

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6189 / November 22, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21245**

**In the Matter of**

**GOLDMAN SACHS ASSET  
MANAGEMENT, L.P.,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Goldman Sachs Asset Management, L.P. (“GSAM” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent's Offer, the Commission finds that

### **Summary**

1. From April 2017 to February 2020 ("Relevant Period"), GSAM failed to adopt and implement policies and procedures reasonably designed to prevent violations of the federal securities laws concerning the investment process GSAM's Fundamental Equity group ("GSAM FE") utilized while advising an ESG (environmental, social and governance) separately managed account ("SMA") strategy and two ESG mutual funds – respectively, the US Equity ESG Strategy ("ESG SMA Strategy"), Goldman Sachs International Equity ESG Fund ("International ESG Fund"), and Goldman Sachs ESG Emerging Markets Equity Fund ("EM ESG Fund") (collectively "ESG Investment Products").

2. In particular, with respect to the ESG SMA Strategy, GSAM did not adopt written policies and procedures governing how GSAM FE evaluated ESG factors as part of the investment process until some time after the strategy was introduced. With respect to all of the ESG Investment Products, once GSAM adopted the written policies and procedures relating to the ESG investment process, it failed to consistently follow them prior to February 2020.

3. For example, the policies and procedures stated that GSAM FE would use a proprietary ESG questionnaire in connection with its research of select securities for inclusion into the ESG Investment Products. GSAM described the questionnaire and a related tool—a materiality matrix—as part of its ESG investment process for the ESG Investment Products in materials provided to intermediaries, including registered investment advisers and broker-dealers, and to the Goldman Sachs Trust ("GST") board of trustees ("GST Board"), among others. However, prior to February 2020 GSAM FE investment teams did not routinely follow the policies and procedures and description of its ESG investment process provided to third parties and the GST Board. Instead, GSAM FE relied on previously conducted ESG research for the issuers held in the ESG Investment Products, which research it had conducted in many instances in a different manner, and only completed the newly developed ESG questionnaires for all positions after securities were already selected for inclusion in the products' portfolios. In addition, GSAM FE failed during the Relevant Period to maintain the ESG questionnaires in a central location, as required by its policies and procedures, which also delayed GSAM in producing relevant documents during the course of the Commission's investigation.

### **Respondent**

4. **GSAM**, a Delaware limited partnership with its principal place of business in New York, New York, is an investment adviser registered with the Commission since October 1990. In its Form ADV dated April 7, 2022, GSAM managed approximately \$1.5 trillion in regulatory assets under management. As part of GSAM's business, GSAM was the investment adviser to the ESG SMA Strategy's investors, and the International ESG Fund and EM ESG Fund.

### **Other Relevant Entities**

5. **ESG SMA Strategy** is a strategy offered to clients in SMAs advised by GSAM. This strategy was renamed from the US Responsible Equity Strategy on April 1, 2017. As of February 1, 2020, GSAM managed approximately \$103 million in client assets utilizing this strategy.

6. **International ESG Fund** is a mutual fund advised by GSAM that was converted from the Goldman Sachs Focused International Equity Fund and relaunched as the International ESG Fund on February 28, 2018. As of February 1, 2020, the fund had a net asset value of \$127 million. GST created the International ESG Fund and the share classes available to investors.

7. **EM ESG Fund** is a mutual fund advised by GSAM that was launched May 31, 2018. As of February 1, 2020, the fund had a net asset value of \$8 million. GST created the EM ESG Fund and the share classes available to investors.

8. **GST** is a Delaware statutory trust established January 28, 1997 that operates as an open-end, management investment company. The International ESG Fund and EM ESG Fund are both series of the trust.

### **Background**

9. Among other things, GSAM FE supports actively managed GSAM equity portfolios through a variety of investment vehicles, including mutual funds and investment strategies for SMAs. In 2017 and 2018, GSAM advised a fund and strategy that were renamed and a fund that was launched, each incorporating the term “ESG” into their names. On April 1, 2017, GSAM renamed the ESG SMA Strategy, a strategy offered in separately managed accounts; the GST Board voted to rename the International ESG Fund, which was renamed on February 28, 2018; and the GST Board voted to launch the EM ESG Fund, which was launched on May 31, 2018. GSAM had clients who invested in the ESG SMA Strategy before and after it was renamed; the International ESG Fund included outside shareholders when it was renamed; the EM ESG Fund was launched with seed money from a GSAM affiliate and did not have outside shareholders until 2019. In re-naming the International ESG Fund and launching the EM ESG Fund, GSAM FE staff noted to the GST Board the significant opportunity presented by investor demand for ESG investments.

10. During the Relevant Period, the prospectuses for the International ESG Fund and EM ESG Fund generally disclosed a two-step investment process for applying ESG considerations to select, monitor, and sell securities. First, the GSAM FE investment teams assigned to the ESG Investment Products identified and screened out securities issued by companies primarily engaged in certain businesses, such as casinos, distillers, tobacco producers, arms manufacturers, or other

prohibited industries and excluded such securities from further ESG considerations.<sup>1</sup> Second, the GSAM FE investment teams undertook a supplemental ESG analysis of companies that were still being considered after step one, which included “conducting proprietary ESG research” in order to select securities for their portfolios; the details of this supplemental analysis and proprietary ESG research were not described in the prospectuses. Prior to February 2018, ESG SMA Strategy marketing materials provided similar disclosures.

### **Policies and Procedures Over the ESG Investment Process**

11. Prior to the Relevant Period, GSAM FE considered ESG factors generally for the securities selected in portfolios it managed that held similar securities to the ESG Investment Products. However, the ESG research at that time varied between the investment teams and was not consistently applied or updated.

12. Beginning in September 2017, in an attempt to consistently apply ESG research to the selection of securities for the ESG SMA Strategy and for its forthcoming ESG focused products, GSAM FE developed a common framework for the ESG investment process. This framework included a questionnaire, which contained a series of detailed questions covering ESG topics. The responses generated numerical scores for each ESG component, which were then weighted depending on the issuer’s industry to generate an aggregated score. GSAM FE determined industry sector score weightings for environmental and social considerations on a worksheet it described as a materiality matrix. Although GSAM FE developed a common framework, during this time GSAM did not have written policies and procedures concerning its existing ESG two-step investment process for the ESG SMA Strategy. Also at this time, GSAM had not launched the EM ESG Fund and had not renamed the International ESG Fund.

13. In 2018, GSAM adopted written policies and procedures concerning the ESG investment process that required investment teams to complete a questionnaire for a company prior to including its securities in the portfolio. In addition, the policies and procedures required completed questionnaires be maintained in a “shared database.” The policies and procedures were further augmented in 2019 requiring, among other things, that questionnaires be updated at least once annually for all positions to monitor holdings. As of February 2020, GSAM FE completed questionnaires as provided by its policies and procedures.

### **GSAM FE Representations of ESG Investment Products**

14. In February 2018, prior to the EM ESG Fund’s launch, GSAM FE representatives presented and provided materials to the GST Board concerning the proposed fund, including the fund’s planned ESG investment process. During the presentation, a GSAM FE representative told the trustees that the EM ESG Fund would place “greater emphasis on the ESG analysis by

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<sup>1</sup> GSAM permitted ESG SMA Strategy clients to further modify these industry exclusions as to their respective SMAs. For the International ESG Fund and EM ESG Fund, the prospectuses also permitted GSAM to hold up to 20% of the value of the funds in assets that did not comply with the applicable mandates of the funds.

assigning scores to companies based on their adherence to ESG principles . . . .” GSAM FE supplemented the presentation with written materials that described the questionnaire, the proprietary ESG score it generated, and its documentation. The presentation also stated that the output of the questionnaire was among several factors “[c]onsidered in determining position sizing.”

15. In mid-2018, the GST Board met and approved the International ESG Fund’s and EM ESG Fund’s updated criteria that determined which securities were classified as ESG securities. GSAM FE included in the board materials a draft of the 2018 policies and procedures that addressed the ESG investment process.

16. Also in 2018, GSAM FE developed promotional “pitch books” that supplemented other materials, such as mutual fund prospectuses, with more information about the ESG Investment Products. From February 2018 through July 2019, GSAM FE disseminated pitch books to at least 57 entities that represented primarily intermediaries. At a high level, the pitch books referred to the questionnaire and related materiality matrix as “[p]roprietary ESG investment tools” that “inform[ed] stock selection and portfolio construction” and were “[c]onsidered in determining position sizing.” Low-resolution images of the questionnaire and matrix were included but were not legible. Some versions of the materials also referenced the idea that the questionnaire generated an ESG score, and the materials stated that the questionnaire documented the ESG investment process.

17. In addition to pitch books, GSAM FE responded to at least four requests for proposal (“RFPs”) through September 2019 that related to the International ESG Fund, EM ESG Fund, or SMA versions of these mutual funds. The RFPs provided similar disclosures concerning the ESG investment process.

### **GSAM FE ESG Investment Process Practices**

18. From April 2017, when the ESG SMA Strategy was renamed, until June 2018, GSAM had not adopted written policies and procedures covering the ESG investment process for that product.

19. Once adopted, GSAM did not implement the policies and procedures for the ESG Investment Products during the Relevant Period. For example, the EM ESG Fund’s investment analysts did not complete all of the newly developed questionnaires until after the investment team had already selected securities for the initial portfolio, which was created on May 31, 2018. As of August 24, 2018, the investment analysts had completed questionnaires for 34 of 79 positions in the fund. In some cases, the investment analysts did not complete a questionnaire for an issuer until November 2018. The investment team never completed questionnaires for two positions that the fund exited before December 2018. Furthermore, because the questionnaires had not been completed, the ESG scores generated from them could not have been used for position sizing as had been disclosed in materials presented to the GST Board and intermediaries, nor could they have been used to inform stock selection and portfolio construction, as the pitch book materials indicated. Prior to 2019, the EM ESG Fund’s only shareholder was a GSAM affiliate that

provided seed capital to the fund. By January 2019, investment analysts had completed questionnaires for nearly all of the EM ESG Fund's then-existing positions.

20. The GST Board approved the rename of the International ESG Fund in February 2018 and investment analysts completed the specific type of questionnaires for most of the fund's 33 then-existing positions by May 2018. However, for new positions the questionnaires were not routinely completed before the positions were added. As a result, GSAM FE did not use the questionnaires or ESG scores to select securities or determine the size of positions in the International ESG Fund during the Relevant Period.

21. Despite describing in pitch books as early as February 2018 that the ESG SMA Strategy's investment team would use questionnaires as a part of its investment process, that team did not begin populating responses to the questionnaires for most ESG SMA Strategy positions until January 2020 and completed the work for the entire portfolio the following month.

22. Prior to the completion of the questionnaires and use of the materiality matrix to generate an ESG score, GSAM FE had conducted ESG research on the issuers held in the ESG Investment Products. However, the research was not uniformly applied across issuers. In addition, GSAM FE's research differed from the policies and procedures. For example, in some instances it used a different scoring system that relied on third party data with proprietary GSAM FE weighting applied.

23. During the Relevant Period, GSAM FE did not provide its staff with sufficient guidance concerning the applicability and scope of the 2018 policies and procedures that covered the ESG investment process. GSAM FE staff's understanding of its obligations to complete questionnaires was inconsistent with the 2018 policies and procedures and marketing materials disseminated to third parties. For example, some GSAM FE staff believed completion of the questionnaire optional; others believed that they could be completed sometime after the position had been added to the portfolio.

24. Finally, from the beginning of the Relevant Period until December 31, 2019, the ESG Investment Products held positions in approximately 270 companies. Although investment analysts completed questionnaires for many of these positions in 2018 and 2019, GSAM FE did not maintain them in a central location as required by its policies and procedures adopted in 2018. This also resulted in delays by GSAM in producing documents in connection with the Commission's investigation.

### **Violation**

25. As a result of the conduct described above, GSAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

#### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent GSAM's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent GSAM cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent GSAM is censured.

C. GSAM shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$4,000,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying GSAM as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew Dean, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor

Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary