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Goldman Sachs

May 21, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

RE: File No. S7-12-04: Proposed Rule: Disclosure Regarding Portfolio Managers of Registered Management Investment Companies

Dear Mr. Katz:

On behalf of Goldman, Sachs & Co. and its affiliates, we are pleased to have the opportunity to comment on the Commission's proposal (the "Proposed Rule"), contained in Investment Company Act Release No. 26383 (March 11, 2004) (the "Release"), to supplement disclosure requirements pertaining to portfolio managers of registered management investment companies.

We commend the Commission on its decision to address concerns about conflicts of interest that may arise out of the management of multiple accounts by an individual portfolio manager through disclosure rather than blanket prohibitions on certain activities, including the management of a mutual fund and a hedge fund by the same portfolio manager. We believe that it is in the interests of investors that these conflicts of interest be disclosed and limited or managed in a manner that, at the same time, permits efficient management of investment portfolios and respects the privacy of portfolio managers' personal financial information.

Dual Management

First, we would like to address the question raised in the Release concerning whether a portfolio manager should be prohibited from providing investment advice with respect to both a registered investment company and a hedge fund. The more attractive compensation arrangements available to some hedge fund managers and their freedom to engage in certain investment strategies unavailable in the mutual fund setting may lead some portfolio managers to choose to advise a hedge fund even if, in doing so, they are prohibited from also advising a mutual fund. We do not believe that it is in the best interests of mutual fund shareholders effectively to reduce the available pool of portfolio managers by introducing a blanket prohibition on dual management. Investor interests are best served by allowing investment advisory firms to continue to use their expertise in allocating portfolio management capabilities. Indeed, the investment experience of a portfolio manager may be valuable to a number of

portfolios and accounts. Moreover, portfolio managers may have different roles with respect to different accounts.

We also believe that the conflicts of interest concerns cited in the Release are not directly addressed by such a prohibition. For example, a portfolio manager may be subject to the same potential conflicts of interest when advising more than one mutual fund, or multiple other accounts that are not hedge funds. It also would not make sense to mandate, by regulation, that a portfolio manager dedicate his or her time to providing advice with respect to a single portfolio.

For these reasons, we believe that it would be preferable for the Commission to take a more direct approach to the disclosure of conflicts of interest, rather than restricting the ability of a portfolio manager to advise more than one kind of investment account. We therefore agree with the proposal in the Release to require disclosure concerning an investment adviser's policies and procedures governing the allocation of investment opportunities. In our view, it would be useful to investors to have the opportunity to evaluate the methods by which an investment adviser allocates investment opportunities.

Location of disclosure

We believe that, in general, where the Proposed Rule calls for additional disclosure, that disclosure should be included in the Statement of Additional Information (SAI) rather than in the prospectus. Specifically, it would seem appropriate to include the information in the disclosure item titled "Management" (Item 12 of Form N-1A, for open-end management investment companies, or Item 18 of Form N-2, for closed-end management investment companies) or "Investment Advisory and Other Services" (Item 14 of Form N-1A or Item 18 of Form N-2).

There is longstanding tension between the need for adequate disclosure in the prospectus and the need for prospectus disclosure to be presented in an understandable manner. If this additional disclosure is included in a fund's prospectus, investors may be confused by discussions about other managed accounts that are not otherwise discussed in the prospectus. By including the information in the SAI, interested investors would have access to the information, as would analysts and researchers.

Disclosure concerning investment team members

The Proposed Rule would require detailed disclosure about each member of a fund's investment team or investment committee. We suggest that the Proposed Rule be modified to require disclosure only with respect to investment team leaders, meaning those who coordinate a portfolio's overall investment process and those who are primarily responsible for making most of the investment decisions on behalf of the portfolio. In this way, the rule would meet the SEC's stated goal of providing for disclosure of "who runs the fund and how long or briefly they have been in place."

Requiring disclosure about every junior or non-primary member of the investment team may distract from the purpose of the proposed disclosure item, and should remain optional for

registrants who believe that disclosure of the entire team is helpful to investors. As investors may be interested in knowing whether an investment adviser uses a team approach for a fund, this registration statement item also should continue to require disclosure, if applicable, that the investment advisory services are provided by an investment team.

We would also suggest that, rather than requiring disclosure about the decision-making process involved in trading decisions, which would generate complex disclosure that may be subject to frequent change, a brief description of the structure of the investment team and the role of each investment team leader and each category of other investment team members would seem better to achieve the Proposed Rule's purposes.

We caution that, if the rule is adopted as proposed, advisory firms may feel it necessary to reduce the number of overlapping members of investment teams simply to reduce the burdens of disclosure, which may have the effect of reducing the advisory expertise available to any particular portfolio.

Method of determining compensation

We agree with the SEC's general approach on disclosure of portfolio manager compensation. Requiring disclosure of the method of determining the portfolio compensation may be helpful to certain investors when they make their investment decisions. For example, a consideration of whether a portfolio manager's compensation is based on short-term or long-term performance of the relevant fund, or to what extent the compensation is based on the financial status of the advisory firm, may help investors better understand the incentives of their funds' portfolio managers.

On behalf of our portfolio manager employees, we appreciate that the Proposed Rule declines to require disclosure of the amount of compensation paid to an individual portfolio manager. In our view, the privacy that, both informally and as a matter of law, has traditionally surrounded an individual's livelihood outweighs the interests of investors in viewing this private personal financial information. We believe it sufficient that investors are already informed of the level and amount of the fees paid to the investment advisory firm. We also note the potentially anticompetitive effects of requiring disclosure of detailed information about portfolio managers' compensation, as this could act as an incentive for successful portfolio managers to seek to manage accounts other than registered funds.

We note that, as a practical matter, registrants may find it difficult to quantify various portions of a portfolio manager's benefits package, which, as with the above information, may be of a highly personal nature. For this reason, we believe that any discussion of compensation should exclude benefits that would not reasonably be considered to constitute current or deferred base salary, bonus or participation in a profit-sharing program. For example, benefits such as health and other insurance or the matching of 401(k) contributions would be of limited or no value to investors and should not be required to be a part of this discussion.

Management of other accounts

The SEC is concerned that portfolio managers may favor accounts that are subject to performance-based advisory fees over other accounts. We agree with the Proposed Rule's requirement that a fund disclose whether its portfolio manager (or where applicable, the team leaders) manages accounts that are subject to performance-based advisory fees. We believe that certain investors will find this information useful, and we support this disclosure requirement. The size of those other accounts, however, seems unimportant. Investors who would avoid investing assets with a portfolio manager who manages an account that is subject to performance-based advisory fees would not, in our view, be more likely to invest in the fund simply because the other accounts are relatively small. The potential for conflicts of interest remains the same, no matter the size of the account in question. For this reason, we believe that both investors and registrants would be better served by simplified disclosure concerning whether the portfolio manager manages one or more other accounts or funds that are subject to performance-based advisory fees. An investor would not have to wade through tables of information, and a registrant would not have to compile tables that are not helpful to investors' investment decisions.

We also believe it is appropriate to require disclosure of the number of other accounts managed professionally (as opposed to personal accounts) by a portfolio manager, so that an investor may consider whether he or she is comfortable that the portfolio manager likely dedicates a satisfactory amount of time to the fund in question. The other information described in the Proposed Rule may be suitable for review by SEC examiners but we submit that the itemized information may be confusing to investors and, moreover, would not be useful in making investment decisions. We also believe that the itemization of accounts, assets, and performance-based advisory fees is unnecessary in light of the existing and proposed requirements concerning disclosure of conflicts of interest.

Conflicts of interest

The Release asks whether the SEC should require disclosure of all actual conflicts of interest that have occurred as a result of managing a fund and other accounts. In addition to our view that, as a general matter, registration statement disclosure should be subject to a materiality threshold, we believe that a detailed report on conflicts of interest in every fund's registration statement would be unwieldy and would not help clarify investors' investment decisions. Such a report would seem to be inconsistent with the concept of plain English disclosure generally and, specifically, General Instruction C.1.(c) of Form N-1A.[1] Moreover, we believe that this

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[1] General Instruction C.1.(c) of Form N-1A states:

> Responses to the Items in Form N-1A should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Fund. The prospectus should avoid: including lengthy legal and technical discussions; simply restating legal or regulatory requirements to which Funds generally are subject; and disproportionately emphasizing possible investments or activities of the Fund that are not

information is more appropriately directed to fund boards, as part of their general oversight responsibilities and those under the new compliance rule.[2] In addition, a review of how a fund addresses conflicts of interest situations can and should be the subject of examinations by the SEC staff.

Ownership of fund shares and other accounts

The Release indicates that the SEC is concerned about conflicts of interest or opportunities for improper trading arising from a portfolio manager's personal or family holdings in accounts managed by the portfolio manager or the advisory firm. We support additional disclosure requirements in this area, but suggest that the Proposed Rule be modified to require disclosure of a range of the amount of personal assets held in (i) the fund and (ii) in the aggregate, other accounts managed by the portfolio manager as an employee of an investment advisory firm. We believe it would be reasonable for the dollar ranges to be the same as those required for directors in Instruction 4 to Item 12(b)(4) of Form N-1A and Instruction 3 to Item 18(7) of Form N-2 (*i.e.*, none; $1 to $10,000; $10,001 to $50,000; $50,001 to $100,000; or over $100,000). In our view, these personal assets should include only those assets in accounts to which the portfolio manager has investment discretion or a pecuniary interest, and only if the portfolio manager is an investment team leader, as described above in this letter, with respect to the assets.

Prospectus disclosure of the value of assets held by the portfolio manager or a member of his or her immediate family in each individual account, or disclosure of any person's net worth, would be an undue intrusion on the individual's or family's privacy. Congress, in a number of statutes, has recognized the importance of maintaining the privacy of personal financial information and other records from the public, third parties, and even the federal government. For example, in the Right to Financial Privacy Act of 1978,[3] Congress expressly limited the ability of the federal government, including the SEC,[4] to obtain information from financial institutions about their customers' financial records. Similarly, the Internal Revenue Code strictly limits sharing of tax returns and other specific taxpayer information with other parts of the federal government or third parties.[5] With its adoption of Regulation S-P,[6] as mandated by

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a significant part of the Fund's investment operations. Brevity is especially important in describing the practices or aspects of the Fund's operations that do not differ materially from those of other investment companies. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

2 *Compliance Programs of Investment Companies and Investment Advisers*, Investment Company Act Rel. No. 26299 (Dec. 17, 2003).

3 12 U.S.C. § 3401.

4 *See* 12 U.S.C. § 3422 ("Applicability to Securities and Exchange Commission").

5 *See* 26 U.S.C. § 6103.

the Gramm-Leach-Bliley Act,[7] the SEC itself has adopted rules that limit the ability of financial institutions to disclose personally identifiable financial information of their customers. The Privacy Act of 1974,[8] the Fair Credit Reporting Act,[9] the Family and Educational Privacy Act of 1974,[10] and the Drivers Privacy Protection Act[11] also limit the ability of the federal agencies to share records about individuals to other agencies or third parties, and indicate the importance that Congress has attached to protecting the privacy of individuals' personal records.

While this is by no means a comprehensive discussion of federal statues and rules governing privacy of personal financial information, we believe that it would be appropriate for the Commission to consider carefully whether it would be consistent with the policies underlying these laws for the Commission to require that individual portfolio managers publicly disclose information relating to their net worth, sizes of their personal and family investment accounts, and their investment choices and the investment choices of their families. Once a record is made public, there is no limit on the purposes to which the information may be used. We view as particularly problematic the ease with which this personal financial information may be retrieved from registration statements stored on an easily accessible electronic database such as the EDGAR filing system.

Reserving the argument about whether the SEC is permitted to require such public disclosure, we strongly suggest that the policies in support of privacy outweigh the public's interest in reviewing this private information. We believe that these disclosure requirements, if adopted as proposed, may lead to a diminished pool of qualified individuals willing to serve as a portfolio manager for a registered investment company. Also important, we believe that the detailed account information would not be useful information for an investor's decision to invest in a particular fund. In contrast, requiring disclosure of information along the lines of our suggestions above would fully satisfy the objectives of the Commission's proposal and, at the same time, not unnecessarily invade a portfolio manager's personal privacy.

Form N-CSR

The Proposed Rule would require all registered closed-end investment companies to provide updated portfolio manager disclosure in each annual report on Form N-CSR. We respectfully submit that the added disclosure burden proposed to be included in Form N-CSR should not apply to those registered closed-end investment companies that update their

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6 *Privacy of Consumer Financial Information (Regulation S-P)*, Investment Company Act Rel. No. 24543 (June 22, 2000).

7 15 U.S.C. § 6801.

8 5 U.S.C. § 552a.

9 15 U.S.C. § 1681.

10 20 U.S.C. § 1232g.

11 18 U.S.C. § 2721.

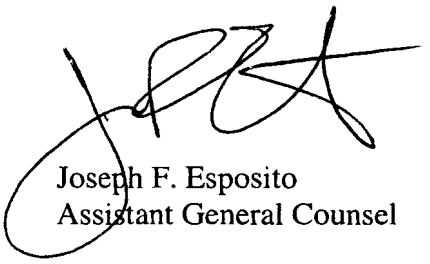
prospectuses annually. There is no reason to treat such closed-end funds differently from open-end funds in this regard.

Conclusion

We are in favor of enhanced disclosure about conflicts of interest and an investment adviser's policies and procedures governing the allocation of investment opportunities, but certain disclosure requirements in the Proposed Rule or suggested in the Release, in our view, would be unhelpful to investors or unduly invasive of a portfolio manager's privacy. To the extent the Commission disagrees with our discussion above, we respectfully request that the Commission consider obtaining certain information pursuant to examinations, rather than in registration statements, as examinations may be the better forum for a review of overly detailed, technical or private information.

Goldman Sachs appreciates the SEC's consideration of our comments and recommendations. Please direct any questions about this letter to the undersigned at 609-497-5517.

Sincerely yours,



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cc: The Hon. William H. Donaldson, Chairman
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