



DIVISION OF
CORPORATION FINANCE

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

March 21, 2022

Frederick H. Alexander
The Shareholder Commons

Re: The Goldman Sachs Group, Inc. (the "Company")
Incoming letter dated March 14, 2022

Dear Mr. Alexander:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John C. Harrington. On March 8, 2022, we issued a no-action response expressing our informal view that the Company could exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position, or, in the alternative, present the matter to the Commission.

The Division "endeavors to act upon a request for reconsideration within a reasonable time, giving due consideration to the demands of the management's schedule for printing its proxy materials" and to process requests for Commission review "provided they are received sufficiently far in advance of the scheduled printing date for the management's definitive proxy materials to avoid a delay in the printing process." See Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, Exchange Act Release No. 12599 (July 7, 1976).

The Company has informed us that when it received your request for reconsideration, the Company had already begun printing its 2022 proxy materials. The Company has also indicated that mailing supplemental proxy materials and/or soliciting revised proxies for the 2022 annual meeting would require substantial time, effort and expense. In light of these timing considerations, we deny the requests for reconsideration and Commission review.

Sincerely,

Rule 14a-8 Review Team

cc: Beverly L. O'Toole
The Goldman Sachs Group, Inc.



Frederick H. Alexander

info@theshareholdercommons.com

+1.302.485.0497

March 14, 2022

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Request for Reconsideration and Referral to Commission of No Action Decision Regarding Shareholder proposal of John C. Harrington to the Goldman Sachs Group, Inc. regarding underwriting multi-class stock

Division of Corporate Finance Staff Members:

I am writing to you on behalf of John C. Harrington (the "Proponent"), a beneficial owner of The Goldman Sachs Group, Inc. (the "Company") common stock, who has submitted a shareholder proposal (the "Proposal") to the Company. On December 22, 2021, the Company submitted to the Securities and Exchange Commission ("SEC") a request for no-action relief on the ground, inter alia, that it was excludable under Rule 14a-8(i)(7) (the "No-Action Request"). On January 10, 2022, the undersigned submitted a letter setting forth the reasons why the Company's no-action letter request should be denied (the "Opposition Letter.") On March 8, 2022, the Staff informed the Company and the Proponent that it concurred with the Company's request on 14a-8(i)(7) grounds, explicitly stating that the Proposal "did not transcend ordinary business." A copy of this letter is being emailed concurrently to Beverly O'Toole.

We hereby request reconsideration of the Staff's grant of relief, and referral to Commission as a matter of substantial importance should the Staff decide to deny reconsideration.¹ We make this request for the following reasons.

1. *Denial of the no action request is necessary given the new Staff guidance on broad societal impact transcending ordinary business.*

Last year, when faced with an almost identical request, the Staff granted relief under 14a-8(i)(7), but declined to find that the proposal did not raise a policy issue significant enough to transcend ordinary

¹ 17 CFR 202.1(d) provides that "The staff, upon request or on its own motion, will generally present questions to the Commission which involve matters of substantial importance and where the issues are novel or highly complex, although the granting of a request for an informal statement by the Commission is entirely within its discretion." We believe the Commission should be given the opportunity to consider this issue.

business. *JPMorgan Chase & Co.* (March 26, 2021). The proponent in *JPM 2021* had proffered two significant policy issues in arguing that the proposal should not be excluded under 14a-8(i)(7), and the Staff did not indicate that either policy concern failed to transcend ordinary business, and instead explicitly relied on a lack of nexus to the company, stating, “it was not a significant policy issue *for the Company.*” [emphasis added] Following that grant of relief, the Staff announced in *Staff Legal Bulletin 14L* that it would no longer apply the nexus requirement:

[S]taff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.

We believe it appropriate for the Staff to reconsider its determination because recent developments confirm that the proposal addresses an issue with broad societal impact. *The no-action request presented a missed opportunity for the Staff to apply its new guidance; the recent developments merit reconsideration by the Staff or the Commission as a matter of substantial importance.*

2. *Following submission of the Opposition Letter, the Congressional Joint Economic Committee reiterated the transcendent character of the policy issue of shareholder primacy by calling a hearing on the subject.*

Shareholder primacy was one of two significant policy issues that were raised in the Opposition Letter. The Proposal requested that the Company compare the benefit it received from underwriting multi-class IPOs with the external costs imposed on social and environmental systems by doing so. The Opposition letter traced the debate over shareholder primacy that the Proposal raised. During the week of March 7, 2022, the JEC announced it would hold an in-person hearing on March 16, 2022, to address this very issue. See Joint Economic Committee, [Examining the Impact of Shareholder Primacy: What It Means to Put Stock Prices First](#).

Given the high level, contemporaneous interest in this issue to the JEC, we believe it appropriate for the Staff to reconsider its determination as to the significance of the issue of shareholder primacy.

3. *Following submission of the Opposition Letter, a new paper was published with a breakthrough analysis that demonstrates the systemic and society-wide impacts caused by the interaction of multi-class stock offerings and shareholder primacy.*

The second policy question raised in the Opposition Letter was the economic impact of corporate departure from the one share, one vote rule (OSOV). Following the submission of the Opposition Letter, an important new paper was published that sheds new light on the systemic and societal impacts of

departing from OSOV.² This new scholarship ties together the two policy issues raised in the Opposition Letter and explains how the risks of one exacerbate the risks of the other.

In particular, the paper argues that in situations where companies are likely to externalize costs to maximize company returns (i.e., to practice shareholder primacy in a manner that has harmful societal impact), the right to adopt multi-class structures should be limited:

*However, our reason for imposing limitations on firms' ability to adopt dual class shares is very different from the one traditionally suggested in the literature. Instead of looking at intra-firm dynamics, and in particular at the agency costs between shareholders and controllers, **we focus on firms' ability to impose externalities...***

*We start by noting that the unfolding climate crisis and the macroeconomics literature have shown that a specific subset of firms **can impose gigantic externalities on the planet and the economy. Allowing these companies to have dual class shares without any limitation implies that [concentrated] shareholders oblivious to these externalities have an unfettered ability to inflict systemic harm.** A clear example is Buffett's Berkshire Hathaway, which was the fourth main source of carbon dioxide emissions (CO₂) in the U.S. in 2019. However, empirical evidence suggests that [diversified] shareholders have relatively strong incentives to mitigate these negative externalities, since [diversified] shareholders suffer from them to some extent via their other portfolio holdings. **Thus, to prevent [concentrated] shareholders from having disproportionate power at these key firms, we suggest some limits on dual class shares for systemically relevant firms.**³*

The paper emphasizes the broad societal impact of the combination of issues presented by the Proposal by explaining that risks created by multi-class shares multiply the risk that shareholder primacy will lead individual companies to externalize significant costs that threaten critical social and environmental systems.

The perspective provided by this new scholarship provides an important reason for the Staff to reconsider its determination as to the broad societal impact of multi-class shares and shareholder primacy.

* * * * *

In summary, we believe that recent developments demonstrate that the issues of multi-class offerings and shareholder primacy raised by the Proposal are significant policy issues that transcend ordinary

² Vittoria Battocletti, Luca Enriques and Alessandro Romano, Dual Class Shares in the Age of Common Ownership, ECGI Law Working Paper N° 628/2022 (March 2022), available at <https://bit.ly/3t3rt8J>.

³ Id. at 5 (emphasis added).

business. We therefore respectfully urge the Staff to reconsider its advice of March 8 and to deny the Company's request for no-action relief. Should the Staff not reverse its advice, we request that the issue be presented to the Commission in light of the strength of the case as a matter of substantial importance.

We would appreciate your contacting the undersigned at rick@theshareholdercommons.com or 302-485-0497 with respect to any questions in connection with this matter or if the Staff wishes any further information. Copies of the Opposition Letter and the No-Action Request are attached for your convenience.

Sincerely,



Rick Alexander
CEO

cc: Beverley O'Toole
John Harrington

200 West Street | New York, New York 10282
Tel: 212-357-1584 | Fax: 212-428-9103 | e-mail: beverly.otoole@gs.com

Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman
Sachs

March 14, 2022

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 John C. Harrington

Ladies and Gentlemen:

By letter dated March 14, 2022, The Shareholder Commons, on behalf of John C. Harrington (the "Proponent"), requested (i) that the staff of the Division of Corporation Finance (the "Staff") reconsider its decision, dated March 8, 2022, concurring that The Goldman Sachs Group, Inc. (the "Company") could omit a shareholder proposal submitted by the Proponent (the "Proposal") from the Company's proxy statement and form of proxy for its 2022 Annual Meeting of Shareholders (the "2022 Proxy Materials") under Rule 14a-8(i)(7) and (ii) Commission review of the same (the "Request for Reconsideration"). As discussed further below, the Company believes the Proponent's challenge to the Staff's response should be denied as it is untimely and without merit.

By way of background, the Proponent delivered the Proposal to the Company on November 18, 2021. The Company then submitted the No-Action Request, with a copy to the Proponent on December 22, 2021, more than 80 days prior to the date that the Company intends to file its definitive 2022 Proxy Materials with the Commission. The Proponent subsequently submitted to the Staff a letter, dated January 10, 2022, objecting to the Company's exclusion of the Proposal from its 2022 Proxy Materials, including certain of the same arguments set forth in the Request for Reconsideration. The Staff responded to the No-Action Request on March 8, 2022, concurring that the Company could exclude the Proposal under Rule 14a-8(i)(7) as relating to ordinary business matters.

Thereafter, on March 9, 2022, in reliance on the Staff's response to the No-Action Request, the Company began printing its 2022 Proxy Materials, which do not include the Proposal. The Company has already incurred substantial time and expense in preparing and printing the 2022 Proxy Materials for shareholders in accordance with its previously established schedule and process for its Annual Meeting. Therefore, the Request for Reconsideration was not received sufficiently far in advance of the Company's scheduled printing dates for its definitive 2022 Proxy Materials and would cause (if the Company is required to delay its mailing, prepare and distribute supplemental proxy materials,

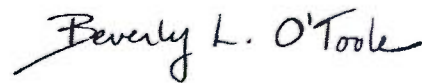
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and/or resolicit revised proxies for the Annual Meeting) significant effort, time and additional expense on behalf of the Company. Given the current timing, as well as the uncertainty and expense potentially involved, it would be unfair and unduly burdensome for the Staff to reconsider its decision or the Commission to review the Staff's decision regarding the excludability of the Proposal at this time.

Finally, in the event that the Staff considers the Request for Reconsideration, we believe that the Staff's concurrence that the Proposal is excludable under Rule 14a-8(i)(7) is appropriate and thus that the Request for Reconsideration should be denied. We also do not believe that the standards for Commission review have been satisfied here.

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), Jamie Greenberg (212-902-0254; Jamie.greenberg@gs.com) or Elizabeth Ising of Gibson, Dunn & Crutcher (202-955-8287; Eising@gibsondunn.com). Thank you for your attention to this matter.

Sincerely,



Beverly L. O'Toole

cc: Frederick Alexander, The Shareholder Commons
Sara Murphy, The Shareholder Commons
John C. Harrington