

## The Ayco Company, L.P. Private Access Account Strategies

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**The Ayco Company, L.P.**

321 Broadway  
Saratoga Springs, New York 12866  
(518) 886-4000  
[www.ayco.com](http://www.ayco.com)

This wrap fee program brochure provides information about the qualifications and business practices relating to the Private Access Account Strategies program sponsored by The Ayco Company, L.P. If you have any questions about the contents of this brochure, please contact your Ayco team or contact us at (518) 886-4000. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority. Investment adviser registration does not imply a certain level of skill or training.

Additional information about The Ayco Company, L.P. also is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

March 30, 2012

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## **Item 2 - MATERIAL CHANGES**

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This brochure is dated March 30, 2012. The material changes since the last annual brochure dated March 31, 2011 include:

- Attached a new balance sheet as of December 31, 2011. See Item 18.

The foregoing is only a summary of the material changes to the Brochure. It does not purport to identify every change to the Brochure since the last annual update. This summary of material changes is qualified in its entirety by reference to the full discussion in this Brochure. Clients are encouraged to read the Brochure in detail and contact their Ayco representative with any questions. For ease of reference, capitalized terms that are defined when first used in the Brochure are also set forth in the Glossary.

## **Item 3 - TABLE OF CONTENTS**

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Item 4 - Services, Fees and Compensation  
Item 5 - Account Requirements and Types of Clients  
Item 6 - Portfolio Manager Selection and Evaluation  
Item 7 - Client Information Provided to Portfolio Managers  
Item 8 - Client Contact with Portfolio Managers  
Item 9 - Additional Information  
GLOSSARY

## **Item 4 - SERVICES, FEES AND COMPENSATION**

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### **Introduction**

This Brochure relates to the Private Access Account Strategies program ("Program") sponsored by The Ayco Company, L.P. ("Ayco"). Ayco provides advisory services to clients and has been helping clients build and preserve their financial wealth since 1971. Ayco is headquartered in Saratoga Springs, NY and operates through offices located in Albany, NY, Atlanta, GA, Canonsburg, PA, Dallas, TX, Irvine, CA, Lake Forest, IL, Latham, NY, New York, NY, Parsippany, NJ, and Troy, MI. Ayco offers certain advisory services to clients of its affiliate Goldman, Sachs & Co. ("GS&Co.") through offices located in Boston, MA, Chicago, IL, Dallas, TX, Los Angeles, CA, New York, NY, Philadelphia, PA, San Francisco, CA and West Palm Beach, FL. Unless otherwise specified, references in this Brochure to "clients" means Ayco clients.

Ayco's principal owner is The Goldman Sachs Group, Inc., a publicly traded bank holding company and financial holding company under the Bank Holding Company Act of 1956, as amended ("BHCA"), and a world-wide, full-service financial services organization. The Goldman Sachs Group, Inc., Ayco and their respective affiliates, directors, partners, trustees, managers, members, officers and employees are referred to collectively as the "Firm."

Ayco has arrangements with GS&Co., and Fidelity Brokerage Services LLC and National Financial Services LLC (collectively, "Fidelity") through which brokerage, custodial, administrative support, record keeping and related services are provided and which may benefit Ayco. Ayco is not affiliated with Fidelity but has a Custodial Support Services Agreement with Fidelity which is described further in the Ayco Form ADV Part 2A.

### **Program Services**

Client's investing in the Program pay a "wrap" fee for discretionary investment management services by Ayco, affiliated or unaffiliated managers ("Managers") participating in the Program. This fee covers the compensation of Ayco, as sponsor of the Program, compensation to certain Ayco personnel responsible for determining investments or giving investment advice to Ayco clients, including Account Managers, Investment Professionals and Wealth Advisers (together, "Advisory Personnel"), compensation to the

Manager, and also generally covers the cost of brokerage execution through Fidelity, custody at Fidelity, reporting and other administrative services.

### Manager Selection

Based upon information provided by the client, the Firm will recommend that the client select one or more Managers in the Program to manage the client's assets in an account established for this purpose ("Program Account").

The Manager has full decision making authority over investments and transactions, subject to any reasonable restrictions imposed by a client and the investment style that the client has selected. The Manager may accept, or withdraw from the management of, a client's account based on the nature of the proposed restrictions or for any other reason. Restrictions regarding industry groups are determined by reference to an independent source, such as industry classifications in a well-recognized index, or by the Manager. Clients should be aware that the performance of Program Accounts with restrictions may differ from, and may be lower than, the performance of Program Accounts without restrictions. The Manager may, in its discretion, hold the amount that would have been invested in the restricted security in cash, invest in substitute securities or invest it across the other securities in the strategy that are not restricted.

Except as otherwise expressly agreed in writing, Ayco does not assume any duties to take action pursuant to the selection, retention and termination of Managers in the Program, which ultimately remain the client's obligation.

The Manager also has exclusive responsibility to determine trades, select brokers and dealers and the markets on or in which trades will be executed. Please refer to each Manager's Form ADV Part 2A for information about its advisory business.

### Manager Selection – Retirement Accounts

Pension plans (including 401(k) plans) and other employee pension benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), tax-qualified retirement plans (including Keogh plans) under Section 401(a) of the Internal Revenue Code of 1986 ("IRC") and not covered by ERISA, and individual retirement accounts under Section 408 or 408A of the IRC (each such client, a "Retirement Account") have two different options for selecting Managers. Retirement Accounts may choose participating Managers either comprised exclusively of Firm affiliated Managers ("Affiliated Manager Option") or comprised exclusively of unaffiliated Managers ("Unaffiliated Manager Option"). The Firm will not provide advice, make recommendations or otherwise assist Retirement Accounts in deciding whether to select the Affiliated Manager Option or the Unaffiliated Manager Option. That selection will be the sole responsibility of the Retirement Account and no information provided by the Firm will form a primary basis for this selection. The Firm does not act as a "*fiduciary*" within the meaning of ERISA or the IRC or have any responsibility or liability for the Retirement Account's selection of either the Affiliated Manager Option or the Unaffiliated Manager Option. However, once a Retirement Account chooses an option, Ayco will assist the Retirement Account in identifying, evaluating, and selecting one or more potential Managers within the option selected to manage the Retirement Account's assets on a discretionary basis.

If a client maintains both Retirement Accounts and Program Accounts that are not Retirement Accounts with Ayco or its affiliates, the client should understand that any advice or recommendations made by Ayco for a Program Account that is not a Retirement Account may not be relied on as a primary basis of any decision for a Retirement Account, which may present different considerations.

### Execution Services

Each Manager has the sole discretion to select broker-dealers, including Fidelity, to execute trades for Program Accounts. The Manager is responsible for executing client trades in a manner consistent with its obligation to obtain best execution, and clients are encouraged to review the selected Manager's Form ADV Part 2A concerning its brokerage practices.

Generally, the Manager selects Fidelity to execute most equity trades. This is because of the fee paid by each client, as described under “Program Fees” below, includes commissions on all agency trades effected through Fidelity. When executing trades for Program Accounts, Fidelity is not acting as investment adviser, but is acting exclusively as a broker-dealer in connection with such trades, and only executes trades for Program Accounts upon a Manager’s instruction. Transactions in Program Accounts will generally produce increased trading flow for Fidelity. To the extent permitted by applicable law, Fidelity may act as principal in executing trades for each client’s account, or as agent while also representing another client of Ayco on the other side of the trade (an “agency cross trade”). For more information about principal and agency cross trades, please refer to “Principal Trading and Cross/Agency Cross Transactions with Client Accounts” in Item 9 of this Brochure.

If a Manager selects a broker-dealer other than Fidelity to execute trades for a Program Account, the client will pay the execution charges for trades executed by that third-party broker-dealer, and such execution charges will be in addition to the Program fee. For more information about fees, please refer to “Program Fees” in Item 4 of this Brochure.

#### Custody and Administrative Services

Fidelity handles some or all of the custody, clearance and settlement services, as well as certain other administrative services provided under the Program at no additional fee. If a client elects a third party custodian, the client will bear the fees, costs, expenses or commissions charged by the custodian, including any custody and administrative fees.

Unless instructed otherwise, each Manager will be responsible for voting proxies associated with securities held in the Program Accounts in accordance with the Manager’s proxy voting policy. Where Fidelity acts as custodian, it will forward to the Manager copies of all related proxies and shareholder communications. Clients that elect not to custody assets with Fidelity are encouraged to contact their third party custodians to ensure that they, or their selected Manager, receive proxy and shareholder communications directly from their custodians.

None of Ayco, Fidelity or the Manager will render any advice or take any action with respect to securities or other property held in the Program Account or the issuers thereof that become the subject of any legal proceedings, including bankruptcies and class actions.

#### Cash Sweep

Generally, free credit balances in a Program Account may be automatically invested or “swept” daily, or at such other interval as determined by Ayco, into one or more money market mutual funds. Clients whose cash is swept to money market funds receive the prospectus for the applicable fund. Clients who elect not to sweep cash may earn less than clients who elect to sweep or may earn nothing on their free credit balances. Clients should check their account statements for the applicable interest rate.

#### **Program Fees**

Clients pay Ayco an annual fee based on a percentage of the market value of the Program Account, as set forth on the fee schedule signed by the client at account opening. Actual fees paid may be negotiated and may vary from those in the fee schedule below. A client may pay more or less than the fees for similar clients depending on the particular circumstances of the client, including the size of the relationship and required service levels.

#### Fee Schedule

The fees set forth below represent the maximum fee that may be charged for Program Accounts invested in the indicated asset class, absent special circumstances.

<u>Asset Class</u>	<u>Annual Fee Range</u>
International Equity	1.40%
U.S. Large Cap and Real Estate	1.35%
U.S. Small Cap	1.625%
All Cap	1.575%
Managed Advisory Accounts (\$100,000 and over)	0.50%

The Firm pays a portion of the Program fee to the selected Manager. The Manager fee ranges from 0.25% to 1.00% for equity accounts, based on the value of the Program Accounts managed by the Manager.

#### Payment of Fees

Fees for Program Accounts are calculated and payable quarterly in arrears based on the average month-end market value of the Program Account and will become due on the following business day. Average month-end values for Advisory Accounts are adjusted for cash flows (contributions and withdrawals) equal to or exceeding \$10,000. Fees will be prorated and due on termination or for partial periods. Where Fidelity acts as custodian, the Program fees are generally deducted from the client's Program Account. In the case of Program Accounts held at a third-party custodian other than Fidelity, clients generally direct their custodian to have their fees and expenses debited from the account for credit to Ayco.

#### Ability to Obtain Services Separately

Clients may be able to obtain some or all of the services offered through the Program separately from GS&Co., Ayco or from other firms, and the cost of obtaining the services separately may be more or less than the Program fee. Factors that bear on the cost of the Program in relation to the cost of the same services purchased separately include the range of investment strategies and managers selected, anticipated trading activity and the range of custodial, reporting and other ancillary services that are available. Clients should also understand that the combination of the Program services may not be available separately and certain Managers might not be willing or able to provide their services or particular investment strategies outside of the Program because of minimum account sizes or other factors.

#### Other Fees and Expenses

The Program fee does not include certain execution costs that may be charged to the client, including broker-dealer spreads, certain broker-dealer mark-ups or mark-downs on principal transactions; auction fees; fees charged by exchanges on a per transaction basis; debit balances and margin interest; certain odd-lot differentials; transfer taxes; electronic fund and wire transfer fees; fees in connection with trustee and other services rendered by the Firm; fees on NASDAQ trades; certain costs associated with trading in foreign securities and other property; any other charges mandated by law; and certain fees in connection with trust accounting, or the establishment, administration, or termination of retirement or profit sharing plans.

The Program fees also do not cover execution charges (such as commissions, commission equivalents, mark-ups, mark-downs or spreads) on transactions a Manager may place with broker-dealers other than Fidelity. For example, Managers of fixed income strategies will generally execute trades through third party dealers and, therefore, the spread, mark-ups and mark-downs on those trades will be paid by clients to the third party dealer. Any such execution charges will be separately charged to the client's Program Account. Clients will pay the public offering price for any securities purchased from an underwriter or dealer involved in a distribution. If the Firm is a member of the underwriting syndicate from which a security is purchased, the Firm may, directly or indirectly, benefit from such purchase. In addition, the value of Program assets invested in shares of investment companies (closed-end or mutual fund companies, and unit investment trusts) is included in calculating the Program fee, to the extent permitted by law. These shares are also subject to investment advisory, administration, transfer agency,

distribution, shareholder service and other fund-level expenses (some of which may be paid to the Firm) that are paid by the fund and clients, indirectly, as a fund shareholder. The Program fee will not be reduced by any of these fund-level fees unless required by law.

#### Compensation for Recommending the Wrap Fee Program

The Firm and its personnel may receive compensation in connection with a client's participation in the Program. The amount of this compensation may be greater or less than the compensation that might have been received by the Firm and its personnel if the client had instead participated in another advisory program offered by the Firm or paid separately for the investment advice, brokerage and other services available through the Program.

The amount of the compensation received also may vary based on the selection of a Manager, asset class or investment strategy. The Firm will generally benefit from the selection of an affiliated Manager, as the amount of compensation received from a Program Account advised by an affiliated Manager may be more or less than the compensation received from a traditional separate account (that is, an account with an advisory fee that does not include execution charges, custodial and other fees) also advised by the Firm. Except in the case of Retirement Accounts, the Firm and its personnel also may have an incentive to recommend or select certain Managers based on the nature of the compensation arrangement with each Manager. These arrangements may include fee break points that the Firm has negotiated with the Managers that reduce the fee paid to Managers (and correspondingly increase the portion of the fee retained by the Firm) as assets managed by a particular Manager in the Program increase. Any such difference in compensation may create a financial incentive for the Firm and its personnel to recommend or select an advisory program, Manager, asset class or investment strategy over another.

Clients who grant Ayco limited discretionary authority to remove and replace Managers and allocate and reallocate assets in Program Accounts should understand that any changes made by Ayco may result in changes to the overall asset allocation and selection of investment strategies for the Program Accounts. Because the fees for each investment strategy vary by asset class, Ayco's discretionary actions may result in a client paying a higher aggregate fee for the Program.

In addition to the disclosures contained in this Brochure, these and other potential conflicts of interest are disclosed in the Ayco Form ADV Part 2A provided to clients from time to time and in the Ayco investment management agreement with the client.

### **Item 5 - ACCOUNT REQUIREMENTS AND TYPES OF CLIENTS**

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#### **Types of Clients**

The majority of Ayco's clients are individuals and their private investment vehicles, corporations and other business entities, trusts, estates, charitable organizations, banks, thrifts institutions, pension and profit sharing plans.

#### **Account Minimums**

Ayco generally requires clients open a Program Account with a minimum account value of \$100,000. Program Accounts may be terminated by Ayco in its sole discretion if the values of the accounts fall below certain minimum thresholds established by Ayco from time to time.

#### **Funding and Liquidation**

The client may open an account with cash, marketable securities, or a combination of both. When initially funding an account with securities, a client should bear in mind that the Manager selected may decide to sell all or a substantial portion of the client's existing portfolio of securities and that the client is responsible for tax liabilities that may result from those transactions. Alternatively, a Manager may return

the securities to the client if the Manager is not able to accept or sell the securities for regulatory or other reasons.

Clients may choose to liquidate assets from the Program and transition them to another product offering with specific entry or subscription periods and liquidity features. Clients are no longer charged an investment advisory fee on those assets. Ayco will use reasonable efforts to limit the amount of time that a client's assets are not invested during such transition periods.

## **Item 6 - PORTFOLIO MANAGER SELECTION AND EVALUATION**

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### **Evaluation of Managers**

The selection and evaluation process for unaffiliated Managers is provided by Global Manager Strategies ("GMS"), which is part of the Alternative Investments & Manager Selection group within Goldman Sachs Asset Management, L.P. ("GSAM"). GMS has developed a due diligence process focused on identifying and evaluating the investment merits of each unaffiliated Manager.

Prior to including unaffiliated Managers in the Program, GMS undertakes a review that focuses on a number of quantitative and qualitative factors, generally including:

- Performance relative to benchmarks and peers;
- Investment philosophy and process;
- Portfolio manager experience, qualifications and reputation;
- Investment style and performance attribution;
- Portfolio construction; and
- Evaluation of risk and volatility.

Each factor may have different weight in the decision-making process and generally no one factor determines the outcome of any selection.

From the managers selected by GMS, Ayco analyzes, among other things, generally the following:

- Performance relative to benchmarks and peers;
- Investment philosophy and process;
- Portfolio manager experience, qualifications and reputation;
- Investment style and performance attribution;
- Portfolio construction; and
- Evaluation of risk and volatility.

Although GMS reviews the performance history of the Managers participating in the Program, none of GS&Co., GMS, Ayco or any third-party calculates or audits the information for accuracy, verifies the appropriateness of the methodology on which the performance is calculated. None of Ayco, GMS or any third party verifies whether the performance complies with Global Investment Performance Standards or any other standard for performance calculation. The methods for calculating performance and forming composites may differ among Managers and performance information may not be calculated on a uniform and consistent basis. Past performance may not be indicative of future results and, as such, prospective clients should not place too much emphasis on Manager performance information.

GMS periodically reviews the unaffiliated Managers through quarterly calls and annual on-site meetings designed to help understand the evolution of their views and portfolio risk and to monitor various considerations, including capacity, primary performance drivers, Manager outlook and organizational and operational changes. GMS also monitors risk by evaluating relevant risk metrics (e.g., tracking error, volatility, beta, correlation and concentration), monitoring realized risk versus expected risk to evaluate whether a Manager's risk profile is within expectations, correlation with other managers and compliance with stated investment guidelines. Ayco will periodically communicate with GMS personnel regarding its

review and also conduct periodic reviews of the GMS information compiled with respect to unaffiliated Managers. If GMS or Ayco identifies actual or potential concerns regarding a Manager that, in their view, need to be addressed, GMS may request that the Manager take appropriate action. In certain circumstances, GMS may request certain modifications to a Manager's operations (including staffing of personnel). For particularly severe concerns, GMS or Ayco may recommend that Ayco suspend or cancel the Manager's participation in the Program.

Clients should carefully review the Form ADV Part 2A for each of the Managers they consider under the Program, including information about best execution, trade rotation and order of execution, investment allocations, conflicts of interest, and any other policy or issue that could potentially impact the management of client assets under the Program. To the extent a Program Account regularly trades behind other types of accounts in a Manager's rotation system, for example, it is possible that the Program Account may suffer adverse effects depending on market conditions.

### **Affiliated Managers**

Except in the case of Retirement Accounts that have selected the Unaffiliated Manager Option, GSAM or another affiliate of Ayco may be selected by or recommended to clients investing in the Program. Affiliated Managers are not reviewed by GMS or Ayco, but instead undergo a different review process. The Firm considers the addition of a new strategy managed by an affiliated Manager through a process that reviews the specific strategy, asset class, performance and relative fees in the context of making the strategy available to clients. In the case of affiliated Managers, the operational infrastructure and internal controls are well understood and are currently in place for other strategies offered to clients. As a result, the due diligence process generally focuses on the specifics of the investment strategy and any unique characteristics, risks or eligibility criteria of the new strategy.

For information about the conflicts associated with the selection and recommendation of affiliated Managers, please see "Compensation for Recommending the Wrap Fee Program" in Item 4 of this Brochure and "Receipt of Compensation from Investment Advisers" in Item 9 of this Brochure. Ayco seeks to address these potential conflicts related to the selection and recommendation of affiliated Managers by disclosing the affiliation to clients so that they may consider the potential conflict.

### **Removing Managers**

Clients may request in writing that the Manager for their Program Account be changed at any time, and Ayco will implement such requests as soon as is reasonably practicable.

If the Firm removes a Manager from the Program, the Firm generally attempts to reach each affected client so the client may select a replacement Manager. With the exception of Retirement Accounts, clients grant Ayco the authority to replace a removed Manager with a Manager of a comparable strategy (if available) without prior approval. In these cases, Ayco will select a replacement Manager and notify the client of the selection. If Ayco is not able to find a replacement Manager, securities previously managed by that Manager will be held by Fidelity in a brokerage account for the client and the client will be responsible for directing transactions in those securities. If a client wishes to continue to retain a Manager that has been removed, the client will need to make other arrangements with the Firm outside the Program.

Where the client has given Ayco discretionary authority to select, appoint and remove Managers and allocate and reallocate assets in Program Accounts, Ayco will not attempt to contact clients in advance of any such selection, appointment or removal.

### **Item 7 - CLIENT INFORMATION PROVIDED TO PORTFOLIO MANAGERS**

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Each Manager is provided with certain information concerning the client's investment objectives, financial goals, risk tolerance, reasonable restrictions and such other information as a Manager reasonably requests to satisfy its own policies and procedures. Each client is responsible for providing accurate and



complete information to Ayco, as the failure to do so could affect the recommendation or selection of a Manager and that Manager's acceptance and management of the client's assets. The Firm will notify the Manager of updates or changes to any of the information previously provided that could affect the management of the client's account.

## **Item 8 - CLIENT CONTACT WITH PORTFOLIO MANAGERS**

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At a client's request, Ayco will make available appropriate Ayco or Firm investment personnel or a representative of the Manager to respond to a client's inquiries about the management of the client's Program Account.

## **Item 9 - ADDITIONAL INFORMATION**

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### **Disciplinary Information**

This Item requests information relating to Ayco. There are no reportable material legal or disciplinary events related to Ayco. In the ordinary course of its business, Ayco and its investment management affiliates and their employees have in the past been, and may in the future be, subject to formal and informal regulatory inquiries, subpoenas, investigations, and legal or regulatory proceedings, involving the SEC, other regulatory authorities, or private parties. Additional information about Ayco's advisory affiliates is contained in Part 1 of Ayco's Form ADV. For information relating to other Firm entities, please visit [www.gs.com](http://www.gs.com) and refer to the public filings of The Goldman Sachs Group, Inc. located on the SEC's website at [www.sec.gov](http://www.sec.gov).

### **Other Material Relationships with Affiliated Entities**

Ayco may use or recommend its own services or the services of affiliated Firm entities in connection with Ayco's advisory business. The particular services involved will depend on the types of services offered by the affiliate. Ayco may delegate certain of its trading, advisory and other activity for advisory clients to affiliated entities. Particular relationships may include, but are not limited to, those discussed below.

#### Broker-Dealer

Ayco's affiliate Mercer Allied Company, L.P. ("Mercer Allied") is registered with the Securities and Exchange Commission ("SEC") as a broker-dealer. Certain of Ayco's management persons, as well as Advisory Personnel, may also be registered representatives of Mercer Allied to the extent necessary or appropriate to perform their responsibilities. Certain Ayco management persons and employees may also be registered representatives of GS&Co., including but limited to Investment Professionals, if necessary or appropriate to perform their responsibilities. Mercer Allied primarily sells variable life insurance and variable annuities or introduces clients to full-service carrying brokers, primarily GS&Co. and Fidelity. Ayco and Mercer Allied have overlapping officers, personnel and share office space and certain expenses.

Ayco may use, or suggest or recommend that advisory clients use, the securities, futures execution or custody services offered by Ayco's affiliates. These may include, but are not limited to GS&Co., Goldman Sachs International ("GSI"), Goldman Sachs Equity Securities (U.K.), Goldman Sachs (Asia) Securities Limited, Goldman Sachs Japan Co., Ltd., Goldman Sachs Execution & Clearing, L.P. ("GSEC") and OOO Goldman Sachs. The Firm may receive compensation when it acts in its capacity as a broker-dealer executing transactions for client accounts.

In addition, the Firm may have ownership interests in trading networks, securities or derivatives indices, trading tools, settlement systems and other assets.

### Investment Companies and Other Pooled Investment Vehicles

Ayco has affiliates, including GSAM, that act in an advisory or sub-advisory capacity including as adviser, administrator and/or distributor to a variety of U.S. and non-U.S. investment companies as well as other pooled investment vehicles including collective trusts and alternative investment funds. Certain Firm personnel are also directors, trustees and/or officers of these investment companies and other pooled investment vehicles. Clients of Ayco and its affiliates may invest in these investment companies and other pooled investment vehicles offered by the Firm.

### Other Investment Advisers

Ayco has investment advisory affiliates in and outside of the United States that are registered with the SEC as investment advisers. These affiliates include: GS&Co., GSAM, Goldman Sachs Asset Management International ("GSAMI"), Goldman Sachs Hedge Fund Strategies LLC ("HFS") and GS Investment Strategies, LLC ("GSIS"). Ayco and its affiliates have or intend to have co-advisory or sub-advisory relationships with their investment advisory affiliates, as may be required for proper management of particular advisory clients and in accordance with applicable law. Ayco's affiliates may receive compensation in connection with such relationships. For additional information on compensation earned when clients select other investment advisers, see Receipt of Compensation from Investment Advisers, below.

### Futures Commission Merchant, Commodity Pool Operator, Commodity Trading Advisor

Ayco has affiliates registered with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant, commodity pool operator and commodity trading advisor. These firms include: GS&Co., GSAM, GSAMI, HFS, Goldman Sachs Management Partners, L.P., GSIS, GSEC, Goldman Sachs Investment Partners GP LLC, Liberty Harbor I GP LLC, GS Distressed Opportunities Advisors LLC, GS Distressed Opportunities Offshore Advisors Inc. and GS Distressed Opportunities Offshore Holdings Inc.

### Bank or Thrift Institution

#### *Banks*

The Goldman Sachs Group, Inc. is a bank holding company under the Bank Holding Company Act of 1956 ("BHC"). As a bank holding company, The Goldman Sachs Group, Inc. is subject to supervision and examination by the Federal Reserve Board.

Goldman Sachs Bank USA ("GS Bank") is a FDIC-insured New York state chartered Federal Reserve member bank. GS Bank accepts brokered and omnibus deposits, lends to individuals and corporate clients, transactions in certain derivatives, and provides securities lending, custody and hedge fund administration services. GS bank offers deposits sweeps to Firm clients, where free credit balances are swept into GS Bank on an omnibus basis.

#### *Trust Companies*

The Goldman Sachs Trust Company, N.A., a national bank limited to fiduciary activities ("GSTC") and the Goldman Sachs Trust Company of Delaware, a Delaware limited purpose trust company ("GSTD") may provide personal trust and estate administration and related services to Ayco's clients. The Firm may provide a variety of services to GSTC and GSTD, including investment advisory, distribution, marketing, operational, infrastructure, financial, auditing and administrative services. The Firm may receive fees from GSTC and GSTD according to the fee schedules agreed upon between the parties in accordance with arm's-length service agreements.

### Insurance Company or Agency

The Ayco Services Agency, L.P. and the Ayco Services Insurance Agency, Inc., may sell insurance contracts, including, but not limited to, variable life and variable annuity insurance contracts. Ayco may refer clients to these related affiliates and may receive referral fees, subject to applicable law.

### Sponsor or Syndicator of Limited Partnerships

The Firm may create and/or distribute unregistered privately placed vehicles for which it may receive fees.

### Management Persons; Policies and Procedures

Certain of Ayco's management persons also hold positions with one or more of its affiliated entities. In these positions, they may have some responsibility with respect to the business of these affiliated entities and may receive compensation based, in part, upon the profitability of other divisions within the Firm. Consequently, in carrying out their roles at Ayco and these other entities, the management persons of Ayco may be subject to the same or similar potential conflicts of interest that exist between Ayco and these affiliates.

Ayco has established a variety of restrictions, policies, procedures and disclosures designed to address potential conflicts that may arise between Ayco, its management persons and its affiliates. These policies and procedures include: information barriers designed to prevent the flow of information between Ayco, its personnel and certain other affiliates; policies and procedures relating to brokerage selection, trading with affiliates or investing in products managed or sponsored by affiliates; and allocation policies applicable to accounts.

Additional information about these conflicts and the policies and procedures to address them is available in Item 11, Code of Ethics, Participation or Interest in Client Transactions and Personal Trading in the Ayco Form ADV Part 2A.

### Receipt of Compensation from Investment Advisers

Ayco may select, or recommend that clients allocate assets to, one or more managed accounts or funds managed by one or more affiliated or unaffiliated Managers. Ayco receives compensation in connection with client investments in and selection and recommendation of such managed accounts or funds, and such compensation creates a potential conflict of interest. The Firm may receive various forms of compensation, including commissions, payments, remuneration or other benefits from unaffiliated managers. The amount of such compensation, commissions, payments, remuneration or other benefits to the Firm may vary by manager and may be greater if Ayco selects certain managers over other managers. Payments to the Firm (either directly from such managers or in the form of fees or allocations payable by client accounts) generally increase as the amount of assets that such managers manage increases. Therefore, investments by Program Accounts with such managers (where the Firm participates in the fee and/or profit sharing arrangement or other interest in the equity or profits of such managers) may result in additional revenues to the Firm. The relationship the Firm has with such managers may also result in an incentive for Ayco to increase client investments with such managers or to retain their investments with such managers. Except to the extent required by applicable law, Ayco may not be required to offset any compensation received by the Firm against fees and expenses the client may otherwise owe the Firm.

Because the Firm will, on an overall basis, receive higher fees, compensation and other benefits if client assets are allocated to managed accounts or investment funds managed by the Firm rather than solely to managed accounts or investment funds managed by unaffiliated managers, Ayco may have an incentive to allocate or recommend the allocation of the assets of advisory clients to managed accounts or investment funds managed by the Firm, including GSAM. Ayco addresses these potential conflicts of interest by determining which managers to recommend or select for clients in Advisory Accounts.

consistent with its fiduciary duties and the Comprehensive financial counseling service does not require clients to maintain accounts or otherwise implement their financial plans through Ayco or its affiliates.

The Firm may have interests in managers or business relationships with unaffiliated managers, including in its prime brokerage, trade execution and investment banking business. In addition, the Firm may have investments in selected manager. As a result, Ayco faces potential conflicts of interest in making determinations as to whether advisory clients should invest with or withdraw funds from managers with which the Firm has interests or other business relationships.

The Firm may receive notice of, or offers to participate in, investment opportunities from third-party managers or their affiliates. The managers or their affiliates may offer the Firm investment opportunities for various reasons including the Firm's use of the services provided by such managers and their affiliates for the Firm client investments. Therefore, investment (or continued investment) by particular client accounts with such managers may result in additional investment opportunities to the Firm or other accounts.

In addition, the fee structure of certain Advisory Accounts where Ayco must compensate managers from the fee it receives from the client may provide an incentive for Ayco to recommend or select managers with lower compensation levels (including managers that discount their fees based on aggregate account size or other relationships) instead of other managers which might also be appropriate for the client accounts. Fee breakpoints may also be affected by the Firm's business relationships and the size of accounts other than a particular client's account, and may directly or indirectly benefit the Firm and other client accounts. Clients are not entitled to receive any portion of such benefits received by the Firm and other client accounts. The Firm addresses these potential conflicts of interest in a manner consistent with its fiduciary duties.

#### Code of Ethics and Personal Trading

Ayco has adopted a Code of Ethics ("Code") under Rule 204A-1 of the Investment Advisers Act of 1940, as amended ("Advisers Act"), designed to provide that Ayco personnel comply with the applicable federal securities laws and place the interests of clients first in conducting personal securities transactions. The Code imposes certain restrictions on securities transactions in the personal accounts of Ayco personnel to help avoid any actual or potential conflicts of interest. Ayco personnel may buy and sell securities or other investments for their personal accounts, including investments in pooled investment vehicles that are sponsored, managed or advised by the Firm, and may also take positions that are the same as, different from, or made at different times than, positions taken for client accounts. Ayco will provide a copy of the Code to clients or prospective clients upon request.

Ayco personnel are subject to Firm wide policies and procedures regarding confidential and proprietary information, information barriers, private investments, outside business activities and personal trading. In addition, Ayco prohibits its employees from accepting gifts and entertainment that could influence, or appear to influence their business judgment. This generally includes gifts of more than \$100 or meals and other business-related entertainment that may be considered lavish or extraordinary and therefore raise a question or appearance of impropriety.

#### Participation or Interest in Client Transactions

The Firm is a worldwide, full-service investment banking, broker-dealer, asset management and financial services organization and a major participant in global financial markets. As such, the Firm provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. The Firm acts as an investment banker, research provider, investment manager, financier, adviser, market maker, prime broker, derivatives dealer, lender, counterparty, agent and principal. In those and other capacities, Goldman Sachs advises clients in all markets and transactions and purchases, sells, holds and recommends a broad array of investments, including, securities, derivatives, loans, commodities, currencies, credit default swaps, indices, baskets and other financial instruments and products for its own accounts and for the accounts of

clients and of its Personnel, through client accounts and the relationships and products it sponsors, manages and advises (such as Goldman Sachs or other client accounts, relationships and products, including Advisory Accounts, collectively, the “Accounts”). The Firm has direct and indirect interests, in the global fixed income, currency, commodity, equities, bank loan and other markets, and may have an interest in the securities and issuers in which the advisory accounts directly and indirectly invest. As a result, the Firm’s activities and dealings may affect client accounts in ways that may disadvantage or restrict client accounts and/or benefit the Firm or other Accounts (including Advisory Accounts). The following are descriptions of certain conflicts of interest and potential conflicts of interest that may be associated with the financial or other interests that Ayco and the Firm may have in transactions effected by, with and on behalf of, client accounts.

#### Principal Trading and Cross/Agency Cross Transactions with Client Accounts

When permitted by applicable law and GS&Co. policy, GS&Co., acting on behalf of its client accounts, may enter into transactions in securities and other instruments with or through the Firm or in affiliated products and may cause advisory clients to engage in cross transactions. There may be potential conflicts of interest or regulatory issues relating to these transactions that could limit GS&Co.’s decision to engage in these transactions for client accounts. A principal transaction occurs if GS&Co., on behalf of a client account, engages in a transaction in securities or other instruments with the Firm, or in affiliated products acting as principal. The Firm may earn compensation (such as a markup) in connection with principal transactions. Cross transactions occur if GS&Co. causes a client account to buy securities or other instruments from, or sell securities or other instruments to, another client account of Ayco or its investment advisory affiliates. An agency cross transaction occurs when the Firm acts as broker for, and receives a commission from, an advisory client on one side of the transaction and a brokerage account on the other side of the transaction in connection with the purchase or sale of securities by the advisory client. The Firm may have a potentially conflicting division of loyalties and responsibilities to the parties to such transactions, and has developed policies and procedures in relation to such transactions and conflicts. Any principal, cross or agency cross transactions are effected consistent with the Firm’s fiduciary duty and applicable law (which may include providing disclosure and obtaining client consent).

#### Effects of Firm Activities on Advisory Clients

The extent of the Firm’s activities in the global financial markets may have potential adverse effects on advisory clients. The Firm, its clients it advises and its personnel, may have interests in and advise Accounts (including advisory clients) that have investment objectives or portfolios similar to or opposed to those of advisory clients, and/or which engage in and compete for transactions in the same types of securities and other instruments as particular advisory clients are invested. These interests may involve the same or related securities or other instruments as those in which particular advisory clients invest and such accounts and funds may engage in a strategy while an advisory client is undertaking the same or a differing strategy, any of which could disadvantage the advisory client. For example, an advisory client may buy a security and the Firm may establish a short position in that same security or in similar securities. This short position may result in the impairment of the price of the security that the advisory client holds or may be designed to profit from a decline in the price of the security. To the extent Accounts (including advisory accounts) engage in transactions in the same types of securities as particular advisory accounts, transactions by Accounts may dilute or otherwise negatively affect the investments of such advisory accounts. Moreover, a particular advisory client and the Firm or an Account (including an advisory account) may also vote differently on, or take different actions with respect to, the same security, which may be disadvantageous to advisory clients. In addition, the Firm or Accounts (including Advisory Accounts), on the one hand, and a particular Advisory Account, on the other hand, may invest in different classes of securities or different parts of the capital structure of the same issuer, and as a result one may take actions that adversely affect the other.

In addition, the Firm may advise clients with respect to different parts of the capital structure of the same issuer and classes of securities and that are subordinate or senior to securities in which a particular advisory client invests. As a result, the Firm may pursue or enforce rights or activities on behalf of Accounts (including advisory accounts), or refrain from pursuing or enforcing rights or activities with

respect to a particular issuer in which the advisory client has invested. For example, the Firm (on behalf of Accounts, including advisory accounts) may seek a liquidation of an issuer in respect of which it holds debt securities, whereas if a particular advisory account holds equity securities in such issuer, the advisory account may prefer a reorganization of the issuer. Advisory clients may be negatively affected by these activities and decisions, and advisory client transactions may be effected at prices or terms that may be less favorable than would otherwise have been the case. Particular advisory clients could sustain losses during periods in which the Firm and other Accounts (including advisory accounts) achieve profits. The negative effects described above may be more pronounced in connection with transactions in, or advisory clients utilizing, small capitalization, emerging market, distressed or less liquid strategies.

The Firm may make loans to clients or enter into asset-based or other credit facilities or similar transactions with clients that are secured by a client's assets or interests in separately managed accounts and pooled vehicles managed by GS&Co. or its affiliates ("Affiliated Products"). In connection with its rights as lender, the Firm may take actions that adversely affect an advisory client, including by causing an advisory client to default, liquidate its assets or redeem positions more rapidly (and at significantly lower prices) than might otherwise be desirable.

Subject to applicable law, the Firm or Accounts (including advisory accounts and Accounts formed to facilitate investment by Personnel) may also invest in or alongside particular advisory accounts that are invested in Affiliated Products. Such investments may be on terms more favorable than those of an investment by other advisory accounts in the Affiliated Products and may constitute substantial percentages of the assets of the Affiliated Products. Unless otherwise provided by agreement to the contrary, the Firm or Accounts may redeem interests in these Affiliated Products at any time without notice or regard to the effect on the portfolios of advisory clients invested in the affiliated investment, which may be adverse.

The Firm may create, write, sell, issue, invest in or act as placement agent or distributor of derivative instruments related to, Affiliated Products such as pooled investment vehicles, or with respect to underlying securities or assets of Affiliated Products, or which may be otherwise based on, or seek to replicate or hedge, the performance of Affiliated Products. Such derivative transactions, and any associated hedging activity, may differ from, and be adverse to, the interests of advisory clients.

The Firm and its personnel, when acting as an investment banker, market maker, investor, broker, adviser or research provider, may make investments or recommendations, provide differing investment views or have views with respect to research or valuations that are inconsistent with, or adverse to, the interests or activities of advisory clients and advisory clients. Similarly, the Firm's investment teams may have differing investment views in respect of a security, and the positions an investment team takes in respect of an advisory account it manages may be inconsistent with, or adverse to, the interests and activities of advisory accounts advised by other Firm investment teams including Ayco's advisory personnel. Moreover, research, analyses or viewpoints may be available to clients or potential clients at different times. The Firm will not have any obligation to make available to the advisory accounts or advisory clients any research or analysis prior to its public dissemination. The Firm, on behalf of one or more other Accounts (including Advisory Accounts), may implement an investment decision or strategy ahead of, or contemporaneously with, or behind similar investment decisions or strategies made for particular client accounts (whether or not the investment decisions emanate from the same research analysis or other information). The relative timing for the implementation of investment decisions or strategies for particular advisory accounts, on the one hand, and other Accounts (including advisory accounts) and advisory clients on the other hand, may work to the disadvantage of the advisory clients. Certain factors, for example, market impact, liquidity constraints, or other circumstances could result in advisory clients receiving less favorable trading results and paying increased costs associated with implementing such investment decisions or strategies, or being otherwise disadvantaged.

The Firm has established certain information barriers and other policies to address the sharing of information between different businesses within the Firm and within Ayco. As a result of information barriers, Ayco generally does not have access, or has limited access, to information and personnel in other areas of the Firm, and generally is not able to manage the advisory clients or advise advisory clients

with the benefit of information held by these other areas. the Firm, due to its access to and knowledge of funds, markets and securities based on its prime brokerage and other businesses, may make decisions based on information or take (or refrain from taking) actions with respect to interests in investments of the kind held by advisory clients in a manner that may be adverse to advisory clients and will not have any obligation to share information with Ayco. Information barriers may also exist between businesses within Ayco. In addition, the Firm will not share information with Ayco. In addition, the Firm does not have any obligation to make available any information regarding its trading activities, strategies or views, or the activities, strategies or views used for other Accounts for the benefit of advisory clients. To the extent that Ayco has access to fundamental analysis and proprietary technical models developed by the Firm and its personnel, Ayco will not be under any obligation to have transactions effected on behalf of advisory accounts in accordance with such analysis or models.

Ayco, in its capacity as investment adviser and subject to applicable law, may cause advisory clients to invest, directly or indirectly, in securities, bank loans or other obligations of companies affiliated with the Firm or in which the Firm or Accounts (including advisory accounts) have an equity, debt or other interest, or to engage in investment transactions that may result in other Accounts (including advisory accounts) being relieved of obligations or otherwise divested of investments. For example, an advisory account may acquire securities or indebtedness of a company affiliated with the Firm directly or indirectly through syndicate or secondary market purchases. These activities may enhance the profitability of the Firm's or other Accounts' (including advisory accounts') investment in and activities with respect to such companies.

The Firm may provide various services to advisory accounts or to companies or affiliated or unaffiliated investment funds in which advisory accounts have an interest, which may result in fees, compensation and remuneration, as well as other benefits to the Firm. In addition, the Firm may act as broker, dealer, agent, lender or adviser or in other commercial capacities for advisory accounts or companies or affiliated or unaffiliated investment funds in which advisory accounts have an interest. For example, a company in which an advisory account has an interest may hire the Firm to provide underwriting, merger advisory, placement agency, foreign currency hedging, research, asset management services, brokerage services or other services to the company. In connection with providing such services, the Firm may take commercial steps in its own interests, which may have an adverse effect on advisory accounts. Providing such services to the advisory clients, and companies' affiliated or unaffiliated investment funds in which they invest, may enhance the Firm's relationships with various parties, facilitate additional business development and enable the Firm to obtain additional business and generate additional revenue. Advisory accounts will not be entitled to compensation related to any businesses of the Firm or Ayco.

GS&Co. performs certain valuation services related to securities and assets in certain advisory clients according to its valuation policies and may value an identical asset differently from another division or unit within the Firm, or differently from another account or advisory client. Ayco may face a conflict with respect to such valuations as they affect GS&Co.'s compensation.

#### Managing and Advising Multiple Advisory Accounts and Advisory Clients

Ayco's decisions and actions on behalf of an advisory client may differ among advisory clients. Advice given to or investment decisions made for one or more advisory clients or advisory clients may compete with, affect, differ from, conflict with, or involve timing different from, advice given or investment decisions made for other advisory clients or advisory clients.

#### Financial Incentives in Selling and Managing Advisory Accounts and Insurance Products

The Firm and its personnel may receive benefits and earn fees and compensation for services provided to advisory clients and in connection with Affiliated Products. Ayco and its affiliates may have a financial incentive to allocate advisory clients' assets to Affiliated Products rather than to accounts or funds managed by third parties. Any differentials in compensation may create a financial incentive for Ayco and Ayco personnel to recommend or select advisory products or investment strategies that will result in

greater compensation and profit to Ayco and, indirectly, to Ayco personnel involved in decision-making for advisory clients.

#### Firm Policies and Regulatory Restrictions Affecting Advisory Clients

Ayco may restrict its investment decisions and activities on behalf of an advisory client in various circumstances, including as a result of applicable regulatory requirements and/or information held by the Firm, or the Firm's internal policies and/or potential reputational risk to the Firm or disadvantage to Accounts, including client accounts. As a result, Ayco might not engage in transactions for, or recommend transactions to, an advisory client, or may reduce an advisory account's position in an investment with limited availability to create availability for an advisory account managed in the same strategy, in consideration of the Firm's activities outside the advisory client's accounts. For example, the Firm may restrict or limit the amount of an advisory client's investment where exceeding a certain aggregate amount could require a filing or a license or other regulatory or corporate consent, which could, among other things, result in additional costs and disclosure obligations for the Firm, including Ayco. In addition, Ayco is not permitted to obtain or use material nonpublic information in effecting purchases and sales in public securities transactions for advisory clients. Restrictions may be imposed on particular Advisory Accounts and not on other Accounts (including Advisory Accounts). Ayco may also limit its activities, transactions and its exercise of rights on behalf, of or with respect to, an advisory client for reputational or other reasons, including where the Firm is providing, or may provide, advice or services to a company, or to another client that is, or may be, engaged in a transaction related to such company or is or may be involved in a transaction that could affect the Firm, Ayco or their activities. For Program Accounts, Ayco has an agreement with Fidelity with respect to retirement accounts custodied at Fidelity that may limit the fees Ayco generates from such accounts..

#### **Review of Program Accounts**

##### Program Account Reviews

Ayco is not obligated to monitor transactions directed by each Manager for conformity with each client's stated investment objectives, risk tolerance, financial circumstances or investment restrictions, if any. In addition, Ayco will not evaluate each transaction executed by a Manager for compliance with the Manager's disclosed policies or style.

Ayco conducts periodic reviews of Program Accounts to monitor for various factors that may affect the management of the Program Account, including changes to the client's investment objectives, financial circumstances, portfolio performance, investment guidelines and investment concentrations. Ayco periodically contacts clients to ascertain whether there have been any changes in the client's financial circumstances or objectives that warrant a change in the management of the client's assets.

##### Program Client Reports

Fidelity provides clients with written reports regarding their Program Accounts on a periodic (generally monthly) basis. These reports generally include a summary of all activity in the accounts, including all purchases and sales of securities and any debits and credits to the account, a summary of holdings including a portfolio valuation, and the change in value of the Program Account from the end of the prior month. Additionally, no less frequently than quarterly, Ayco will provide clients with Ayco's performance report, which constitutes a statistical compilation of the performance of the Program Account during the preceding period.

#### **Client Referrals and Other Compensation**

From time to time, Ayco may make cash payments to affiliates and third parties for client referrals, consistent with applicable laws, including Rule 206(4)-3 under the Advisers Act. The compensation arrangements generally are based on a percentage of the advisory fees paid to Ayco by the referred clients and are disclosed to clients. In addition, from time to time, Ayco may also compensate employees



of Ayco and its affiliates for client referrals pursuant to applicable laws. Personnel may have board, advisory, brokerage or other relationships with issuers, distributors, consultants and others that may have advisory accounts or that may recommend the use of advisory accounts or portfolio transactions for advisory clients.

The Firm, including Ayco and its personnel, may make charitable contributions to institutions, including those that have relationships with clients or personnel of clients and personnel may have board relationships with charitable institutions. Personnel may also make political contributions. The individuals and entities with which Ayco and its personnel have these relationships may have or recommend advisory clients.

**Financial Information**

A balance sheet for Ayco's most recent fiscal year is attached.

## GLOSSARY

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As used in this Brochure, these terms have the following meanings:

“Accounts” mean accounts, relationships or products for which the Firm acts as an investment banker, research provider, investment manager, financier, advisor, investor, market maker, trader, prime broker, derivatives dealer, lender, counterparty, agent and principal and such and other capacities, advises clients in all markets and transactions and purchases, sells, holds and recommends a broad array of investments and actively trades securities, derivatives, loans, commodities, currencies, credit default swaps, indices, baskets and other financial instruments and products for its own accounts and for the accounts of clients and of its personnel, through client accounts and the relationships and products it sponsors, manages and advises.

“Advisers Act” means the Investment Advisers Act of 1940, as amended.

“Advisory Personnel” mean such Ayco personnel responsible for determining investments or giving investment advice to Ayco clients.

“Affiliated Manager Option” means the option for Retirement Accounts to choose participating Managers comprised exclusively of Firm affiliated Managers.

“Affiliated Products” means Ayco or affiliate loans, asset-based or other credit facilities or similar transactions that are secured by a client’s assets or interests in separately managed accounts and pooled vehicles managed by the Firm.

“agency cross trade” means where Fidelity acts as agent while also representing another client of Ayco on the other side of the trade.

“Ayco” means The Ayco Company, L.P. an investment adviser registered with the SEC.

“BHCA” means the Bank Holding Company Act of 1956, as amended.

“Brochure” means this wrap fee program brochure providing information about the qualifications and business practices relating to the Private Access Account Strategies program sponsored by The Ayco Company, L.P.

“clients” means Ayco clients.

“Code” means the Ayco’s Code of Ethics.

“CFTC” means the Commodity Futures Trading Commission.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“FDIC” means Federal Deposit Insurance Corporation.

“Fidelity” means Fidelity Brokerage Services LLC and National Financial Services LLC.

“Firm” means The Goldman Sachs Group, Inc., Ayco and their respective affiliates, directors, partners, trustees, managers, members, officers and employees.

“GMS” means Global Manager Strategies, which is a part of the Alternative Investments & Manager Selection group within GSAM.

“GS Bank” means the Goldman Sachs Bank USA.

“GS&Co.” means Goldman, Sachs & Co., a broker-dealer and investment adviser registered with the SEC and Ayco affiliate.

“GSAM” means Goldman Sachs Asset Management, L.P. an investment adviser registered with the SEC and Ayco affiliate.

“GSAMI” means Goldman Sachs Asset Management International.

“GSEC” means Goldman Sachs Execution & Clearing, L.P.

“GSI” means Goldman Sachs International.

“GSIS” means GS Investment Strategies, LLC.

“GSTC” means Goldman Sachs Trust Company, N.A., a national bank limited to fiduciary activities.

“GSTD” means Goldman Sachs Trust Company of Delaware.

“HFS” means Goldman Sachs Hedge Fund Strategies LLC.

“IRC” means the Internal Revenue Code of 1986.

“Manager” means an investment manager that manages client assets on a discretionary basis under one or more investment strategies offered through the Program.

“Mercer Allied” means Mercer Allied Company, L.P.

“Program” means The Ayco Company, L.P. Private Access Account Strategies program.

“Program Account” means accounts for which Managers have been selected or appointed to manage the client’s assets invested through the Program.

“Program Fee” means an annual Program fee based on a percentage of the market value of a client’s Program Account.

“Retirement Accounts” mean pension plans (including 401(k) plans) and other employee pension benefit plans subject ERISA, tax-qualified retirement plans (including Keogh plans) under Section 401(a) of the IRC and not covered by ERISA, and individual retirement accounts under Section 408 or 408A of the IRC.

“SEC” means the Securities and Exchange Commission.

“Unaffiliated Manager Option” means the option for Retirement Accounts to choose Managers comprised exclusively of third-party Managers not affiliated with the Firm.

# **GS Ayco Holding LLC and Affiliates\***

**Consolidated Statement of Financial Condition  
December 31, 2011**

\*Affiliates are comprised of the Ayco Company, L.P. and its Affiliates

# **GS Ayco Holding LLC and Affiliates**

## **Index**

**December 31, 2011**

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	<b>Page(s)</b>
<b>Report of Independent Auditors .....</b>	<b>1</b>
<b>Financial Statement</b>	
Consolidated Statement of Financial Condition .....	2
Notes to Consolidated Statement of Financial Condition .....	3–10



## Report of Independent Auditors

To the Member of  
GS Ayco Holding LLC and Affiliates:

In our opinion, the accompanying consolidated statement of financial condition presents fairly, in all material respects, the financial position of GS Ayco Holding LLC and Affiliates (the "Company") at December 31, 2011 in conformity with accounting principles generally accepted in the United States of America. This financial statement is the responsibility of the Company's management; our responsibility is to express an opinion on this financial statement based on our audit. We conducted our audit of this statement in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated statement of financial condition is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated statement of financial condition, assessing the accounting principles used and significant estimates made by management, and evaluating the overall consolidated statement of financial condition presentation. We believe that our audit of the consolidated statement of financial condition provides a reasonable basis for our opinion.

As described in Note 7, to the consolidated statement of financial condition, the Company has had significant transactions with related parties.

*PricewaterhouseCoopers LLP*

March 22, 2012

**GS Ayco Holding LLC and Affiliates**  
**Consolidated Statement of Financial Condition**  
**December 31, 2011**

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**Assets**

Current assets	
Cash	\$ 9,066,200
Accounts receivable, net of allowance of \$609,000	31,800,500
Prepaid expenses	1,464,900
Due from affiliates	<u>65,569,100</u>
Total current assets	107,900,700
Property, building and equipment, net	16,530,500
Goodwill	284,230,700
Customer relationships, net	98,795,400
Other assets	<u>604,800</u>
Total assets	<u>\$ 508,062,100</u>

**Liabilities and Equity**

Current liabilities	
Accrued compensation and benefits	\$ 41,679,700
Other liabilities and accrued expenses	1,394,900
Due to affiliates	100,000
Deferred income	5,124,000
Income taxes payable	18,059,300
Pensions, postretirement and deferred compensation liabilities	<u>1,690,900</u>
Total current liabilities	68,048,800
Net deferred tax liabilities	60,880,600
Rent escalation	3,999,300
Pensions, postretirement and deferred compensation liabilities	<u>2,944,600</u>
Total liabilities	135,873,300
Commitments, contingencies and guarantees	-
Equity	<u>372,188,800</u>
Total liabilities and equity	<u>\$ 508,062,100</u>

The accompanying notes are an integral part of the Consolidated Statement of Financial Condition.

# **GS Ayco Holding LLC and Affiliates**

## **Notes to Consolidated Statement of Financial Condition**

### **December 31, 2011**

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#### **1. Description of Business**

GS Ayco Holding LLC and Affiliates, a Delaware limited liability company, together with its subsidiaries (The Ayco Company, L.P., Saratoga Springs LLC, Mercer Allied Company, L.P., Ayco Services Agency, L.P., Mercay Corporation, and Ayco Services Insurance Agency, Inc. collectively, the "Company"), is an indirectly wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("Group, Inc."), a Delaware corporation and a financial holding company. Effective, December 1, 2011, the Company's sole member is GS Ayco Senior Holding LLC. The Company is engaged in the business of providing professional services which include financial counseling, tax return preparation, asset management, trust and estate, corporate benefit plan and insurance services to corporate and individual clients primarily throughout the United States.

#### **2. Basis of Presentation and Significant Accounting Policies**

The consolidated statement of financial condition is prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP).

##### **Principles of Consolidation**

The consolidated statement of financial condition includes the accounts of the Company which is comprised of entities under common ownership. All material intercompany transactions and balances have been eliminated.

##### **Use of Estimates**

Preparation of the consolidated statement of financial condition requires management to make certain estimates and assumptions regarding the discount rate in determining pension and postretirement liabilities, the accounting for goodwill, the provision for potential losses that may arise from litigation and regulatory proceedings, potential losses on accounts receivable and other matters that affect the consolidated statement of financial condition and related disclosures. These estimates and assumptions are based on the best available information, but actual results could be materially different.

##### **Cash**

The Company defines cash as highly liquid overnight deposits held in the ordinary course of business. Cash balances are maintained at various institutions some of which are insured by the Federal Deposit Insurance Corporation to the extent provided by law. At December 31, 2011, the Company had \$7,666,100 in banks in excess of the insured limits.

##### **Accounts Receivable**

Accounts receivable consist primarily of amounts owed by customers. These balances are presented net of allowances for uncollectible accounts. The allowance estimates are based on past collection experience and our assessment over future collectability.

##### **Property, Building and Equipment**

Property, building and equipment are stated at cost with depreciation provided for on a straight-line basis over the estimated useful lives of the assets, primarily three to seven years on furniture, fixtures and equipment, ten years on building improvements, and thirty years on buildings. Leasehold improvements are amortized over the shorter of the lease term or useful life which range from nine to twenty years. Significant additions or improvements extending the assets' useful lives are capitalized.



# **GS Ayco Holding LLC and Affiliates**

## **Notes to Consolidated Statement of Financial Condition**

### **December 31, 2011**

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Property, building and equipment are tested for impairment whenever events or changes in circumstances suggest that an asset's or asset group's carrying value may not be fully recoverable. An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the expected undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

As discussed in Note 6, the Company has contractual obligations under long-term noncancelable lease agreements, principally for office space, expiring on various dates through 2027. Certain agreements are subject to periodic escalation provisions for increases in real estate taxes and other charges. Leases with escalating rent payments over the lease term are recorded on a straight line basis.

#### **Goodwill**

The Goodwill balance of \$284,230,700 relates to the acquisition of The Ayco Company, L.P. and Affiliates by GS Ayco Holding LLC on July 1, 2003. Goodwill is the cost of acquired companies in excess of the fair value of identifiable net assets at acquisition date. The carrying value of goodwill has decreased \$1,201,000 from the prior year due to the amortization of tax goodwill (see Note 4). Goodwill is tested at least annually for impairment. An impairment loss is recognized if the estimated fair value of a reporting unit is less than its estimated net book value. Such loss is calculated as the difference between the estimated fair value of goodwill and its carrying value. There is no accumulated impairment loss associated with this goodwill.

#### **Customer Relationships**

Customer relationships are amortized over their estimated useful lives. Customer relationships are tested for potential impairment whenever events or changes in circumstances suggest that an asset group's carrying value may not be fully recoverable. An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the estimated undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

The following table sets forth the gross carrying amount, accumulated amortization and net carrying amounts of the customer relationships:

Gross carrying amount	\$ 161,000,000
Accumulated amortization	<u>(62,204,600)</u>
Net carrying amount	<u>\$ 98,795,400</u>

The customer relationships are being amortized over their estimated useful life of 22 years. The remaining life of customer relationships is approximately 14 years.

#### **Deferred Income**

Deferred income consists of the unearned portion of amounts invoiced.

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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#### 3. Property, Building and Equipment

Property, building and equipment consist of the following:

Land	\$ 800,000
Building and improvements	21,124,700
Furniture, fixtures and equipment	21,968,800
	<hr/>
	43,893,500
Less: Accumulated depreciation	(27,363,000)
	<hr/>
	\$ 16,530,500

#### 4. Income Taxes

The operating companies in the Company are made up of entities that are treated as single member limited liability corporations ("SMLLC"), and therefore considered disregarded branches of their parent for U.S. Federal tax purposes, and entities that are "C" Corporations for U.S. Federal tax purposes. Therefore, the Company is required to accrue U.S. federal, state and local tax as if all entities were "C" corporations. The Company is included in the consolidated federal tax return filed by Group Inc., as well as consolidated and combined state and local tax returns. The Company computes its tax assets and liabilities as if it was filing tax returns on a modified separate company basis and settles such assets and liabilities with Group Inc. pursuant to a tax sharing policy. As of December 31, 2011, the Company's net income tax payable in the consolidated statement of financial condition was \$18,059,300.

Income taxes are provided for using the asset and the liability method. Deferred tax assets and liabilities are recognized for temporary differences between the financial reporting and tax bases of the Company's assets and liabilities. Valuation allowances are established to reduce deferred tax assets to the amount that will more likely than not be realized. The Company recognizes tax positions in its consolidated statement of financial condition only when it is more likely than not that the position will be sustained upon examination by the relevant taxing authority based on the technical merits of the position. A position that meets this standard is measured at the largest amount of benefit that will more likely than not be realized upon settlement. A liability is established for differences between positions taken in a tax return and amounts recognized in the consolidated statement of financial condition. As of December 31, 2011, the Company did not record a liability related to accounting for uncertainty in income taxes. All years subsequent to and including 2005 for U.S. Federal and 2004 for New York State and City remain open to examination by the taxing authorities.

Deferred taxes are recorded in the consolidated statement of financial condition, until the underlying temporary differences reverse and the taxes become currently payable or receivable. At December 31, 2011, the Company had net deferred tax liabilities of \$60,880,600 primarily related to deferred tax liabilities on tax amortization of customer relationships and goodwill of \$67,760,000, offset by deferred tax assets related to deferred compensation of \$6,803,400 and other book tax differences of \$76,000. No valuation allowance is required as it is considered more likely than not that the deferred tax assets will be utilized.

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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#### 5. Employee Benefit Plans

##### Postretirement Benefits

The Company provides postretirement health benefits to individuals who retire at or after age 55 and who also have at least ten years of full time service or the equivalent as of the date of retirement. During 2011, the plan was amended to extend eligibility to employees whose age plus years of service are equal to or greater than 60 and have at least 15 years of service. The Company has limited the annual benefit under the plan to \$1,000 per year per participant. Any premiums in excess of \$1,000 must be paid for by the retiree.

At December 31, 2011, accumulated other comprehensive income (included in the caption "Equity") is comprised of an unrecognized gain and unrecognized prior service credit of \$786,700 and \$614,200, respectively.

The following table sets forth the funded status of the postretirement health benefit plan and amount recognized in the Company's consolidated statement of financial condition:

	<b>Postretirement Benefits</b>
Accumulated postretirement benefit obligation	\$ 2,127,200
Plan assets at fair value	<u>-</u>
Unfunded status	<u>2,127,200</u>
Liability recognized in the consolidated statement of financial condition	<u>\$ 2,127,200</u>

For the year ended December 31, 2011, the projected benefit obligation increased in the aggregate by approximately \$548,700 due primarily to a decrease in the discount rate from 5.50% at December 31, 2010 to 4.75% at December 31, 2011 which accounted for \$220,100 of the increase, as well as a plan amendment which had accounted for \$180,600 of the increase.

Weighted-average assumptions and other benefit information as of December 31, 2011:

	<b>Postretirement Benefits</b>
Discount rate	4.75 %
Healthcare cost trend rate assumed next year	7.60 %
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	5.00 %
Year that the rate reaches the ultimate trend rate	2024
Benefit cost	\$ (51,400)
Employer contributions	48,400
Benefits paid	48,400

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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An increase or decrease in the assumed health care cost trend rates by one percentage point would have the following impact:

	One Percentage Point Increase	One Percentage Point Decrease
Accumulated postretirement benefit obligation at December 31, 2011	\$ 200	\$ (200)
Postretirement benefit cost (aggregate service and interest cost)	-	-

The following table sets forth benefit payments projected to be paid from the Company's postretirement health benefit plan and reflects expected future service, where appropriate:

	Postretirement Benefits
2012	\$ 49,900
2013	59,700
2014	66,100
2015	72,700
2016	81,500
2017-2021	533,900

#### Other Employee Benefits

The Company maintains a nonqualified deferred compensation plan for eligible employees. The cost of such plan is accrued over the period of active employment from the employee's participation date in the plan. At December 31, 2011, the deferred compensation payable amount approximated \$1,004,800 of which \$302,400 is included in the current portion of pensions, postretirement and deferred compensation liabilities.

Group, Inc. maintains a defined benefit pension plan for eligible employees of the Company. The Company is allocated a prorata share of the overall expense (income) from Group, Inc.

The Company maintains a deferred compensation (401(k)) plan which covers substantially all employees who have met certain service requirements. The plan permits participants to contribute up to 50% of salary, including commissions and bonuses, subject to IRS limitations. Effective January 1, 1999, the Company's matching contribution is 75% of the participant's total elective deferred contribution up to a maximum of 75% of 2% of the participant's compensation up to the IRC Section 401 (a) (17) limit. Participants elect to have their contributions invested in a number of investment funds made available by the plan sponsor. The plan administrator may limit the maximum contributions per participant to comply with the IRS regulations. At December 31, 2011, matching contributions payable under the plan and included in current portion of pensions, postretirement and deferred compensation liabilities approximated \$193,600.

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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The Company maintains an additional retirement account which covers all employees who have met certain service requirements. Benefits are based on employee's adjusted gross earnings and years of participation in the Plan. The Company's funding policy is to contribute annually an amount equal to the calculated benefit. At December 31, 2011, retirement contributions payable under the plan and included in the current portion of pensions, postretirement and deferred compensation liabilities approximated \$1,119,500.

The Company maintains an unfunded supplemental pension plan for certain retirees.

At December 31, 2011, accumulated other comprehensive income (included in the caption "Equity") is comprised of an unrecognized gain and unrecognized prior service credit of \$221,300 and \$0, respectively, relating to the postretirement health benefit plan and supplemental pension plan.

The following table sets forth the funded status of the supplemental pension plan and amount recognized in the Company's consolidated statement of financial condition:

	<b>Supplemental Pension Benefits</b>
Projected benefit/accumulated benefit obligation	\$ 190,400
Plan assets at fair value	<u>-</u>
Unfunded status	<u>190,400</u>
Liability recognized in the consolidated statement of financial condition	<u>\$ 190,400</u>

For the period ended December 31, 2011, the projected benefit obligation decreased in the aggregate by approximately \$24,500 due primarily to benefits paid. Further, the discount rate decreased from 5.50% at December 31, 2010 to 4.75% at December 31, 2011.

Weighted-average assumptions and other benefit information as of December 31, 2011:

	<b>Supplemental Pension Benefits</b>
Discount rate	4.75 %
Benefit cost	\$ (9,600)
Employer contributions	28,500
Benefits paid	28,500

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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The following table sets forth benefit payments projected to be paid from the Company's supplemental pension plan:

	<b>Supplemental Pension Benefits</b>
2012	\$ 25,500
2013	25,500
2014	25,500
2015	25,500
2016	25,500
2017-2021	127,600

The estimates inherent in measuring pension benefits are sensitive to change and the effects of the change could be material to the Company's consolidated statement of financial condition.

Generally, the Company determined the discount rates for postretirement and supplemental pension benefits by referencing indices for long-term, high quality bonds and ensuring that the discount rate does not exceed the yield reported for those indices after adjustment for the duration of the plans' liabilities.

The consolidated statement of financial condition includes a liability at December 31, 2011 for the foregoing plans of \$4,635,500 of which \$1,690,900 is current.

#### **Restricted Stock Units**

Group, Inc. issues restricted stock units ("RSUs") to employees of the Company under The Goldman Sachs Amended and Restated Stock Incentive Plan, primarily in connection with year-end compensation. RSUs are valued based on the closing price of the underlying shares on the date of grant after taking into account a liquidity discount for any applicable post-vesting transfer restrictions. Year-end RSUs generally vest and deliver as outlined in the applicable RSU agreements. Employee RSU agreements generally provide that vesting is accelerated in certain circumstances, such as on retirement, death and extended absence. Delivery of the underlying shares of common stock is conditioned on the grantees satisfying certain vesting and other requirements outlined in the award agreements. At December 31, 2011, amounts payable to Group, Inc. for the vested portion of RSUs are included within accrued compensation and benefits in the consolidated statement of financial condition.

#### **6. Commitments, Contingencies and Guarantees**

The Company has contractual obligations under long-term noncancelable lease agreements, principally for office space, expiring on various dates through 2027. Certain agreements are subject to periodic escalation provisions for increases in real estate taxes and other charges. Future minimum rental payments, net of minimum sublease rentals are set forth below.

# GS Ayco Holding LLC and Affiliates

## Notes to Consolidated Statement of Financial Condition

### December 31, 2011

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Minimum rental payments are as follows:

2012	\$ 7,052,000
2013	8,106,100
2014	7,335,600
2015	6,904,000
2016	7,029,100
2017-thereafter	<u>40,468,000</u>
Total	<u>\$ 76,894,800</u>

The Company is involved in a number of judicial and arbitration proceedings concerning matters arising in connection with the conduct of its businesses. Management believes, based on currently available information, that the results of such proceedings, in the aggregate, will not have material adverse effect on the Company's financial condition. Given the inherent difficulty of predicting the outcome of the Company's litigation matters, particularly in cases in which substantial or indeterminate damages are sought the Company cannot estimate losses or ranges of losses for cases where there is only a reasonable possibility that a loss may have been incurred.

#### 7. Related Party Transactions

In 2011, the Company provided certain counseling services to partners of its affiliates which resulted in the Company recording an expense offset for the cost of providing such services. The expense offset amounted to \$8,037,200. In addition, in 2011 the Company approved and paid net equity distributions to Group, Inc. of \$63,000,000. At December 31, 2011, amounts due from/to Affiliates which are accruing interest (2.22% at December 31, 2011) are primarily with Group, Inc.

#### 8. Disclosure about Fair Value of Financial Instruments

Financial instruments mainly consist of accounts receivable and due to/from affiliates. The carrying amount of accounts receivable approximates fair value due to the short-term nature of this instrument. Loans receivable from [payable to] affiliates earn [pay] interests at 2.22%, are due upon demand, and the outstanding balance approximates fair value.

#### 9. Subsequent Events

The Company has performed an evaluation of subsequent events through March 22, 2012, the date at which the consolidated statement of financial condition was available to be issued.