August 31, 2011

Via Email: rule-comments@sec.gov

Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number SR-2011-36

Dear Ms. Murphy:

Goldman, Sachs & Co. is pleased to submit the following comments with respect to the Securities and Exchange Commission's Release Number 34-64988, File Number SR-2011-36 (the "Release").

The New York Stock Exchange, LLC (the "Exchange") has proposed to eliminate the application process for approved persons, amend the definition of approved person to exclude foreign affiliates, create a new definition of "foreign securities affiliate" and make technical and conforming changes.[1] We support these changes, with certain modifications discussed below, and urge their expeditious approval and implementation.

The proposed changes improve and streamline the Exchange's procedures with respect to approved persons in several ways. Most notably, by eliminating the application process for approved persons, the proposed changes will significantly reduce the administrative burden associated with the Exchange obtaining jurisdiction over an approved person. Under the proposal, the Exchange will obtain jurisdiction over approved persons by consent, rather than through what the Exchange has described as "the submission of a substantial amount of information and documents related to member organization affiliates to submit that is unnecessary to carry out the Exchange's regulatory responsibilities."[2] Both the Exchange and member organizations will benefit from this change, which will save considerable time and resources while maintaining an appropriate level of regulatory oversight.

However, we believe it is neither necessary nor desirable to create a new category of "foreign securities affiliate". As the Exchange notes, excluding foreign affiliates from its jurisdiction would be consistent with Rule 19g2-1 and consistent with the practices of

[1] 76 Fed. Reg. 46860 (August 3, 2011).

[2] 76 Fed. Reg. 46861. The Goldman Sachs Group Inc. currently owns three NYSE member firms and has in the recent past owned as many as five. Each approved person is currently required to make a separate filing in respect of each member firm, further multiplying the required paperwork.

other national securities exchanges. Moreover, the limited circumstances under which the new term is proposed to be used (in a total of 13 rules) do not, in our view, present meaningful conflicts of interest, or they could be addressed more effectively in other ways. We make this comment not solely in the interests of simplifying the drafting of the rules (although that is a worthy objective), but also because we have in recent years devoted considerable resources just to making the determination of whether a non-US affiliate is an approved person based upon its activities and local regulation. Even if foreign securities affiliates are not required to apply to the Exchange, under the proposed rules the member firm would be required to maintain a list of foreign securities affiliates and to check activities against that list in the circumstances described in the 13 rules. Member firms would continue to be subject to second-guessing by the Exchange as to which entities should or should not be foreign securities affiliates, and could be subject to sanctions for determinations with which the Exchange subsequently disagreed.

The objective identified by the Exchange in proposing the category of "foreign securities affiliate" is the management of conflicts of interest. In view of the many existing rules of the NYSE and FINRA, as well as provisions of the Securities Exchange Act of 1934 and related Comission rules, designed to regulate conflicts of interest, we believe that the burden of requiring Exchange members to monitor this additional category outweighs any benefits it may bring. Moreover, the term is in most cases unnecessary because the foreign affiliates are already captured in the rules. For example, Rule 21, which defines the term "substantial interest" for purposes of determining when a director of the Exchange must recuse him or herself from deliberations about a company, creates an artificial precision in reciting the affiliates whose activities and ownership must be checked. Referring simply to a direct or indirect interest by the member firm and its approved persons is sufficient to capture any foreign securities affiliate, which must by definition be owned directly or indirectly by the member or its parent. A similar analysis applies in Rules 22, 91, 92 and 96. The other rules in which "foreign securities affiliate" is proposed to be used could also be modified to eliminate the term without sacrificing substance.

In the alternative, if some monitoring of foreign affiliates is determined to be necessary notwithstanding the above, we strongly recommend that it be limited to those affiliates with a substantial securities business. We have a number of approved persons that are essentially local agents for our larger foreign affiliates, which accept and relay orders but do not engage directly in trading or holding securities, and other approved persons the activities of which are unlikely to raise issues under the 13 NYSE rules. To address this we would recommend that the definition of foreign securities affiliates be limited tot hose affiliates that have been identified by the member firm as "material associated persons" for purposes of the risk assessment provision in Section 17(h) of the Exchange Act. All broker-dealers are already required to maintain that list, so this modification would eliminate any incremental burden on member firms.

Finally, as a drafting matter, we believe the proposed amendments to Rule 304 could be clearer that the consents and agreements required of approved persons must be given or made to the member firm, not directly to the Exchange. In particular, prior to

the first colon in Rule 304, we recommend changing “shall agree” to “shall agree with the member organization that it will” and then strike the word “to” at the beginning of paragraphs (1), (2) and (3).

For the reasons stated above, the Exchange’s proposal should be approved, with the modifications discussed above, and implemented. We appreciate the opportunity to provide our comments on the Release and would welcome the opportunity to discuss any questions that you may have.

Sincerely,

/s/ JOHN W. CURTIS

Managing Director
General Counsel Global Compliance
Goldman, Sachs & Co.