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

DIVISION OF
CORPORATION FINANCE

July 23, 2010

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

Re: SEC v. Goldman Sachs & Co. and Fabrice Tourre (HO-10911)
Goldman Sachs Group, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Harms:

This is in response to your letter dated July 15, 2010, written on behalf of Goldman Sachs Group, Inc. (Company) and its subsidiary Goldman, Sachs & Co. (Firm) and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). On April 15, 2010, the Commission filed a civil injunctive complaint (Complaint), in the United States District Court for Southern District of New York, against the Firm. The complaint alleges that the Firm violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder. The Firm filed a consent in which it agreed, without admitting or denying the allegations of the Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on July 20, 2010, provides for a permanent injunction from committing future violations of Section 17(a) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and the Firm comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel
Division of Corporation Finance

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July 15, 2010

Mary Kosterlitz, Esq.,
Chief of the Office of Enforcement Liaison,
Division of Corporation Finance,
U.S. Securities and Exchange Commission,
100 F. Street, N.E.,
Washington, D.C. 20549.

Re: SEC v. Goldman, Sachs & Co.
and Fabrice Tourre (S.D.N.Y. 2010)

Dear Ms. Kosterlitz:

We are writing on behalf of our client, the Goldman Sachs Group, Inc. ("GS Group"), and its subsidiary, Goldman, Sachs & Co. (the "Firm"), which is a settling defendant in the above-captioned civil action (the "Action") brought by the Securities and Exchange Commission (the "Commission") in the United States District Court for the Southern District of New York (the "Court"). The Action relates to alleged violations of the federal securities laws by the Firm in connection with the sale of synthetic collateralized debt obligations to two institutional investors.

GS Group hereby requests, pursuant to Rule 405 under the Securities Act of 1933 (the "Securities Act"), that the Division of Corporation Finance, on behalf of the Commission, determine that GS Group shall not be considered an "ineligible issuer" as defined in Rule 405 as a result of the judgment to be entered in the Action, as described below. GS Group requests that this determination be made effective upon entry of that judgment. It is our understanding that the Division of Enforcement supports our request for such a determination.

BACKGROUND

The conduct of the Firm alleged in the complaint in the Action involved an offering of a synthetic collateralized debt obligation, which referenced a portfolio of synthetic residential mortgage-backed securities, to qualified institutional buyers in reliance on the exemption from registration under the Securities Act provided by Rule 144A thereunder and to non-U.S. persons in reliance on the safe harbor from registration provided by Regulation S thereunder. Specifically, the complaint alleged that the offering materials, in describing the Portfolio Selection Agent for the portfolio of synthetic residential mortgage-backed securities, should have disclosed that the hedge fund assuming the short side of the transaction had played a role in the selection process. In its consent to the judgment (described below), the Firm acknowledged that it was a mistake not to disclose the role of the hedge fund.

In connection with the above-captioned proceeding, the Firm and the Division of Enforcement have reached an agreement in principle to settle the Action as described below, and the Firm has executed a consent to the entry of a judgment by the Court (the "Judgment") without admitting or denying the matters set forth in the Commission's complaint in the Action (except as to the jurisdiction of the Court).

In the Judgment, the Court will permanently restrain and enjoin the Firm[1] from violating Section 17(a) of the Securities Act in the offer or sale of any security. The Judgment will also decree that the Firm is liable for disgorgement of $15 million and a civil penalty in the amount of $535 million. Finally, the Judgment will require the Firm to comply with certain undertakings relating to (i) the vetting and approval process for offerings of residential mortgage-related securities, (ii) review of marketing materials used in connection with residential mortgage-related securities offerings by the Firm's Legal Department and Compliance Department, (iii) annual internal audits of the review of such marketing materials, (iv) where the firm 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.

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[1] The injunction will also apply to the Firm's agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the Judgment.

DISCUSSION

Under a number of Securities Act rules that became effective on December 1, 2005, a company that qualifies as a "well-known seasoned issuer" as defined in Rule 405 is eligible, among other things, to register securities for offer and sale under an "automatic shelf registration statement", as so defined, and to have the benefits of a streamlined registration process under the Securities Act. Companies that qualify as well-known seasoned issuers are entitled to conduct registered offerings more easily and with substantially fewer restrictions. Pursuant to Rule 405, however, a company cannot qualify as a well-known seasoned issuer if it is an "ineligible issuer". Similarly, the Securities Act rules permit an issuer and other offering participants to communicate more freely during registered offerings by using free-writing prospectuses, but only if the issuer is not an "ineligible issuer".[2]

Rule 405 of the Securities Act makes an issuer an "ineligible issuer" if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer "was made the subject of any judicial or administrative decree or order arising out of a governmental action" that, among other things, "(A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws" or "(B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws".[3] Rule 405 also authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer".[4] The Commission has delegated authority to the Division of Corporation Finance to grant waivers from any of the ineligibility provisions of this definition.[5]

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2 Being an ineligible issuer will disqualify an issuer under the definition of "well-known seasoned issuer", thereby preventing the issuer from using an automatic shelf registration statement (see Rule 405) and limiting its ability to communicate with the market prior to filing a registration statement (see Rule 163). In addition, being an ineligible issuer will disqualify an issuer, whether or not it is a well-known seasoned issuer, under Rules 164 and 433, thereby preventing the issuer and other offering participants from using free-writing prospectuses during registered offerings of its securities. Consequently, this request for relief is being made not only for the purpose of qualifying as a well-known seasoned issuer but for all purposes of the definition of "ineligible issuer" in Rule 405 – *i.e.,* for whatever purpose the definition may now or hereafter be used under the federal securities laws, including SEC rules.

3 *See* 17 C.F.R. §§ 230.405.

4 *Id.*

5 *See* 17 C.F.R. § 200.30-1. *See also* note 215 in Release No. 33-8591 (July 19, 2005).

The Judgment may be deemed to be a judicial order of the kind that would result in GS Group becoming an ineligible issuer for a period of three years after the Judgment is entered. This result would preclude GS Group from qualifying as a well-known seasoned issuer and having the benefit of automatic shelf registration and other provisions of the new rules for three years. This would be a significant detriment for GS Group. GS Group is one of the most frequent issuers of registered securities. It offers and sells securities under a shelf registration statement in both one-off transactions and in an ongoing medium-term note program. For GS Group, the shelf registration process provides an important means of access to the U.S. capital markets, and over the years these markets have been an essential source of funding for the company's global operations. Consequently, automatic shelf registration and the other benefits available to a well-known seasoned issuer will be significant for GS Group.

As described above, Rule 405 authorizes the Commission to determine that a company shall not be an ineligible issuer, notwithstanding that the company becomes subject to an otherwise disqualifying judicial order. GS Group believes that there is good cause, in its case, for the Commission to make such a determination with respect to the Judgment on the grounds that the disqualification of GS Group is not warranted given the nature of the alleged violation in the Commission's complaint. The alleged conduct does not relate to GS Group's disclosures in its own filings with the Commission, nor does the Commission's complaint allege fraud in connection with GS Group's offering of its own securities.

* * * * *

In light of the foregoing, we believe that disqualification of GS Group as an ineligible issuer is not necessary under the circumstances, either in the public interest or for the protection of investors, and that GS Group has shown good cause for the requested relief to be granted. Accordingly, we respectfully request that the Division of Corporation Finance, on behalf of the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that GS Group be an "ineligible issuer" within the meaning of Rule 405 as a result of the Judgment. We request that this determination be made for all purposes of the definition of "ineligible issuer", however it may now or hereafter be used under the federal securities laws and the rules thereunder.

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

Sincerely,

David B. Harms

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

Melissa E. Lamb, Esq.
(Division of Enforcement)