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December 29, 2020

**VIA E-MAIL**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *The Goldman Sachs Group, Inc.*  
*Shareholder Proposal of James McRitchie and Myra K. Young (John*  
*Chevedden)*  
*Securities Exchange Act of 1934 ("Exchange Act")—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that The Goldman Sachs Group, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the "2021 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from John Chevedden on behalf of James McRitchie and Myra K. Young (the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

RESOLVED, shareholders ask that the board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return.

A copy of the Proposal, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

## ANALYSIS

### **I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Involves Matters Related To The Company's Ordinary Business Operations.**

#### *A. Background.*

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept [of] providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release").

In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that "[c]ertain tasks are so fundamental to

management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples of the tasks cited by the Commission include "management of the workforce, such as the hiring, promotion, and termination of employees, *decisions on production quality and quantity*, and the retention of suppliers" (emphasis added). 1998 Release. In the instant case, the Proposal relates to the Company's decisions and considerations regarding whether or not to offer its underwriting services to customers, and, if so, to which customers, on what terms, and in what context.

Finally, framing a shareholder proposal in the form of a request for a report or study does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)."); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

Similar to the well-established precedents and consistent with the Commission and Staff guidance cited above, the Proposal requests a report involving subject matters that address the Company's ordinary business operations, and therefore may be excluded under Rule 14a-8(i)(7).

*B. The Proposal May Be Excluded Because Its Subject Matter Relates To The Products And Services That The Company Offers, Including The Company's Customer Relations.*

The Proposal is excludable pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations, in that it directly relates to the Company's decision to offer underwriting services to its customers, a component of the Company's ordinary business as a leading global investment banking, securities, and investment management firm. The Proposal also relates to the Company's customer relations in so far as the underwriting services at issue are services and offerings routinely provided to the Company's clients and customers.

The Company provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments, and individuals. The Company is an active participant in financial markets around the world, with offices in over 30 countries, and serves clients worldwide. Specifically, the Company engages in various lines of business, such as investment banking, global markets, asset management and consumer & wealth management. The Company's day-to-day business revolves around providing its clients and customers with financial products and services, including the underwriting of public offerings. Here, the Proposal asks for a report relating to "external costs created by the Company's underwriting multi-class equity offerings," and therefore focuses entirely on one of the Company's core products and services.

The Staff has frequently concurred that proposals regarding the provision of banking services and products offered by a financial institution concern matters of ordinary business and thus are excludable under Rule 14a-8(i)(7). In particular, the Staff has consistently permitted exclusion of proposals submitted to financial institutions that relate to the banks' credit policies, loan underwriting, and customer relations. For example, in a series of no-action letters, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal that requested a board report on the direct deposit advance service offered by a number of financial services companies, under which the banks advanced loans to customers against recurring direct deposits in the customers' checking accounts. In those proposals, the proponents raised concerns with the advance services offered by those institutions, including the social and financial impacts of those services. In each case, the Staff concurred that the proposal was properly excludable pursuant to the ordinary business exclusion, stating, "[i]n this regard, we note that the proposal relates to the products and services offered for sale by the company. Proposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)." See *Wells Fargo & Co.* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013), *Fifth Third Bancorp* (avail. Jan. 28, 2013, *recon. denied* Mar. 4, 2013), *Regions Financial Corp.* (avail. Jan. 28, 2013). See also *JPMorgan Chase & Co.* (avail. Mar. 16, 2010) (concurring with the exclusion of a proposal regarding the company's decision to issue refund anticipation loans to customers, noting that "proposals concerning the sale of particular services are generally excludable under Rule 14a-8(i)(7)"); *Bank of America Corp.* (avail. Jan. 6, 2010) (concurring with the exclusion of a proposal requiring the company to stop accepting matricula consular cards as a form of identification, which effectively sought "to limit the banking services the [company could] provide to individuals the [p]roponent believe[d] [we]re illegal immigrants," because the proposal sought to control the company's "customer relations or the sale of particular services"); *Bank of America Corp.* (avail. Feb. 27, 2008) (concurring with the exclusion of a proposal requesting the preparation of a report detailing, in part, the company's policies and practices regarding the issuance of credit cards and lending of mortgage funds to individuals without Social Security numbers as relating to the company's "credit policies, loan underwriting and customer relations"); *J.P. Morgan Chase & Co.* (avail. Feb. 26, 2007) (concurring with the exclusion of a proposal requesting a report about company policies to safeguard against the provision of financial services to clients that enabled capital flight and resulted in tax avoidance as relating to the "sale of particular services"); *Wells Fargo & Co.* (avail. Feb. 16, 2006) (concurring with the exclusion of a proposal requesting that the company not provide its services to payday lenders as concerning "customer relations"); *Bank of America Corp.* (avail. Mar. 7, 2005) (same); *Banc One Corp.* (avail. Feb. 25, 1993) (concurring with the exclusion of a proposal that requested the corporation adopt procedures that would consider the impact on customers when they were denied credit).

In addition, the Staff has consistently concurred that proposals relating to a financial institution's *policies and practices* concerning its banking products and services concern ordinary business matters and thus are excludable. For example, the Staff recently concurred with the exclusion under Rule 14a-8(i)(7) of two proposals requesting that the boards of financial services companies complete a report evaluating each company's overdraft policies and practices and the impacts those have on customers. In each case, the proposal raised concerns that overdraft fees allegedly impacted certain customers more than others and that the provision of such services exposed the companies to

increased litigation and reputational risks. The Staff nonetheless concurred that the proposals related to “ordinary business operations,” and specifically, “the products and services offered for sale” by those companies. See *Bank of America Corp. (Worcester County Food Bank and Plymouth Congregational Church of Seattle)* (avail. Feb. 21, 2019) (“*Bank of America 2019*”); *JPMorgan Chase & Co.* (avail. Feb. 21, 2019) (“*JPMorgan 2019*”). Like the decisions and practices at issue in *Bank of America 2019* and *JPMorgan 2019*, here, the Proposal is concerned with “external costs” stemming solely from the Company’s policies to offer certain products and services (namely, its underwriting services) to certain customers. Consistent with *Bank of America 2019* and *JPMorgan 2019*, the Proposal is excludable because it fundamentally relates to the Company’s ordinary business operations.

Here, like the precedents discussed above, the Proposal relates to “external costs” stemming from the Company’s decisions regarding which public offerings to underwrite and therefore squarely relates to the Company’s decisions concerning products and services that are offered to its customers. Similar to the proposals regarding direct deposit advance services and overdraft policies and practices, the Proposal seeks a report regarding the Company’s provision of a particular service (underwriting services to customers with multi-class equity offerings) that the Proponents are concerned may have “external costs” to and borne by certain Company shareholders—but only in so far as those shareholders rely on “overall stock market return” since the Proposal seeks a report addressing the manner in which the costs at issue “affect the majority of [Company] shareholders who rely on overall stock market return.” Throughout, the Proposal and the supporting statements focus on the Company’s underwriting services, including its “facilitation” of multi-class equity offerings and “lending [of] reputation and expertise.” Consistent with *JPMorgan 2019*, *Bank of America 2019*, and the other precedent cited above, the Proposal is therefore excludable under Rule 14a-8(i)(7) because it focuses on a specific service the Company offers to its customers, and thus relates to the Company’s core day-to-day banking business.

Similarly, the Staff has also concurred with the exclusion of a proposal when it relates to potential impacts of a company’s operations and activities, including economic costs, on the company’s shareholders. For example, in *Ameren Corp.* (avail. Feb. 8, 2018), the proposal requested a report “*estimating shareholder losses* for the continued storage of high-level waste at Callaway 1,” including the potential range of shareholder losses over the course of different year ranges into the future (emphasis added). The company argued that the proposal “would focus solely on financial issues – operational and compliance costs and ‘shareholder losses’” and not on any significant policy issues to the company, and the Staff concurred with exclusion under Rule 14a-8(i)(7). See also *McDonald’s Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal seeking a report “disclos[ing] the economic risks [the company] faces as a result of campaigns targeting the [c]ompany over concerns about cruelty to chickens,” where the company argued that such an assessment of potential economic costs are fundamental aspects of the company’s ordinary business operations, and therefore are inappropriate for direct shareholder oversight).

Here, although the Proposal seeks a report on potential external costs (economic or otherwise) to Company shareholders as a result of the Company's underwriting activity, the consequences of the Company's actions on its shareholders are even more tangential than those consequences at issue in *Ameren*. Specifically, the Proposal seeks a report on how costs derived from Company actions ultimately affect "the majority of [Company] shareholders who rely on overall stock market return." Thus, the potential consequences of the Company's actions flow through to Company shareholders not directly via their ownership interests in the Company, but indirectly, through such shareholders' ownership interests in other companies, funds, and indexes. Remote or otherwise, the Company's evaluation of its operations and activities, including how and whether the foregoing may generate costs external to the Company, are central considerations for the Company's management of its ordinary business operations. As in *Ameren*, a proposal focusing on a report of this nature is excludable under Rule 14a-8(i)(7).

Decisions regarding the services and products the Company offers and to which customers are a fundamental responsibility of management, requiring consideration of a number of factors, including decisions regarding the type of customers with whom to engage and on what terms. Such considerations involve complex evaluations about which shareholders are not in a position to make an informed judgment. Balancing such considerations is a complex matter and is "so fundamental to management's ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." 1998 Release. Deciding whether or not to offer a particular product or service to customers is a bedrock aspect of the Company's day-to-day operations. Consistent with Staff precedent, the Proposal, by focusing on the Company's underwriting activity, addresses issues that are ordinary business matters for the Company and is properly excludable under Rule 14a-8(i)(7).

*C. The Proposal Does Not Focus On Any Significant Policy Issue That Transcends The Company's Ordinary Business Operations.*

The well-established precedent set forth above demonstrates that the Proposal squarely addresses ordinary business matters and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005). Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, the Proposal seeks a report on the “external costs” created by the Company underwriting multi-class equity offerings and does not focus on any significant policy issues. Instead, as discussed above, the Proposal’s principal focus is on the offering and sale of specific Company products and services. The Proposal’s focus on ordinary business matters is not refuted simply because the supporting statements implicate corporate governance structures of *other public companies*. In this regard, while the Proposal’s supporting statements touch upon corporate governance concerns, those concerns are neither addressed in nor central to the underlying ask of the Proposal nor do they relate to the Company’s own corporate governance practices or policies. Rather, the Proponents postulate that the Company’s act of offering underwriting services to a company that elects to have multiple classes or high-voting stock somehow equates to the “facilitation of poor corporate governance” broadly, which the Proponents further contend has negative impacts on the economy at large and may impact “diversified shareholders” investing in “overall stock market return.” In this regard, it is clear that the Proposal is not focused on corporate governance practices or policies internal to or impacting the Company and its shareholders, but rather on how the offering of a particular service to particular customers may create “external costs” that may have a tangential effect on other stakeholders. Importantly, the Proposal does not ask the Company to examine or alter its own governance structure or corporate governance policies. Instead, it is squarely focused on requesting a report of “external costs” created by certain Company underwriting activity and a request to analyze how such costs might impact diversified Company shareholders (to the extent such shareholders rely on overall market return).

To this end, even if the Proposal were to raise a significant policy issue, the Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo (Harrington Investments, Inc.)* (avail. Feb. 27, 2019) (“*Wells Fargo*”), the proposal requested that the board commission an independent study and then report to shareholders on “options for the board . . . to amend [the] [c]ompany’s governance documents to enhance fiduciary oversight of matters relating to customer service and satisfaction.” In spite of language relating to various compliance and governance issues at the company, the Staff concurred with exclusion of the proposal based on ordinary business. While it is possible that one or more of those issues related to policy issues that transcend ordinary business and may have been significant to the company, the “Resolved” clause focused on customer relations, rendering the proposal excludable under Rule 14a-8(i)(7). As in *Wells Fargo*, it is not enough here for the Proposal to reference “governance” in the abstract and, without further context, the references in the Proposal to corporate governance concerning other public companies do not automatically invoke a significant corporate governance issue for the Company specifically, least of all one that transcends the Company’s ordinary business. *See also Amazon.com, Inc. (Domini Impact Equity Fund and the New York State Common Retirement Fund)* (avail. Mar. 28, 2019) (concurring with the exclusion of a proposal that arguably touched on sustainability concerns where the proposal was broadly worded, encompassed a wide range of issues relating to the company’s business and did not focus on any single issue, and where the Staff noted that “the [p]roposal relates generally to ‘the community impacts’ of the [c]ompany’s operations and does not appear to focus on an issue that transcends ordinary business matters”).

Here, the Proposal presents an even stronger case for exclusion than *Wells Fargo* as the Proposal does not focus on any significant policy issues for the Company. Additionally, the Proposal is not focused on any issues impacting the Company, nor does it seek to change or reform the Company's own policies or practices, governance-related or otherwise. As made clear in Staff Legal Bulletin 14K (Oct. 16, 2019), the Staff takes a "company-specific approach in evaluating significance, rather than recognizing particular issues or categories of issues as universally 'significant.'" Further, the kinds of corporate governance proposals the Staff has historically viewed as transcending ordinary business are those where the governance concern raised by the proposal related to the company's governance matters. See, e.g., *MasterCard Inc.* (avail. Apr. 25, 2019) (unable to concur with the exclusion of a proposal requesting the company's board direct its nominating and corporate governance committee to create a standing committee to oversee company responses to human rights developments affecting the company's business, because, in the Staff's view, the proposal "transcends ordinary business matters"); *Paramount Packaging Corp.* (avail. Mar. 11, 1981) (unable to concur with the exclusion of a proposal requesting that the company retain at least one outside consulting firm to analyze the company's structure and make recommendations that could improve operating results, because, in the Staff's view, "a proposal that requests a consideration of the employment of outside consultants to review the [c]ompany's organization and structure involves an important matter of policy and not the day-to-day operation of the [c]ompany"). Consistent with the Staff's foregoing reasoning, because this Proposal is not seeking any reform or internal review of the Company's own structure, governance or otherwise, it is not the kind of proposal that the Staff has considered non-ordinary.

Instead, the Proposal focuses on the external costs of the Company's choice to offer its services to particular customers and the tangential impact those services might have on the value of shareholders' external investments more broadly. The Proposal's focus on ordinary business matters is not refuted by the supporting statements' assertion that "[t]he Company's facilitation of poor corporate governance across the economy is a social issue of great importance," nor its other references to "governance" and impacts on "society" and the "economy." Instead, the Proposal broadly focuses on "external costs" relating to certain of the Company's products and services, and as such relates primarily to ordinary business matters. Thus, similar to *Wells Fargo*, the Proposal fails to focus on any issue that might rise to the level of significance that would preclude exclusion.

By way of further example, the Staff has previously concurred with the exclusion of proposals that related to a large financial institution's decisions regarding the products and services offered for sale, despite raising social concerns regarding the impact of those products and services on the institution's customers. See *Bank of America 2019* and *JPMorgan 2019*. For example, in *JPMorgan 2019*, the proposal's recitals expressed concern that the overdraft policies at issue disproportionately impacted account holders that were "more financially vulnerable," including those who were "low-income, single, non-white, and renters," as well as "college-age customers and older Americans who rely heavily on Social Security Income." In this regard, the proposal articulated the proponent's concern with the impact that JPMorgan's overdraft policies and practices were having on its customers. Yet, these social impact concerns did not rise to the level of a significant policy issue. Similar to *JPMorgan 2019*, here, although the Proposal's supporting statements express concern for

diversified shareholders, reflect that the Proponents are troubled by “high-vote stock” and believe that class structure “contribut[es] to poor corporate governance that harms investors as a class,” and claim that “poor corporate governance across the economy is a social issue of great importance,” such broad social concerns do not rise to the level of a significant policy issue for the Company. Moreover, merely claiming an issue is one “of great importance” does not make it so, nor does the Proposal demonstrate how underwriting multi-class equity offerings at other companies equates to a significant social policy issue for the Company when its own current equity class structure reflects a single class of Common Stock with one vote per share. In fact, the absence of language in the Proposal expressly criticizing the Company’s own corporate governance structure is notable.

As discussed above, the Proposal relates to ordinary business matters: the products and services that the Company offers, including its customer relations. More specifically, the Proposal focuses on these ordinary business matters as they relate to a discrete aspect of the Company’s operations: its offering of underwriting services to customers with multi-class equity offerings. Accordingly, because the Proposal’s request is directly related to the Company’s ordinary business operations and does not transcend those ordinary business operations, similar to the proposals in the precedents discussed above, the Proposal may be excluded under Rule 14a-8(i)(7).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission’s proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because “neither the [share]holders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.” Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) (“[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the [share]holders at large to comprehend precisely what the proposal would entail.”); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion of a shareholder proposal where the company argued that its shareholders “would not know with any certainty what they are voting either for or against”). As described below, the Proposal is so vague and indefinite that neither the Company nor the Company’s shareholders could comprehend what the requested report would entail, nor is the subject matter of the requested report reasonably clear. Therefore, the Proposal is excludable under Rule 14a-8(i)(3).

Under this standard, the Staff has routinely concurred with the exclusion of proposals that fail to define key terms or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, the Staff recently concurred that a company could exclude, as vague and indefinite, a proposal

requesting that a company “reform the company’s executive compensation committee.” *eBay Inc.* (avail. April 10, 2019). The proposal’s supporting statement did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company’s executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that “neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the ‘reform’ the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading.” Additionally, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the company sought exclusion of a proposal under Rule 14a-8(i)(3) because the proposal recommended the company “improve guiding principles of executive compensation” but failed to define or explain what improvements the proponent sought to the “guiding principles.” The Staff noted that the proposal “lack[ed] sufficient description about the changes, actions or ideas for the [c]ompany and its shareholders to consider that would potentially improve the guiding principles” and concurred with exclusion of the proposal as “vague and indefinite.” *See also Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting an amendment to the company’s bylaws and any other appropriate governing documents to require management to “strictly honor shareholders rights to disclosure identification and contact information” where the company asserted that the proposal “[did] not describe or define in any meaningfully determinate way the standard for [the] supposed ‘shareholder[s] rights’” and that “it appear[ed] the [p]roponent ha[d] a different view of what those rights entail[ed] than is supported by generally understood principles of corporate law”); *AT&T Inc.* (avail. Feb. 21, 2014) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting that the board review the company’s policies and procedures relating to the “directors’ moral, ethical and legal fiduciary duties and opportunities” where the phrase “moral, ethical and legal fiduciary” was not defined or meaningfully described); *Morgan Stanley* (avail. Mar. 12, 2013) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the key term “extraordinary transactions” could have multiple interpretations); *AT&T Inc.* (avail. Feb. 16, 2010, *recon. denied* Mar. 2, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting a report on political contributions and payments used for “grassroots lobbying communications” as “vague and indefinite,” where the company argued such term was not defined and constituted a material element of the proposal); *Bank of America Corp.* (avail. Feb 22, 2010) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal requesting the establishment of a board committee on “US Economic Security” where the proposal failed to define such term and where the company argued that the proposal contained a vague litany of factors to be considered, including the “long term health of the economy,” the “well-being of US citizens” and “levels of domestic and foreign control,” all of which rendered the proposal impermissibly vague).

Here, the Proposal fails to define a number of key terms and phrases essential to the Proposal. The Proposal seeks a report “on the *external costs* created by the Company underwriting multi-class equity offerings,” as well as “the manner in which *such [external] costs affect* the majority of its *shareholders who rely on overall stock market return*” (emphasis added). Notably, and in the Proposal’s own words, “*this information is essential*” for shareholders to understand (emphasis added). Therefore, it is necessary for shareholders to understand these terms and phrases in order to

reasonably determine what actions or measure the Proposal requires and, more importantly, whether or not the shareholders are in favor of undertaking the requested report.

The Proposal fails to define or provide any context around the key term “external costs,” and similar to the proposals in the precedents cited above, the term does not have a commonly understood uniform meaning. Neither the “Resolved” clause nor the supporting statements provide sufficient clarity or direction as to what these external costs actually entail. For example, they do not specify whether the Proponents intend for the requested report to focus on actual monetary costs, broader, intangible social costs, positive or negative impacts, or a combination thereof. The supporting statements refer repeatedly to “harm” investors will suffer (*e.g.*, by lowered gross domestic product, reduced equity market values), but the relationship between such “harm” and the external costs within the scope of the requested report is fundamentally vague. More broadly, the Proposal provides no guidance as to what level of review would be deemed to satisfy the requested report, as it is not clear whether “external costs” are limited to only negative impacts, like lost value, or encompass any type of impact (positive or negative). This lack of clarity would make it difficult, for example, for the Company, in implementing any such report, to know whether or how to account for perceived benefits from underwriting certain offerings (*e.g.*, income generated to the Company and its shareholders from servicing these customers, or benefits accruing to the subject customer of such equity offerings, and by extension such customer’s employees, customers, and stakeholders).

The final phrase of the Resolved clause also renders the Proposal inherently vague. The Proposal requests that the report address “the manner in which *such [external] costs affect* the majority of its *shareholders who rely on overall stock market return*” (emphasis added). However, the Proposal fails to define the term “shareholders who rely on overall stock market return” and neither the Proposal nor the supporting statements provide sufficient context to explain the scope of the requested assessment. For example, does the Proposal require the Company to assume that all of its shareholders “rely on overall stock market return” and assess the “affect” (whether positive, negative, tangible, or otherwise) of “external costs” with respect to the “majority” of them? Or, alternatively, is the Company required to first identify those shareholders who rely on overall market return and then assess the “affect” of “external costs” on the majority of that subset of shareholders? In either case, such vague and unexplained distinctions among the Company’s shareholders are complicated by the fact that the as a publicly-traded company, the Company’s shareholders can change every day. Accordingly, without further explanation or context, it is unclear what shareholders are the focus of the requested report.

In the absence of further guidance regarding the scope and nature of the requested report, shareholders would inevitably be left to grapple with multiple and conflicting interpretations about the central ask of the Proposal. The Proposal could be interpreted as requiring the commissioning of a broad macro-economic report analyzing all impacts, direct and indirect, social, financial, reputational, environmental, and otherwise, that the Company’s “underwriting [of] multi-class equity offerings” could conceivably create. Alternatively, the Proposal could be interpreted as narrowly focusing on the actual financial costs incurred by customers that engage the Company to provide the aforementioned underwriting services in connection with a public equity offering (thus relating to the

Company's cost and pricing model for its underwriting services). A shareholder may be in favor of supporting a report of the Company's community impacts—but that same shareholder may not be in favor of supporting a report that could result in disclosure of the Company's sensitive and proprietary pricing models for its business offerings, which may put it at a competitive disadvantage, thereby potentially impacting the Company's performance. Different still, a shareholder may be in favor of this Proposal based on the expectation that the requested report would somehow inform such shareholder's own investment portfolio, since the Proposal purports to relate to "the manner in which *such costs affect* the majority of [Company] shareholders *who rely on overall stock market return,*" despite there being no certainty whatsoever that any such report could or would ultimately link the Company's act of engaging in a very narrow and specific kind of underwriting (*i.e.*, those relating to multi-class equity offerings) to macro-economic impacts that both affect "overall stock market return" and the majority of the Company's own shareholder base, whom the Proposal presumes are deeply diversified investors. Given the inherent vagueness of the Proposal, there is likewise little assurance that, if the Proposal received majority support, the Company would implement it in the manner that the majority of shareholders expected. This is the kind of situation the Staff has consistently sought to avoid when concurring with the exclusion of similarly inherently vague proposals in the past.

In this regard, the Proposal is similar to *Apple*, *eBay*, and *AT&T*, as based on the language in the Proposal, neither the Company nor its shareholders would be able to determine with any reasonable certainty how to implement the Proposal, nor what information the requested report is intended to address. Just as *eBay* hinged on the vagueness of a simple and seemingly innocuous term, "reform," where the proposal failed to provide any hints or indication as to the manner and scope of reform being sought, so too here do the terms "external costs" and "affect," among others, as used in this Proposal, leave the Company and its shareholders unable to determine with any reasonable certainty the scope and nature of the requested undertaking. As such, the Proposal lacks sufficient specificity to indicate to the Company and to its shareholders what actions the Proposal requires, and the Proposal as a whole is thus rendered materially misleading. This is not a question of marginal ambiguity that the Company's Board of Directors or management could, in exercising its discretion, resolve. Rather, it is an inherent vagueness in the central subject matter that forms the cornerstone of the Proposal's request. Similar to *eBay*, when a proposal fails to define a term or key phrase that is essential to an understanding and execution of the proposal, the Proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite.

\*\*\*\*\*

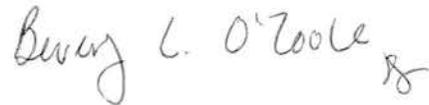
Office of Chief Counsel  
Division of Corporation Finance  
December 29, 2020  
Page 13

### CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Beverly.OTOole@gs.com. Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OTOole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Beverly L. O'Toole" followed by a small flourish.

Beverly L. O'Toole

Enclosures

cc: John Chevedden  
James McRitchie and Myra K. Young

**EXHIBIT A**

**From:** John Chevedden \*\*\*  
**Sent:** Wednesday, November 18, 2020 5:42 PM  
**To:** O'Toole, Beverly L; shareholderproposals@ny.email.gs.com  
**Cc:** Greenberg, Jamie; Mangone, Kara  
**Subject:** Rule 14a-8 Proposal (GS)``  
**Attachments:** GS-EX-2021.pdf

Dear Ms. O'Toole,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,  
John Chevedden

Ms. Beverly O'Toole <[Beverly.OTOole@gs.com](mailto:Beverly.OTOole@gs.com)>  
Corporate Secretary  
The Goldman Sachs Group, Inc. (GS)  
200 West Street  
New York NY 10282  
PH: 212 902-1000  
PH: 212-357-1584  
FX: 212-428-9103

Dear Corporate Secretary,

We are pleased to be shareholders in The Goldman Sachs Group, Inc. (GS) and appreciate the company's leadership.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting requesting a study on the **external costs created by the Company underwriting multi-class equity offerings**.

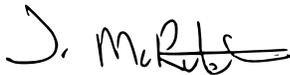
The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold the required stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden

\*\*\* to facilitate prompt communication. Please identify James McRitchie and Myra K. Young as the proponents of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Of course, we would be happy to negotiate terms. We expect to forward a broker letter soon, so if you simply acknowledge our proposal in an email message to \*\*\*. It may not be necessary for you to request such evidence of ownership.

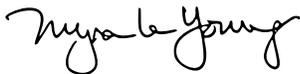
Sincerely,



James McRitchie

November 18, 2020

Date



Myra K. Young

November 18, 2020

Date

cc: Beverly O'Toole, <[shareholderproposals@gs.com](mailto:shareholderproposals@gs.com)>  
Jamie Greenberg, Vice President and Assistant General Counsel <[Jamie.Greenberg@gs.com](mailto:Jamie.Greenberg@gs.com)>  
Kara Mangone, <[Kara.Mangone@gs.com](mailto:Kara.Mangone@gs.com)>

ITEM 4\* – External Corporate Governance Cost Disclosure

**RESOLVED, shareholders ask that the board commission and disclose a study on the external costs created by the Company underwriting multi-class equity offerings and the manner in which such costs affect the majority of its shareholders who rely on overall stock market return.**

Our Company underwrites initial public offerings providing perpetual control to insiders with high-vote stock,<sup>1</sup> contributing to poor governance that harms investors as a class, including companies with three classes of stock having 20, 1 and 0 votes, respectively.<sup>2</sup> As the Company advised the investors, its most critical stakeholder group, “[u]sing multi-class voting to insulate management from its own shareholders comes at a significant long-term cost.”<sup>3</sup>

In addition to risk of poor returns for their own shareholders, these structures give unchecked power to insiders, whose concentrated interests are misaligned with the interests of typical diversified shareholders. As a working paper co-authored by a Nobel Laureate notes, “initial entrepreneurs are not well-diversified and so they want to maximize the value of their own company, not the joint value of all companies.”<sup>4</sup>

By lending reputation and expertise to marketing governance structures that risk both underperformance and misalignment of corporate control with shareholder interests, the Company jeopardizes the viability of the one share, one vote governance model that creates significant economic wealth for shareholders and society. As a 2020 study noted, “if many similarly-situated companies [accept a higher cost of capital for multi-class shares], then the prevalence of dual class shares might have negative consequences for the economy as a whole.”<sup>5</sup>

Understanding this information is essential to the Company’s shareholders, who are almost all broadly diversified. Indeed, as of June 2020, the top three holders of our shares are Vanguard, BlackRock, and State Street—investment managers with indexed or otherwise broadly diversified investors. Their beneficial owners are materially harmed by facilitation of governance that may lower GDP, thus reducing equity market values.<sup>6</sup> While the Company may profit by ignoring externalized costs, its diversified shareholders ultimately pay them.

The Company’s facilitation of poor corporate governance across the economy is a social issue of great importance. A study would help shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests.

Please vote for: External Corporate Governance Cost Disclosure – Proposal [4\*]

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<sup>1</sup> See, e.g., <https://www.sec.gov/Archives/edgar/data/1792789/000119312520292381/d752207ds1.htm> (Door Dash);

<https://www.sec.gov/Archives/edgar/data/1559720/000119312520294801/d81668ds1.htm> (Airbnb).

<sup>2</sup> See Adams and Ferreira, *One Share-One Vote: The Empirical Evidence*, 12 Rev. of Fin. 51 (2008); Bebchuk and Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 Virginia L. Rev. 585, 594 (2017).

<sup>3</sup> <https://www.forbes.com/sites/simonconstable/2019/09/30/goldman-sachs-warning-one-share-one-vote-or-else-the-stocks-shares-will-suffer/?sh=6cb9916e71da>

<sup>4</sup> Broccardo, Eleonora and Hart, Oliver D. and Zingales, Luigi, *Exit vs. Voice* (August 24, 2020),

<https://ssrn.com/abstract=3680815> or <http://dx.doi.org/10.2139/ssrn.3680815>

<sup>5</sup> <https://www.capmksreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf>

<sup>6</sup> See, e.g., <https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator> (total market capitalization to GDP “is probably the best single measure of where valuations stand at any given moment”) (quoting Warren Buffet).



[This line and any below are *not* for publication]  
Number 4\* to be assigned by the Company

The graphic above is intended to be published with the rule 14a-8 proposal. The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email \*\*\*

**From:** O'Toole, Beverly L <Beverly.OToole@ny.email.gs.com>  
**Sent:** Thursday, November 19, 2020 5:48 AM  
**To:** John Chevedden  
**Cc:** Greenberg, Jamie; Mangone, Kara  
**Subject:** RE: Rule 14a-8 Proposal (GS)``

I acknowledge receipt of this proposal.

Thank you,  
Bev O'Toole

Beverly O'Toole  
Managing Director  
General Counsel, Corporate Governance  
Goldman Sachs & Co. LLC  
200 West Street, 15th Floor  
New York, New York 10282-2198  
telephone: 212-357-1584  
facsimile: 212-428-9103

**This message may contain information that is confidential or privileged. If you are not the intended recipient, please advise the sender immediately and delete this message. See <http://www.gs.com/disclaimer/email> for further information on confidentiality and the risks inherent in electronic communication.**

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**From:** John Chevedden \*\*\*  
**Sent:** Wednesday, November 18, 2020 8:42 PM  
**To:** O'Toole, Beverly L [Legal] <Beverly.OToole@ny.email.gs.com>; Shareholder Proposals\_GS <shareholderproposals@ny.email.gs.com>  
**Cc:** Greenberg, Jamie [Legal] <Jamie.Greenberg@ny.email.gs.com>; Mangone, Kara (Succoso) [EO] <Kara.Mangone@ny.ibd.email.gs.com>  
**Subject:** Rule 14a-8 Proposal (GS)``

Dear Ms. O'Toole,  
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,  
John Chevedden

**From:** [O'Toole, Beverly L](#)  
**To:** \*\*\*  
**Cc:** [Greenberg, Jamie](#)  
**Subject:** RE: Rule 14a-8 Center Justified Proposal Graphic (GS)  
**Date:** Monday, November 23, 2020 3:53:35 PM

---

Mr. Chevedden:

With respect to the shareholder proposal graphic both for the proposal submitted by Jim McRitchie and Myra Young on November 18, 2020, as well as for your written consent proposal, I can confirm that our proxy statement has not in the past contained, and will not this year contain, graphics (such as thumbs up / thumbs down or "Xs" and check marks) in connection with recommendations with respect to either management or shareholder proposals. Accordingly, we will not be including the shareholder proposal graphics either.

So that you can see our previous proxy disclosure regarding management and shareholder proposals is graphic-free, a link to our proxy disclosure from the 2020 annual meeting can be found here (<https://www.goldmansachs.com/investor-relations/financials/current/proxy-statements/2020-proxy-statement-pdf.pdf>), and, in due course, we would as usual provide you with a full copy of how these proposals will appear in the 2021 annual meeting proxy statement.

In addition, with respect to the McRitchie/Young proposal, you indicated that a broker letter with respect to confirmation of their ownership was forthcoming. **We ask that you please provide such proof of ownership by November 30, 2020, which will alleviate the need to send the more formal SEC required notice.** We appreciate your help with this.

Best,  
Bev O'Toole

Beverly O'Toole  
Managing Director  
General Counsel, Corporate Governance  
Goldman Sachs & Co. LLC  
200 West Street, 15th Floor  
New York, New York 10282-2198  
telephone: 212-357-1584  
facsimile: 212-428-9103

**This message may contain information that is confidential or privileged. If you are not the intended recipient, please advise the sender immediately and delete this message. See <http://www.gs.com/disclaimer/email> for further information on confidentiality and the risks inherent in electronic communication.**

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**From:** John Chevedden \*\*\*  
**Sent:** Friday, November 20, 2020 6:04 PM  
**To:** O'Toole, Beverly L [Legal] <Beverly.OToole@ny.email.gs.com>  
**Cc:** Greenberg, Jamie [Legal] <Jamie.Greenberg@ny.email.gs.com>  
**Subject:** Rule 14a-8 Center Justified Proposal Graphic (GS)

Dear Ms. O'Toole,

This is a better copy of the center justified graphic (for proxy publication) included with the rule 14a-8 proposal.

The graphic would be published just below the top title of the rule 14a-8 proposal.

Sincerely,

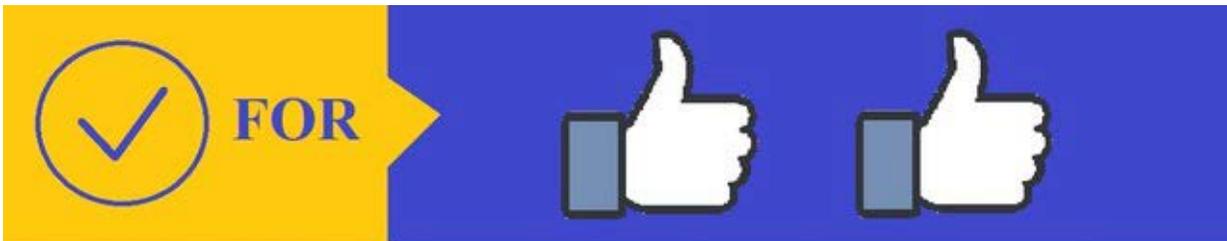
John Chevedden

The graphic below is intended to be published with the rule 14a-8 proposal.

The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.



**From:** \*\*\*  
**To:** [O'Toole, Beverly L](#)  
**Cc:** [Greenberg, Jamie](#)  
**Subject:** Re: Rule 14a-8 Center Justified Proposal Graphic (GS)  
**Date:** Monday, November 23, 2020 7:00:19 PM

---

Dear Ms. O'Toole,

We expect to have the broker letter by Monday.

The graphic is needed to help make up for the special enhancements of the management position statement compared to the rule 14a-8 proposal as was the case with the 2020 GS proxy.

John Chevedden

**From:** \*\*\*  
**To:** [O'Toole, Beverly L](#)  
**Cc:** [Greenberg, Jamie](#)  
**Subject:** Rule 14a-8 Proposal (GS) blb  
**Date:** Tuesday, November 24, 2020 8:28:14 AM  
**Attachments:** [24112020\\_2.pdf](#)  
[ATT00001.htm](#)

---

Dear Ms. O'Toole,  
Please see the attached broker letter.  
Please confirm receipt.  
Sincerely,  
John Chevedden



11/24/2020

James Mcritchie & Myra Young  
\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\*

Dear James Mcritchie & Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra Young held and had held continuously for at least 13 months, no less than 40 common shares of Goldman Sachs Group Inc (GS) in an account ending in \*\*\* at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in cursive script that reads 'Gabriel Elliott'.

Gabriel Elliott  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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**From:** [O'Toole, Beverly L](#)  
**To:** \*\*\*  
**Cc:** [Greenberg, Jamie](#)  
**Subject:** RE: Rule 14a-8 Proposal (GS) blb  
**Date:** Tuesday, November 24, 2020 8:32:11 AM

---

Thank you.

---

**From:** John Chevedden  
**Sent:** Tuesday, November 24, 2020 11:28:07 AM  
**To:** O'Toole, Beverly L [Legal]  
**Cc:** Greenberg, Jamie [Legal]  
**Subject:** Rule 14a-8 Proposal (GS) blb

Dear Ms. O'Toole,  
Please see the attached broker letter.  
Please confirm receipt.  
Sincerely,  
John Chevedden