



DIVISION OF  
CORPORATION FINANCE

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

October 31, 2003

Stephanie G. Wheeler, Esq.  
Sullivan & Cromwell, LLP  
125 Broad Street  
New York, New York 10004

**Re: Goldman, Sachs & Co. - Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Ms. Wheeler:

This is in response to your letter dated October 31, 2003, written on behalf of Goldman, Sachs & Co. (the "Firm") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of the injunction included in the Final Judgment in *Securities and Exchange Commission v. Goldman, Sachs & Co.* (S.D.N.Y.) (the "Final Judgment"). You also requested relief under those provisions from disqualifications that arise by virtue of the entry of an order, judgment or decree of a U.S. state or territorial court addressing the same conduct and based on the same facts as the conduct and facts addressed in the complaint that resulted in the entry of the Final Judgment and in the Consent Order dated April 22, 2003 of the Utah Division of Securities in *In the Matter of Goldman, Sachs & Co.*, Docket No. SD-02-0166.

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Final Judgment and any such state or territorial court order, judgment or decree.

On the basis of your letter, the Commission, pursuant to delegated authority, has determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Final Judgment or any state or territorial court injunction of the nature described above. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mauri Osheroff".

Mauri Osheroff  
Associate Director, Regulatory Policy

# SULLIVAN & CROMWELL LLP

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October 31, 2003

Via Facsimile and Federal Express

Gerald J. Laporte, Esq.  
Chief Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 Fifth, N.W., Room 3501  
Washington, D.C., 20549-0310

Re: In the Matter of Certain Analyst Conflicts of Interest,  
File No. HO-9479 (Goldman, Sachs & Co.)

Dear Mr. Laporte:

We submit this letter on behalf of our client, Goldman, Sachs & Co. (the "Settling Firm") in connection with a settlement agreement (the "Settlement") arising out of a joint investigation by the Securities and Exchange Commission (the "Commission"), the New York Stock Exchange, Inc. (the "NYSE"), NASD, Inc. ("NASD") and various U.S. state and territorial regulatory agencies (the "States") into research analyst conflicts of interest at the Settling Firm and several other large investment banking firms.

The Settling Firm below requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to the Settling Firm, any of its affiliates or any issuer, offering participant or other persons as a result of the entry of the Final Judgment (as defined below) or any related disqualifying order, judgment, or decree of a U.S. state or territorial court addressing the same conduct and based on the same facts as are addressed in the Complaint (as defined below) and in the Consent Order of the Utah Division of Securities dated April 22, 2003, in In the Matter of Goldman, Sachs & Co., Docket No. SD-02-0166 (the "Utah Order"). The Settling Firm also requests that these waivers be granted effective upon the entry of the Final Judgment or such state or territorial court order, judgment, or decree. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers by the Division of Corporation Finance.

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## BACKGROUND

The Commission, the NYSE, the NASD and the States have engaged in settlement discussions with the Settling Firm in connection with the joint investigation described above. As a result of these discussions, the Commission has filed a complaint (the "Complaint") against the Settling Firm in the United States District Court for the Southern District of New York (the "District Court") in a civil action captioned Securities and Exchange Commission v. Goldman, Sachs & Co. The Settling Firm has executed a consent and undertaking (the "Consent") in which the Settling Firm neither admitted nor denied any of the allegations in the Complaint, except as to jurisdiction, but consented to the entry of a final judgment against the Settling Firm by the District Court (the "Final Judgment"). The District Court entered the Final Judgment on October 31, 2003. The Final Judgment, among other things, enjoins the Settling Firm, directly or through its officers, directors, agents and employees, from violating rules cited in the Final Judgment. Additionally, the Final Judgment orders the Settling Firm to make payments aggregating \$110 million in settlement of the matters addressed in the Final Judgment, and to comply with the undertakings set forth in the Final Judgment.<sup>1</sup>

## DISCUSSION

The Settling Firm understands that the entry of the Final Judgment could disqualify it, its affiliated entities and other persons from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act insofar as the Final Judgment may be deemed to cause the Settling Firm to be subject to an order, judgment or decree of a court of competent jurisdiction enjoining the Settling Firm and its affiliates from engaging in or continuing to engage in any conduct or practice in connection with the purchase or sale of a security. The Commission has the authority to waive the Regulation A and Rule 505 of Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C). The Settling Firm requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505

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<sup>1</sup> The Settling Firm has entered into settlement agreements relating to the conduct referred to in the Final Judgment and the Utah Order with other state and territorial agencies which are substantially similar to the Utah Order. To the extent that any such settlement agreement results in a judicial or administrative decree or order, the Settling Firm intends this request to cover any resulting disqualifications under Regulation A or Rule 505 of Regulation D.

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of Regulation D with respect to the Settling Firm, its affiliates or any other persons on the following grounds:

1. The Settling Firm's conduct addressed in the Final Judgment, alleged in the Complaint and addressed in the Utah Order does not relate to offerings under Regulation A or D.

2. The Settling Firm will undertake or has undertaken to improve and enhance its compliance and surveillance procedures in a manner reasonably designed to ensure compliance with the provisions of the Final Judgment as outlined in the Term Sheet attached as Addendum A to the Final Judgment (the "Term Sheet").

3. The disqualification of the Settling Firm from the exemptions under Regulation A and Rule 505 of Regulation D would have an adverse impact on third parties that retain the Settling Firm or any of its affiliates in connection with transactions that may need to be made in reliance on these exemptions.

4. The disqualification of the Settling Firm from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given (i) the fact that the Final Judgment and the Utah Order relate to activity which has already been addressed pursuant to recently adopted rules of the Commission, NYSE and NASD and pursuant to the Term Sheet; and (ii) the fact that the Commission staff has negotiated a settlement with the Settling Firm and reached a satisfactory conclusion to this matter that will require the Settling Firm to make payments aggregating \$110 million in settlement of the matters addressed in the Final Judgment and will require the Settling Firm to make certain structural changes pursuant to the Term Sheet, as well as to make available to the Settling Firm's customers certain research prepared by third party research providers.

In light of the foregoing, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that the Settling Firm has shown good cause that relief should be granted. Accordingly, we respectfully request the Commission, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D, to waive, effective upon the entry of the Final Judgment or any related disqualifying order, judgment, or decree of a U.S. state or territorial court based on the same facts and addressing the same conduct as are addressed in the Complaint and the Utah Order, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to the Settling Firm, any of its affiliates or any

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issuer, offering participant or other persons as a result of the entry of the Final Judgment or such state or territorial court order, judgment, or decree.<sup>2</sup>

Please do not hesitate to contact me at (212) 558-7384 regarding this request.

Sincerely yours,

*Stephanie Wheeler /MHF*  
Stephanie G. Wheeler

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<sup>2</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D. *See, e.g.*, Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001); In the Matter of Certain Market-Making Activities, S.E.C. No-Action Letter (pub. avail. Jan. 11, 1999); Stephens Incorporated, S.E.C. No-Action Letter (pub. avail. Nov. 23, 1998).