

any other registered open-end investment company or series thereof that is part of the same group of investment companies as the Trust (each a "Fund of Funds") to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies as the Fund of Funds (the "Non-Affiliated Underlying Funds") and the Non-Affiliated Underlying Funds to sell such shares to the Fund of Funds; and (b) the Fund of Funds to acquire shares of certain other series of the Trust and any other registered open-end investment company or series thereof that is part of the same group of investment companies as the Trust (the "Affiliated Underlying Funds") (together with the Non-Affiliated Underlying Funds, the "Underlying Funds") and the Affiliated Underlying Funds to sell such shares to the Fund of Funds.² The requested order would apply to purchases made by the Fund of Funds only where the Fund of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act. A Fund of Funds also may make direct investments in stocks, bonds, and any other securities which are consistent with its investment objective.

4. Applicants state that each Fund of Funds will enable investors to create either a comprehensive asset allocation program or achieve diversification in a specific segment of the market with just one investment. Applicants assert that a Fund of Funds will provide a simple, convenient, low cost investment program for investors who are able to identify their long-term investment goals but who may not be comfortable deciding how to invest their assets to achieve those goals.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if

the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Fund of Funds to acquire shares of the Underlying Funds and the Underlying Funds to sell their shares to the Fund of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the influence that a Fund of Funds may have over a Non-Affiliated Underlying Fund, applicants propose a condition prohibiting the Adviser, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the Non-Affiliated Underlying Funds, applicants propose conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of a Non-Affiliated Underlying Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.³

5. As an additional assurance that a Non-Affiliated Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds

and Non-Affiliated Underlying Fund will execute an agreement (prior to an investment in the shares of the Non-Affiliated Underlying Fund in excess of the limits of section 12(d)(1)(A)(i) of the Act) stating that the board of directors or trustees of the Non-Affiliated Underlying Fund and the adviser to the Non-Affiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that a Non-Affiliated Underlying Fund may choose to reject an investment from the Fund of Funds.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that the board of trustees of the Fund of Funds (the "Board"), including a majority of the trustees who are not "interested persons" as such term is defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will find that the investment advisory fees charged under any investment advisory agreements are based on services provided that will be in addition to, rather than duplicative of, services provided under the investment advisory agreement of any Underlying Fund in which a Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser, or an affiliated person of the Adviser, from a Non-Affiliated Underlying Fund in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund. Applicants also state that the aggregate sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

7. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more

² All existing entities that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

³ Applicants assert that Goldman Sachs has no control or influence over the investment decisions of the Trust (including the Fund of Funds), and therefore cannot use the Fund of Funds structure to exercise an undue influence over a Non-Affiliated Underlying Fund in any way. Therefore, conditions 4, 6, and 7 would not apply to a GS Group entity.