Frederick H. Alexander
rick@theshareholdercommons.com
302-593-0917

March 17, 2021
Via electronic mail

John Coates
Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Goldman Sachs Regarding Underwriting Multiclass Stock on behalf of James McRitchie

Dear Mr. Coates:

I am writing to you on behalf of James McRitchie (the "Proponent"), who has submitted a shareholder proposal (the "Proposal") to The Goldman Sachs Group, Inc. (the "Company") for consideration at its 2021 annual meeting of shareholders. On December 23, 2020, the Company submitted to the Securities and Exchange Commission ("SEC") a request for no-action relief on the ground, *inter alia*, that it was excludable under Rule 14a-8(i)(7) (the "No-Action Request"). On March 9, 2021, the Staff announced that it concurred with the Company's request on 14a-8(i)(7) grounds. The Staff provided no explanation for its concurrence. On March 16, we submitted a letter (the "Reconsideration Request") requesting that the Staff reconsider the question due to our inability to reconcile the decision with prior precedents and guidance under Rule 14a-8(i)(7) and the appearance of additional press reports of the significant policy issue affecting listings of companies outside the U.S. since the filing of the Proponent's letter opposing the No-Action Request. The Reconsideration Request also requested that if the Staff declined to reconsider its grant of relief, the matter be presented to the Commission, due to the novel nature of the decision to treat a question of multiclass voting structures as ordinary business.

On March 17, 2021, the Company filed a letter urging the Commission deny the request, because it had started to print its proxy materials the day after receiving relief. We hereby request that even if the Staff declines to address our request with respect to the Company due to the Company's decision to immediately begin printing materials, that it nevertheless reconsider

its position on the issue or present it to the Commission, for the reasons set forth in the Reconsideration Request.

This is an important issue that is likely to arise in the future, and if the precedent is followed, there may be no opportunity for a reconsideration or presentation to the Commission if issuers are able to avoid that procedure by immediately printing their materials upon receipt of relief. Moreover, with no explanation of the reason for the Staff's concurrence, shareholders will not have an opportunity to modify their proposals on this critical issue in order to conform to the Staff's interpretation of 14a-8(i)(7) as it applies to this question.

We note that Proponent has filed a similar proposal at JPMorgan Chase & Co., which has requested relief on similar grounds, and that the question of reconsideration and presentation to the Commission may be applicable to that proposal as well. Their counsel is copied on this letter.

We would appreciate your contacting the undersigned at 302-593-0917 or rick@theshareholdercommons.com with respect to any questions in connection with this matter or if the Staff wishes any further information. Copies of the Opposition Letter and the No-Action Request are attached for your convenience.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Beverly O'Toole
James McRitchie
Brian Breheny

200 West Street | New York, New York 10282
Tel: 212-357-1584 | Fax: 212-428-9103 | e-mail: beverly.otoole@gs.com

Beverly L. O'Toole
Managing Director
Associate General Counsel

Goldman Sachs

March 17, 2021

VIA E-MAIL
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *The Goldman Sachs Group, Inc.*
Shareholder Proposal of James McRitchie and Myra K. Young

Ladies and Gentlemen:

By letter dated March 16, 2021, The Shareholder Commons, on behalf of James McRitchie and Myra K. Young (the "Proponents"), requested (i) that the staff of the Division of Corporation Finance (the "Staff") reconsider its decision, dated March 9, 2021, concurring that The Goldman Sachs Group, Inc. (the "Company") could omit a shareholder proposal submitted by the Proponents (the "Proposal") from the Company's proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (the "2021 Proxy Materials") under Rule 14a-8(i)(7) and (ii) Commission review of the same (the "Request for Reconsideration"). As discussed further below, the Company believes the Proponents' challenge to the Staff's response should be denied as it is untimely and without merit.

By way of background, the Proponents delivered the Proposal to the Company on November 18, 2020. The Company then submitted the No-Action Request, with a copy to the Proponents, no later than 80 days prior to the date that the Company intends to file its definitive 2021 Proxy Materials with the Commissions. The Proponents subsequently submitted to the Staff a letter, dated January 22, 2021, objecting to the Company's exclusion of the Proposal from its 2021 Proxy Materials and making many of the same arguments set forth in the Request for Reconsideration. The Staff responded to the No-Action Request on March 9, 2021, concurring that the Company could exclude the Proposal under Rule 14a-8(i)(7) as relating to ordinary business matters.

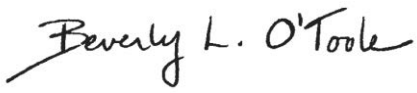
Thereafter, on March 10, 2021, in reliance on the Staff's response to the No-Action Request, the Company began printing its 2021 Proxy Materials, which do not include the Proposal. The Company has already incurred substantial time and expense in preparing and printing the 2021 Proxy Materials for shareholders in accordance with its previously established schedule and process for its Annual Meeting. Therefore, the Request for Reconsideration was not received sufficiently far in advance of the Company's scheduled printing dates for its definitive 2021 Proxy Materials and would cause (if the Company is required to delay its mailing, prepare and distribute supplemental proxy materials, and/or resolicit revised proxies for the Annual Meeting) significant effort, time and additional

expense on behalf of the Company. Given the current timing, as well as the uncertainty and expense potentially involved, it would be unfair and unduly burdensome for the Staff to reconsider its decision or the Commission to review the Staff's decision regarding the excludability of the Proposal at this time.

Finally, in the event that the Staff considers the Request for Reconsideration, we believe that the Staff's concurrence that the Proposal is excludable under Rule 14a-8(i)(7) is appropriate and thus that the Request for Reconsideration should be denied. We also do not believe that the standards for Commission review have been satisfied here.

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 Elizabeth Ising of Gibson, Dunn & Crutcher (202-955-8287; Eising@gibsondunn.com). Thank you for your attention to this matter.

Sincerely,



Beverly L. O'Toole

cc: Frederick Alexander, The Shareholder Commons
James McRitchie and Myra K. Young

Frederick H. Alexander
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John Coates
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Re: Shareholder Proposal to Goldman Sachs Regarding Underwriting Multiclass Stock on behalf of James McRitchie

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We hereby request reconsideration of the Staff's grant of relief. We make this request because:

(1) We are unable to reconcile this decision with prior guidance under Rule 14a-8(i)(7). Since the Proposal addresses a significant policy issue, has clear significance to the Company and does not micromanage, we can see no basis for exclusion under Rule 14a-8(i)(7).[1]

[1] We note as well that the unwritten determination provides no rigorous rationale for the Rule 14a-8(i)(7) exclusion of the Proposal, and also no guidance to the market as to how such proposal could be revised in the future to be acceptable.

(2) Additional reports of the significant policy issue affecting listings of companies outside the U.S. have appeared in the press since the filing of the Opposition Letter, further demonstrating that the Proposal addresses a significant policy issue in global corporate governance.

Should the Staff decline to reverse its decision, we request that the matter be presented to the Commission, due to the novel nature of the decision to treat a question of multiclass voting structures as ordinary business.

Prior Guidance

The SEC has issued guidance on this issue on several occasions. In 1976, the Commission in Release 12999 (November 22, 1976) reviewed and reversed prior Staff determinations which had excluded shareholder proposals on ordinary business grounds and concluded that:

> *The Commission is of the view that the provision adopted today can be effective in the future if it is interpreted somewhat more flexibly than in the past. Specifically, the term "ordinary business operations" has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. For instance, a proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable under former subparagraph (c)(5) [now (i)(7)]. In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary business operations, and future interpretative letters of the Commission's staff will reflect that view.*

The same issue was discussed in Release 34-40018 (May 21, 1998) where the Commission stated that proposals that relate to ordinary business matters but that focus on "sufficiently significant social policy issues . . . would not be considered to be excludable because the proposals would transcend the day-to-day business matters."

Staff Legal Bulletin 14E (October 27, 2009) addressed considerations relevant to the present matter as well, since the Proposal implicates certain risks to investors. Under the guidance of the bulletin, a proposal that requests analysis of risks to investors does not necessarily render the proposal excludable. Instead, the Staff suggested that a key question is whether the particular risk that is being analyzed involves a significant policy issue:

> *On a going-forward basis, rather than focusing on whether a proposal and supporting statement relate to the company engaging*

> *in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. The fact that a proposal would require an evaluation of risk will not be dispositive of whether the proposal may be excluded under Rule 14a-8(i)(7). Instead, similar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document — where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business — we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7). In determining whether the subject matter raises significant policy issues and has a sufficient nexus to the company, as described above, we will apply the same standards that we apply to other types of proposals under Rule 14a-8(i)(7)*

Finally, in 2018, the Staff indicated at a stakeholder meeting that shareholder proposals involve significant social policies if they involve issues that engender widespread debate, media attention, and legislative and regulatory initiatives.[2] The Opposition letter cited to more than a century of such debate, attention, and initiatives.

The Proposal is analogous to other proposals that the Staff has found to raise significant policy issues

The Proposal asks the Company to prepare a study on the effect of underwriting multiclass IPOs on diversified shareholders through the economic effects of centralizing voting power in the hands of insiders with concentrated stock positions.

In the past, the Staff has repeatedly concluded that proposals regarding dual class or multiple class stock ownership were not excludable as relating to ordinary business. Such proposals have typically requested various companies to recapitalize to eliminate dual class voting structures. *Ford Motor Company* (March 07, 2005), *Cablevision Systems Corporation* (March 14, 2014), *Affiliated Computer Services, Inc.* (August 09, 2005) *Vishay Intertechnology,*

[2] JD Supra, *SEC Staff's Latest Guidance Presents Dilemma for Companies Seeking to Exclude Shareholder Proposals on Environmental and Social Issues* (January 4, 2018) ("In a June 30, 2016 stakeholder meeting, the Staff indicated that significant policy issues are matters of widespread public debate, which include legislative and executive attention and press attention.)

Inc. (March 23, 2009). The Staff has repeatedly found, despite the insistence of boards and management that these issues ought to be reserved to their discretion, that these are appropriate issues for shareholders to vote on.

As detailed in the Opposition Letter, there is a long history of public, regulatory and legislative debate over multiclass share structures. The issue of one-share, one-vote was raised in 1896 at the Delaware State Constitutional Convention that adopted the constitutional provisions that authorized the nation's preeminent corporation law, that three decades later, President Calvin Coolidge threatened to address the issue and that it appeared on the front-page of the New York Times and that recent Commissioners Stein and Jackson have both spoke critically of the of multiclass offerings, as has the SEC's own Investor Advocate.

The Proposal's Focus on Externalities Does Not Alter the Significance of the Public Policy Issue

The fact that the Proposal relates to the external costs of underwriting multiclass structures and the effect of those costs upon diversified shareholders does not make the Proposal any less significant from a public policy perspective. In *PepsiCo, Inc.* (March 12, 2021), the Staff declined to provide relief under Rule 14a-8(7) with respect to a proposal that asked the issuer to report on the external public health costs of an issuer's food and beverage business and the effects of those costs on diversified shareholders. The Proposal asks the same question of the Company, but as to selling multiclass shares, rather than soda and chips.

Indeed, the question how the continuing underwriting of multiple companies with multiclass structures affects overall economic performance and diversified shareholders is a much more significant policy issue than whether a single issuer retains its dual class structure. This economy-wide concern was expressed by the Investor Advocate:

> *In my view, what we now have in our public markets is a festering wound that, if left untreated, could metastasize unchecked and affect the entire system of our public markets. The question, then, is what can be done to avoid the inevitable reckoning.* (Emphasis added.)[3]

Commissioner Stein also worried about the society-wide effect of such structures:

> *Structures where a minority of insiders lock out the interests and rights of the majority may also have collateral effects on our capital markets. They may be harmful not just for those companies, their shareholders, and their employees, but for the economy as a whole.* (Emphasis added).[4]

The Proposal is aimed at this critical policy issue highlighted out by the Investor Advocate and Commissioner Stein. As they state, the issue is not simply an agent/agent/principal problem at the individual companies that have the structure; because the divergence between the two may involve the agent's imperviousness to cost externalization, the

[3] Rick Fleming, *Dual-Class Shares: A Recipe for Disaster* (October 15, 2019) (emphasis added).

[4] (Emphasis added), available at https://www.sec.gov/news/speech/speech-stein-021318#_ednref45.

structure has the potential to create widespread corporate governance that is particularly insensitive to irresponsible corporate behavior that threatens public goods and common resources. Indeed, a speech made March 15, 2021 by Acting Chair Lee pointed out the connection between corporate governance and sustainable corporate behavior:

> *While disclosure is key, it only works for shareholders if they can effectively use the information in overseeing their investments. Shareholders exercise oversight of the companies they own and the funds in which they invest through certain fundamental rights – and they are increasingly seeking to exercise those rights to drive corporate decision-making toward sustainable solutions and long-term value creation.*[5]

Multiclass structures sever the link between the rights of diversified shareholders and "sustainable solutions."

The Proposal's Connection to Underwriting Does Not Alter the Ordinary Business Analysis

While it is true that the proposal has a relation to the Company's underwriting business, and that a proposal that related only to a pure business question regarding underwriting criteria would be excludable, both the guidance and the precedents indicate that if the underwriting criteria addressed is itself a significant policy issue, then that issue will transcend the ordinary business exception. The *Citicorp* (January 23, 1991), *Merrill Lynch & Co.* (February 25, 2000), and *PNC Financial Services Group, Inc.* (February 13, 2013), each cited in the Opposition Letter, make it clear that when significant policy questions are raised around underwriting criteria, the significant policy exception applies.

The proposals at issue in those three underwriting situations over the last three decades involved criteria applicable to the developing world, the environment, human rights and climate change, *inter alia.* The current Proposal also is foundational to addressing such social and environmental issues because, as the Proposal explains, multiclass voting structures enable insiders to wield control at the company where their financial interests are concentrated. This gives them an incentive to exploit negative externalities, ignoring the needs of diversified shareholders and their beneficiaries. This means that diversified shareholders, who rely on healthy social and environmental systems to support their broad portfolios, are unable to add exercise the power of the franchise to address those interests. Thus, the control structure of a multiclass corporation may affect the ability of diversified shareholders to steward companies to better ESG performance.

Thus, it appears entirely inconsistent with Staff precedents and Commission guidance to find the proposal excludable under Rule 14a-8(i)(7). We urge reconsideration.

[5] https://www.sec.gov/news/speech/lee-climate-change?utm_medium=email&utm_source=govdelivery

Continuing Controversy

Even after the Opposition Letter was filed, press coverage of the issue continued, as competitive pressure for listings forces other jurisdictions to consider permitting multiclass structures. For example, on February 11, 2021, Bloomberg reported on the concern that the UK was loosening listing requirements to permit multiclass structures in order to keep listings in London:[6]

> *Another key issue is the listing of shares with different voting rights, known as dual-class share structures, which are popular in the U.S. and used by the likes of Google parent Alphabet Inc. and Facebook Inc. U.K. rules for the LSE main market's premium segment don't allow this practice, which can leave some shareholders with no voting rights.*[7]

The practice of multiclass offerings is spreading to other markets as well. On March 14, 2021, the Korea Times reported on a Korean company that chose to list in the U.S. in order to use the structure.[8] While the government there has tabled legislation to permit multiclass structures, some elements of civil society object:

> *However, opposition voices are growing among liberal civic groups. Citizens' Coalition for Economic Justice (CCEJ) and a number of other economic civic groups held a press conference last month, denouncing the government's bill, saying if passed it will only help Korean conglomerate owners further tighten their corporate control with small stakes and pass on their fortunes to their heirs.*[9]

These reports make it clear that jurisdictions are competing for listings, and that competition is leading to more countries permitting multiclass listings, with the ability to do so in the U.S. a significant factor. The role that an issuer plays in an issue like multiclass offerings would seem to be precisely the type of question that the significant policy exception was meant to cover.

Conclusion

In summary, we believe that we have shown that the Proposal raises a significant policy issue that is accelerating in global importance as competition for listings spreads the practice, whether or not it is good policy. We do not believe the Proposal is meaningfully distinguishable from other proposals addressing either external costs or underwriting criteria. We therefore respectfully urge the Staff to reconsider its advice of March 11 and to deny the Company's

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[6] *London's Top Investors Warn on Post-Brexit Easing of IPO Rules,,* Bloomberg (February 11, 2021) available at https://www.bnnbloomberg.ca/london-s-top-investors-warn-on-post-brexit-easing-of-ipo-rules-1.1562277 (last visited March 13, 2021).
[7] *Id.*
[8] *Debate over dual-class shares reignites on Coupang IPO,* Korea Times (March 14,2021) available at https://www.koreatimes.co.kr/www/nation/2021/02/694_304060.html?fl (last visited March 13, 2021)
[9] *Id.*

request for no-action relief. Should the Staff not reverse its advice, we request that the issue be presented to the Commission in light of the novel treatment of a proposal to vote on a multiclass structure question being treated as ordinary business.

We would appreciate your contacting the undersigned at 302-593-0917 or rick@theshareholdercommons.com with respect to any questions in connection with this matter or if the Staff wishes any further information. Copies of the Opposition Letter and the No-Action Request are attached for your convenience.

Sincerely,

Frederick Alexander

Frederick Alexander

cc: Beverly O'Toole
James McRitchie

Attachments (2)