

the research analysts in Goldman Sachs' research department (the "Research Division"). The Federal Injunction enjoined Goldman Sachs directly or through its officers, directors, agents and employees, from violating the Exchange Rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Goldman Sachs consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by Goldman Sachs to adopt and implement policies and procedures relating to certain research activities. Applicants state that Goldman Sachs expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

#### 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 UIT 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 person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) 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 the 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 standard 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 conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former personnel of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.<sup>3</sup> While the Applicants' portfolio managers had access to research reports issued by the Research Division, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.<sup>4</sup> Although some of the Funds held securities in their portfolios at the time that Goldman Sachs issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final

<sup>3</sup> The Complaint also refers to general practices regarding the relationship between the Investment Banking Department and Research Division of Goldman Sachs. It is possible that one or more current or former personnel of the Applicants who is or was involved in providing advisory, subadvisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking Department or Research Division of Goldman Sachs.

<sup>4</sup> Applicants state that they act as investment adviser, principal underwriter, or depositor to a Fund whose portfolio securities were formerly selected based primarily on a list of recommended securities compiled by the Research Division.

Judgment. In addition, each of the Applicants that serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the "Policies") designed to protect the Funds from certain conflicts of interest that may arise between portfolio managers and other employees of Goldman Sachs. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of Goldman Sachs.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunctions, any impact on the Funds, and this application. The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Goldman Sachs previously has received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail 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, Applicants, 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.