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Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman Sachs

December 19, 2016

Via E-Mail to shareholderproposals@sec.gov

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: The Goldman Sachs Group, Inc.
Request to Omit Shareholder Proposal of John Harrington

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), The Goldman Sachs Group, Inc., a Delaware corporation (the "Company"), hereby gives notice of its intention to omit from the proxy statement and form of proxy for the Company's 2017 Annual Meeting of Shareholders (together, the "2017 Proxy Materials") a shareholder proposal (including its supporting statement, the "Proposal") received from John Harrington (the "Proponent"). The full text of the Proposal and all other relevant correspondence with the Proponent are attached as Exhibit A.

The Company believes it may properly omit the Proposal from the 2017 Proxy Materials for the reasons discussed below. The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2017 Proxy Materials.

This letter, including the exhibit hereto, is being submitted electronically to the Staff at shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), the Company has filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2017 Proxy Materials with the Commission. A copy of this letter is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2017 Proxy Materials.

I. The Proposal

The resolution included in the Proposal reads as follows:

"Resolved: To provide more clarity on long term investing, systemic risk and sustainability concerns, we request the board of directors issue an annual, forward-looking one-page document, the "Statement of Significant Audiences and Materiality" to inform shareholders, management, and all other stakeholders of the audiences and timeframes the board views as relevant to its application of "reasonable investor" and materiality in the company's SEC filings reports."

The supporting statement included in the Proposal (the "Supporting Statement") is set forth in Exhibit A.

II. Reasons for Omission

The Company believes that the Proposal properly may be excluded from the 2017 Proxy Materials pursuant to:

- Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(3), because the Proposal is inherently misleading contrary to Rule 14a-9.

A. The Proposal may be excluded under Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

Rule 14a-8(i)(7) permits the exclusion of a shareholder proposal that deals with a "matter relating to the company's ordinary business operations." According to the Commission, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Release No. 34-40018, Amendments to Rules on Shareholder Proposals, [1998 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 86,018, at 80,539 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission outlines two central considerations for determining whether the ordinary business exclusion applies: (1) was the task "so fundamental to management's ability to run a company on a day-to-day basis" that it could not, as a practical matter, be subject to direct shareholder oversight; and (2) "the degree to which the proposal seeks to 'micromanage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* at 80,539-40 (footnote omitted).

In this case, the Proposal relates to management's fundamental day-to-day operations and seeks to micromanage the Company, in that it relates to (1) the details of the Company's internal legal compliance policies; and (2) the Company's financial reporting disclosures.

1. The Proposal relates to the details of the Company's internal legal compliance policies.

In determining whether the ordinary business exclusion applies to a shareholder proposal requesting the preparation of a special report, such as the Proposal here, the Commission has indicated that it "will consider whether the subject matter of the special report . . . involves a matter of ordinary business." Release No. 34-20091, Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Fed. Sec. L. Rep. (CCH) ¶ 83,417 at 86,205 (Aug. 16, 1983). Similarly, for proposals that request disclosure in addition to those found in documents filed with or submitted to the Commission, the Staff has indicated that "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7)." *Johnson Controls, Inc.* (Oct. 26, 1999).

The Proponent requests that that the board of directors prepare and issue an annual, forward-looking statement (the "Statement") relating to the "audiences and timeframes the board views as relevant to its application of 'reasonable investor' and materiality in the company's SEC filings reports." As an example, the Proponent states that the Statement "could clarify where the firm's disclosures are directed toward the needs and interests of short, medium and long term investors and special categories of investors."

Management's materiality determinations[1] made in order to comply with the requirements of the securities laws applicable to the Company's required filings with the Commission constitute a part of the Company's ordinary business operations. These materiality determinations involve the Company's internal legal and compliance professionals, who bring their professional judgment and experience to bear on these determinations, as well as input on the relevant facts. The Commission, the Staff and courts have consistently noted that materiality assessments are facts and circumstances determinations that require significant management judgment. *See, e.g.*, SEC Staff Accounting Bulletin No. 99: Materiality (Aug. 12, 1999) ("SAB 99") ("[N]o general standards of materiality could be formulated to take into account all the considerations that enter into an experienced human judgment . . . Evaluation of materiality requires a registrant . . . to consider *all* the relevant circumstances, . . ." (footnotes omitted) (emphasis in original)). Making these judgments and applying them to a wide variety of disclosure requirements is an ongoing function of the Company's legal compliance program.

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[1] While the Proposal requests that the Statement reflect the *board of director*'s views on application of the materiality standard, in reality, the judgments are made by management as part of the day-to-day operation of the Company, subject, of course, to the oversight of the board of directors.

The Commission has consistently determined that proposals that concern a company's legal compliance program are excludable as a matter of ordinary business pursuant to Rule 14a-8(i)(7). *See, e.g., Navient Corp.* (Mar. 26, 2015, *reconsideration denied* Apr. 8, 2015) ("Proposals that concern a company's legal compliance program are generally excludable under [R]ule 14a-8(i)(7))"); *FedEx Corp.* (July 14, 2009) (permitting exclusion of a proposal seeking a report on compliance with state and federal laws regarding the classification of employees and independent contractors as relating to the company's "ordinary business operations (i.e., general legal compliance program)"); *Verizon Communications Inc.* (Jan. 7, 2008) (permitting exclusion of a proposal seeking the adoption of policies on compliance with trespass laws as relating to the company's "ordinary business operations (i.e., general legal compliance program)").

In *Navient*, the proposal recommended that the company prepare a "report on the company's internal controls over student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws." The focus of the *Navient* proposal was the internal control process used by management to comply with applicable laws; the Staff agreed that those controls were part of ordinary business operations. The same is true of the Proposal, which requests disclosure of very specific aspects (the "audiences and timeframes" for materiality) of the Company's internal policies for ensuring compliance with SEC disclosure requirements. The Company's determination of whether a particular matter is material for disclosure purposes can require a complex analysis, taking into account the Commission requirement to which the disclosure is responsive, the context provided by all the Company's other disclosures, all relevant facts and circumstances, and guidance provided by Commission releases and enforcement actions, accounting literature, judicial decisions and industry practice. This type of analysis, conducted by the Company's internal legal and compliance personnel in consultation with others within the Company and outside advisors, is clearly a component of the Company's general legal compliance program, and therefore the Proposal is excludable as relating to the ordinary business operations of the Company.

2. The Proposal relates to the Company's regular financial reporting disclosures.

The Proposal seeks a report on policies that are an integral part of the Company's financial reporting disclosures. The crafting of financial reporting disclosures, including making judgments on materiality, involves consideration of complex accounting rules and guidance, Commission regulations (such as Regulations S-K and S-X and Staff Accounting Bulletins) and industry practice. These decisions are required to be made on an ongoing basis, and relate broadly to all aspects of the Company's day-to-day business.

The Staff has consistently agreed that decisions on disclosure of ordinary business matters, such as the regular financial information included in Commission filings, are part of the Company's ordinary business. For example, the Staff in *Merrill Lynch & Co., Inc.* (Feb. 20, 2008) and *Citigroup Inc.* (Feb. 20, 2008) permitted exclusion of proposals relating to the disclosure of collateral and other credit risks arising from off-balance sheet liabilities. These disclosures, like the disclosures requested by the Proposal, involved the routine preparation of

financial statements. Likewise, in *Lehman Brothers Holdings Inc.* (Feb. 5, 2008) the Staff permitted exclusion of a proposal relating to the preparation of a report discussing the registrant's potential financial exposure as a result of the mortgage securities crisis.

Based on these letters, it is clear that the Proposal is excludable under Rule 14a-8(i)(7) since it seeks information on the Company's policies for making ordinary course disclosure decisions in its financial statements filed with the Commission.

Based on the foregoing, the Company respectfully requests that the Staff concur that the Proposal may be excluded from the 2017 Proxy Materials as involving a matter of ordinary business pursuant to Rule 14a-8(i)(7).

B. The Proposal may be excluded under Rule 14a-8(i)(3) because it is inherently misleading contrary to Rule 14a-9.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As the Staff clarified in Staff Legal Bulletin No. 14B (Sept. 15, 2004), Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal when "the resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires."

Applying the foregoing standards, the Staff has allowed exclusion of proposals that contain misleading statements speaking to the proposal's fundamental premise. *See, e.g.*, *State Street Corp.* (Mar. 1, 2005) (concurring that a proposal requiring the company take action under a state statute not applicable to the company could be excluded under Rule 14a-8(i)(3)); *Energy East Corp.* (Feb. 12, 2007) (shareholder proposal that requests a shareholder vote on a compensation committee report that the company is no longer required to include in the proxy statement may be omitted under Rule 14a-8(i)(3)).

The Company believes that the Proposal is inherently misleading because it is based on the false premise that the Company utilizes different standards of materiality based on the audience and timeframe and that the Company uses a definition of materiality that is different than the standard proscribed by federal law.[2] "Materiality" for securities law purposes is not established by Company policy, but is a legal standard to which the Company (like all public companies) is required to comply. There are not multiple standards of materiality depending on the audience and the timeframe. The Supreme Court in *TSC Industries v. Northway, Inc.*, 426

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[2] Despite the importance of the term "materiality" to the Proposal, the Proponent fails to include a definition. When a proposal fails to adequately define a key term, the proposal may be omitted as vague and indefinite. *See, e.g.*, *The Boeing Co.* (Mar. 2, 2011) (proposal that failed to define "executive pay rights" may be excludable under Rule 14a-8(i)(3)); *AT&T Inc.* (Feb. 16, 2010) (proposal that failed to define "grassroots lobbying communications" may be excluded under Rule 14a-8(i)(3)).

U.S. 438, 449 (1976) defined materiality: a fact is material if there is "a substantial likelihood that the . . . fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." The Company has no ability to define the term differently, including by substituting specific categories of investors for the judicially defined "reasonable investor." Likewise, the Proposal assumes that the Company employs a distinct materiality standard to different investors based on each investor's investment horizon. The *TSC* materiality standard is simply not stratified based on the investment horizon of investors. In presupposing that the Statement will provide any additional information, other than a recitation of the *TSC* legal standard, the Proposal implicitly assumes that the Company utilizes different, or varying, standards of materiality. The Proposal, therefore, is excludable because such assumption is false or misleading in a manner that undermines its fundamental premise.

For the reasons discussed above, the Company respectfully requests that the Staff concur that the Proposal may be excluded from the 2017 Proxy Materials as the Proposal is inherently misleading in violation of the Commission's proxy rules and, therefore, may be excluded under Rule 14a-8(i)(3).

* * *

Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact me (212-357-1584; Beverly.OToole@gs.com) or Jamie Greenberg (212-902-0254; Jamie.Greenberg@gs.com). Thank you for your attention to this matter.

Very truly yours,

Beverly L. O'Toole

Beverly L. O'Toole

Attachments

cc: John Harrington

HARRINGTON
INVESTMENTS, INC.

November 23, 2016

John F.W. Rogers
Secretary to the Board of Directors
The Goldman Sachs Group, Inc.
200 West Street
New York, NY 10282

RE: Shareholder Proposal

Dear Corporate Secretary,

As a shareholder in the Goldman Sachs Group, Inc., I am filing the attached shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the company's Proxy Statement for the 2017 annual meeting of shareholders.

I am the beneficial owner of at least $2,000 worth of GS stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in the Goldman Sachs Group, Inc. through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is provided with this submission. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President
Harrington Investments, Inc.

The Statement of Significant Audiences and Materiality

Our company's reputation depends in part on the clarity of its communications and disclosures. More clearly stating which investors our company's disclosures are directed toward could help strengthen its reputation and trust.

For example, many in the financial community now recognize the importance of considerations beyond daily challenges of portfolio management, and seek to evaluate risks and rewards at environmental, societal and financial systems levels. Large institutional investors in particular are recognizing a role as "universal" investors. They are managing impacts on the vitality of the whole economy, recognizing externalities of specific investments affecting other investments in their portfolios, and evaluating impacts of assets on environment and society. They are effectively adding an ownership discipline to buy and sell disciplines.

When it comes to our company, it is often unclear which perspectives are considered material to its disclosures. An SEC news release on July 15, 2010 announced Goldman Sachs would pay $550 million to settle charges it misled investors in a subprime mortgage product just as the U.S. housing market was starting to collapse. The Wall Street Journal noted a pivotal issue in the case was whether it was considered a material omission for the company to fail to tell its clients about the involvement in the deal by hedge-fund Paulson & Co.

The ambiguity of materiality undermines trust and reputation. How do our company's disclosures meet the informational needs of its diverse investors with different risk tolerances, time horizons, strategies, and perspectives?

A Harvard Business School paper, Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality suggests all security registrants should be required to file a "Statement of Significant Audiences and Materiality," explaining how materiality determinations are made.

We propose our company exercise leadership and strengthen its reputation by preparing such a statement.

Resolved: To provide more clarity on long term investing, systemic risk and sustainability concerns, we request the board of directors issue an annual, forward-looking one-page document, the "Statement of Significant Audiences and Materiality" to inform shareholders, management, and all other stakeholders of the audiences and timeframes the board views as relevant to its application of "reasonable investor" and materiality in the company's SEC filings reports.

Supporting Statement

The Statement should clarify the timeframes of materiality utilized. For instance, the statement could clarify where the firm's disclosures are directed toward the needs and interests of audiences of short, medium and long term investors and special categories of investors such as ESG or sustainable investors. The Statement may identify categories, segments or activities of disclosure with specific audiences or timelines. This proposal does not request the Company utilize any particular timeline or audience, but only clarify how materiality determinations are made and where they may differ in disclosure documents.

charles SCHWAB

Advisor Services

PO BOX 982603
EL PASO, TX 79998

November 23, 2016

John F.W. Rogers
Secretary to the Board of Directors
The Goldman Sachs Group, Inc.
200 West Street
New York, NY 10282

RE: ***Redacted per OMB Memorandum M-07-16***
HARRINGTON INV INC 401K PLAN
FBO JOHN C. HARRINGTON

Dear Secretary:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. 401K Plan account and which holds in the account 100 shares of common stock in Goldman Sachs Group Inc. These shares have been held continuously for at least one year prior to and including November 23, 2016.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

Melanie Salazar
Advisor Services
Charles Schwab & Co. Inc.