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May 29, 2008

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Montréal
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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
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c/o Anne-Marie Beaudoin, Directrice du secrétariat
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Attention: Office of the Secretary

Dear Sirs/Mesdames:

Re: Revised Draft 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 revised draft National Instrument 31-103 *Registration Requirements* (the "Revised NRR") and the revised draft Companion Policy 31-103 *Registration Requirements* (the "Revised 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 many of the changes that have been made to National Instrument 31-103 (the "NRR") as initially proposed, and is pleased to see that several of the comments that it provided in its response letter to the initial draft of the NRR dated June 20, 2007 (the "First Comment Letter") were incorporated into the Revised NRR or given consideration by the CSA in the Summary of Comments Received by June 30, 2007 (the "CSA Commentary"). Goldman Sachs is submitting this second comment letter to focus on several outstanding issues that it believes require additional consideration. We firmly believe, and hope that the CSA will recognize, that all of the comments set out below are consistent with the express objectives of the NRR to "harmonize, streamline and modernize the registration regime across the CSA jurisdictions," and to "provide protection to investors from unfair, improper or fraudulent practices […] thereby enhanc[ing] capital market integrity."[1]

I. Extension of Margin/Credit by Exempt Market Dealers

In the event that the scope of the International Dealer Exemption is not expanded from that provided in the Revised NRR (see section II below), certain of Goldman Sachs' non-Canadian broker-dealer affiliates will be required to register as an Exempt Market Dealer ("EMD") in most Canadian jurisdictions in order to continue to provide services to Canadian clients on the same basis as they do currently. However, as Goldman Sachs pointed out in its First Comment Letter, registration of Goldman Sachs' non-Canadian broker-dealer affiliates as EMDs will introduce some impediments to carrying on its existing business that do not currently exist. Most importantly, under the Revised NRR as it is currently proposed, all full service international broker-dealers registering in Canada as EMDs will be prohibited from providing margin or otherwise extending credit to a client.[2]

While Goldman Sachs recognizes that the CSA has now indicated that exemptive relief may be available on a case-by-case basis[3], requiring EMDs to apply for such discretionary exemptive relief will lead to both uncertainty and inefficiency. An application for exemptive relief will require the expenditure of considerable time and expense, particularly since regulators from many Canadian jurisdictions will likely be involved and no CSA guidance has been provided on the criteria that the regulatory authorities will apply in deciding whether to grant the exemption. Further, there will be uncertainty as to the terms and conditions that might be applied to any such exemption order. Accordingly, Goldman Sachs recommends that an exemption should be built directly into section 5.7 of the NRR, setting out the specific criteria that must be satisfied to rely on the exemption to ensure that exemptions are made available on clear and consistent terms. It is further submitted that membership in a non-Canadian SRO that regulates the extension of margin to customers should be sufficient to allow an EMD to do so.

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[1] (2007) 30 OSCB (Supp-2) at page 6.

[2] In the case of a non-Canadian firm this restriction is presumably intended to read "*a client in Canada*" though clarity should be provided for EMDs registered in a foreign jurisdiction where margin is permitted.

[3] The CSA Commentary contains the following statement:

"We recognize that there are business models for non-SRO registrants that involve margin lending. Exemptive relief under section 9.1 of the Rule will be available on a case-by-case basis to non-SRO registrants or applicants for registration who have adequate measures in place to address the risks involved and other related regulatory concerns"

Presumably, the rationale for limiting the ability of EMDs to extend margin is that the sophistication of such registrants and 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 FINRA or to UK broker-dealers that are regulated by the FSA and the Securities and Futures Authority because these broker-dealers will be subject to capital and insurance requirements that are at least equivalent to that of IDA-member firms. For instance, most FINRA members, including GS&Co, are required to comply with stringent and detailed capital and other requirements associated with margin accounts and they are required to be members of the Securities Investor Protection Corporation ("SIPC"), which is analogous to the Canadian Investor Protection Fund. Canadian investors who maintain accounts with FINRA member firms are covered by the protections of SIPC. It is respectfully submitted that there is no basis to prohibit international broker-dealers from providing margin and extending credit where those broker-dealers are subject to regulation in their home jurisdiction that affords Canadian investors with protection that is equal to, or greater than, that afforded by an IDA-member firm. Indeed, given that historically, firms registered as International Dealers and Limited Market Dealers in Ontario (and relying on the accredited investor exemptions in other provinces) have been able to provide margin, and that going forward, firms utilizing the International Dealer Exemption will be able to provide margin, a non-Canadian, FINRA-member firm that is registering as an EMD because of the limited scope of the International Dealer Exemption should also be permitted to provide margin and extend credit to investors. If the CSA is inclined to provide some form of exemptive relief to EMDs wishing to extend margin, it strikes us as a logical approach, and consistent with the effort to bring more uniformity within the Canadian securities markets, for the CSA to implement as part of the NRR an exemptive process in which the criteria are clearly set forth and consistently applied to all EMDs seeking such an exemption.

In the absence of appropriate exemptive relief, Goldman Sachs is particularly concerned about the impact that the prohibition on providing margin or otherwise extending credit to Canadian clients will have on its ability to provide Canadian clients access to its prime brokerage services and over-the-counter (OTC) derivatives trading services. Goldman Sachs currently provides prime brokerage services to institutional investors, including privately offered investment funds, primarily through its wholly owned broker-dealer affiliate Goldman, Sachs & Co. ("GS&Co"), through its registration as an International Dealer in Ontario and in reliance on the accredited investor exemptions in the other provinces. As a prime broker GS&Co provides a full array of services to its clients in Canada that include clearance and settlement of transactions, custodial services, securities lending and other related services. Additionally, one of the principal prime brokerage services it offers is providing margin loans or other forms of financing to clients for their portfolios. Separate from its prime brokerage business, GS&Co also offers clients various OTC derivatives trading strategies that require the provision of margin in order to effect the transactions.

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. In Ontario, where GS&Co is registered as an International Dealer and a Limited Market Dealer, there is no such restriction on extending margin to clients under either registration. Given that the transitioning provisions in Part 10 of the Revised NRR automatically deem (or "transition") firms registered as Limited Market Dealers (as well as those registered as International Dealers) to become EMDs, GS&Co is very concerned about the impact that the

conversion to an EMD registration will have on its business as its ability to extend margin to clients in Ontario will immediately cease at the time it is deemed to be an EMD. Unless the restriction on providing margin is removed or an appropriate exemption is granted, registration as an EMD will not be a viable alternative for GS&Co, as margin lending and financing on the security of assets held in custody are key components of any prime brokerage service offering as well as any OTC derivatives trading strategy. If the prohibition on EMDs providing margin is maintained, Canadian investors will be deprived of the ability to choose from a variety of dealers with the capacity, expertise, reputation and track record to afford them these services and their ability to obtain direct access to these services in respect of securities traded in US markets and other markets outside Canada will be drastically reduced.

II. Permitted Clients for the International Dealer and International Adviser Exemptions

Goldman Sachs supports the CSA's efforts to develop a single list of *permitted clients* for purposes of the International Dealer and International Adviser Exemptions that is somewhat broader than the separate lists contained in the initial draft of the NRR. In particular, the inclusion of individuals with net financial assets greater than $5,000,000 and corporations with a specified minimum shareholders' equity is an important and welcome change. However, as a general observation, because the definition appears to be derived from and, according to discussions with CSA staff, was intended to reflect the list of clients that a non-resident adviser is currently permitted to advise under OSC Rule 35-502, the list requires some further adjustment to make it equally useful for dealers.

A. Corporations and Other Business Organizations

The list as drafted would appear to exclude business organizations other than *corporations* with significant net assets (including, for example, limited partnerships and trusts). Given the significant number of well capitalized Canadian businesses that are not organized as corporations (and that may not meet any of the other categories of "permitted clients"), and given the lack of any obvious investor protection rationale to exclude them, Goldman Sachs recommends that paragraph (o) of the definition be revised to include a "person or company, excluding individuals," with net assets greater than a specified threshold (with the term "person" being defined within the various securities acts). With regard to the appropriate net asset threshold for business organizations, it is also submitted that the $100,000,000 amount set out in paragraph (o) of the definition in the Revised NRR is particularly onerous for international dealers who historically (whether as registered International Dealers in Ontario or using the accredited investor exemption in other provinces) have been able to trade with business organizations with at least $5,000,000 in net assets. It is submitted that there is no policy rationale for moving the threshold for international dealers providing brokerage services to business organizations from $5,000,000 to $100,000,000. Consideration should be given to setting a lower net asset threshold for business organizations, e.g. $25,000,000 (which is the threshold used under U.S. rules governing permitted investors for certain exempt investment funds) or the equivalent of £5,000,000 (which is the standard applied under FSA rules for the overseas person exemption).

B. Family Assets

In the event that the net asset threshold for business organizations in paragraph (o) is not reduced as recommended (and assuming the category is expanded to allow for trusts and partnerships),

paragraphs (m) and (n) of the definition of "permitted client" raise difficulties in the context of family trusts, family holding companies or other estate vehicles where children or other dependents who are beneficiaries (or shareholders) may, in many instances, not be considered to own net assets exceeding $5,000,000. Although under paragraph (m) of the definition, individuals with $5,000,000 in net assets are permitted clients, where such assets are held in the form of a family trust or family holding company and one or more of the beneficiaries or shareholders (as applicable) does not have $5,000,000 in net assets at that time, the vehicle would not be a permitted client unless it met the $100,000,000 threshold for business organizations in paragraph (o). There would not appear to be any investor protection rationale for precluding the use of the International Dealer Exemption or International Adviser Exemption for a family trust or family holding company with significant net assets just because one of the beneficiaries or shareholders happens not to meet the $5,000,000 threshold at that time, particularly when the exemptions would otherwise be available for the same assets if they are held by the head of the family individually (or in a holding company for that individual). It is respectfully submitted that the language in paragraphs (m) and (n), as well as the net asset threshold in paragraph (o) should be reconsidered and revised so as to ensure that the International Dealer Exemption and International Adviser Exemption do not preclude wealthy Canadian individuals and their families access to international dealers and advisers.

C. Investment Fund Categories

Although the definition of "permitted client" in the NRR is based on the definition of the same term in the current OSC Rule 35-502, there are also some notable differences between them in respect of the types of investment funds that are included in the two definitions. Specifically, paragraph 14 in the definition of permitted client under OSC Rule 35-502 includes a Canadian domiciled investment fund in which the *manager* of the fund (i.e. the sponsor, or the person or company directing the business, operations or affairs of the fund) is ordinarily resident in Canada and registered in some capacity under Canadian securities law and where the international adviser has contracted with the fund to provide portfolio management services. Furthermore, paragraph 15 under the definition in OSC Rule 35-502 includes a fund that distributes its securities in Ontario only to persons or companies (other than investment funds) otherwise referred to in the definition of permitted client. In contrast, under the proposed definition of "permitted client" in the NRR, the only investment funds that meet the definition are those "*advised by a person or company registered as a portfolio manager under securities legislation of a jurisdiction of Canada*."[4] It is submitted that this single category is unduly restrictive as the only fund that an international adviser would be permitted to advise is one that already has a fully registered portfolio manager (recognizing that a separate sub-adviser exemption is provided in section 8.17 of the Revised NRR). There are a number of Canadian investment funds whose only portfolio managers currently are non-Canadian firms registered in "foreign" or "international" adviser categories in various provinces (including in Ontario under OSC Rule 35-502). Such advisers would not be able to continue servicing such funds using the International Adviser Exemption as drafted. This could potentially leave a significant segment of Canadian investment funds without the international advisory services they require. Accordingly, we would recommend, at a minimum, revising paragraph (k) of the definition of "permitted clients" under the Revised NRR to include those investment funds that distribute their securities to

[4] Paragraph (k) of the definition of "permitted client" in section 1.1 of the Revised NRR.

persons or companies who otherwise qualify as "permitted clients". Based on discussions with OSC staff, we understand that, as it relates to investment funds, the intention of the CSA was not to make the list of permitted clients under the NRR any more restrictive than that in current OSC Rule 35-502.

III. Restrictions on Dealing with Canadian Securities for the International Dealer and International Adviser Exemptions

The restrictions on trading in, or advising with respect to, securities of Canadian issuers, which have been retained as conditions to the exemptions in the Revised NRR, greatly reduce the utility of the International Dealer Exemption and the International Adviser Exemption.

As drafted, the International Dealer Exemption does not appear to provide any scope for dealing in securities of Canadian domiciled issuers, including those that are interlisted on Canadian and US or international exchanges, or even those that are listed *exclusively* on exchanges or marketplaces outside of Canada. In the case of Canadian issuer securities listed exclusively in the U.S., it is critical to recognize that Canadian investors cannot trade such securities except, at some level, through a U.S. broker-dealer. As Goldman Sachs initially observed in its First Comment Letter, there is no apparent investor protection or market integrity rationale for this limitation.

It is also unclear why the CSA has adopted such a different approach to Canadian securities (and activities in Canada generally) for purposes of the International Adviser Exemption as compared to the International Dealer Exemption (including different terminology for Canadian and foreign securities). Under the International Adviser Exemption, an adviser is permitted to advise in respect of Canadian securities where such activity is "incidental" to providing advice in respect of foreign securities. Furthermore, the international adviser may not use the exemption if more than 10% of its revenues and the revenues of its affiliates are derived from portfolio management activities in Canada. If the CSA is going to continue to restrict international dealers from trading in securities of Canadian domiciled issuers, Goldman Sachs recommends that a similar approach to that proposed under the International Adviser Exemption should be applied under the International Dealer Exemption and that the two provisions should use consistent terminology with respect to Canadian and foreign securities.

Although the CSA explained the basis for the restriction under the International Dealer Exemption in the CSA Commentary as follows:

> We have revised the list of securities in which an international dealer may trade. However it remains restrictive. The purpose of the international dealer exemption is to facilitate access to foreign issues for Canadian investors whose economic and advisory resources are sufficient that the protections of dealing with a registrant may not always be necessary. It is appropriate that a foreign dealer that wishes to become more active in the **Canadian market** should register in the appropriate categories and jurisdictions.[5] (Emphasis added.)

, there are still a number of concerns in respect of this issue. First, it is important that there be clarification on the meaning of "*more active in the Canadian market*" in the last sentence of the

[5] CSA Commentary, item #529 [emphasis added].

CSA Commentary cited above. If the "Canadian market" is intended to mean the scope of activity that a local Canadian dealer otherwise conducts, then an international dealer should not be prevented from executing a trade in an equity security listed or traded on a marketplace in its home jurisdiction, even if such security happens to be an interlisted security of a Canadian issuer. If an international dealer is retained by a Canadian investor for purposes of trading in securities listed on non-Canadian marketplaces, the international dealer should not be considered "active in the Canadian market" for occasionally trading equity securities of Canadian issuers that happen to be listed on that foreign marketplace.

Furthermore, although in the definition of "foreign security" in the Revised NRR the requirement that the security not be "*listed or traded on a marketplace in Canada*" was removed, which addresses foreign domiciled issuers whose securities trade on a marketplace in Canada, there are also a significant number of Canadian domiciled issuers whose securities are actively traded on marketplaces outside of Canada, particularly in the jurisdictions in which Goldman Sachs international dealers are domiciled and registered. If the economic and advisory resources of permitted clients are sufficient to eliminate the necessity of dealing with a registrant in the case of securities of foreign issuers (regardless of where they are listed), then surely those resources are also sufficient to eliminate the necessity of dealing with a registrant in the case of securities of Canadian issuers when trading on a foreign marketplace. From an investor protection perspective, there is nothing categorically unique about the governing jurisdiction of the issuer that justifies differential treatment for purposes of national dealer registration requirements.

If the CSA is unwilling to adopt an approach under the International Dealer Exemption similar to that of the International Adviser Exemption, which would permit incidental dealings in Canadian securities, Goldman Sachs reiterates the comment in its First Comment Letter that if the CSA believes that it is in the best interests of the Canadian marketplace to restrict trading in securities of Canadian domiciled issuers by international dealers with institutional customers in Canada, this restriction should be limited to trading in such securities on a marketplace in Canada (or there should be an exception for trades on foreign marketplaces).

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

One area of uncertainty for Goldman Sachs that was not addressed in the CSA Commentary is the extent to which certain of Goldman Sachs' 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 Adviser 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 legal entity. Under the NRR, it is possible that certain business units within a firm 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, a firm registered as a Portfolio Manager may have a distinct business unit that may qualify for and seek to use the International Adviser Exemption. If the business unit that otherwise qualified for and sought to utilize the exemption were required to register its individual representatives and comply with the proficiency requirements associated with either the EMD or Portfolio Manager category, as applicable, this would create a significant impediment for that business unit. Such incremental

costs and barriers appear particularly unwarranted where the NRR would otherwise permit those activities to be conducted utilizing an exemption.

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 Adviser Exemption, Goldman Sachs submits that a registered broker-dealer or registered adviser should be permitted to utilize the International Dealer Exemption or International Adviser Exemption, as applicable, for a distinct business unit or activity within the same firm or organization. This position would be entirely consistent with the tenor of section 2.10 of the Companion Policy and the corresponding CSA Commentary. Section 2.10.5 makes it clear that where a firm is registered in multiple categories, its individual registrants need only comply with the requirements that apply to the particular conduct they are engaged in.[6] Presumably, where those individuals are organized into two or more distinct business units, they need only be registered in the category that applies to the activities undertaken by their specific unit. Although the International Dealer *Exemption* and International Adviser *Exemption* are not categories of *registration*, and thus technically, a firm that intended to be registered as an EMD or Portfolio Manager and rely on an exemption for a specific business unit would not fall within the language of s.2.10, the principles that apply in the case of multiple registrations should be equally applicable in this scenario.

V. Use of National Registration System by Non-Residents

As it currently stands, foreign firms without a business office in Canada are unable to utilize the integrated filing system (NRS) pursuant to National Instrument 31-101 *National Registration System*, as section 2.1(a) of NI 31-103 requires a firm filer to have a "business office in Canada" in order to take advantage of the NRS. We understand from discussions with OSC staff that it is intended that all firms and individuals registering in Canada in any registration category will be entitled to make use of the NRS, including non-Canadian firms. We understand that the principal regulator for purposes of NRS for a firm whose head office is not in Canada will be based on a "connecting factors" test. Goldman Sachs would support such a system and recommends that the connecting factors test allow a non-Canadian firm to choose the jurisdiction in which it has the largest number of customers or conducts the largest amount of business attributable to registrable activity.

VI. Exemption from Custody Requirements for Non-Canadian EMDs that are SRO Members

In its First Comment Letter, Goldman Sachs raised the concern regarding the application of the specific Canadian requirements with respect to custody of client assets (which provisions now appear in sections 5.10 through 5.13 of the Revised NRR). We note and appreciate that section

[6] Section 2.10.5 of the Revised Companion Policy contains the following statement:

> "When a firm or individual registered in multiple categories carries on a registerable activity, it must comply with the conduct requirements that apply to that activity. For example, in most circumstances, a registrant in the categories of exempt market dealer and mutual fund dealer must comply with the relationships disclosure requirements in section 5.4 before recommending a mutual fund trade to a permitted client. However, when the registrant is trading an exempt security to a permitted client, the registrant does not have to comply with the relationship disclosure requirement."

5.35 (2) of the Revised NRR has been added to remove the application of section 5.10 to a registered dealer that is a member of an SRO that is a member of a compensation fund or contingency trust fund comparable to the Canadian Investor Protection Fund (which we believe includes FINRA and its members participating in the SIPC). However, sections 5.11 through 5.13 of the Revised NRR also contain specific details relating to segregation and treatment of free credit balances that may not be completely consistent non-Canadian SRO requirements and associated practices in these areas. There would not appear to be any policy basis to treat sections 5.11 through 5.13 differently from section 5.10 as they relate to such non-Canadian registrants. The policy basis for providing this flexibility, whether for section 5.10 or otherwise, is that the specific custody requirements of SROs such as FINRA or the IDA are extremely detailed and robust, providing ample protection to Canadian investors. Furthermore, for firms that have developed and implemented the custody infrastructure to meet these complex provisions of SRO regulations, it is simply impracticable to build separate infrastructure to meet any non-conforming custody requirements of the NRR. Therefore, Goldman Sachs recommends that section 5.35(2) of the Revised NRR should be amended to read: "*Sections 5.10-5.13 do not apply to a registered firm that is subject to subsection (1).*"

VII. EMD Requirements that differentiate Accredited Investors from Permitted Clients

A number of provisions in the NRR provide relief from compliance obligations for registrants registered as EMDs where dealing with a customer that meets the definition of "permitted client".[7] Although we recognize that the CSA's intent with these provisions is to provide some added flexibility to EMDs when dealing with more sophisticated clients, the practical reality is that these provisions will either require the EMD to develop separate, parallel compliance regimes and customer procedures depending on whether customers meet the definition of "permitted client" or "accredited investor" (at significant incremental cost) or, alternatively, limit their customers entirely to "permitted clients". For global firms the size of Goldman Sachs, the administrative and technical challenge of having two sets of compliance procedures and systems for Canada depending on the type of client is considerable. Given that IDA-member firms are expressly exempt from most of these provisions, it is respectfully submitted that these provisions should similarly not apply to an EMD that is a member of an SRO and participates in a compensation fund or contingency trust fund comparable to the Canadian Investor Protection Fund. In this manner, the flexibility of these provisions could be maintained for those EMDs for whom it may be practicable to differentiate clients, while allowing non-Canadian SRO-regulated EMDs to benefit from implementation of a single set of compliance procedures and systems for Canadian purposes.

VIII. Registration of a Firm's Approved Persons (the Mind and Management)

It appears from the Notice of Proposed Revocation and Replacement of National Instrument 33-109 *Registration Information* and Companion Policy 33-109CP and Notice of Proposed Amendments to National Instrument 31-102 *National Registration Database* and Companion Policy 31-102CP, that the CSA is continuing to consider the "registration" of senior executives

[7] These include: relief from certain know-your-client requirements in section 5.3; relief from relationship disclosure requirements in section 5.4(c); relief from the requirement to determine client suitability for transactions under section 5.5; relief from disclosure requirements where recommending client use of borrowed money under section 5.8; and relief from all of the complaint handling requirements in Division 6 of Part 5.

and directors (i.e. the "mind and management") of a registered firm as "approved persons." These individuals will be required to file Form 33-109F4, and are defined in NI 33-109 as "permitted individuals" to include, "an individual who is not registered to trade or to advise on behalf of the firm and who (a) is a director, chief executive officer, chief financial officer, or chief operating officer of the firm, or performs the functional equivalent of any of those positions …". For an organization as large as Goldman Sachs, its most senior management (the equivalent of CEO, CFO or COO) and its directors will have very little, if any, connection to the distinct business that Goldman Sachs conducts with Canadian investors and generally are not involved in the execution of the firm's day-to-day activity. Functionally, these individuals will not be the mind and management of the business units that will be providing services to Canadian investors and indeed, there will be several layers of senior management between the functional heads of the business units and the heads of the global corporate entity. Requiring the heads of the global entity to "register" will not achieve the intended purpose of registration, as these individuals will lack the relevant knowledge that would enable them to assist the securities regulatory authorities on a timely or cost-effective basis. In sum, registration of these individuals, in the case of Goldman Sachs, will result in an unnecessary administrative burden without any corresponding benefits. The Companion Policy to NI 33-109 should be amended to clarify what is meant by the phrase "performs the functional equivalent of any of those positions" and to specify that in the case of a large, global institution, only those individuals directly responsible for the applicable business unit(s) will be required to register as "permitted individuals".

IX. Transition Issues re: International Adviser Categories

Section 4.16 provides that individuals already registered in a category referred to in Part 4, Division 1 at the time the NRR comes into force are exempt from any proficiency requirements otherwise mandated by Part 4, Division 1. Historically, foreign firms have been able to register in Ontario as full Investment Counsel Portfolio Managers ("ICPM"), but they have been forced into various "international" or "foreign" adviser categories in the other provinces despite the fact that they may otherwise have sought full ICPM status. According to Appendix C of the NRR, only those firms with full ICPM status are deemed to be equivalent to Portfolio Managers under the new regime and thus will be "registered in a category referred to in a Section of this Division" on the date the NRR comes into force. It follows that those foreign firms that have been denied the ability to register as full ICPMs will not be recognized as Portfolio Managers when the NRR comes into force, and will not be entitled to rely on the grandfathering clause in section 4.16. Nonetheless, under the existing regime these foreign firms have satisfied or obtained equivalency relief from the proficiency requirements contained in the applicable province's foreign or international adviser categories. We understand from discussions with OSC staff that the intention of section 4.16 is to provide grandfathered proficiency status for all representatives of advisers who have satisfied proficiency requirements, including those of foreign firms.

X. Application of Part 8 to Exchange Contracts

In the first draft of the NRR, section 1.1(2) stated that for purposes of the provinces of Alberta, British Columbia and Saskatchewan, a reference to the term "security" or "securities" anywhere in the instrument includes "exchange contract" or "exchange contracts". This provision has been changed in the Revised NRR such that a reference to the term "security" or "securities" includes "exchange contract" or "exchange contracts" anywhere in the instrument *except for Part 8 of the*

*instrumen*t. This change does not appear to be in response to any particular comment received on the first draft of the NRR, nor is the change discussed anywhere in the CSA notices, summaries or commentary accompanying the Revised NRR. Goldman Sachs' particular concern with this change is that the International Dealer Exemption and International Adviser Exemption in sections 8.15 and 8.16 of the Revised NRR will now not apply in respect of exchange contracts in the provinces of Alberta, British Columbia and Saskatchewan. This will require non-Canadian firms wishing to trade exchange contracts with or for customers in Alberta, British Columbia and Saskatchewan to apply for and obtain exemptive relief from these jurisdictions for these purposes. We understand that these provinces have generally been prepared to issue exemptive relief to allow non-Canadian firms to trade in exchange contracts with "Qualified Parties" as defined in the OTC derivatives blanket orders of Alberta and British Columbia, provided the contracts are traded on "Recognized Exchanges" as defined in the Alberta blanket order regarding the Recognition of Exchanges Located Outside Alberta (which list includes the Montreal Exchange). Given that this discretionary relief is in fact broader than the International Dealer Exemption and International Adviser Exemption (both in terms of types of clients and underlying products), it is unclear why non-Canadian firms should be prohibited from utilizing the exemptions under the Revised NRR and be obligated to apply for discretionary relief. In the interests of harmonization and efficiency (and given the lack of any express policy rationale otherwise), Goldman Sachs recommends that the CSA revert to the language in section 1.1(2) of the first draft of the NRR and allow all references to "security" or "securities" in the Revised NRR to include "exchange contract" or "exchange contracts".

Conclusion

Although we recognize and applaud the efforts of the CSA to implement harmonized, national standards for registration regulation, we are concerned that some of the proposed revisions represent a step back from the efforts of various securities regulators around to world to facilitate more open cross-border activities, particularly in relation to dealings with sophisticated clients. For instance, we note that the SEC has indicated in statements that it is considering amendments to Rule 15a-6 of the U.S. Securities Exchange Act to enable direct dealings between sophisticated U.S. investors and foreign broker-dealers in certain circumstances. In addition, we note that the broader concept of "mutual recognition" in relation to securities is a separate initiative being considered by regulators in some of the world's most developed markets and which the NRR should, in our view, be designed to support. We specifically note today's announcement by the CSA regarding a schedule for the completion of a process agreement intended to "open the way for substantive discussions between the CSA and the SEC on the subject of mutual recognition."

Furthermore, in light of the prudential characteristics and historic performance of many regulated non-Canadian dealers and advisers such as Goldman Sachs, some of the proposed changes in the NRR, as we have highlighted, do not appear to provide significant additional protection to Canadian investors beyond what they currently have. Rather, these changes could in fact limit the ability of Canadian investors, when dealing with non-Canadian firms, to have access to the scope and breadth of reputable financial services that they rely on today.

Goldman Sachs greatly appreciates your consideration of these submissions and would welcome the opportunity to discuss these matters further in the hopes of improving the utility of the NRR and ensuring that it serves the purposes of efficient, principles-based regulation to the benefit of

Canadian investors and 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/JS