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December 15, 2016

BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Sebastian Gomez Abero,
Division of Corporation Finance,
Securities and Exchange Commission,
100 F Street, N.E.,
Washington, D.C. 20549.

Re: In the Matter of The Goldman Sachs Group, Inc. and Goldman, Sachs & Co.

Dear Mr. Gomez Abero,

This letter is submitted on behalf of our clients The Goldman Sachs Group, Inc. ("GS Inc.") and Goldman, Sachs & Co. ("GS&Co." and, together with GS Inc., the "Applicants"). The Applicants hereby request, pursuant to Rule 506(d)(2)(ii) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act"), a waiver of any disqualification from relying on the exemption provided by Rule 506 of Regulation D ("Rule 506") that may be applicable as a result of the entry by the U.S. Commodity Futures Trading Commission (the "CFTC") of an order against the Applicants (the "CFTC Order") in connection with the actions of certain employees of GS&Co. in respect of submissions to the interest rate benchmark, the U.S. Dollar International Swaps and Derivatives Association Fix ("USD ISDAFIX") and transactions related thereto. GS Inc. and its subsidiaries are referred to herein collectively as "Goldman Sachs".

Goldman Sachs is a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and individuals. GS Inc. is the holding company for Goldman Sachs' global operations. GS&Co. is GS Inc.'s principal U.S. broker-dealer subsidiary.

BACKGROUND

CFTC Order

In and prior to 2016, the staff of the CFTC engaged in settlement discussions with Goldman Sachs in connection with the actions of certain employees beginning in January 2007 and continuing through March 2012 (the "Relevant Period") to attempt to manipulate the USD ISDAFIX, a benchmark related to interest rate products.[1] As a result of these discussions, GS Inc. and GS&Co., without admitting or denying the findings or conclusions therein, are prepared to consent to the entry of the CFTC Order, the terms of which provide, among other things, the following:

1. Certain GS&Co. traders' bids, offers, and executed trades at specific times during the day, which were intended to affect the USD ISDAFIX, as well as the traders' communications with each other and with certain swaps brokers to plan and execute this trading conduct, constituted overt acts in furtherance of their intent to affect the USD ISDAFIX. These actions constituted attempted manipulation in violation of the Commodity Exchange Act ("CEA") and the regulations thereunder.[2]

2. Certain GS&Co. traders specifically intended to affect the rate at which USD ISDAFIX was set by making false, misleading, or knowingly inaccurate submissions to certain swaps brokers for inclusion in the calculation of the daily rates. The GS&Co. traders' oral and written requests for certain rates to be submitted which would benefit their trading positions, and the submissions resulting from those requests, constituted overt acts in furtherance of the traders' intent to affect the USD ISDAFIX. By doing so, the GS&Co. traders engaged in acts of attempted manipulation in violation of the CEA and the regulations thereunder.[3]

3. GS&Co. conveyed false, misleading, or knowingly inaccurate information that the rates it submitted were based on the prices at which GS&Co. would offer and bid swaps to an acknowledged dealer of good credit in the swaps market absent intent to manipulate the USD ISDAFIX. Moreover, GS&Co.'s submitters knew that GS&Co.'s USD ISDAFIX submissions contained false,

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[1] In 2014, the administration of ISDAFIX changed, and a new version of the benchmark is published under a different name by a new administrator using a different methodology. *See generally* ICE Swap Rate, ICE Benchmark Association, https://www.theice.com/iba/ice-swap-rate (accessed September 19, 2016).

[2] CFTC Order § IV.B.1.

[3] CFTC Order § IV.B.2.

misleading, or knowingly inaccurate information. By such conduct, GS&Co. violated the CEA.[4]

As set forth in the CFTC Order, the CFTC will find that Applicants violated Sections 6(c), 6(d), and 9(a)(2) of the CEA,[5] and, for conduct occurring on or after August 15, 2011, Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the CEA[6] and Regulations 180.1(a) and 180.2.[7] (Both GS Inc. and GS&Co. are found liable based on the conduct of GS&Co. employees.)[8]

Under the CFTC Order, the Applicants will agree (i) to pay a civil monetary penalty of $120 million and (ii) to undertake certain remediation efforts relating to internal controls and procedures reasonably designed to ensure the integrity of the fixing of any interest-rate swap benchmark (although the CFTC Order will acknowledge that certain of these remediation efforts have already been completed), as discussed below under "What remedial steps have been taken".[9]

DISCUSSION

Goldman Sachs understands that the entry of the CFTC Order will disqualify it, affiliated entities, and certain other issuers from relying on the exemption provided by Rule 506. Goldman Sachs is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of an issuer, promoter, or underwriter of securities, or acting in any other capacity described in Rule 506 for the purposes of Rule 506(d)(1)(iii), Goldman Sachs, its affiliated issuers, and other issuers with which Goldman Sachs or an affiliate of Goldman Sachs is associated in one of the above-listed capacities would be prohibited from relying upon this offering exemption when issuing securities. The Securities and Exchange Commission (the "Commission") has the authority to waive the Rule 506 disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. § 230.506(d)(2)(ii).

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4 CFTC Order § IV.C.

5 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

6 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b and 13(a)(2) (2012).

7 17 C.F.R. §§ 180.1(a) and 180.2 (2015).

8 CFTC Order §§ IV.B, C and D.

9 CFTC Order § VII.

On March 13, 2015, the Division of Corporation Finance ("Division") published guidelines setting forth the factors the Division will consider in determining whether to grant a waiver under Rule 506(d)(2).[10] These factors include:

1. The nature of the violation;
2. Whether it involved the offer and sale of securities;
3. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation;
4. Who was responsible for the misconduct;
5. What was the duration of the misconduct;
6. What remedial steps have been taken; and
7. What the impact will be if the waiver request is denied.

The guidelines also address the issuer's burden to show good cause and note that, where there is a criminal conviction or a scienter-based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified will be significantly greater. The Applicants believe that, in this case, each of them satisfies the requirements for establishing good cause under the factors discussed in the guidelines, as described in detail below.[11]

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[10] *See* SEC, Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D, March 13, 2015, at https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml (last accessed September 19, 2016).

[11] We note in support of this request that the Commission has granted relief under Rule 506 for similar reasons or in similar circumstances. *See, e.g., In the Matter of Barclays PLC, Barclays Bank PLC, and Barclays Capital Inc.,* Order Under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(iii) Disqualification Provision (Release No. 9786, May 20, 2015); *In the Matter of Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Order Under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(ii) Disqualification Provision (Release No. 9682, November 25, 2014); *In the Matter of Citigroup Global Markets, Inc.*, Order Under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(ii) Disqualification Provision (Release No. 9657, September 26, 2014). Goldman Sachs is not requesting waivers of the disqualifications from relying on Regulation A and Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. Goldman Sachs understands that it may request such waivers in a separate request if circumstances change.

1. The nature of the violation. The CFTC Order finds that, during the Relevant Period, the Applicants, by and through certain GS&Co. traders in New York, attempted to manipulate the USD ISDAFIX.[12] The CFTC Order describes USD ISDAFIX as a leading global benchmark referenced in a range of interest rate products including swaps, cash-settled options on interest rate swaps and swap futures contracts. The CFTC Order finds that certain traders intended to benefit their derivatives positions in such instruments and in certain exotic structured products.[13] As described above under "Background", the CFTC Order finds that the traders specifically intended to affect the rate at which USD ISDAFIX was set by making false, misleading, or knowingly inaccurate submissions to certain swaps brokers for inclusion in the calculation of the daily rates, thereby engaging in acts of attempted manipulation in violation of the CEA and the regulations thereunder.[14] The CFTC Order also finds that the GS&Co. employees conveyed false, misleading, or knowingly inaccurate information that the rates submitted were based on the prices at which GS&Co. would offer and bid swaps to an acknowledged dealer of good credit in the swaps market absent intent to manipulate the USD ISDAFIX, in violation of the CEA.[15]

2. Whether it involved the offer and sale of securities. The violations addressed in the CFTC Order involved the firm's trading and related submissions to affect the ISDAFIX interest rate swap benchmark. The trading activities involved swaps, derivatives and secondary market transactions in products potentially affecting the ISDAFIX benchmark. The CFTC Order provides that certain traders at GS&Co. bid, offered and executed transactions in interest rate products, including swaps, swap spreads, Eurodollar futures and U.S. Treasuries at the relevant fixing time with the intent to affect the reference rates and spreads used in establishing the USD ISDAFIX.[16] The transactions described in the Order that were made with the intent to affect the ISDAFIX did not, except for the transactions in U.S. Treasuries, involve the offer and sale of securities.[17] The CFTC Order also provides that certain traders at GS&Co. attempted to manipulate USD ISDAFIX through false submissions to the firm that managed the USD ISDAFIX process.[18] As described in the CFTC Order, the potential benefit of this trading

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[12] CFTC Order §§ III.A, IV.B, C and D.

[13] CFTC Order § III.A., first paragraph.

[14] CFTC Order § IV.B.1.

[15] CFTC Order § IV.B and C.

[16] CFTC Order §§ III.C.5 and 6, and IV.B.1.

[17] The CFTC Order discusses activity in Treasury securities in § III.C.5 (including in particular § III.C.5.a.iii) and the fourth, fifth and sixth bullets of § III.C.6.

[18] CFTC Order § IV.B.2.

and other activity involved positions in interest rate swaps, swap futures, swaptions and various other derivatives positions and instruments.[19]

3. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation. No criminal proceeding has been brought and the Applicants know of none contemplated in connection with the conduct that is the subject of the CFTC Order.

The form of the CFTC Order includes findings that the Applicants violated Sections 6(c), 6(d), and 9(a)(2) of the CEA,[20] and, for conduct occurring on or after August 15, 2011, Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the CEA[21] and Regulations 180.1(a) and 180.2.[22] Certain of these provisions have been identified by the CFTC as scienter-based.

Section 6(c)(1) of the CEA makes it unlawful "for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance" in contravention of CFTC rules. The CFTC stated in a 2010 Notice of Proposed Rulemaking that scienter is an element of a violation of Section 6(c)(1).[23]

Section 6(c)(3) of the CEA makes it unlawful "for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." While the CFTC does not appear to have stated explicitly that Section 6(c)(3) is scienter-based, it has specified a scienter requirement of specific intent for Regulation 180.2,[24] which is adopted under Section 6(c)(3).[25]

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19 CFTC Order § III.C.4.

20 7 U.S.C. §§ 9, 13b and 13(a)(2) (2006).

21 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b and 13(a)(2) (2012).

22 17 C.F.R. §§ 180.1(a) and 180.2 (2015).

23 Prohibition of Market Manipulation, Notice of Proposed Rulemaking, 17 C.F.R. Part 180, 75 Fed. Reg. 67657, 67659 (Nov. 3, 2010) ("The Commission proposes that, consistent with the Supreme Court's interpretation of Exchange Act section 10(b) and SEC Rule 10b-5, a person must act with 'scienter' in order to violate subsection 6(c)(1) of the CEA and the Commission's implementing rule. 'Scienter' in this context refers to a mental state embracing intent to deceive, manipulate or defraud, and it includes recklessness.").

24 *See* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, Final Rules (hereinafter, "Final Rules"), 17 CFR Part 180, 76 Fed. Reg. 41398, 41404; CFTC Fact Sheet, "Anti-Manipulation and Anti-Fraud Final

Section 9(a)(2) of the CEA makes unlawful certain manipulation and attempted manipulation and other conduct, and the CFTC has stated that it views Section 9(a)(2) as having a scienter requirement of specific intent.[26] The CFTC has specified a scienter requirement of intentional or reckless conduct for Regulation 180.1,[27] which is adopted under Section 9(a)(2).

Based upon the foregoing, the Applicants believe that CEA Sections 6(c)(1) (including Section 6(c)(1)(A), which specifies that "unlawful manipulation" for purposes of Section 6(c)(1) includes delivery of certain false, misleading or inaccurate reports), 6(c)(3) and 9(a)(2), and Regulations 180.1 and 180.2 are considered by the CFTC to be scienter-based.[28]

4. Who was responsible for the misconduct. The employees whose conduct will be found in the CFTC Order to have been violative were certain traders on the USD Swap and USD Volatility Desks (i.e., desks that primarily traded non-securities derivatives and related hedges). None of these individuals was an officer or held a position on the Board of Directors of either Applicant.[29] None of these traders who were on GS&Co.'s Swap Desk during the Relevant Period is currently employed by Goldman Sachs.

One of these traders, who was employed by the firm's Volatility Desk during the relevant period, remains at Goldman Sachs. This trader is currently a Managing Director and became the Head of the firm's Interest Rate Products Trading Group subsequent to the Relevant Period. He currently supervises ten employees on various interest rate products desks, including the U.S. Swap Desk and the U.S. Volatility Desk. This trader was interviewed during the course of the investigation that will culminate with the entry of the Order. He has not been individually charged with any violation of law. Section VII.C.1.d of the CFTC Order requires the Head of that Group to make a supplemental sworn individual compliance certification to the CFTC, after consultation

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Rules" (undated), available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/amaf_factsheet_final.pdf (accessed September 19, 2016) (hereinafter "Fact Sheet").

25 *See* Final Rules, *supra* note 24, at 41399.

26 *See* id. at 41404-408; Fact Sheet, *supra* note 24.

27 *See* Fact Sheet, *supra* note 24.

28 Section 6(c) as in effect prior to the 2010 amendments to the CEA, and Section 6(d), authorize CFTC action in the event of specified noncompliance with the CEA.

29 Goldman Sachs does not consider its traders or desk heads to be "officers", although some may have supervisory responsibilities. In that respect, the CFTC Order finds that a former head of the Swap Desk, who is no longer employed at the firm, engaged in attempted manipulative conduct.

with the firm's chief compliance officer, within 365 days after entry of the CFTC Order, certifying among other things the effectiveness of the firm's remedial actions (which are discussed below), in conjunction with a separate certification required from a representative of the Applicants' executive management under Section VII.C.1.c of the CFTC Order. He is not involved in any Regulation D private placement activity.

There are no findings that the misconduct described in the CFTC Order occurred at the direction of senior management of Goldman Sachs. Moreover, there is no indication that the wrongdoing reflected "a tone at the top" that condoned or chose to ignore the misconduct. Rather, Goldman Sachs has accepted responsibility for the conduct of the USD swaps and USD options traders involved in the conduct described in the CFTC Order.

Importantly, the CFTC Order will not find that members of the Board of Directors, the Executive Committee, the Disclosure Committee or the Financial Reporting group within the Finance Division of GS Inc. knew about the misconduct, or find that members of the Board of Directors, the Executive Committee, the Disclosure Committee or the Financial Reporting group within the Finance Division ignored any warning signs or "red flags" regarding the misconduct. Notably, the Order describes solely "attempted" manipulation and related activity involving submissions, and contains no findings that the conduct came to the attention of anyone senior to the individuals on the relevant trading desks, that the desks traded outside the prevailing bid/ask spreads in a manner that actually moved the market to artificial levels, or that through ISDAFIX-related conduct the desks generated a level of transactional activity or achieved profits of a dimension that would have stood out to more senior supervisors. As a result, Goldman Sachs believes it has shown good cause for the Commission to determine that it is not necessary under the circumstances that an exemption from Rule 506(d) be denied.

5. What was the duration of the misconduct. The conduct at issue in the CFTC Order occurred over a period of approximately five years, beginning in January 2007 and continuing through March 2012.[30] The Applicants note that the conduct at issue is not alleged to have continued after that point, almost five years ago.

6. What remedial steps have been taken. The CFTC Order acknowledges that Goldman Sachs has undertaken certain steps to make reasonable efforts to ensure the integrity of any submission to, and trading in connection with, certain benchmarks to which Goldman Sachs submits or submitted, including ISDAFIX and its successor benchmark.[31] These steps, which have been completed, include but are not limited to:

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[30] CFTC Order § III.A., first paragraph.

[31] CFTC Order § VI.F.

1) Goldman Sachs has conducted a global review of risks relating to benchmarks, including of the processes and controls governing its participation in benchmark rates, including USD ISDAFIX, and has reaffirmed its prohibition on manipulation and attempted manipulation of benchmark rates specifically (in addition to existing broad prohibitions on market manipulation);

2) Goldman Sachs enhanced controls and processes surrounding its participation in benchmarks (including interest-rate swap benchmarks), including the direct involvement of senior management personnel through review and attestation requirements. These enhanced controls and processes include but are not limited to:

   a) Enhanced guidance relating to the appropriate source of benchmark contribution information, including the implementation of automated and/or transaction-based contributions where possible, as well as identification and mitigation of potential conflicts of interest relating to Goldman Sachs' trading in products affected by the relevant benchmark;

   b) Required prior approval of all contributions to benchmarks by a Securities Division PMD, including the identification of contributing individuals and their supervisors;

   c) Implementation of record keeping of benchmark contributions and the methodologies for establishing contributions;

   d) Establishment of a Contribution Working Group comprised of Compliance personnel, which meets regularly to discuss topics and potential risks relating to benchmark contributions;

   e) Annual review of each benchmark contribution by the relevant approver (a Securities Division PMD), as well as quarterly attestations by trading supervisors and employees regarding compliance with established policies;

   f) Enhanced control framework and governance, including developing appropriate escalation procedures for both internal and external conduct relating to benchmarks, and mandating periodic review and audit of contributions to benchmarks.

3) Goldman Sachs enhanced controls and processes relating to its prohibition on benchmark contributions (and trading generally) intended to mislead or manipulate the market, including but not limited to:

a) Development of daily reports showing upcoming expiries potentially referencing ISDAFIX, as well as additional trading and position surveillances, designed to detect potential manipulation of benchmark rates through trading and/or related communications;

b) As part of enhanced training of all employees on the submitting and trading desks regarding market manipulation, additional discussion concerning improper submission and trading practices;

c) Enhanced policies and procedures providing additional guidance regarding benchmark contributions and market manipulation generally.

The CFTC Order will note that these remedial measures were undertaken to implement and strengthen the Applicants' internal controls and procedures relating to the fixing of interest-rate swaps benchmarks and related supervision of the Applicants' swaps, options (volatility) and exotics desks.[32]

In addition, under the CFTC Order, the Applicants will undertake the following remediation efforts to the extent not already undertaken. All of the items below other than b.ii, iii. and viii. (and item a., to the extent items b.ii, iii. and viii. are incorporated therein) have been completed, and the anticipated timetable for completion of those remaining items is indicated.

a. The Applicants will implement and improve their internal controls and procedures in a manner reasonably designed to ensure the integrity of the fixing of any interest-rate swap benchmark, including measures to identify and address internal or external conflicts of interest;

b. The Applicants' remediation improvements will include established internal controls and procedures relating to:

i. measures designed to enhance the detection and deterrence of improper communications concerning interest-rate swap benchmarks, including the form and manner in which communications may occur;

ii. monitoring systems designed to enhance the detection and deterrence of trading or other conduct potentially intended to manipulate directly or indirectly swap rates, including benchmarks based on

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[32] CFTC Order § VII.C.1.

interest-rate swaps (Goldman Sachs anticipates that this process will be completed by the third quarter of 2017);

iii. periodic audits, at least annually, of the Applicants' participation in the fixing of any benchmark based on interest-rate swaps (Goldman Sachs anticipates that this process will be completed within 12 months of the effective date of the CFTC Order);

iv. supervision of trading desks that participate in the fixing of any benchmark based on interest-rate swaps;

v. supervision of trading desk conduct that relates to any interest-rate swap benchmark;

vi. routine and on-going training of all traders, supervisors and others who (1) are involved in the fixing of any benchmark based on interest-rate swaps or (2) oversee supervisors or desk heads involved in the fixing of any benchmark based on interest-rate swaps;

vii. routine and on-going training of all trading desk personnel and supervisors relating to the trading of any product that references a benchmark based on interest-rate swaps;

viii. processes for the periodic but routine review of written and oral communications of any traders, supervisors and others who are involved in the fixing of any benchmark based on interest-rate swaps with the review being documented and documentation being maintained for a period of three years (Goldman Sachs anticipates that this process will be completed by the first quarter of 2017); and

ix. maintenance of a system for reporting, handling and investigating any suspected misconduct or questionable, unusual or unlawful activity relating to the fixing of any benchmark based on interest-rate swaps with escalation to compliance and legal, and with reporting of material matters to the executive management of the Applicants and the CFTC, as appropriate; and with Applicants' maintaining the record basis of the handling of each such matter for a period of three years.

While the Applicants believe that items described as completed are currently in compliance with the requirements of the CFTC Order, the Applicants also note that, as a matter of best practice, Goldman Sachs continually reviews its internal controls and procedures and implements enhancements as it deems appropriate to further strengthen them.

7. What the impact will be if the waiver request is denied. Rule 506 is fundamental to the operations of several of Goldman Sachs' business lines, including the Investment Management, Merchant Banking and Investment Banking Divisions, each of which is distinct from, and whose business activities have no relation to, the trading desks and activities that are the subject of the CFTC Order. The loss of the ability to act as placement agent, or to issue securities, in offerings conducted under Rule 506 would have an extremely harmful effect on those Goldman Sachs businesses, harming client relationships and relationships with companies in which Goldman Sachs has substantial investments, resulting in substantial loss of revenue for GS&Co. and jeopardizing the ability to attract and retain assets under management. These effects will be felt immediately as a result of GS&Co.'s inability to conduct Rule 506 offerings but are also likely to have cumulative longer-term effects, including loss of assets under management if clients begin to look elsewhere for private investments. Goldman Sachs believes that these impacts to its finances and to its client relationships–particularly in business areas completely separate from, and unrelated to, those at issue in the CFTC Order–are disproportionate to the conduct that is the subject of the CFTC Order. Moreover, Goldman Sachs' clients will be harmed if GS&Co. is unable to rely upon Rule 506 because they would not be able to invest in such offerings, including clients with existing investments in private funds, who could be harmed by the cessation of offering activity by those funds.

Investment Management Division. Goldman Sachs' Investment Management Division ("IMD") provides investment and wealth advisory services, including to institutions such as pension plans, charitable organizations, insurance companies and corporations, trusts, estates, family offices and high-net-worth individuals. Use of Rule 506 is integral to IMD's business including its client franchise. IMD uses private pooled vehicles ("private funds") as a fundamental part of its business, a substantial portion of which depends upon Rule 506 placements of private funds to its clients. The management fees and potential performance fees earned on IMD private funds are a significant source of revenue for IMD. IMD's private placement activity is conducted almost exclusively by GS&Co. Without Rule 506, IMD would not be able to offer new private funds to its clients or to support existing private funds, many of which are offered on a continuous basis.

In the period from January 1, 2014 through August 31, 2016, IMD offered interests in approximately 300 private funds in reliance on Rule 506, including U.S. private funds and non-U.S. private funds offered to U.S. investors. These 300 private funds are only a subset of IMD's private fund assets, as the figure does not include private funds that have not been offered since 2013 (although some may be offered again in the future). The figure also does not include private fund assets attributable to non-U.S. investors. Goldman Sachs believes that the potential harm to its non-U.S. private fund business is also an important consideration in assessing the harm from the loss of Rule 506, as discussed in the following paragraph. IMD's regulatory assets under

management for all of its private funds, including interests offered outside the United States in reliance on exemptions other than Rule 506, were approximately $152 billion as of December 31, 2015.

IMD believes that its ability to offer and sell its private funds in non-U.S. markets is also dependent in many instances upon its substantial U.S. investor base, without which it might not be practicable to achieve sufficient scale for viable funds. For this reason, IMD believes that its ability to attract and retain non-U.S. assets as well as U.S. assets would be at risk if it were to lose the ability to rely upon Rule 506. The number of private funds affected by loss of the ability to rely on Rule 506 could substantially exceed the approximately 300 private funds that have had recent Rule 506 activity, because many Rule 506 offerings are conducted concurrently with a non-U.S. offering under Regulation S, and in some instances termination of the Rule 506 offering could likely also result in termination of the Regulation S offering.

The inability to use Rule 506 will harm IMD clients as well as the firm. Disqualification under Rule 506 would have the immediate effect of forcing IMD to halt all activity in on-going offers and sales of private placements under the Rule and the longer-term effect of IMD being unable to engage with clients who are interested in a range of privately placed investments. Clients would be deprived of the opportunity to consider any number of potential prospective offerings made under Rule 506. Significantly, also, to the extent IMD funds are unable to conduct continuous offerings of their securities, IMD clients would not be able to enjoy the benefits of economies of scale as fund assets grow through further sales.[33] Indeed, if the offering of a fund's securities ceases, there is a greater risk of net redemptions, potentially resulting in a shrinking asset base.

There is no ready substitute if Rule 506 were to become unavailable. The parameters of exemptions under Section 4(a)(2), for example, are far less clear than those of Rule 506. Section 4(a)(2) is not well suited to offerings to relatively large numbers of investors or to continuous offerings. Accordingly, Goldman Sachs does not view Section 4(a)(2) as a viable alternative to Rule 506. It bears noting, as well, that offerings conducted under Section 4(a)(2) do not have the benefit of Federal pre-emption of state registration requirements, which does apply to Rule 506 offerings. As a consequence, each Section 4(a)(2) offering would require an analysis of state Blue Sky laws and, in many instances, registration in multiple states, the requirements of which are impracticable for many of IMD's products and offerings.

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[33] Such benefits may include reductions in a fund's overall expense ratio as fixed costs are paid from a larger asset base and increased opportunity for diversification of investments.

Merchant Banking Division. Goldman Sachs' Merchant Banking Division ("MBD") also would be materially adversely affected by the loss of Rule 506. MBD's activities include sponsoring and investing in funds that pursue investment opportunities within broad investment mandates. As is the case with IMD, the use of Rule 506 is integral to MBD's business including its client franchise, and there is no ready substitute for MBD if Rule 506 were to become unavailable.

A substantial portion of MBD's operations involves private funds managed and offered by GS&Co. As of December 31, 2015, MBD's funds that were offered and sold under Rule 506 had aggregate regulatory assets under management of approximately $25 billion. (Regulatory assets under management for MBD private funds includes uncalled capital, cash and receivables). As of December 31, 2015, MBD's private funds in total had aggregate regulatory assets under management of approximately $71 billion. The larger figure includes both funds designed for U.S. investors that are offered under Rule 506 and funds designed for non-U.S. investors that are offered under other exemptions from the Securities Act, usually Regulation S, but that may also have some U.S. investors who purchase in Rule 506 transactions.

MBD is currently engaged in offerings of four substantial private fund families and is expecting to begin others in the short term. Disqualification under Rule 506 would have the immediate negative effect of forcing Goldman Sachs to halt all activity in on-going offers and sales of these funds. The disqualification will also have the longer-term effect of MBD being unable to engage with clients who are interested in a range of privately placed investments.

Goldman Sachs, through various business units including MBD and the Special Situations Group within the Securities Division (which also is completely separate from, and unrelated to, the trading desks at issue in the CFTC Order), has investments, either directly or through their managed funds, accounts and investment vehicles, constituting voting equity interests of 20% or greater in over 100 portfolio companies that are held for investment purposes and are not operationally part of Goldman Sachs. If GS Inc. is disqualified from Rule 506, each of these portfolio companies also will be disqualified by GS Inc.'s 20% beneficial ownership. In many cases GS Inc. does not actually control these portfolio companies, and they may use another broker-dealer as placement agent when they conduct offerings, but they will not in any event be able to rely on Rule 506. Permitting such consequences to befall companies that have only an attenuated relationship with Goldman Sachs and that had no involvement in the misconduct addressed in the CFTC Order seems punitive for these companies that have no involvement in the violative conduct.

Investment Banking Division. Goldman Sachs' Investment Banking Division ("IBD") acts as placement agent for corporate clients in Rule 506 offerings. Over the past three years, IBD has completed approximately 20 placements for clients that relied

on the Rule 506 exemption or contemplated doing so at the time Goldman Sachs was engaged, aggregating approximately $5.8 billion raised.

In these cases, the Rule 506 exemption provides protections to the clients, as issuers, that are not available under Section 4(a)(2). In such transactions, it is the client, not Goldman Sachs, that decides which exemption it will rely upon. If Goldman Sachs is not able to operate under Rule 506 for these sophisticated clients, they may not be willing to proceed under Section 4(a)(2) and will take their business elsewhere.

Other units within Goldman Sachs also rely upon Rule 506, including its Impact Investing initiative, which finds innovative commercial solutions that address social and civic challenges in communities across the United States. In furtherance of this initiative, the Urban Investment Group within Goldman Sachs Bank USA has raised a private fund under Rule 506 and would be precluded from such activity in the future if disqualification arises under Rule 506(d).

<u>Prior Relief</u>

GS Inc. and GS&Co. have previously obtained relief under Rule 506(d) in connection with the Commission's Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative").[34] The MCDC Initiative was a voluntary program under which municipal securities dealers self-reported disclosure violations in municipal bond offering documents. The conduct reported in the MCDC Initiative occurred in a different business unit, was described by the Commission as "non-scienter based" and is unrelated to the conduct which is the subject of this waiver request.

* * *

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that Goldman Sachs has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D, to waive the disqualification provision in Rule 506 to the extent it may be applicable as a result of the entry of the CFTC Order.

For a period of five years from the date of the CFTC Order, Goldman Sachs will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d)(l) as a result of the CFTC Order, a description in writing of the CFTC Order a reasonable time prior to sale.

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[34] In the Matter of Certain Underwriters Participating in the Municipalities Continuing Disclosure Cooperation Initiative, Release No. 33-9848 (June 18, 2015) (granting relief to 36 broker-dealers).

Please do not hesitate to call me at (212) 558-4974 if you have any questions.

Very truly yours,

Frederick Wertheim/MDT

Frederick Wertheim

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