

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-29366; 812-13796]

Goldman, Sachs & Co., et al.; Notice of Application and Temporary Order

July 21, 2010

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 exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. (“Goldman Sachs”) on July 20, 2010 by the United States District Court for the Southern District of New York (the “Injunction”), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: Goldman Sachs, Goldman Sachs Asset Management, L.P. (“GSAM, L.P.”), Goldman Sachs Asset Management International (“GSAMI”), Goldman Sachs Hedge Fund Strategies LLC (“GSHFS”), Commonwealth Annuity and Life Insurance Company (“Commonwealth”), First Allmerica Financial Life Insurance Company (“FAFLIC”) and Epoch Securities, Inc. (“Epoch,” together, the “Applicants”).¹

Filing Dates: The application was filed on July 16, 2010, and amended on July 21, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by

¹ Applicants request that any relief granted pursuant to the application also apply to any existing company of which Goldman Sachs is an affiliated person and to any other company of which Goldman Sachs may become an affiliated person in the future (together with Applicants, “Covered Persons”).

writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 2010, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities & Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. Applicants: Goldman Sachs, GSAM, L.P. and GSHFS, 200 West Street, New York, NY 10282; GSAMI, Christchurch Court, 10-15 Newgate Street, London, England EC1A7HD; and Commonwealth, FAFLIC and Epoch, 132 Turnpike Road, Southborough, MA 01772.

For Further Information, Contact: Jaea F. Hahn, Senior Counsel, at (202) 551-6870 or Janet M. Grossnickle, Assistant Director, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site 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. Goldman Sachs, a New York limited partnership, is a global investment banking and securities firm. Goldman Sachs is registered as an investment adviser with the Commission pursuant to section 203 of the Investment Advisers Act of 1940

(“Advisers Act”). Goldman Sachs is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the “Exchange Act”) and acts as a principal underwriter of certain registered investment companies. GSAM, L.P, GSAMI and GSHFS are each registered under the Advisers Act as investment advisors and provide investment advisory or subadvisory services to Funds.² Commonwealth and FAFLIC are insurance companies domiciled in Massachusetts and each acts as depositor for certain separate accounts that are registered as UITs under the Act. Epoch is a registered broker-dealer that acts as principal underwriter for the UITs of Commonwealth and FAFLIC. Each of Goldman Sachs, GSAM, L.P., GSAMI and GSHFS provide investment advisory services to ESCs, as defined in section 2(a)(13) of the Act, which provide investment opportunities for partners of Goldman Sachs (prior to its initial public offering) and certain employees and consultants of Goldman Sachs and its affiliates. GSHFS does not currently provide investment advisory services to registered investment companies.

2. On July 20, 2010, the United States District Court for the Southern District of New York entered a final judgment, which included the Injunction against Goldman Sachs in a matter brought by the Commission (“Final Judgment”).³ The Commission alleged in the complaint (“Complaint”) that offering materials related to a transaction in which Goldman Sachs or its affiliates sold synthetic collateralized debt obligations, which referenced a portfolio of synthetic mortgage-backed securities, to two

² “Funds” refer to any registered investment company or employees’ securities company (“ESC”) for which a Covered Person serves as an investment adviser, subadviser or depositor, or any registered open-end investment company, registered unit investment trust (“UIT”) or registered face amount certificate company for which a Covered Person serves as principal underwriter (such activities, collectively, “Fund Servicing Activities”).

³ Securities and Exchange Commission v. Goldman, Sachs & Co. and Fabrice Tourre, 10-CV-03229 (S.D.N.Y. July 20, 2010).

institutional investors in early 2007 (“Transaction”), should have disclosed that the hedge fund assuming the short side of the Transaction had played a role in the selection process. As part of an agreement to settle the action, Goldman Sachs entered into a consent in which it acknowledged that it was a mistake not to disclose the role of the hedge fund in the Transaction and consented to the entry of the Final Judgment, including the Injunction. The Final Judgment will also decree that Goldman Sachs is liable for disgorgement of \$15 million and a civil penalty of \$535 million.⁴

Applicants’ Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UITs or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Goldman Sachs is an affiliated

⁴ The Final Judgment will also require Goldman Sachs to comply with certain undertakings relating to (i) the vetting and approval process for offerings of residential mortgage-related securities products by its firmwide Capital Committee, (ii) review of marketing materials used in connection with residential mortgage-related securities offerings by Goldman Sachs’ Legal Department and Compliance Department, (iii) annual internal audits of the review of such marketing materials, (iv) where Goldman Sachs is the lead underwriter of an offering of residential mortgage-related securities and retains outside counsel to advise on the offering, review of the related offering materials by outside counsel and (v) education and training of persons involved in the structuring or marketing of residential mortgage-related securities offerings.

person of each of the other Applicants within the meaning of section 2(a)(3) of the Act because they are under common control. Applicants state that entry of the Final Judgment would result in the disqualification of Goldman Sachs under section 9(a)(2) and the other Applicants under section 9(a)(3) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the violations alleged in the Complaint did not involve Fund Servicing Activities or the current or former Goldman Sachs employees who are or were involved in Fund Servicing Activities. Applicants also state that no current or former director, officer, or employee of Goldman Sachs or the other Applicants—who is involved in providing Fund Servicing Activities to Funds—had any knowledge of, or was involved in, the conduct that forms the basis of the Complaint.

Applicants further state that the individual defendant named in the Complaint and the other personnel at Goldman Sachs who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in providing Fund Servicing Activities to Funds. Applicants represent that the alleged conduct giving rise to the Final Judgment did not involve any Fund or the assets of any Fund for which an Applicant provided Fund Servicing Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Servicing Activities would result in potentially severe hardships for the Funds (including the UITs) and their shareholders or contract holders. Applicants state that they will distribute, as soon as reasonably practicable, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (excluding for this purpose, the ESCs) (the “Boards”), including the directors who are not “interested persons,” as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants have provided and will continue to provide the Funds with all information concerning the Final Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing Fund Servicing Activities to the Funds and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in Fund Servicing Activities. Applicants further state that prohibiting them from Fund Servicing Activities would not only adversely affect their

businesses, but would also adversely affect over 600 employees at GSAM, L.P. alone that are involved in those activities. Applicants also state that disqualifying Goldman Sachs, GSAM, L.P., GSAMI and GSHFS from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Applicants assert that it would not be consistent with the purposes of the ESC provisions of the Act or the representations made in the application for the ESC order to require another entity not affiliated with Goldman Sachs to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by Goldman Sachs or one of its affiliates.

7. Applicants state that Goldman Sachs has previously sought and received exemptions under section 9(c) of the Act on four occasions, as described in the application.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, the 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.

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 Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Elizabeth M. Murphy
Secretary