

SECURITIES AND EXCHANGE COMMISSION

Release No. IC-34071; File No. 812-15172

Goldman Sachs (Malaysia) Sdn. Bhd., et al.; Notice of Application and Temporary Order

October 22, 2020

Agency: Securities and Exchange Commission (“Commission”)

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order (“Temporary Order”) exempting them from section 9(a) of the Act, with respect to a guilty plea entered on October 22, 2020 (“Guilty Plea”), by Goldman Sachs (Malaysia) Sdn. Bhd. (the “Pleading Entity” or “GS Malaysia”) in the United States District Court for the Eastern District of New York (the “District Court”) in connection with a plea agreement (“Plea Agreement”) between the Pleading Entity and the United States Department of Justice (“DOJ”), until the Commission takes final action on an application for a permanent order (the “Permanent Order,” and with the Temporary Order, the “Orders”). Applicants also have applied for a Permanent Order.

Applicants: GS Malaysia, Goldman Sachs & Co. LLC (“GS&Co.”), Goldman Sachs Asset Management, L.P. (“GSAM”), Goldman Sachs Asset Management International (“GSAMI”) and GS Investment Strategies, LLC (“GSIS” and collectively, the “Applicants”).

Filing Date: The application was filed on October 22, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving applicants with a copy of the request, by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on

November 16, 2020 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by e-mailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

Addresses: The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: David A. Markowitz, The Goldman Sachs Group, Inc., [david.markowitz@gs.com](mailto:david.markowitz@gs.com).

For Further Information Contact: Kieran G. Brown, Senior Counsel, at (202) 551-6773 or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations:

1. The Pleading Entity is a Malaysia Sendirian Berhad (private company limited by shares) that provides asset management and corporate finance services to clients in Malaysia and is a wholly-owned indirect subsidiary of Goldman Sachs Group, Inc. ("GS Group"). GS Group is a bank holding company and a financial holding company regulated by the Board of Governors of the Federal Reserve System ("FRB").

2. GS&Co., a New York limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and is a direct, wholly-

owned subsidiary (as such term is defined in the Act) of GS Group. GS&Co. is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the “Exchange Act”). GS&Co. serves as principal underwriter to the Funds<sup>1</sup> and as adviser to the ESCs (as defined below) listed in Part 1 of Appendix A to the application.

3. GSAM, a New York limited partnership, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSAM serves as an adviser or subadviser to the Funds listed in Part 2 of Appendix A to the application.

4. GSAMI, a United Kingdom limited company, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSAMI serves as an adviser or subadviser to the Funds listed in Part 3 of Appendix A to the application.

5. GSIS, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act and is a wholly-owned indirect subsidiary of GS Group. GSIS serves as an adviser to the ESCs listed in Part 4 of Appendix A to the application.

6. While no existing company of which the Pleading Entity is an “affiliated person” within the meaning of section 2(a)(3) of the Act (“Affiliated Person”), other than GSIS, GS&Co., GSAM and GSAMI (together, the “Fund Servicing Applicants”), currently serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor of any registered investment company, employees’ securities company (“ESC”), or investment company that has elected to be treated as a business development company under the Act, or as principal underwriter (as defined in section 2(a)(29) of the Act) for any registered open-end investment

---

<sup>1</sup> The term “Funds” as used herein refers to any registered investment company, employees’ securities company or investment company that has elected to be treated as a business development company under the Act for which a Covered Person (as defined below) currently or in the future serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor, or any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company for which a Covered Person currently or in the future serves as principal underwriter (as defined in section 2(a)(29) of the Act).

company (“Open-End Fund”), registered unit investment trust (“UIT”), or registered face-amount certificate company (“FACC”) (such activities performed on behalf of such persons, collectively “Fund Servicing Activities”), Applicants request that any relief granted by the Commission pursuant to the application also apply to any other current or future Affiliated Person of the Pleading Entity other than GS Group (together with the Fund Servicing Applicants, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.<sup>2</sup>

7. On October 22, 2020, the DOJ filed a criminal information (the “Information”) in the District Court charging the Pleading Entity with one count of conspiracy to commit offenses against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, *see* Title 15, United States Code, Sections 78dd-1 and 78dd-3. According to the Statement of Facts that served as the basis for the Plea Agreement (the “Statement of Facts”), between 2009 and 2014, the GS Group (together with its wholly-owned subsidiaries and affiliated entities, the “Company”), through certain of its agents and employees, including Tim Leissner (“Leissner”)<sup>3</sup> and Roger Ng (“Ng”)<sup>4</sup>, knowingly and willfully conspired with others to provide payments and other things of value to or for the benefit of foreign officials to induce the officials to influence the decisions of 1Malaysia Development Berhad (“1MDB”), a sovereign

---

<sup>2</sup> Covered Persons may, if the Order is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders. GS Group, the ultimate parent of the Pleading Entity, does not and will not serve as an investment adviser, depositor or principal underwriter to any registered investment company as it is not a Covered Person.

<sup>3</sup> From November 2006 to February 2016, Leissner was a Participating Managing Director of the Company and, from 2011 to 2016, held various senior positions in the Company’s investment banking division in Asia and served on the board of directors of GS Malaysia.

<sup>4</sup> From 2010 to 2014, Ng was a Managing Director of the Company and, for part of that time, served as Head of Investment Banking for, and was on the board of directors of, GS Malaysia.

development company wholly owned by the Government of Malaysia, International Petroleum Investment Company (“IPIC”) (an investment fund wholly owned by the Government of Abu Dhabi), and Aabar Investments PJS (a subsidiary of IPIC) to obtain and retain business for the Company (the “Conduct”), as further described in the application, in violation of the FCPA. Leissner, Ng, and another employee of the Company referred to in the Statement of Facts as Employee 1 (“Employee 1”), also used the connections of an outside individual involved in the Conduct (Jho Low) to obtain and retain business for the Company and, in turn, concealed that individual’s involvement in the deals from certain other employees and agents of the Company.<sup>5</sup> In connection with the Plea, the Company expects to enter into a deferred prosecution agreement with DOJ (the “DPA”).

8. Pursuant to the Plea Agreement, the Pleading Entity entered the Guilty Plea on October 22, 2020 in the District Court to the charge set out in the Information. Applicants state that, according to the Plea Agreement, the Pleading Entity agrees as follows: First, the Pleading Entity shall cooperate fully with the DOJ and the United States Attorney’s Office for the Eastern District of New York (collectively, the “Offices”) in any and all matters relating to the conduct described in the Plea Agreement and the Statement of Facts and other conduct under investigation by the Offices or any other component of the DOJ at any time during the term of the DPA (the “Term”) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, the Pleading Entity shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of the Pleading Entity, GS Group, or any of its present or former

---

<sup>5</sup> Employee 1 is no longer employed by any Company affiliate.

officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the Plea Agreement and the Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should the Pleading Entity learn during the Term of any evidence or any allegations of conduct that may constitute a violation of the money laundering laws that involve the employees or agents of the Pleading Entity, or should the Pleading Entity learn of any evidence or allegation of conduct that may constitute a violation of the FCPA's anti-bribery or accounting provisions had the conduct occurred within the jurisdiction of the United States, the Pleading Entity shall promptly report such evidence or allegation to the Offices. Fourth, the Pleading Entity agrees that any fine imposed by the District Court will be due and payable as specified in Paragraph 19 of the Plea Agreement, and that any restitution imposed by the District Court will be due and payable in accordance with the District Court's order. Finally, the Pleading Entity agrees to commit no further crimes and to work with GS Group in fulfilling GS Group's obligations under the DPA.

9. The Applicants expect that the District Court will enter a judgment against the Pleading Entity (the "Judgment") that will require remedies that are materially the same as set forth in the Plea Agreement. The individuals referenced in the Information as responsible for the Conduct are no longer employed by the Pleading Entity or any of its affiliates.

10. On October 22, 2020, the SEC instituted cease-and-desist proceedings against GS Group relating to the Conduct (the "SEC Order"). In anticipation of the institution of those proceedings, GS Group submitted an Offer of Settlement consenting to the entry of such order, which the Commission has accepted. The SEC Order includes findings that GS Group violated the following sections of the Exchange Act: section 30A (the anti-bribery provisions of the FCPA), section 13(b)(2)(A) (the books and records provision of the FCPA), and section

13(b)(2)(B) (requiring Exchange Act registered companies to devise and maintain a sufficient system of internal accounting controls).<sup>6</sup>

11. GS Group and its affiliates have entered into settlement agreements with other U.S. and non-U.S. regulatory or enforcement agencies related to the Conduct. The Board of Governors of the Federal Reserve System (“FRB”) entered a cease and desist order and order of assessment of a civil monetary penalty (the “FRB Order”) on October 22, 2020 against GS Group concerning unsafe and unsound banking practices relating to the 1MDB transactions that resulted from deficient policies, procedures and controls. The New York State Department of Financial Services (“DFS”) entered into a consent order (the “DFS Order”) on October 22, 2020 with GS Group as the parent company of Goldman Sachs Bank USA (“GS Bank”) (which operates in New York State and is licensed and regulated by the DFS) to settle DFS’ investigations into alleged violations of New York banking law arising out of GS Bank’s investments in 1MDB-related instruments. GS Group entered into a Settlement Agreement with the Government of Malaysia and 1MDB (the “Malaysian Settlement Agreement”) on August 18, 2020 to resolve all criminal and regulatory proceedings in Malaysia involving the Company, including pending criminal proceedings against subsidiaries of GS Group and certain of their current and former directors, relating to the 1MDB transactions and the Conduct. On October 22, 2020, the U.K. Financial Conduct Authority and the U.K. Prudential Regulation Authority each entered a warning notice (together, the “U.K. Notices”) against Goldman Sachs International (“GSI”), an indirect wholly owned subsidiary of GS Group, relating to GSI’s failure to assess and manage the risks associated with the 1MDB transactions, properly record

---

<sup>6</sup> 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), and 78dd-1.

how GSI committees assessed and managed those risks and respond appropriately to allegations of bribery. The Hong Kong Securities and Futures Commission issued a Statement of Disciplinary Action (the “SFC Statement”) against Goldman Sachs (Asia) L.L.C. (“GS Asia”), an indirect wholly owned subsidiary of GS Group, on October 22, 2020, relating to GS Asia’s failure to properly examine and address red flags in connection with the 1MDB transactions and to diligently supervise its senior personnel in connection with their participation in the 1MDB transactions. On October 22, 2020, the Singapore Commercial Affairs Department, at the direction of the Singapore Attorney General’s Chambers, issued a Notice of Conditional Warning against Goldman Sachs (Singapore) Pte, an indirect wholly owned subsidiary of GS Group (“GS Singapore”), relating to the Conduct (the “Singapore Notice”). On October 22, 2020, the Monetary Authority of Singapore (the “MAS”) issued a letter of direction (the “MAS Letter”) requiring GS Singapore to appoint an independent auditor to review the effectiveness and sustainability of the remedial measures implemented by GS Singapore following the MAS’ inspection.

Applicants’ Legal Analysis:

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or as principal underwriter for any Open-End Fund, UIT, or FACC, if such person within ten years has been convicted of any felony or misdemeanor, including those arising out of such person’s conduct as a broker, dealer or bank. Section 2(a)(10) of the Act defines the term “convicted” to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any



person directly or indirectly controlling, controlled by, or under common control with, the other person. The Pleading Entity is an Affiliated Person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Therefore, the Applicants state that the Plea Agreement would result in a disqualification of each Fund Servicing Applicant for ten years under section 9(a)(3) were they to act in any of the capacities listed in section 9(a), by effect of a conviction described in section 9(a)(1).

2. Section 9(c) of the Act provides that: “[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection 9(a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application.” Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting the Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that (i) the scope of the misconduct was limited and did not involve any of the Applicants acting as an investment adviser, depositor or principal underwriter for any Fund, or any Fund with respect to which the Fund Servicing Applicants engage in Fund Servicing Activities, (ii) application of the statutory bar would impose significant hardships on the Funds and their shareholders, (iii) the prohibitions of section 9(a), if applied to the Fund

Servicing Applicants, would be unduly or disproportionately severe and (iv) the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption from section 9(a).

4. Applicants represent that the Conduct did not involve any of Applicants acting in the capacity as an investment adviser, depositor or principal underwriter for any Fund.

Applicants represent that the Conduct similarly did not involve any Fund with respect to which the Fund Servicing Applicants engage in Fund Servicing Activities.<sup>7</sup> Instead, the Applicants state that the Conduct occurred primarily as a result of the actions of a few employees. As discussed above, the individuals referenced in the Information as responsible for the Conduct are no longer employed by the Pleading Entity or any of its affiliates.

5. Applicants acknowledge that the Conduct also reflected failures of GS Group control functions and that the Company's control functions and committees should have done more to follow up on red flags. The application states that five employees identified in the Statement of Facts as having been involved in these failures are employed by affiliates of the Pleading Entity that are not Covered Persons. Applicants represent, however, that none of these five employees has been, or will in the future be, employed by a Covered Person relying on the Orders or otherwise involved in the Fund Servicing Activities.

6. Applicants state that one of the employees discussed above was employed by a Fund Servicing Applicant before the 1MDB bond transactions, but was employed by an affiliate that is not a Fund Servicing Applicant at the time of the 1MDB bond transactions. Applicants state that this employee did not engage in the Conduct. Applicants further state that, after the

---

<sup>7</sup> The Pleading Entity does not engage, has not engaged, and will not engage in in any of the capacities contemplated by section 9(a) of the Act.

1MDB bond transactions were completed, the employee became aware of and failed to escalate information and concerns about bribery related to the bond transactions. Applicants state that this individual currently serves as a manager or director of a Fund Servicing Applicant and has had, and in the future will have, no day-to-day involvement in Fund Servicing Activities. Applicants state that this individual's role includes oversight of that Fund Servicing Applicant commensurate with the responsibilities of a manager or director.

7. Applicants state that GS Group is committed to promoting a general culture of compliance, including continuing to implement significant changes in connection with its relevant practices and controls, as summarized below and described in more detail in the application. Applicants assert that, in light of the limited scope of the Conduct, it would be unduly and disproportionately severe to impose a section 9(a) disqualification on the Fund Servicing Applicants. Applicants assert that the conduct of the Applicants has not been such to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

8. Applicants assert that neither the protection of investors nor the public interest would be served by permitting the section 9(a) disqualifications to apply to the Fund Servicing Applicants because those disqualifications would deprive the Fund of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that the prohibitions of section 9(a) could operate to the financial detriment of the Funds and their shareholders, including by causing the Funds to spend time and resources to engage substitute advisers, subadvisers, and principal underwriters, which would be an unduly and disproportionately severe consequence given that the Conduct did not involve any of the Fund Servicing Activities.

9. Applicants assert that if the Fund Servicing Applicants were barred under section 9(a) from providing investment advisory services to the Funds and were unable to obtain the requested exemption, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial capital and other resources to establishing expertise in advising and sub-advising Funds with a view to continuing and expanding this business, which Applicants consider strategically important. Similarly, Applicants represent that if GS&Co. were barred under section 9(a) from continuing to provide underwriting services to the Funds and were unable to obtain the requested exemption, the effect on its current business and employees would be significant. GS&Co. has committed capital and other resources to establish expertise in underwriting the securities of the Funds and to establish distribution arrangements for Fund shares. Applicants further state that prohibiting the Fund Servicing Applicants from engaging in Fund Servicing Activities would not only adversely affect their business, but would also adversely affect their employees who are involved in these activities.<sup>8</sup>

10. Applicants represent that: (1) none of the current or former directors, officers or employees of Applicants (other than certain former personnel of the Pleading Entity and GS&Co.<sup>9</sup> who were not involved in any of the Fund Servicing Applicants' Fund Servicing Activities) engaged in the Conduct; (2) no current or former employee of the Pleading Entity or

---

<sup>8</sup> Applicants represent that GS&Co. acts as transfer agent for most of the Funds. Although GS&Co. would retain the authority to act in this capacity even if it were prohibited under section 9(a) from engaging in Fund Servicing Activities, Applicants represent that as a practical matter, it is unlikely that the Funds would continue to retain GS&Co. as transfer agent if GS&Co. were unable to perform Fund Servicing Activities. Thus, GS&Co. would likely lose another significant part of its business. This would also adversely affect its employees.

<sup>9</sup> One of the employees most extensively involved in and responsible for the Conduct (Leissner), was employed by GS&Co. for approximately two months immediately prior to his termination in February 2016. During this time, the employee had no involvement in GS&Co.'s Fund Servicing Activities.

any Covered Person who previously has been or who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Covered Person; (3) the identified employees have had no, and will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (4) because the personnel of Applicants (other than certain former personnel of the Pleading Entity and GS&Co.<sup>10</sup> who were not involved in any of the Fund Servicing Applicants' Fund Servicing Activities) did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser.

11. Applicants have agreed that none of GS Group, the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entity or any other person who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

12. Applicants have also agreed that GS Group and each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure compliance with the terms and conditions of the Orders granted under section 9(c).

13. In addition, GS Group and each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreement and with the material terms of the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS

---

<sup>10</sup> See paragraph 6, *supra*.

Letter, and any other orders issued by regulatory or enforcement agencies addressing the Conduct. Applicants note that in connection with the DPA, GS Group will represent that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA and other anti-corruption laws *throughout its operations*, including its subsidiaries. In addition, GS Group will represent that it has undertaken, and will continue to undertake, a review of its existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other anti-corruption laws, and modify them where necessary to ensure that it maintains (i) an effective system of internal accounting controls, and (ii) a rigorous anti-corruption compliance program designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The DPA will require GS Group to provide an initial report to DOJ within one year describing its remediation efforts to date, and to undertake two annual follow-up reviews and reports to DOJ.<sup>11</sup>

14. Applicants further state that GS Group and its affiliates have undertaken certain other remedial measures, as described in greater detail in the application. These remedial measures include: enhancing the scrutiny of senior personnel in high-risk areas and products, heightening the firm's focus on accountability when employee red flags are identified, and taking steps to ensure that employees are hearing about compliance expectations from the firm's executive management. Applicants state that GS Group has also been strengthening processes to heighten attention to potential red flags identified by deal teams and committees, increasing representation of the firm's control functions in key vetting groups and committees, and reviewing transactions earlier in the life cycle to reduce the possibility that later momentum in

---

<sup>11</sup> The required remedial steps with respect to GS Group's Corporate Compliance Program are described in Attachment C to the DPA, and the reporting requirements are described in Attachment D to the DPA.

the deals could inappropriately carry them over the line for approval. Applicants also state that the firm has been continually improving its electronic surveillance to take advantage of recent technological advances and has increased its commitment to spending on compliance efforts and headcount in order to maintain the efficacy of the enhancements described above and to continue improving the firm's controls and systems.

15. As a result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption.

16. To provide further assurance that the exemptive relief being requested in the application would be consistent with the public interest and the protection of the investors, the Applicants agree that they will, as soon as reasonably practical, with respect to each of the Funds for which a Fund Servicing Applicant is the primary adviser, distribute to the boards of directors or trustees of the Funds ("Board") written materials describing the circumstances that led to the Plea Agreement, as well as any effects on the Funds and the application. The written materials will include an offer to discuss the materials at an in-person meeting with the Board, including the directors who are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act and their "independent legal counsel" as defined in rule 0-1(a)(6) under the Act, if any. With respect to each of the Funds for which a Fund Servicing Applicant is not the primary investment adviser, the relevant Fund Servicing Applicant will provide such materials to the Fund's primary investment adviser and offer to discuss the materials with such primary investment adviser. The Applicants undertake to provide the Boards with all information concerning the Plea Agreement and the application as necessary for those Funds to fulfill their

disclosure and other obligations under the U.S. federal securities laws and will provide them a copy of the Judgment as entered by the District Court.

17. Certain Fund Servicing Applicants, as well as certain of their affiliates, have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application. Applicants, however, note that none of the conduct underlying the previous section 9(c) orders granted to Fund Servicing Applicants involved the provision of Fund Servicing Activities.

Applicants' Conditions:

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. None of GS Group, the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entity or any other person who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

3. GS Group and each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and



conditions of the Orders within 60 days of the date of the Permanent Order or, with respect to condition four, such later date or dates as may be contemplated by the Plea Agreement, the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS Letter or any other orders issued by regulatory or enforcement agencies addressing the Conduct.

4. GS Group and each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreement and with the material terms of the DPA, the FRB Order, the DFS Order, the SEC Order, the Malaysian Settlement Agreement, the U.K. Notices, the SFC Statement, the Singapore Notice, the MAS Letter and any other orders issued by regulatory or enforcement agencies addressing the Conduct. In addition, within 30 days of each anniversary of the Permanent Order (until and including the third such anniversary), GS Group will submit a certification signed by its chief executive officer and its global head of regulatory affairs, confirming that the Pleading Entity has complied with the terms and conditions of the Plea Agreement in all material respects and that GS Group has complied with the terms and conditions of the DPA in all material respects. Each such certification will be submitted to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation. In addition, GS Group will submit to the Chief Counsel of the Commission's Division of Investment Management, with a copy to the Chief Counsel of the Commission's Division of Enforcement, a copy of each report

submitted to the Department of Justice pursuant to Paragraph 14 and Attachments C and D of the DPA within five days of the submission of each report to the Department of Justice. GS Group's first such report will be signed by its chief executive officer and global head of regulatory affairs.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as the date of the Guilty Plea, solely with respect to the Guilty Plea entered into pursuant to the Plea Agreement, subject to the representations and conditions in the application, until the Commission takes final action on their application for a permanent order.

By the Commission.

J. Matthew DeLesDernier,  
Assistant Secretary.