



DIVISION OF  
CORPORATION FINANCE

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

May 31, 2006

David B. Harms, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004

**Re: Goldman, Sachs & Co., Administrative Proceeding File No. 3-12310—Waiver  
Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Harms:

This is in response to your letter dated as of the date of this letter, written on behalf of Goldman, Sachs & Co. ("Goldman Sachs") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 ("Securities Act"). You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arose by virtue of the entry of an order dated today against Goldman Sachs and others as respondents by the Securities and Exchange Commission in the referenced administrative proceeding (the "Order"). The disqualifications arose because the Order was issued under Section 15(b) of the Securities Exchange Act of 1934 and contained paragraphs numbered IV.D and IV.E, which ordered Goldman Sachs, among other things, to provide written descriptions of its material auction practices and procedures for auction rate securities. The order also was issued under Section 8A of the Securities Act and also censured Goldman Sachs, ordered Goldman Sachs to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, and ordered Goldman Sachs to pay a civil money penalty in the amount of \$1,500,000.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order against Goldman Sachs. We have also assumed that Goldman Sachs has complied and will continue to comply with the Order.

On the basis of your letter, I have determined that Goldman Sachs has made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of entry of the Order against Goldman Sachs. Accordingly, pursuant to delegated authority, Goldman Sachs is granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that arose as a result of entry of the Order against it.

Very truly yours,

Gerald J. Laporte  
Chief, Office of Small Business Policy

# SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000  
FACSIMILE: 1-212-558-3588  
WWW.SULLCROM.COM

*125 Broad Street*  
*New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

As of May 31, 2006

## Via Federal Express

Gerald J. Laporte, Esq.,  
Chief, Office of Small Business Policy,  
Division of Corporation Finance,  
Securities and Exchange Commission,  
100 F Street, N.E.,  
Washington, D.C. 20549.

Re: In the Matter of Auction Rate Securities Practices,  
File No. HO-09954 (Goldman, Sachs & Co.)

Dear Mr. Laporte:

Our client, Goldman, Sachs & Co. (the "Settling Firm"), is a settling respondent in the above-captioned proceeding by the Securities and Exchange Commission (the "Commission"). The proceeding relates to certain practices involving auction rate securities. A number of other investment-banking firms are also settling respondents in this proceeding.

The Settling Firm hereby requests, pursuant to Rule 262 of Regulation A and Rule 505 of Regulation D under the Securities Act of 1933 (the "Securities Act"), that the Commission grant a waiver of any disqualification from the exemptions provided by Regulation A and Rule 505 that may otherwise apply to the Settling Firm, any of its affiliates or any issuer, offering participant or other persons as a result of the Order described below entered by the Commission in the above-captioned proceeding. The Settling Firm requests that this waiver be granted effective upon entry of the Order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waiver.

## **BACKGROUND**

In connection with the above-captioned proceeding, which was brought pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Settling Firm submitted an offer of settlement in which, for the purpose of the above-captioned proceeding, the Settling Firm consented to

the entry of an order by the Commission (the "Order") without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission and the subject matter of the proceeding).

In the Order, the Commission made findings, without admission or denial by the Settling Firm, that the Settling Firm willfully violated Section 17(a)(2) of the Securities Act in connection with certain practices relating to auction rate securities. Based on these findings, the Order requires that the Settling Firm cease and desist from committing or causing any current or future violations of Section 17(a)(2) and pay a civil money penalty of \$1.5 million.

### DISCUSSION

Regulation A and Rule 505 of Regulation D provide exemptions from registration under the Securities Act for certain offerings of limited size. Rule 262 of Regulation A and Rule 505 provide for disqualification from these exemptions if "any underwriter of the securities to be offered . . . [i]s subject to an order of the Commission entered pursuant to Section 15(b)" of the Exchange Act. *See* 17 C.F.R. §§262(b)(3) and 505(b)(2)(iii). These Rules, however, also provide that these disqualifications shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemptions be denied. *See* 17 C.F.R. §§262 and 505(b)(2)(iii)(C).

The Settling Firm understands that the Order could disqualify it from participating in offerings in reliance upon the exemptions from registration under the Securities Act provided by Regulation A and Rule 505, insofar as the Settling Firm would thereby be subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. Pursuant to these Rules, the disqualifications could also apply to any issuer, underwriter or other person participating in such an offering with the Settling Firm. As noted above, however, the Commission has the authority to waive the Regulation A and Rule 505 exemption disqualifications.

The Settling Firm requests that the Commission waive any disqualifying effects that the Order may have under Regulation A and Rule 505 of Regulation D with respect to the Settling Firm, its affiliates or any other persons, whether acting as issuer, underwriter or otherwise, for the following reasons:

1. The disqualification of the Settling Firm from the exemptions under Regulation A and Rule 505 would be unduly and disproportionately severe given the nature of the violation found in the Order. The Settling Firm's conduct addressed in the Order does not pertain to securities offerings under Regulation A or Rule 505, but

instead is confined to certain practices related to the offering and trading of auction rate securities, primarily the conduct of auctions of such securities by auction dealers. These securities are municipal securities exempt from registration pursuant to Section 3(a)(2) of the Securities Act or other provisions thereof or are registered under the Securities Act. The Order does not prohibit or suspend the ability of the Settling Firm to participate in exempt offerings and does not relate to the exemption provided by Regulation A or Rule 505.

2. In the future, issuers may wish to retain the Settling Firm to participate in an offering of securities conducted in reliance on the exemption provided by Regulation A or Regulation 505. Consequently, the disqualification of the Settling Firm could adversely affect the Settling Firm's business operations with regard to securities distribution and could adversely affect third parties that may wish, but because of the disqualification would be unable, to retain the Settling Firm or participate with it in connection with an offering conducted pursuant to these exemptions.

3. Finally, the disqualification of the Settling Firm would be unduly and disproportionately severe because the Settling Firm is required under the Order to pay a civil money penalty of \$1.5 million. The disqualification would result in an additional penalty beyond what the Order requires.

In light of the grounds for relief described above, we believe that disqualification is not necessary, either in the public interest or for the protection of investors, and that the Settling Firm has shown good cause that relief should be granted. Accordingly, we respectfully request that the Commission waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent that they may otherwise apply to the Settling Firm, any of its affiliates or any issuer, offering participant or other persons as a result of the entry of the Order against the Settling Firm.<sup>1</sup>

---

<sup>1</sup> We note that the Commission has granted relief under Regulation A and Rule 505 of Regulation D for similar reasons in other instances. *See, e.g.*, Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Oct. 31, 2003); Merrill Lynch & Co., Inc., SEC No-Action Letter (pub. avail. March 17, 2003); Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); and Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001).

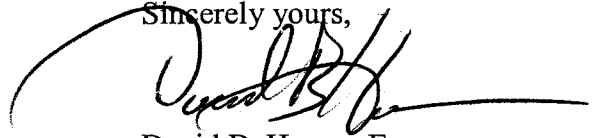
The Commission has also granted the requested relief to the same firm on more than one occasion. *See, e.g.*, In the matter of Certain Municipal Bank Refundings, SEC No-Action Letter (pub. avail. April 6, 2000).

Gerald J. Laporte, Esq.

-4-

If you have any questions regarding this request, please contact the undersigned at (212) 558-3882.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David B. Harms", with a long horizontal flourish extending to the right.

David B. Harms, Esq.

cc: Kenneth R. Lench, Esq.  
(Division of Enforcement)