

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the proposed exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the proposed exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director

of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the proposed exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Effective Date: This proposed exemption, if granted, will be effective as of February 6, 2003.

Summary of Facts and Representations

1. The Goldman, Sachs entities (the GS Entities) collectively form a leading global investment banking, securities and investment management firm that provide a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals. The Goldman, Sachs Group, Inc. is a financial holding company incorporated under Delaware law in May 1999 and headquartered in New York, New York, and is the parent company of Goldman, Sachs & Co. (*i.e.*, Goldman) and other principal subsidiaries. As of May 31, 2002, the GS Entities collectively had approximately \$327.2 billion in assets, and approximately \$18.86 billion in shareholders' equity.

2. Goldman's Foreign Affiliates that are covered by the proposed exemption are subject to regulation as a broker-dealer or bank by the following: (i) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (ii) the Federal

Authority for Financial Services Supervision, *i.e.*, the BAFin in Germany, (iii) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (iv) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (v) the Swiss Federal Banking Commission in Switzerland, or (vi) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

The Applicant requests an individual exemption for Goldman and its current and future affiliates, including the Foreign Affiliates identified above, which would permit principal transactions with employee benefit plans (*i.e.*, the Plans), as described herein.

The Applicant represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicant states that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets. The foreign regulatory regimes have been described in detail in numerous other exemptions previously granted by the Department [see, *e.g.*, Prohibited Transaction Exemption (PTE) 2000-57 (65 FR 56341, September 18, 2000), granted to Goldman, Sachs & Co.].

Further, the Applicant represents that, in connection with the transactions covered by the proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act (as discussed further in Item 9, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

3. The Applicant represents that it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank. Such trades are referred to as principal transactions. In the subject principal transactions with Plans, occurring in the context of a portfolio liquidation or restructuring,