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June 20, 2007

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Saskatchewan Securities Commission
Montréal The Manitoba Securities Commission
Ontario Securities Commission
Ottawa Autorité des marchés financiers
Office of the Administrator, New Brunswick
Calgary Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
New York Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
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c/o John Stevenson, Secretary

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Attention: Office of the Secretary

Dear Sirs/Mesdames:

**Re: National Instrument 31-103 "Registration Requirements" - Comments
Submitted on Behalf of The Goldman Sachs Group, Inc.**

Thank you for the opportunity to provide comments on the CSA's proposed National Instrument 31-103 *Registration Requirements* (the "NRR") and proposed Companion Policy 31-103 *Registration Requirements* (the "Companion Policy"). We are submitting these comments on behalf of our client, The Goldman Sachs Group, Inc., together with its consolidated subsidiaries (collectively, "Goldman Sachs"). Goldman Sachs is encouraged by and highly supportive of the CSA's efforts to harmonize and streamline Canada's securities registration requirements as

modernization and increased efficiency in this area are of critical importance to Canadian capital markets.

Goldman Sachs is a leading global investment banking, securities and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, investment funds, financial institutions, governments and high net-worth individuals. The firm's overall activities are divided into three core business segments: Investment Banking; Trading and Principal Investments; and Asset Management and Securities Services. A number of Goldman Sachs' affiliates located outside of Canada, some of whose businesses are discussed in more detail below, maintain various dealer and adviser registrations in a number of Canadian provinces or have otherwise been actively working with Canadian regulators in the pursuit of continuing compliance with local registration requirements.

Goldman Sachs has maintained a full service investment dealer in Canada since 1987. Its Canadian subsidiary, Goldman Sachs Canada Inc., currently has offices in Toronto and Calgary. It is registered as an Investment Dealer (or equivalent) in Alberta, British Columbia, Ontario and Quebec and is a member of the Investment Dealers Association of Canada (the "IDA") and the Toronto Stock Exchange. Goldman Sachs Canada Inc. has an investment banking operation and is engaged in institutional trading and sales of Canadian equity securities.

PART I PRINCIPAL CONCERNS AND COMMENTS

While the NRR does offer some welcome harmonization of Canada's securities registration requirements, Goldman Sachs is concerned that the current proposal represents a significant reversal of recent regulatory developments that have led to increased participation by international dealers and advisers in the Canadian market and increased demand by Canadian investors for the products and services of international securities firms. Goldman Sachs understands that regulatory change will be a necessary product of the CSA's efforts to harmonize and streamline the Canadian registration requirements and that the CSA must balance a number of different interests in the pursuit of these objectives. However, Goldman Sachs believes that the proposed NRR represents a significant increase in the regulatory burden placed on non-resident dealers and advisers participating in the Canadian market. It does not believe that this significant increase in regulation of non-resident securities firms is warranted in light of the fact that there have been no major compliance or regulatory failings associated with the participation of non-resident securities firms in the Canadian market.

Goldman Sachs is also concerned that the proposal to subject foreign dealers and advisers to increased regulation in their dealings with Canadian investors is out of step with the initiatives being pursued by the Government of Canada as well as governments and securities regulators in other countries. In the recent Federal Budget, the Government of Canada stated that it is seeking to promote free trade in securities and that Canada is spearheading discussions to eliminate barriers to free trade in securities. As well, the Securities and Exchange Commission ("SEC"), in the context of mutual recognition, is considering proposals to allow non-US dealers to trade securities with US resident clients without dealer registration in certain circumstances. In view of the foregoing, it is difficult to understand why the CSA is proposing to make it more difficult for foreign dealers and advisers to provide their services and products to Canadian investors.

Goldman Sachs believes that implementation of the NRR as proposed will ultimately disadvantage Canadian investors by limiting their access to foreign securities and investment expertise currently offered by Goldman Sachs and other foreign securities firms. The implications of this are that US and other foreign broker-dealers and asset managers servicing Canadians will be faced with the option of scaling back their existing product and service offerings or registering with multiple securities regulators in a category (or in multiple categories) that will add significant incremental regulation and cost. The result will be a limitation on access to products and services that Canadian investors rely upon in the conduct of their financial activities. Further, to the extent that foreign dealers and advisers such as Goldman Sachs are able to continue to offer their products and services to Canadian investors, the burden of complying with duplicative and unnecessary regulatory oversight will result in increased cost of conducting business in Canada that may ultimately be borne by its Canadian customers.

The following sets forth Goldman Sachs' principal concerns and comments regarding the NRR as drafted.

I. Dealer Registration Comments

A. The Proposed "International Dealer Exemption"

Goldman Sachs submits that the limited registration exemption for foreign broker-dealers provided in section 9.13 of the NRR (the "International Dealer Exemption") is too restrictive to be useful to many of Goldman Sachs' businesses that are currently dealing with Canadian investors. This national exemption will restrict foreign broker-dealers to a much more limited range of activities than is currently permitted under their "International Dealer" registrations in Ontario and under the accredited investor registration exemptions currently available to foreign broker-dealers in most other provinces. Specifically, the list of permitted clients for purposes of the International Dealer Exemption will be reduced significantly from that which is currently available to foreign broker-dealers by eliminating many of the existing categories of investors that foreign broker-dealers currently deal with, including corporations and other legal entities with C\$5,000,000 in net assets and, in jurisdictions other than Ontario and Newfoundland and Labrador, individuals with C\$1,000,000 in net financial assets. More importantly, there will be almost no scope for dealing in securities of Canadian issuers, including those that are only listed outside of Canada or are interlisted on Canadian and US or international exchanges. Consequently, the International Dealer Exemption will not allow Goldman Sachs' broker-dealer affiliates outside Canada to continue offering financial services to Canadian investors as they currently do under the existing regulatory framework.

1. Permitted Clients

The commentary in Part 2 of the *Notice and Request for Comment* accompanying the NRR suggests that the International Dealer Exemption was intended to *replace* the existing registration category of International Dealer and that as a result of it being an exemption rather than a category of registration, the list of permitted clients needed to be "narrowed somewhat" in order to reinforce investor protection. It is submitted that the omission of non-individual Accredited Investors (as defined in NI 45-106) from the definition of "permitted international dealer client" results in a substantial reduction in efficacy of the International Dealer Exemption relative to Ontario's current International Dealer category and does not serve any significant investor protection interest. The types of institutional clients that

Goldman Sachs' broker-dealer affiliates outside Canada currently serve as registered International Dealers in Ontario are highly sophisticated and are actively seeking access to increasingly diverse global markets.

Goldman Sachs does not agree with the argument that the substitution of the International Dealer Exemption for the current International Dealer registration category necessitates narrowing the list of permitted clients under the exemption and submits that this change would not result in any meaningful loss of Canadian regulatory oversight given that the current International Dealer registration imposes relatively minimal compliance requirements. Furthermore, the International Dealer Exemption under the NRR requires that the dealer be *registered* as a dealer in its home jurisdiction while the current International Dealer registration only requires that it be carrying on business as such in its home jurisdiction, thus ensuring that only regulated dealers will be able to utilize the exemption under the NRR. As discussed further in Part II of this letter, Goldman Sachs submits that the list of permitted clients for purposes of the International Dealer Exemption should not be any more restrictive than that which is applicable for Ontario's current International Dealer registration category.

2. *Canadian Securities*

The International Dealer Exemption provides almost no scope for dealing in securities of Canadian issuers, including those that are interlisted on Canadian and US or international exchanges, or even Canadian issuers listed exclusively on exchanges or marketplaces outside of Canada. There is no apparent investor-protection or market integrity rationale for this limitation. The implications of this limitation however, are that brokerage services of many would-be exempt international dealers are made functionally impracticable given the large number of Canadian issuers listed on exchanges and marketplaces outside of Canada, such as the NASDAQ, the New York Stock Exchange or more recently London's AIM market. Furthermore, this limitation effectively results in many Canadian institutions being forced to use an entirely separate dealer for securities of Canadian issuers when they could otherwise use a single dealer for all or most securities trading services.

If a limitation on the ability of international securities firms to deal in Canadian securities is nonetheless determined to be necessary, the limitation should be based on the jurisdiction of the securities marketplace as opposed to the issuer's jurisdiction of incorporation (or formation). That would assist Goldman Sachs broker-dealer affiliates outside Canada (and many other foreign broker-dealers) to better manage a prohibition on dealing in securities of Canadian issuers if there was an exception made for Canadian issuers with securities traded on a major US or international marketplace.

B. *Concerns Regarding the Exempt Market Dealer ("EMD") Category*

If the International Dealer Exemption remains unchanged in terms of the proposed list of permitted clients and the existing limitation on trading securities of Canadian issuers, the only viable alternative for many foreign broker-dealers will be registration as an EMD. Although Goldman Sachs recognizes that the introduction of a national EMD category is intended, primarily, to level the playing field across Canada and ensure a set of standards for dealing with

accredited investors¹, its application to large foreign securities firms raises some significant concerns. For foreign broker-dealers regulated by the SEC and the National Association of Securities Dealers (“NASD”) (hereafter the “SEC/NASD”) or the Financial Services Authority (“FSA”), for example, registration in Canada as an EMD will result in significant duplication of regulation in their home jurisdiction and consequent incremental cost, without increasing the level of protection to Canadian investors or to the Canadian markets. In addition, certain limitations on EMDs set out in the NRR will preclude foreign firms from offering a full range of services and products that they currently offer to Canadian clients.

1. Registration of Individuals

The requirement for senior business and compliance personnel and each “dealing representative” of an EMD to be registered in each Canadian jurisdiction and to have passed the Canadian New Entrants Exam, in addition to having passed their US exams will impose an unnecessary burden on large foreign broker-dealers. Currently, dealing representatives of firms registered in Ontario as International Dealers are not required to register or meet proficiency requirements. For firms registered as Limited Market Dealers in Ontario, the imposition of specific exam requirements for registered representatives will be a new and potentially burdensome requirement.

The requirement for registration of “Dealing Representatives” raises additional concerns because there does not appear to be any clear guidance as to when an individual acting on behalf of an EMD is required to be registered in this capacity. Section 2.6 of the NRR may imply that *any* individual acting on behalf of an EMD must be registered. Goldman Sachs submits that only individuals dealing with Canadian customers in a securities sales or trading capacity should be registered as a Dealing Representative. Goldman Sachs is seeking clarification that individuals dealing with Canadian customers in other capacities, including trade clearance and settlement, investment research and investment banking will not be required to be registered as Dealing Representatives, consistent with current legal and administrative practice for Investment Dealers in Canada.

Question #6 in the CSA’s Notice and Request for Comment indicates that the CSA is considering requiring registration of *senior executives and directors* (i.e. the mind and management) of a registered firm as “approved persons”. The requirement to register these individuals, even though proficiency requirements may not be applicable, provides no apparent benefit and would result in unnecessary administrative burden on global securities firms such as Goldman Sachs whose most senior management and corporate directors are high in number and generally not involved in the execution of the firm’s day-to-day sales and trading, investment banking and asset management activity. Goldman Sachs submits that the NRR’s approach requiring registration of an Ultimate Designated Person along with a Chief Compliance Officer for each registrant, in addition to requiring registration of dealing or advising representatives, is sound and sufficient.

¹ For example, the commentary in Part 1 of the *Notice and Request for Comment* accompanying the NRR indicates that British Columbia is considering not adopting the EMD category out of a concern regarding the potential impact on its venture capital industry.

2. Margin Prohibition & Custody Requirements

Under the NRR, it is currently proposed that all full service international broker-dealers registering in Canada as EMDs will be prohibited from providing margin or otherwise extending credit to a client unless registered with the IDA. A non-Canadian EMD that is regulated by the SEC/NASD or another foreign SRO will not, as a practical matter, be in a position to also become a member of the IDA and meet the requirements of both SROs, as many of the ongoing regulatory and compliance requirements of the SROs are sufficiently different or inconsistent as to make compliance with both regulatory regimes impracticable. The rationale for limiting the ability of non IDA-member registrants to extend margin is presumably that the capital and insurance requirements applicable to such registrants may be considered insufficient to cover the risks associated with providing margin. However, this concern would not be applicable to US broker-dealers that are regulated by the SEC and the NASD or to UK broker-dealers that are regulated by the FSA because they are subject to regulation equivalent to that of IDA-member firms. For further details regarding investor protection requirements applicable to US broker-dealers that are regulated by the SEC and the NASD, please see the discussion below in Section I(b) of Part II of this letter.

International broker-dealers regulated by the SEC/NASD or by the FSA are also concerned about the application of specific Canadian requirements with respect to custody of client assets such as those set out in Division 3 of Part 5 of the NRR. We have been advised informally by Canadian regulators but would like to confirm that the requirement in section 5.35(c) of the NRR will allow broker-dealers that are members of the Securities Investor Protection Corporation (as NASD-member firms are) to hold client assets, securities and other property on behalf of Canadian clients. We are also seeking confirmation that such firms, if registered as EMDs, will not be subject to the requirements relating to custody of client assets set out in Division 3 of Part 5 of the NRR. These requirements, such as the requirement set out in Section 5.13 of the NRR to hold its clients' cash in a designated trust account with a Canadian financial institution, are incompatible with requirements applicable to US broker-dealers, which are subject to SEC/NASD safekeeping and segregation requirements.

Goldman Sachs submits that the proposed prohibition on lending and granting margin for non-IDA member firms as well as the imposition of specific Canadian custody requirements will effectively preclude US securities firms that would otherwise register as EMDs from performing a number of business critical broker-dealer services that Canadian clients are currently receiving and which are necessary in order for Canadian institutional clients to access the investing opportunities generally available to comparable non-Canadian institutional clients. In particular, these EMD limitations will significantly affect the ability of US broker-dealers to provide prime brokerage services to Canadian institutional clients for the reasons discussed below under Section I of Part II of this letter. Furthermore, these limitations could potentially preclude an EMD from providing various types of derivatives trading services on the basis that margin is a required and integral component of such trading.

3. Use of the National Registration System

Foreign firms are currently unable to utilize the electronic filing platform (NRS) pursuant to National Instrument 31-101 *National Registration System*. This creates the unnecessary

administrative burden and inefficiency of filing materials separately in each Canadian jurisdiction, which will be particularly burdensome in the context of registering individuals in each Canadian jurisdiction where Goldman Sachs' foreign affiliates deal with Canadian investors. Goldman Sachs submits that all firms and individuals registering in Canada in any registration category should be entitled to utilize the NRS.

II. Adviser Registration Comments

A. The Proposed "International Portfolio Manager Exemption"

Goldman Sachs submits that the limited registration exemption for foreign investment advisers provided in section 9.14 of the NRR (the "International Portfolio Manager Exemption") is too restrictive to be useful to many of Goldman Sachs' advisory and investment management businesses serving Canadian clients. This national exemption is intended to replace the existing "International Adviser" registration category in which certain Goldman Sachs' affiliates are registered in a number of provinces. However, this national exemption will restrict foreign investment advisers to a much more limited range of activities than is currently permitted under the International Adviser registration categories.

1. Permitted Clients

The list of permitted clients for purposes of the International Portfolio Manager Exemption will be significantly reduced by eliminating from the list, among others, individuals with a minimum of C\$5,000,000 in net financial assets, portfolio managers acting for fully managed accounts, corporations with a minimum of C\$100,000,000 of shareholders equity and Canadian-domiciled investment funds. As discussed above in respect of International Dealers, there does not appear to be a recognizable investor protection basis on which to narrow the permitted client list from that which is available to International Advisers under the current regime. The remaining permitted clients for purposes of the exemption are essentially limited to Canadian government entities, Canadian financial institutions such as banks and insurance companies, Canadian regulated pension funds and accounts fully managed by regulated trust companies. The limited scope of the revised list also means that publicly offered Canadian-domiciled mutual funds will no longer be able to retain foreign investment advisers unless these advisers become fully registered in Canada.

2. Prohibition on Solicitation of New Clients

Importantly, the exemption will also not be available to a foreign investment adviser that solicits new clients in Canada. The requirement that an International Portfolio Manager not "solicit new clients" in Canada requires clarification both from a technical and policy perspective. For instance, there is significant uncertainty with regard to what this means for existing clients of firms currently registered as International Advisers. This restriction introduces significant uncertainty with respect to the way in which foreign portfolio managers can communicate with or present opportunities to existing clients or those clients who initially seek them out in their home jurisdiction. Further, an investor-protection rationale for this no-solicitation rule would not appear to exist in the context of sophisticated, institutional clients most of which are seeking ongoing and active global investment management.

3. Prohibition on Advising in respect of Canadian Securities

The International Portfolio Exemption provides almost no scope for advising in respect of securities of Canadian issuers, including those that are interlisted on Canadian and US or international exchanges, or even Canadian issuers listed exclusively on exchanges or marketplaces outside of Canada. As discussed above in respect of the International Dealer Exemption, there is no apparent investor-protection or market integrity rationale for this limitation. If a limitation is to be adopted, a definition based on jurisdiction of marketplace rather than jurisdiction of incorporation (or formation) should be utilized.

B. Concerns regarding Full Portfolio Manager Registration for Non-Residents

If the International Portfolio Manager Exemption remains unchanged in terms of the proposed list of permitted clients and the no-solicitation rule, the only viable alternative for many international investment advisers will be registration as a full Portfolio Manager. Registration as a Portfolio Manager, in order to offer services on an unrestricted basis, will impose the full range of initial and ongoing registration requirements on both the firm and its advising representatives resulting in significant duplication of existing regulation in the foreign investment adviser's home jurisdiction and consequent incremental cost.

Of particular concern to Goldman Sachs' non-Canadian affiliates considering these implications are the imposition of specific proficiency requirements for each advising representative. Currently there are limited proficiency requirements for officers or advising representatives of firms that are registered in Ontario and other provinces in the International Adviser category. In the United States and elsewhere outside Canada, advising representatives of registered investment advisers are not subject to detailed proficiency exam requirements.

Goldman Sachs submits that international proficiency and experience should be explicitly recognized for representatives of international advisers. The proficiency requirements for Advising Representatives and Chief Compliance Officers of registered Portfolio Managers set out in the NRR do not contemplate foreign equivalent exam requirements where specific Canadian exams are prescribed. The specific requirements applicable to the Chief Compliance Officer of registered Portfolio Managers are of particular concern to Goldman Sachs and are discussed further below under Section III D of Part II of this letter. This will likely lead to an increase in applications for exemptive relief on the basis of proficiency equivalency.

III. "Look-Through" Registration for Advisers and Fund Managers

In their current form, sections 9.15 and 9.16 of the NRR imply that the CSA is, on a national level, adopting the "look-through" concept currently applicable in Ontario whereby foreign portfolio managers advising non-Canadian investment funds which distribute their securities to investors in Canada are subject to adviser registration in Canada. As a result, portfolio managers advising non-Canadian investment funds as well as investment fund managers managing such foreign funds (which may or may not be the same entity) would have to be registered as an adviser and/or as an investment fund manager in each province before the securities of the investment fund may be sold to investors in that province, unless an exemption from registration is available. These additional registration requirements associated with offering foreign investment fund products in Canada would be a significant impediment to such products being made available to Canadian investors.

We understand that the CSA has decided not to incorporate this “look-through” concept in the NRR such that the specific exemptions in sections 9.15 and 9.16 will be removed. As a result of this change in the NRR, we understand that the sale of foreign investment fund securities to Canadian investors will not ordinarily subject the foreign investment advisers and investment fund managers serving these funds to registration requirements in Canada. Goldman Sachs is extremely supportive of this development as it will bring the NRR into line with the registration regimes in other countries around the world where Goldman Sachs distributes investment products. Goldman Sachs believes that this is the proper approach on the basis that the need to comply with, or rely on an exemption from, prospectus and dealer registration requirements in connection with the sale of foreign investment fund securities to Canadian investors will address any investor protection and market integrity concerns.

IV. Ability of Distinct Business Units within a Registered Entity to use Exemption

One of the areas of uncertainty for Goldman Sachs is the extent to which certain of its foreign affiliates that have multiple and distinct business units, some of which may be eligible to rely upon either the International Dealer Exemption or the International Portfolio Manager Exemption (or both), will be affected by the NRR. For example, in Ontario, several multi-service foreign broker-dealers currently maintain both a Limited Market Dealer and an International Dealer registration which serve the needs of distinct business activities within the registered entity. Under the NRR, it is possible that certain business units within a Goldman Sachs affiliate may qualify for and would seek to use the International Dealer Exemption, while other business units within the same entity would require the entity to be registered as an EMD to conduct the activities they contemplate. Similarly, it may be that a Goldman Sachs affiliate registered as a Portfolio Manager may have a distinct business unit that may qualify for and seek to use the International Portfolio Manager Exemption. If the business unit that sought to utilize the International Dealer Exemption or International Portfolio Manager were required to register its individuals and comply with proficiency requirements in compliance with either the EMD or Portfolio Manager requirements as applicable, this would impose a significant cost and impediment to the business being considered that would otherwise qualify for the exemption. In this case, the Goldman Sachs affiliate may consider abandoning the conduct of the business in Canada requiring the registration of all dealing and/or advising representatives or abandoning the conduct of the business in Canada that could be done on an exempt basis but are not cost effective if registration of all relevant representatives is required.

Given the current ability of firms to maintain concurrent registrations in multiple dealer categories in Ontario, as well as the fact that the NRR would require prescribed disclosure and a submission to jurisdiction by anyone seeking to use the International Dealer Exemption or International Portfolio Manager Exemption, Goldman Sachs submits that a registered broker-dealer or a registered adviser should be permitted to utilize the International Dealer Exemption or International Portfolio Manager Exemption as applicable for a distinct business unit or activity within the same business unit. Goldman Sachs requests clarification that this approach will be available to international dealers and advisers under the NRR.

V. Transition Issues

Given the scope of the changes being introduced by the NRR, the timing of the transition from the current registration regime is of utmost importance to Goldman Sachs, particularly as it relates to the registrations of its affiliates and their representatives currently providing services to

Canadians. The NRR provides little guidance on the timing and rules that will apply to existing registrants. Goldman Sachs believes that a significant transition period is warranted in the case of dealers currently registered as International Dealers or Limited Market Dealers that may be required under the NRR to register as EMDs and for advisers currently registered as International Advisers that may be required under the NRR to register as Portfolio Managers.

PART II IMPLICATIONS FOR SPECIFIC BUSINESS UNITS

Goldman Sachs carries on its global business through wholly owned affiliated legal entities, many of which are licensed as broker-dealers or investment advisers in their home jurisdiction. Following is a description of Goldman Sachs primary businesses that engage in dealings in Canada.

- **Goldman Sachs Canada Inc. (“GS Canada”)** – GS Canada is an Ontario corporation that is registered as an investment dealer or equivalent in Alberta, British Columbia, Ontario and Quebec. GS Canada is a member of the IDA and is a participant on the TSX. GS Canada is principally engaged in providing investment banking services to Canadian corporations, financial institutions and governments, and equity trading and sales services to Canadian institutional customers.
- **Goldman, Sachs & Co. (“GS&Co”)** – GS&Co is Goldman Sachs’ principal broker-dealer affiliate based in the United States where it is registered as a broker-dealer and investment adviser with the SEC and is a member of the NASD. GS&Co is also a member of the New York Stock Exchange, NASDAQ and certain other exchanges or alternative marketplaces in the United States. GS&Co is engaged in a variety of business activities with Canadian clients and counterparties. GS&Co is registered as an International Dealer in Ontario and as an International Adviser or equivalent in Alberta, British Columbia, Manitoba, Ontario, Quebec, Saskatchewan and Prince Edward Island.
- **Goldman Sachs Execution & Clearing, L.P. (“GSEC”)** – GSEC is a US limited partnership that operates Goldman Sachs’ global electronic trading platform known as REDIPlus. REDIPlus offers clients the ability to electronically execute transactions involving equities, options and futures through direct access to marketplaces throughout the world, including the TSX. REDIPlus also offers clearing, custody and other prime brokerage services. GSEC is registered as a broker-dealer with the SEC and a member of the NASD. GSEC is registered as a Limited Market Dealer in Ontario.
- **Goldman Sachs International (“GSI”)** – GSI is Goldman Sachs’ principal European broker-dealer based in London, England. GSI is authorized and regulated by the FSA. GSI is registered as an International Dealer in Ontario.
- **Goldman Sachs Asset Management, L.P. (“GSAM”)** – GSAM is a US limited partnership that carries on Goldman Sachs’ asset management business in North America. GSAM is registered as an investment adviser with the SEC. In Canada, GSAM has a full adviser registration in Ontario and international adviser registrations in several other provinces.

- **Goldman Sachs Asset Management International (“GSAMI”)** – GSAMI is Goldman Sachs principal European based asset manager. GSAMI frequently acts as a sub-adviser to GSAM’s Canadian clients under existing adviser registration exemptions.

I. Prime Brokerage

Goldman Sachs currently provides prime brokerage services to Canadian institutional investors, including privately offered investment funds, primarily through GS&Co which is registered as an International Dealer in Ontario and operates in reliance on the accredited investors exemptions in other provinces.

The prime brokerage services provided by GS&Co to Canadian customers include the following:

- (i) clearing and settling trades in securities executed by Goldman Sachs or other broker-dealers acting as executing brokers;
- (ii) acting as the customer’s custodian with respect to securities in the customer’s portfolio;
- (iii) borrowing securities on behalf of the customer when required to cover short sales in securities;
- (iv) providing margin loans or other forms of financing to the customer on the security of assets held in custody for the customer to facilitate the purchase of securities for the customer’s account; and
- (v) providing the customer with comprehensive reporting of its securities trading activities and its portfolio assets.

Under current Canadian securities registration requirements, GS&Co is able to provide the full range of these services to institutional customers in most provinces without significant impediment. A significant exception is in Ontario, where GS&Co’s International Dealer registration restricts it from providing prime brokerage services in respect of securities of Canadian domiciled issuers, regardless of whether such securities are traded significantly or primarily in United States securities marketplaces. This impediment, for which there is no apparent investor protection or capital markets rationale, has caused significant frustration for GS&Co’s Ontario-based institutional clients, many of whom have determined that US brokers offer unique access to markets, products, securities lending supply and sophisticated reporting capabilities which are beneficial to their business objectives.

A. International Dealer Exemption

Unfortunately, it appears that the NRR will create further obstacles to Goldman Sachs providing prime brokerage services to Canadian institutional customers. One of the most disappointing aspects of the NRR for Goldman Sachs’ prime brokerage business is the fact that the International Dealer Exemption will retain, and extend to other jurisdictions, the Ontario restriction on trading (as well as clearance, settlement, margining and custody services) in equity securities of Canadian domiciled issuers, particularly in circumstances where the securities are being traded in US or other foreign marketplaces. Goldman Sachs is unaware of any negative

impacts or public harm that has resulted from US broker-dealers having cleared and settled trades in equity securities of Canadian issuers for, and having provided margin to Canadian institutional clients outside of Ontario. If the CSA believes that it is in the best interests of the Canadian marketplace to restrict the types of securities that may be traded by international dealers with institutional customers in Canada, it is submitted that the restriction should be based on the location of the marketplace where the securities are traded and not the domicile of the issuer of the securities. This would allow Goldman Sachs to provide prime brokerage services to Canadian institutional customers in respect of those securities traded in marketplaces in its home jurisdiction and elsewhere outside Canada.

A second concern of Goldman Sachs with respect to the proposed International Dealer Exemption is the restriction on dealing with business corporations, trusts, partnerships and other legal entities with substantial assets. Under current Canadian registration requirements, Goldman Sachs is permitted to provide prime brokerage services to these types of legal entities in most jurisdictions as long as the entity has a net worth of at least \$5 million. It is submitted that there is no investor protection rationale for restricting international dealers from trading with these types of legal entities provided they are of sufficient size to ensure a reasonable level of sophistication and financial means. For example, Canadian hedge funds and private pools of capital looking to raise capital in Canada and compete against their international competitors would be effectively blocked from using international prime brokers unless they become registered in Canada, even though this is exactly the type of service provider they will need in order to gain broad access to different markets.

B. EMD Registration

Unless the above-mentioned impediments to use of the International Dealer Exemption are addressed, GS&Co will have to become registered to continue to provide any level of prime brokerage services to Canadian institutional customers, including hedge funds. Although the proposed EMD registration category would permit GS&Co to provide certain brokerage services to a broader range of Canadian institutional customers without restriction as to the type of securities being traded, there would be certain obstacles associated with EMD registration that would effectively prohibit a US broker-dealer such as GS&Co from acting as prime broker for Canadian clients.

As margin lending and financing on the security of assets held in custody is a key component of any prime brokerage service offering, registration as an EMD will not be a viable alternative to any non-Canadian prime brokerage service provider unless this restriction is removed. Given the sophistication and financial means of the institutional customers served by GS&Co in Canada and the significant amount of regulation applicable to GS&Co under US margin requirements issued by the US Federal Reserve and the NYSE, it is submitted that there is no rationale for applying the margin lending restriction to GS&Co if it becomes registered as an EMD.

GS&Co's other significant concern with EMD registration from a prime brokerage perspective is the potential application of onerous restrictions or other requirements with respect to custody of assets. Given that custody of customer assets is a key component of any prime brokerage service offering, registration as an EMD will not be a viable alternative to any non-Canadian prime brokerage service provider unless it is permitted to take custody of its Canadian clients' assets in accordance with existing home jurisdiction regulations. Accordingly, GS&Co is seeking clarification from the CSA that the requirements concerning custody of client assets in Division

3 of Part 5 of the NRR will not be applicable to non-resident EMD registrants that comply with the requirements for custody of assets in Division 8 of Part 5 of the NRR. Furthermore, GS&Co is seeking to clarify that it would be eligible under subsection 5.35(c) to act as a custodian for its Canadian customers if it becomes registered as an EMD on the basis that it is a member of the NASD and participates in the Securities Investor Protection Corporation which maintains a compensation fund similar to the Canadian Investor Protection Fund and provides comparable insurance for any Canadian customer of GS&Co. It is GS&Co's understanding based on representations received from the Canadian regulators that the CSA does contemplate applying subsection 5.35(c) on this basis.

As a general matter, Goldman Sachs submits that SEC-registered broker-dealers are subject to regulation providing protection of client assets equivalent to that governing IDA-member registrants. Specifically, SEC-registered broker-dealers are required to maintain a minimum amount of net capital and limit the amount of leverage they can use while their parent companies are restricted from withdrawing capital invested in them. Further, SEC-registered broker-dealers are required to obtain possession or control of all fully-paid securities and excess margin securities as well as deposit a specified amount of cash in a designated bank account solely for the benefit of customers to ensure that client property is not used to finance the broker-dealers' proprietary trading. Further, SEC-registered US broker-dealers are subject to extensive margin regulations (Regulation T as well as NYSE Rule 431) that restrict the amount of leverage that the US broker-dealers can extend to their customers against securities collateral. While these protections are different in certain respects from those imposed on IDA-member registrants, they are universally acknowledged to be robust and conservative, and as a result, highly protective of investors.

Ultimately, if Goldman Sachs' concerns with regard to the limited scope of the NRR's International Dealer Exemption were addressed, GS&Co's prime brokerage business would be able to rely on the International Dealer Exemption, and thus avoid the issues raised above regarding EMD registration.

II. Goldman Sachs Execution and Clearing, L.P. ("GSEC")

GSEC currently provides its electronic trading platform to securities dealers and institutional customers across Canada. Most of GSEC's customers use its electronic trading platform to trade foreign securities on a wide range of marketplaces outside Canada. GSEC's electronic trading platform also provides investors with access to the Toronto Stock Exchange via Goldman Sachs' fully registered Canadian investment dealer, GS Canada.

Currently GSEC is registered as a Limited Market Dealer in Ontario and provides its electronic trading services to customers in most other provinces in reliance on the accredited investor exemption from dealer registration.

A. Restricted Scope of International Dealer Exemption

Given GSEC's institutionally focused customer base and the fact that GSEC's electronic trading system is designed to provide its customers with access to marketplaces all over the world, it would seem reasonable to expect that GSEC would be able to rely on the International Dealer Exemption in the NRR. Unfortunately, the restriction on trading in equity securities of Canadian issuers will mean that GSEC would have to develop a technology based method for blocking

trading in equity securities of Canadian issuers in a variety of marketplaces served by GSEC's trading platform. Even if GSEC was prepared to develop this technology, its Canadian customers would not likely accept a service which did not provide access to all securities traded in a particular marketplace such as the New York Stock Exchange, NASDAQ, or the London Stock Exchange's AIM market, all of which list a significant number of Canadian issuers.

It is submitted that the restriction on trading equity securities of Canadian issuers is particularly inappropriate in the context of a global trading platform providing institutional investors around the world with direct electronic access to the world's largest equity marketplaces. If other countries with major marketplaces adopted a similar restriction, GSEC would have to become registered in all of the relevant jurisdictions around the world or replicate the trading platform so that a separate affiliate in each such jurisdiction was in a position to operate the system and offer it locally.

As a further matter, there does not appear to be any rationale for the restriction implicit in subsection 9.13(2)(e) of the NRR which would preclude an international dealer from trading Canadian equity securities with a Canadian investment dealer acting as agent for its customers. If international dealers are not permitted to engage in this activity, it is not clear how Canadian investment dealers will trade Canadian equity securities listed in foreign marketplaces unless all of their local executing brokers in these marketplaces become registered in all provinces of Canada. International dealers registered in Ontario are currently permitted to trade Canadian equity securities with Canadian investment dealers whether they are acting a principal or as agent for Canadian customers. It is submitted that there is no reason to further restrict dealer to dealer trading under the NRR.

B. EMD Registration

GSEC understands that it would be able to offer its electronic trading program to institutional customers across Canada by registering as an EMD in every province and territory. However, registration as an EMD would subject GSEC to additional regulation that would add significant additional cost to what is necessarily a low cost, low margin business. As a US broker-dealer subject to NASD oversight, GSEC is already subject to substantial regulatory requirements which are broadly similar to those associated with EMD registration. As such, GSEC will have to comply with duplicative but not entirely consistent registration requirements as a registered EMD. In addition, GSEC will have to register a number of its personnel to comply with the Ultimate Designated Person, Chief Compliance Officer and Dealing Representative registration requirements and satisfy the associated proficiency requirements. Given that GSEC's business in Canada is limited to providing an electronic platform over which sophisticated institutional clients enter their own trades and GSEC's personnel provide no investment advice and otherwise have very limited client contact, it is submitted that there is no benefit to GSEC's Canadian institutional customers in having GSEC comply with the incremental regulatory burden and related costs associated with EMD registration.

If Goldman Sachs' concerns with regard to the limited scope of the NRR's International Dealer Exemption were appropriately addressed, GSEC and its personnel would not need to seek registration as an EMD and incur the consequent cost.

III. Private Wealth Management

GS&Co's Private Wealth Management business ("PWM") provides brokerage and advisory services to high net worth individuals, their families and related entities. PWM currently serves Canadian clients primarily through teams of private wealth professionals located in New York, Chicago and certain other US cities ("Private Wealth Advisors"). Private Wealth Advisors provide investment advice and portfolio management services primarily with respect to US and other non-Canadian securities.

Private Wealth Advisors in PWM currently provide investment advisory services under GS&Co's International Adviser registrations in various provinces and provide ancillary brokerage services under GS&Co's International Dealer registration in Ontario and under the accredited investor registration exemptions available in all other provinces except Newfoundland. PWM is able to carry on its business under the existing provincial registration requirements without significant impediment except for the restriction under GS&Co's International Dealer registration which precludes providing brokerage services to high net worth individuals in Ontario.

A. Restricted Scope of International Dealer and Portfolio Manager Exemption

PWM is concerned that the NRR will introduce a number of potentially significant impediments on its ability to continue to provide services to Canadians on the same basis as it does currently. Neither the International Portfolio Manager Exemption nor the International Dealer Exemption will be available to PWM because the list of permitted clients in each case is far too limited. As a result, PWM will only be able to continue offering its investment advisory services to Canadian private clients if GS&Co obtains registration as a Portfolio Manager and each Private Wealth Advisor serving Canadian clients becomes registered as an Advising Representative. Furthermore, in order to continue to provide ancillary brokerage services to its Canadian private clients, GS&Co will have to register as an EMD and each Private Wealth Advisor serving Canadian clients will have to register as a Dealing Representative.

Most significantly, each Private Wealth Advisor registering as an Advising Representative will now have to satisfy proficiency requirements. Given the non-institutional focus of the PWM business, very few Private Wealth Advisors have a need to pursue a CFA charter. Therefore, unless the CSA is prepared to grant an exemption to US investment professionals with equivalent US exam qualifications, the Private Wealth Advisors serving Canadian clients will have to pass all of the exams involved in obtaining the Canadian Investment Manager designation. Goldman Sachs recommends that a provision be added to the NRR permitting registration staff to exercise discretion to accept equivalent proficiency exam qualifications obtained in the applicant's home jurisdiction.

It is submitted that there is no investor protection rationale for significantly increasing the registration and proficiency exam requirements for US investment professionals providing private wealth management services to Canadian clients in respect of securities traded in US and foreign marketplaces. The significant increase in regulatory burden and associated costs will disadvantage Canadian private clients to the extent that US investment professionals would be unwilling to continue serving their Canadian clients because the benefits associated with this business are outweighed by the regulatory burden.

B. Client Assets

Most of the clients served by PWM require GS&Co to take custody of their investment assets. As a result, PWM has similar concerns regarding the asset custody requirements under the NRR as those discussed above in relation to GS&Co's Prime Brokerage business. Therefore, PWM is also seeking clarification from the CSA that GS&Co will qualify to hold the assets of Canadian clients served by PWM under subsection 5.35(c) of the NRR without meeting any additional requirements.

C. Margin Lending

One of the key services that PWM looks to make available to Canadian private clients is diversification of risk associated with a significant holding of US or foreign equity securities acquired in connection with the sale of a business to a US or foreign acquirer. This service involves equity hedging and monetization arrangements that typically feature a loan or other extension of credit to the private client. As a result, the restriction on a registrant providing a loan or extension of credit to a client in section 5.17 of the NRR would significantly constrain PWM's ability to provide this important service to Canadian private clients. As discussed above, it is submitted that there is no investor protection or market integrity rationale for imposing this restriction on a registered US broker-dealer such as GS&Co

D. Chief Compliance Officer

One area of particular concern under the NRR are the proficiency exam requirements for the Chief Compliance Officer of a firm registering as a Portfolio Manager which generally require the candidate to have passed the Canadian Securities Exam and the Partners, Directors and Senior Officers Exam, with no alternatives. As such, the NRR does not provide candidates for registration as Chief Compliance Officer of a Portfolio Manager with the alternative of passing the US Series 7 Exam and the New Entrants Exam. However, this alternative is provided to individuals registering as Chief Compliance Officer of an EMD where the basic Canadian exam requirements are the same as those for a Chief Compliance Officer of a Portfolio Manager. In the circumstances, there would not appear to be any rationale for why the US exam alternative should not also be available for Chief Compliance Officers of firms registering as a Portfolio Manager.

IV. Equity Derivatives Business

GS&Co's Equity Derivatives Group currently provides exchange traded and over-the-counter derivatives trading services to Canadian institutional customers in respect of equity securities traded in US and international marketplaces. The Equity Derivatives Group's Canadian customers typically look to employ equity derivatives to obtain exposure to individual equity securities or an equity portfolio or to hedge exposure to an individual equity position or an equity portfolio. Canadian public companies may also seek to hedge exposure to obligations under employee stock incentive programs to issue their own equity or make cash payments based on the value of their equity.

A. Restricted Scope of Permitted Clients

The Equity Derivatives Group currently provides its services to Canadian customers relying upon GS&Co's International Dealer registration in Ontario and upon accredited investor registration exemptions in provinces other than Newfoundland. Under the NRR, equity derivatives trading personnel will now be required to become registered individually in most of the provinces in order to provide the same level of service to its existing Canadian customers. This registration requirement will arise primarily because the International Dealer Exemption does not permit dealing with Canadian business corporations, trusts, partnerships or other legal entities with substantial net assets. As mentioned above, there is no investor protection rationale for excluding Canadian business entities with significant net assets from the list of permitted clients under the proposed International Dealer Exemption.

B. Restriction on Extending Credit

If GS&Co's Equity Derivatives Group is required to operate under the EMD registration because the International Dealer Exemption is not available, the prohibition on lending or extending credit to clients in section 5.17 of the NRR will effectively preclude the Equity Derivative Group from executing many of the derivatives trades which it typically transacts with its customers. Many of the derivatives transactions that customers seek to execute with the Equity Derivative Group have a financing component which requires GS&Co to extend credit to the customer. For example, any equity monetization transaction will typically involve a margin loan or an extension of credit to a customer in some other form. Many of the largest derivatives clients in Canada are also some of its largest and most sophisticated institutions. As previously submitted, there is no investor protection or market integrity rationale for restricting GS&Co from lending or extending credit to the Canadian institutional customers that require its services in light of the rigorous US regulatory scheme to which GS&Co is subject.

In summary, the Equity Derivatives Group submits that the CSA should either expand the list of permitted clients to include business corporations and other entities with minimum net assets in excess of a specified threshold. In addition, it is submitted that the restriction on extending credit to customers in section 5.17 of the NRR should not apply to US broker-dealers subject to SEC/NASD oversight.

V. Securities Trading and Sales

Goldman Sachs' Securities Division provides trading and sales services to a broad range of Canadian institutional customers. Trading and sales of equity securities of Canadian issuers is provided primarily through Goldman Sachs' Canadian investment dealer, GS Canada. Trading and sales in equity securities of non-Canadian issuers is conducted primarily through Goldman Sachs' US and UK affiliated dealers, GS&Co and GSI, respectively. Trading and sales personnel employed by GS&Co and GSI are not required to register because these entities are registered as International Dealers in Ontario and rely upon the accredited investor registration exemptions available currently in all other provinces except Newfoundland.

Once again, the narrow scope of the list of permitted clients under the International Dealer Exemption will result in both GS&Co and GSI having to register as EMDs and all equity trading and sales personnel dealing in foreign securities will have to register as Dealing Representatives and pass the requisite Canadian proficiency exams. Given the significant number of personnel in

the US and the UK who trade or sell foreign securities to Canadian institutions from time to time, the regulatory regime contemplated by the NRR will be a significant impediment for this business. It is submitted that there is no investor protection or market integrity rationale for introducing these additional registration requirements for those trading securities of foreign issuers or securities of Canadian issuers traded in foreign marketplaces with institutional customers.

VI. Institutional Asset Management

Goldman Sachs currently provides asset management services to Canadian institutional clients through its asset management affiliates in the US and Europe. In connection with these activities, Goldman Sachs offers a wide range of investment fund products for sale to Canadian institutions. GSAM is currently registered as a fully-regulated adviser (non-resident) in Ontario with no material restrictions on the nature of GSAM's activities in Ontario and as a International Adviser or equivalent in a number of other provinces which impose limited regulatory requirements on GSAM on the basis of restrictions on advising retail customers and deference to regulation in GSAM's home jurisdiction. Under the NRR, in order to provide the same types of services and products currently offered, GSAM and potentially other Goldman Sachs asset management affiliates will be required to register as Portfolio Managers in all relevant Canadian jurisdictions without regard to the fact that these affiliates are subject to comprehensive regulation in their home jurisdiction.

A. Restricted Scope of International Portfolio Manager Exemption

GSAM will not be able to utilize the International Portfolio Manager Exemption in the NRR to conduct the business that it currently provides to Canadian clients as a result of the limited list of permitted clients, the prohibition on solicitation of new clients and the prohibition on providing advisory services in respect of Canadian securities, all of which are discussed above. For instance, the International Portfolio Manager Exemption would not allow GSAM to service publicly offered Canadian-domiciled mutual funds, a critical constituent of its current Canadian client base.

Registration as a Portfolio Manager, in order to offer services on an unrestricted basis, will impose the full range of initial and ongoing registration requirements on both the firm and its advising representatives. These will include proficiency requirements for each Advising Representative. This would be a significant change for foreign investment advisors currently registered in the International Adviser category in Ontario and other provinces for which there are limited, if any, Canadian proficiency requirements for advising officers and representatives. Further, the concerns raised above in respect US exam equivalency for Chief Compliance Officers (see section III.D of this Part) would also be problematic for any Goldman Sachs affiliate in the asset management division forced to register as a full Portfolio Manager.

B. Abandonment of the "Look-Through" Concept

As discussed in section III of Part I above, the abandonment of the "look-through" concept is also critically important to GSAM. Including the look-through concept and the related exemptions in the NRR would have resulted in the reduction of the number of Goldman Sachs-managed foreign investment funds made available to Canadian investors primarily by GSAM out of a concern that the portfolio managers and sponsors of such funds may be exposed to

registration requirements. Furthermore, it would be quite onerous to require a Goldman Sachs affiliate to register as an EMD only in order to be able to offer and sell foreign investment fund products to Canadian investors (particularly if the affiliate could have otherwise utilized the “International Dealer Exemption” for the particular transaction).

C. Clarification on Investment Fund Manager Requirements for Regulated Trust Companies

In the future, GSAM may wish to form one or more Canadian domiciled investment funds for distribution to Canadian institutional investors. GSAM would act as Portfolio Manager to the investment fund. A Canadian registered trust company would act as trustee to the investment fund and, for Canadian tax reasons, would also retain fund management responsibilities. To retain fund management responsibilities, under the NRR, the Canadian registered trust company would need to register as an investment fund manager. This registration requirement would add incremental cost and regulation for a trust company that is already regulated under Canadian federal trust and loan company legislation such that the trust company would likely be unwilling to act as trustee to such a Canadian domiciled investment fund where it was necessary for the trust company to retain fund management responsibilities. Accordingly, Goldman Sachs submits that the CSA should consider including in the NRR an exemption from the fund manager registration requirement for Canadian financial institutions and other entities where the performance of their services as a fund manager is incidental to their principal business. This would be similar to the adviser registration exemption that is included in Section 9.11 of the NRR.

VII. Investment Banking

GS Canada and GS&Co provide a broad range of investment banking services to a diverse group of corporations, financial institutions, governments and individuals. The Investment Banking business is generally divided into two main business lines: Financial Advisory (mergers and acquisitions, divestitures, corporate defense activities, restructurings and spin-offs) and Underwriting (public offerings and private placements of equity, equity-related and debt instruments).

Goldman Sachs provides its Financial Advisory services on the basis that such services do not involve trading in, or advising in respect of, securities. Where these Financial Advisory services involve trading or advising, Goldman Sachs involves appropriately registered representatives of a dealer or adviser affiliate or places appropriate restrictions on the nature of its activities. Goldman Sachs submits that its approach to its investment banking business is consistent with the CSA's statement in its summary of the key features of the NRR that "we would not consider a firm that provides merger and acquisition advisory services to a company but does not participate in the distribution of securities to be in the business of dealing in securities".

To the extent that Goldman Sachs' investment banking business were to involve activities requiring dealer registration, including its underwriting activities, such business will be impacted by some of the potentially problematic provisions of the NRR such as the restrictive nature of the International Dealer Exemption and the requirements of the new EMD category as discussed above. To this end, Goldman Sachs is seeking clarification from the CSA that GS&CO's investment banking and other professionals engaged in underwriting activities, such as “road show” presentations, will not be required to register as Dealing Representatives in the event that GS&Co is registered as an EMD.

Conclusion

Goldman Sachs greatly appreciates your consideration of these submissions and would welcome the opportunity to discuss these matters further with the hopes of eliminating any potential negative impact of the NRR on Canadian investors or Canada's capital markets. Should you wish to engage in such discussions, or if you have any questions regarding the comments provided herein, please feel free to contact the undersigned by telephone at 416-862-6709 or via email at mdeslauriers@osler.com.

Yours very truly,

Mark DesLauriers
Osler, Hoskin & Harcourt LLP

JMD/JB/JS