

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 10-K**  
**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended November 25, 2005

Commission File Number: 001-14965

**The Goldman Sachs Group, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**13-4019460**  
(I.R.S. employer  
identification no.)

**85 Broad Street**  
**New York, N.Y.**  
(Address of principal executive offices)

**10004**  
(Zip Code)

**(212) 902-1000**  
(Registrant's telephone number, including area code)

**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of each class:</u>	<u>Name of each exchange on which registered:</u>
Common stock, par value \$.01 per share, and attached Shareholder Protection Rights	New York Stock Exchange
Depository Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-Cumulative Preferred Stock, Series A	New York Stock Exchange
Depository Shares, Each Representing 1/1,000th Interest in a Share of 6.20% Non-Cumulative Preferred Stock, Series B	New York Stock Exchange
Depository Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-Cumulative Preferred Stock, Series C	New York Stock Exchange
Medium-Term Notes, Series B, 0.25% Exchangeable Notes due 2007; Index-Linked Notes due 2013; Index-Linked Notes due April 2013; Index-Linked Notes due May 2013; Index-Linked Notes due July 2010; and Index-Linked Notes due 2011	American Stock Exchange
Medium-Term Notes, Series B, 7.35% Notes due 2009; 7.80% Notes due 2010; Floating Rate Notes due 2006; and Floating Rate Notes due 2008	New York Stock Exchange

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Annual Report on Form 10-K or any amendment to the Annual Report on Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes  No

As of May 27, 2005 the aggregate market value of the common stock of the registrant held by non-affiliates of the registrant was approximately \$42.5 billion.

As of January 30, 2006 there were 436,004,478 shares of the registrant's common stock outstanding.

**Documents incorporated by reference:** Portions of The Goldman Sachs Group, Inc.'s Proxy Statement for its 2006 Annual Meeting of Shareholders to be held on March 31, 2006 are incorporated by reference in the Annual Report on Form 10-K in response to Part III, Items 10, 11, 12, 13 and 14.

**THE GOLDMAN SACHS GROUP, INC.**

**ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED NOVEMBER 25, 2005**

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## PART I

### Item 1. Business

#### Introduction

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, financial institutions, governments and high-net-worth individuals. As of November 25, 2005, we operated offices in over 20 countries and approximately 38% of our 22,425 employees were based outside the United States.

Goldman Sachs is the successor to a commercial paper business founded in 1869 by Marcus Goldman. On May 7, 1999, we converted from a partnership to a corporation and completed an initial public offering of our common stock.

Our activities are divided into three segments: (i) Investment Banking, (ii) Trading and Principal Investments and (iii) Asset Management and Securities Services.

All references to 2005, 2004 and 2003 refer to our fiscal years ended, or the dates, as the context requires, November 25, 2005, November 26, 2004 and November 28, 2003, respectively.

When we use the terms “Goldman Sachs,” “we,” “us” and “our,” we mean The Goldman Sachs Group, Inc., a Delaware corporation, and its consolidated subsidiaries. References herein to the Annual Report on Form 10-K are to our Annual Report on Form 10-K for the fiscal year ended November 25, 2005.

Financial information concerning our business segments and geographic regions for each of 2005, 2004 and 2003 is set forth in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and the consolidated financial statements and the notes thereto, which are in Part II, Items 7, 7A and 8 of the Annual Report on Form 10-K.

Our Internet address is [www.gs.com](http://www.gs.com) and the investor relations section of our web site is located at [www.gs.com/our\\_firm/investor\\_relations/](http://www.gs.com/our_firm/investor_relations/). We make available free of charge, on or through the investor relations section of our web site, annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as well as proxy statements, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the U.S. Securities and Exchange Commission (SEC). Also posted on our web site, and available in print upon request of any shareholder to our Investor Relations Department, are our certificate of incorporation and by-laws, charters for our Audit Committee, Compensation Committee and Corporate Governance and Nominating Committee, our Policy Regarding Director Independence Determinations, our Policy on Reporting of Concerns Regarding Accounting and Other Matters, our Corporate Governance Guidelines and our Code of Business Conduct and Ethics governing our directors, officers and employees. Within the time period required by the SEC and the New York Stock Exchange (NYSE), we will post on our web site any amendment to the Code of Business Conduct and Ethics and any waiver applicable to any executive officer, director or senior financial officer (as defined in the Code). In addition, our web site includes information concerning purchases and sales of our equity securities by our executive officers and directors, as well as disclosure relating to certain non-GAAP financial measures (as defined in the SEC’s Regulation G) that we may make public orally, telephonically, by webcast, by broadcast or by similar means from time to time.

Our Investor Relations Department can be contacted at The Goldman Sachs Group, Inc., 85 Broad Street, 17th Floor, New York, New York 10004, Attn: Investor Relations, telephone: 212-902-0300, e-mail: [gs-investor-relations@gs.com](mailto:gs-investor-relations@gs.com).

### **Cautionary Statement Pursuant to the Private Securities Litigation Reform Act of 1995**

We have included or incorporated by reference in the Annual Report on Form 10-K, and from time to time our management may make, statements that may constitute “forward-looking statements” within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not historical facts but instead represent only our belief regarding future events, many of which, by their nature, are inherently uncertain and outside our control. These statements include statements other than historical information or statements of current condition and may relate to our future plans and objectives and results, among other things, and may also include our belief regarding the effect of various legal proceedings, as set forth under “Legal Proceedings” in Part I, Item 3 of the Annual Report on Form 10-K, as well as statements about the objectives and effectiveness of our liquidity policies, statements about trends in our businesses and statements about our investment banking transaction backlog, in Part II, Item 7 of the Annual Report on Form 10-K. It is possible that our actual results may differ, possibly materially, from the anticipated results indicated in these forward-looking statements. Important factors that could cause actual results to differ from those in the forward-looking statements include, among others, those discussed below and under “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of the Annual Report on Form 10-K.

In the case of statements about our investment banking transaction backlog, such statements are subject to the risk that the terms of these transactions may be modified or that they may not be completed at all; therefore, the net revenues that we expect to earn from these transactions may differ, possibly materially, from those currently expected. Important factors that could result in a modification of the terms of a transaction or a transaction not being completed include, in the case of underwriting transactions, a decline in general economic conditions, outbreak of hostilities, volatility in the securities markets generally or an adverse development with respect to the issuer of the securities and, in the case of financial advisory transactions, a decline in the securities markets, an adverse development with respect to a party to the transaction or a failure to obtain a required regulatory approval.

**Segment Operating Results**  
(in millions)

		<b>Year Ended November</b>		
		<u>2005</u>	<u>2004</u>	<u>2003</u>
<b>Investment Banking</b>	Net revenues .....	\$ 3,671	\$ 3,374	\$ 2,711
	Operating expenses .....	<u>3,258</u>	<u>2,973</u>	<u>2,504</u>
	Pre-tax earnings .....	<u>\$ 413</u>	<u>\$ 401</u>	<u>\$ 207</u>
<b>Trading and Principal Investments</b>	Net revenues .....	\$16,362	\$13,327	\$10,443
	Operating expenses .....	<u>10,144</u>	<u>8,287</u>	<u>6,938</u>
	Pre-tax earnings .....	<u>\$ 6,218</u>	<u>\$ 5,040</u>	<u>\$ 3,505</u>
<b>Asset Management and Securities Services</b>	Net revenues .....	\$ 4,749	\$ 3,849	\$ 2,858
	Operating expenses .....	<u>3,070</u>	<u>2,430</u>	<u>1,890</u>
	Pre-tax earnings .....	<u>\$ 1,679</u>	<u>\$ 1,419</u>	<u>\$ 968</u>
<b>Total</b>	Net revenues .....	\$24,782	\$20,550	\$16,012
	Operating expenses <sup>(1)</sup> .....	<u>16,509</u>	<u>13,874</u>	<u>11,567</u>
	Pre-tax earnings .....	<u>\$ 8,273</u>	<u>\$ 6,676</u>	<u>\$ 4,445</u>

<sup>(1)</sup> Includes the following expenses that have not been allocated to our segments: (i) the amortization of employee initial public offering awards, net of forfeitures, of \$19 million and \$80 million for the years ended November 2004 and November 2003, respectively; (ii) net provisions for a number of litigation and regulatory proceedings of \$37 million, \$103 million and \$155 million for the years ended November 2005, November 2004 and November 2003, respectively; and (iii) \$62 million in connection with the establishment of our joint venture in China for the year ended November 2004.

## Business Segments

These segments consist of various products and activities that are set forth in the following chart:

<b>Business Segment/Component</b>	<b>Primary Products and Activities</b>
<b>Investment Banking:</b> <i>Financial Advisory</i>  <i>Underwriting</i>	<ul style="list-style-type: none"> <li>• Mergers and acquisitions advisory services</li> <li>• Financial restructuring advisory services</li>   <li>• Equity and debt underwriting</li> </ul>
<b>Trading and Principal Investments:</b> <i>Fixed Income, Currency and Commodities</i>       <i>Equities</i>       <i>Principal Investments</i>	<ul style="list-style-type: none"> <li>• Commodities and commodity derivatives, including our power generation activities</li> <li>• Credit products, including the trading of and investing in credit derivatives, investment-grade corporate securities, high-yield securities, bank loans, municipal securities, emerging market debt and other distressed debt, and equity securities</li> <li>• Currencies and currency derivatives</li> <li>• Interest rate products, including interest rate derivatives, global government securities and money market instruments, including our matched book</li> <li>• Mortgage-backed securities and loans and other asset-backed securities</li>   <li>• Equity securities and derivatives</li> <li>• Securities, futures and options clearing services</li> <li>• Specialist and market-making activities in equity securities and options</li>   <li>• Principal investments in connection with merchant banking activities</li> <li>• Investment in the convertible preferred stock of Sumitomo Mitsui Financial Group, Inc.</li> </ul>
<b>Asset Management and Securities Services:</b> <i>Asset Management</i>       <i>Securities Services</i>	<ul style="list-style-type: none"> <li>• Asset management, advisory services and investment products for all major asset classes, including money markets, fixed income, currencies, equities and alternative investments (including hedge funds, private equity funds and real estate funds), for institutional and high-net-worth clients, as well as retail clients through third-party channels</li> <li>• Management of merchant banking funds</li>   <li>• Prime brokerage</li> <li>• Financing services</li> <li>• Securities lending</li> </ul>

## **Investment Banking**

Investment Banking represented 15% of 2005 net revenues. We provide a broad range of investment banking services to a diverse group of corporations, financial institutions, governments and individuals and seek to develop and maintain long-term relationships with these clients as their lead investment bank.

Our current structure, which is organized by regional, industry and product groups, seeks to combine client-focused investment bankers with execution and industry expertise. We continually assess and adapt our organization to meet the demands of our clients in each geographic region. Through our commitment to teamwork, we believe that we provide services in an integrated fashion for the benefit of our clients.

Our goal is to make available to our clients the entire resources of the firm in a seamless fashion, with investment banking serving as “front of the house.” To accomplish this objective, we focus on coordination among our equity and debt underwriting businesses and our corporate risk and liability management businesses. This coordination is intended to assist our investment banking clients in managing their asset and liability exposures.

Our Investment Banking segment is divided into two components: Financial Advisory and Underwriting.

### ***Financial Advisory***

Financial Advisory includes advisory assignments with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings and spin-offs. Our mergers and acquisitions capabilities are evidenced by our significant share of assignments in large, complex transactions for which we provide multiple services, including “one-stop” acquisition financing and cross-border structuring expertise, as well as services in other areas of the firm, such as interest rate and currency hedging.

### ***Underwriting***

Underwriting includes public offerings and private placements of a wide range of securities and other financial instruments, including common and preferred stock, convertible and exchangeable securities, investment-grade debt, high-yield debt, sovereign and emerging market debt, municipal debt, bank loans, asset-backed securities and real estate-related securities, such as mortgage-backed securities and the securities of real estate investment trusts.

**Equity Underwriting.** Equity underwriting has been a long-term core strength of Goldman Sachs. As with mergers and acquisitions, we have been particularly successful in winning mandates for large, complex transactions. We believe our leadership in worldwide initial public offerings and worldwide public common stock offerings reflects our expertise in complex transactions, prior experience and distribution capabilities.

**Debt Underwriting.** We engage in the underwriting and origination of various types of debt instruments, including investment-grade debt securities, high-yield debt securities, bank and bridge loans and emerging market debt securities, which instruments may be issued by, among others, corporate, sovereign and agency issuers. In addition, we underwrite and originate structured securities, which include mortgage-backed and other asset-backed securities and collateralized debt obligations.

## **Trading and Principal Investments**

Trading and Principal Investments represented 66% of 2005 net revenues. Trading and Principal Investments facilitates client transactions with a diverse group of corporations, financial institutions, governments and individuals and takes proprietary positions through market making in,

trading of and investing in fixed income and equity products, currencies, commodities and derivatives on such products. In addition, we engage in specialist and market-making activities on equities and options exchanges and we clear client transactions on major stock, options and futures exchanges worldwide. In connection with our merchant banking and other investing activities, we make principal investments directly and through funds that we raise and manage.

To meet the needs of our clients, Trading and Principal Investments is diversified across a wide range of products. We believe our willingness and ability to take risk to facilitate client transactions distinguishes us from many of our competitors and substantially enhances our client relationships.

Our Trading and Principal Investments segment is divided into three components: Fixed Income, Currency and Commodities, Equities and Principal Investments.

### ***Fixed Income, Currency and Commodities and Equities***

Fixed Income, Currency and Commodities (FICC) and Equities are large and diversified operations through which we engage in a variety of customer-driven and proprietary trading and investing activities.

In their customer-driven businesses, FICC and Equities strive to deliver high-quality service by offering broad market-making and market knowledge to our clients on a global basis. In addition, we use our expertise to take positions in markets, by committing capital and taking risk, to facilitate client transactions and to provide liquidity. Our willingness to make markets, commit capital and take risk in a broad range of fixed income, currency, commodity and equity products and their derivatives is crucial to our client relationships and to support our underwriting business by providing secondary market liquidity.

A core activity in FICC and Equities is market making in a broad array of securities and products. For example, we are a primary dealer in many of the largest government bond markets around the world, including the United States, Japan and the United Kingdom. We are a member of the major futures exchanges, and also have interbank dealer status in the currency markets in New York, London, Tokyo and Hong Kong.

We generate trading net revenues from our customer-driven businesses in three ways.

- First, in large, highly liquid markets, we undertake a high volume of transactions for modest spreads and fees.
- Second, by capitalizing on our strong relationships and capital position, we undertake transactions in less liquid markets where spreads and fees are generally larger.
- Finally, we structure and execute transactions that address complex client needs.

We continue to increase coordination among our FICC and Equities businesses as we respond to what we believe is client demand for more coordinated services and for cross-market knowledge and expertise.

In our proprietary activities in both FICC and Equities, we assume a variety of risks and devote resources to identify, analyze and benefit from these exposures. We capitalize on our analytical models to analyze information and make informed trading judgments and we seek to benefit from perceived disparities in the value of assets in the trading markets and from macroeconomic and issuer-specific trends.

Through Allmerica Financial Life Insurance and Annuity Company, an insurance subsidiary that we acquired in December 2005, we now manage interests in variable annuity and variable life insurance contracts. We also plan to participate opportunistically in both the life and annuity and property reinsurance businesses.



## **FICC**

Our FICC business makes markets in and trades interest rate and credit products, mortgage-backed securities and loans and other asset-backed securities, currencies and commodities, structures and enters into a wide variety of derivative transactions, and engages in proprietary trading and investing. FICC has five principal businesses: commodities; credit products; currencies; interest rate products, including money market instruments; and mortgage-backed securities and loans and other asset-backed securities.

**Commodities.** We make markets in, and trade for our clients and our own account, a wide variety of commodities and commodity derivatives, including oil and oil products, metals, natural gas and electricity and forest products. We are also a member of or have relationships with major commodities exchanges worldwide.

As part of our commodities business, we have acquired interests in electric power generation facilities. As of January 1, 2006, we owned interests in 20 power generation facilities located in the United States and one power generation facility located outside the United States. Of these facilities, eight are fueled by natural gas, eight by coal, four by waste coal and one by fuel oil. We acquired interests in the first of these facilities in 2003. Since that time, we have acquired and disposed of interests in other power generation facilities.

**Credit Products.** We offer our clients, and trade for our own account, a broad array of credit and credit linked products, including credit derivatives, investment-grade corporate securities, high-yield securities, bank loans (origination and trading), municipal securities, emerging market debt and other distressed debt. We also trade credit products for the benefit of our clients. For example, we enter, as principal, into complex structured transactions designed to meet client needs and also provide credit through bridge and other loan facilities.

Our credit products business includes making long-term and short-term investments for our own account (often investing together with our merchant banking funds) in a broad array of asset classes (including distressed debt) globally. We opportunistically invest in assets across an entity's capital structure, including in equity, senior loans, debt securities and preferred stock.

**Currencies.** We act as a dealer in foreign exchange and trade for our clients and ourselves in most currencies on exchanges and in cash and derivative markets globally.

**Interest Rate Products.** We trade and make markets in a variety of interest rate products, including interest rate swaps, options and other derivatives and government bonds, as well as money market instruments, such as commercial paper, treasury bills, repurchase agreements and other highly liquid securities and instruments. This business includes our matched book, which consists of short-term collateralized financing transactions.

**Mortgage Business.** We make markets in, and trade for our clients and ourselves, mortgage-related securities and loan products and other asset-backed securities, and we securitize loan portfolios backed by real estate and other assets.

## **Equities**

We make markets in, trade and act as a specialist for equities and equity-related products, structure and enter into equity derivative transactions and engage in proprietary trading. We generate commissions from executing and clearing client transactions on major stock, options and futures exchanges worldwide through our Equities customer franchise and clearing activities.

Equities includes three principal businesses: our customer franchise business, principal strategies and specialist activities.

**Customer Franchise Business.** Our customer franchise business includes primarily customer-driven activities in the shares, convertible securities and equity derivatives markets.

These activities also include clearing client transactions on major stock, options and futures exchanges worldwide, as well as our options specialist and market-making businesses.

We trade equity securities and equity-related products, including convertible securities, options, futures and over-the-counter (OTC) derivative instruments, on a global basis as an agent, as a market maker or otherwise as a principal. As a principal, we facilitate client transactions, often by committing capital and taking risk, to provide liquidity to clients with large blocks of stocks or options. For example, we are active in the execution of large block trades. We also execute transactions as agent and offer clients direct electronic access to trading markets.

We are a member of most of the world's major stock, options and futures exchanges and marketplaces, including those located in New York, Chicago, London, Paris, Frankfurt, Tokyo and Hong Kong.

In the options and futures markets, we structure, distribute and execute derivatives on market indices, industry groups and individual company stocks to facilitate client transactions and our proprietary activities. We develop strategies and render advice with respect to portfolio hedging and restructuring and asset allocation transactions. We also create specially tailored instruments to enable sophisticated investors to undertake hedging strategies and to establish or liquidate investment positions. We are one of the leading participants in the trading and development of equity derivative instruments. We are an active participant in the trading of futures and options on most of the major exchanges in the United States, Europe and Asia. In options, we are a specialist and market maker on the International Securities Exchange and a market maker on the Boston Options Exchange and the Philadelphia Stock Exchange.

**Principal Strategies.** Our principal strategies business includes a multi-strategy proprietary investment business that invests and trades for the firm's own account. Principal strategies trades and invests the firm's capital across global markets employing strategies that are primarily focused on public markets. Most strategies involve fundamental equities and relative value trading (which involves trading strategies to take advantage of perceived discrepancies in the relative value of financial instruments, including equity, equity-related and debt instruments). Other strategies involve event-driven investments (which focus on event-oriented special situations such as corporate restructurings, bankruptcies, recapitalizations, mergers and acquisitions and legal and regulatory events) as well as convertible bond trading, various types of volatility trading and principal finance (which includes private structured investments in public or private companies).

**Specialist Activities.** Our specialist activities business includes our stock and exchange-traded funds (ETF) specialist and market-making businesses. We engage in specialist and market-making activities on equities exchanges. In the United States, we are one of the leading stock specialists on the NYSE. For ETFs, we are a specialist on the NYSE and a specialist and market maker on the American Stock Exchange.

### ***Principal Investments***

Principal Investments primarily represents net revenues from our corporate and real estate merchant banking investments. To date, these net revenues have been from three primary sources: returns on corporate and real estate investments, our investment in the convertible preferred stock of Sumitomo Mitsui Financial Group, Inc. (SMFG) and overrides. In January 2006, the firm entered into a definitive agreement to invest \$2.58 billion in the Industrial and Commercial Bank of China Limited, with investment funds managed by the firm assuming a substantial portion of the firm's economic interest. The transactions are expected to close by May 2006, subject to receipt of regulatory approvals and other closing conditions.

**Returns on Corporate and Real Estate Investments.** In connection with our merchant banking activities, we invest by making principal investments directly and through funds that we raise and manage. As of November 2005, the aggregate carrying value of our principal investments held directly or through our merchant banking funds, excluding our investment in the convertible preferred stock of SMFG, was approximately \$2.47 billion, comprised of corporate principal investments with an aggregate carrying value of approximately \$1.72 billion and real estate investments with an aggregate carrying value of approximately \$745 million. In addition, as of November 2005, we had outstanding equity capital commitments of up to \$3.54 billion.

**SMFG.** Principal Investments also includes our investment in the convertible preferred stock of SMFG, which we acquired on February 7, 2003. This preferred stock is generally nontransferable, but is freely convertible into SMFG common stock. Restrictions on our ability to hedge or sell one-third of the common stock underlying our investment in SMFG lapsed in February 2005. As of November 2005, we were fully hedged with respect to these unrestricted shares. Under our initial agreement with SMFG, restrictions on our ability to hedge or sell the remaining shares of common stock underlying our investment in SMFG lapse in equal installments on February 7, 2006 and February 7, 2007. In connection with a public offering by SMFG of its common stock, we have separately agreed with SMFG that the restrictions that were to lapse on February 7, 2006 will instead lapse on March 9, 2006. As of November 2005, the carrying value of our investment in the SMFG preferred stock was approximately \$4.06 billion.

**Overrides.** Principal Investments also includes net revenues from the increased share of the income and gains derived from our merchant banking funds when the return on a fund's investments exceeds certain threshold returns (typically referred to as an "override").

## **Asset Management and Securities Services**

Asset Management and Securities Services represented 19% of 2005 net revenues. Our Asset Management business provides investment advisory and financial planning services and offers investment products to a diverse group of institutions and individuals worldwide and primarily generates revenues in the form of management and incentive fees. Securities Services provides prime brokerage services, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals worldwide, and generates revenues primarily in the form of interest rate spreads or fees.

### ***Asset Management***

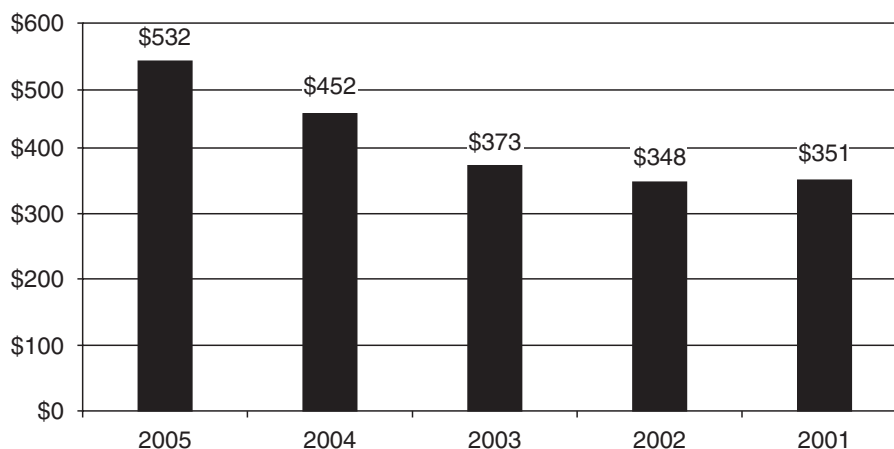
We offer a broad array of investment strategies, advice and planning. We provide asset management services and offer investment products across all major asset classes: money markets, fixed income, currencies, equities and alternative investments (which primarily includes private equity funds, hedge funds, real estate funds, certain currency and asset allocation strategies and other assets allocated to external investment managers). Through our subsidiary, The Ayco Company, L.P. (Ayco), we also provide fee-based financial counseling in the United States.

Assets under management (AUM) typically generate fees as a percentage of asset value. In certain circumstances, we are also entitled to receive asset management incentive fees based on a percentage of a fund's return or when the return on assets under management exceeds specified benchmark returns or other performance targets. Incentive fees are recognized when the performance period ends and they are no longer subject to adjustment. We have numerous incentive fee arrangements, many of which have annual performance periods that end on December 31 and are not subject to adjustment thereafter. For that reason, incentive fees are seasonally weighted each year to our first fiscal quarter. Depending on the level of net revenues in our first fiscal quarter of 2006, these incentive fees may be material to the results of operations in that quarter.

AUM includes our mutual funds, alternative investment funds and separately managed accounts for institutional and individual investors. Alternative investments include our merchant banking funds, which generate revenues as described below under “Management of Merchant Banking Funds.” AUM excludes assets in brokerage accounts, which generate commissions, mark-ups and spreads that are included in our Trading and Principal Investments segment. Increasingly, many of our individual clients’ brokerage accounts pay fees based on the assets in their accounts rather than commissions on transactional activity in the accounts.

The amount of AUM is set forth in the graph below. In the following graph, as well as in the following tables, substantially all assets under management are valued as of November 30.

**Assets Under Management**  
(in billions)



The following table sets forth AUM by asset class:

**Assets Under Management by Asset Class**  
(in billions)

Asset Class	As of November 30		
	2005	2004	2003
Money markets .....	\$101	\$ 90	\$ 89
Fixed income and currency .....	159	139	115
Equity <sup>(1)</sup> .....	158	126	98
Alternative investments <sup>(2)</sup> .....	114	97	71
Total .....	<u>\$532</u>	<u>\$452</u>	<u>\$373</u>

<sup>(1)</sup> Includes both our fundamental equity and our quantitative equity strategies.

<sup>(2)</sup> Primarily includes private equity funds, hedge funds, real estate funds, certain currency and asset allocation strategies and other assets allocated to external investment managers.

**Clients.** Our clients are institutions and individuals, including both high-net-worth and retail investors. We access institutional and high-net-worth clients through both direct and third-party channels and retail clients through third-party channels. Our institutional clients include pension

funds, governmental organizations, corporations, insurance companies, foundations and endowments. In third-party distribution channels, we distribute our mutual funds and separately managed accounts through brokerage firms, banks, insurance companies and other financial intermediaries. Our clients are located worldwide.

The table below sets forth the amount of AUM by distribution channel and client category:

**Assets Under Management by Distribution Channel <sup>(1)</sup>**

(in billions)

	As of November 30		
	2005	2004	2003
<b>Distribution Channel</b>			
• Directly Distributed			
— Institutional .....	\$226	\$183	\$142
— High-net-worth individuals .....	148	130	115
• Third-Party Distributed			
— Institutional, high-net-worth and retail .....	158	139	116
<b>Total</b> .....	<b>\$532</b>	<b>\$452</b>	<b>\$373</b>

<sup>(1)</sup> The primary investment vehicles for these assets under management are separately managed accounts and commingled vehicles, such as mutual funds and private investment funds.

**Management of Merchant Banking Funds.** Goldman Sachs sponsors numerous corporate and real estate private investment funds. Our strategy with respect to these funds generally is to invest opportunistically to build a portfolio of investments that is diversified by industry, product type, geographic region and transaction structure and type. Our corporate investment funds pursue, on a global basis, long-term investments in equity and debt securities in privately negotiated transactions, leveraged buyouts, acquisitions and investments in funds managed by external parties. Our real estate investment funds invest in real estate operating companies, debt and equity interests in real estate assets, and other real estate-related investments. Our clients in private investment funds include pension plans, endowments, charitable institutions and high-net-worth individuals.

Since inception, we have raised \$52.53 billion of committed equity capital in these funds, of which \$37.23 billion relates to our corporate funds and \$15.30 billion relates to our real estate funds. As of November 2005, \$37.30 billion of the committed equity capital was funded and the amount of AUM remaining in these funds after distributions was \$28.85 billion.

Merchant banking activities generate three primary revenue streams. First, we receive a management fee that is generally a percentage of a fund's committed capital, invested capital, total gross acquisition cost or asset value. These annual management fees are included in our Asset Management net revenues. Second, Goldman Sachs, as a substantial investor in some of these funds, is allocated its proportionate share of the funds' unrealized appreciation or depreciation arising from changes in fair value as well as gains and losses upon realization. Third, after a fund has achieved a minimum return for fund investors, we receive an increased share of the fund's income and gains that is a percentage of the income and gains from the fund's investments. The second and third of these revenue streams are included in net revenues of the Principal Investments component of our Trading and Principal Investments segment.

## **Securities Services**

Securities Services provides prime brokerage services, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals worldwide.

**Prime brokerage services.** We offer prime brokerage services to our clients, allowing them the flexibility to trade with most brokers while maintaining a single source for financing and consolidated portfolio reports. Our prime brokerage business provides clearing and custody in 45 markets (with net revenues from clearing and custody included in our Trading and Principal Investments segment), consolidated multi-currency accounting and reporting and offshore fund administration.

**Financing services.** A central element of our prime brokerage business involves providing financing to our clients for their securities trading activities through margin and securities loans that are collateralized by securities, cash or other acceptable collateral.

**Securities lending services.** Securities lending services principally involve the borrowing and lending of securities to cover clients' and Goldman Sachs' short sales and otherwise to make deliveries into the market. In addition, we are an active participant in the broker-to-broker securities lending business and the third-party agency lending business.

## **Global Investment Research**

Global Investment Research provides fundamental research on companies, industries, economies, currencies, commodities and macro strategy research on a worldwide basis.

Global Investment Research employs a team approach that as of November 28, 2005 provided research coverage of approximately 2,250 companies worldwide, over 50 national economies and 25 stock markets. This is accomplished by the following departments:

- The Equity Research Departments provide fundamental analysis, earnings forecasts and investment opinions for equity securities;
- The Credit Research Department provides fundamental analysis, forecasts and investment opinions as to investment-grade and high-yield corporate bonds and credit derivatives;
- The Economic Research Department formulates macroeconomic forecasts for economic activity, foreign exchange and interest rates;
- The Commodities Research Department provides research on the commodity markets; and
- The Strategy Research Department provides equity market forecasts, opinions on both asset and industry sector allocation, equity trading strategies and options research.

Further information regarding research at Goldman Sachs is provided below under “— Regulation — Regulations Applicable in and Outside the United States,” “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K and “Legal Proceedings — Research Independence Matters” in Part I, Item 3 of the Annual Report on Form 10-K.

## **Technology**

Goldman Sachs is committed to the ongoing development, maintenance and use of technology throughout the organization. Our technology initiatives can be broadly categorized into four efforts:

- Enhancing client service through increased connectivity and the provision of value-added, tailored products and services;

- Improving our trading, execution and clearing capabilities;
- Risk management; and
- Overall efficiency, productivity and control.

We have tailored our services to our clients by providing them with electronic access to our products and services. In particular, we provide global electronic trading and information distribution capabilities covering many of our fixed income, currency, commodity, equity and mutual fund products around the world.

Electronic commerce and technology have changed and will continue to change the ways that securities and other financial products are traded, distributed and settled. This creates both opportunities and challenges for our businesses. We remain committed to being at the forefront of technological innovation in the global capital markets.

### **Business Continuity and Information Security**

Business continuity and information security are high priorities for Goldman Sachs. Our Business Continuity Program has been developed to provide reasonable assurance of business continuity in the event of disruptions at the firm's critical facilities and to comply with NYSE and National Association of Securities Dealers, Inc. (NASD) regulatory requirements. The key elements of the program are crisis management, business recovery, systems and data recovery, people recovery facilities and process improvement. In the area of information security, a framework of principles, policies and technology has been developed to protect the information assets of the firm and our clients. Safeguards are applied to maintain the confidentiality, integrity and availability of information resources.

### **Employees**

Management believes that a major strength and principal reason for the success of Goldman Sachs is the quality and dedication of our people and the shared sense of being part of a team. We strive to maintain a work environment that fosters professionalism, excellence, diversity, cooperation among our employees worldwide and high standards of business ethics.

Instilling the Goldman Sachs culture in all employees is a continuous process, in which training plays an important part. All employees are offered the opportunity to participate in education and periodic seminars that we sponsor at various locations throughout the world. Another important part of instilling the Goldman Sachs culture is our employee review process. Employees are reviewed by supervisors, co-workers and employees they supervise in a 360-degree review process that is integral to our team approach.

As of November 2005, we had 22,425 employees (excluding 1,437 employees of Goldman Sachs' property management and loan servicing subsidiaries, for whom the majority of the costs are reimbursed to Goldman Sachs by the investment funds for which these subsidiaries provide services, and 7,143 employees of certain consolidated entities that are held for investment purposes only). Consolidated entities held for investment purposes include entities that are held strictly for capital appreciation, have a defined exit strategy and are engaged in activities that are not closely related to our principal businesses.

### **Competition**

The financial services industry — and all of our businesses — are intensely competitive, and we expect them to remain so. Our competitors are other brokers and dealers, investment banking firms, insurance companies, investment advisers, mutual funds, hedge funds, private equity funds, commercial banks and merchant banks. We compete with some of our competitors globally and with

others on a regional, product or niche basis. Our competition is based on a number of factors, including transaction execution, our products and services, innovation, reputation and price.

We also face intense competition in attracting and retaining qualified employees. Our ability to continue to compete effectively in our businesses will depend upon our ability to attract new employees and retain and motivate our existing employees.

Over time, there has been substantial consolidation and convergence among companies in the financial services industry, due in part to U.S. federal legislation that has expanded the activities permissible for firms affiliated with a U.S. bank. In particular, a number of large commercial banks, insurance companies and other broad-based financial services firms have established or acquired broker-dealers or have merged with other financial institutions. Many of these firms have the ability to offer a wide range of products, from loans, deposit-taking and insurance to brokerage, asset management and investment banking services, which may enhance their competitive position. They also have the ability to support investment banking and securities products with commercial banking, insurance and other financial services revenues in an effort to gain market share, which has resulted in pricing pressure in certain of our businesses and could result in pricing pressure in other of our businesses.

Moreover, we have faced, and expect to continue to face, pressure to retain market share by committing capital to businesses or transactions on terms that offer returns that may not be commensurate with their risks. In particular, corporate clients increasingly seek such commitments (such as agreements to participate in their commercial paper backstop or other revolving loan facilities) from financial services firms in connection with investment banking and other assignments. To respond to this trend, we established the William Street entities, through which we have issued commitments to lend to counterparties, primarily investment-grade clients. With respect to these commitments, we have credit loss protection provided to us by SMFG, which is generally limited to 95% of the first loss we realize on approved loan commitments, subject to a maximum of \$1.00 billion. In addition, subject to the satisfaction of certain conditions, upon our request, SMFG will provide protection for 70% of the second loss on such commitments, subject to a maximum of \$1.13 billion. We also use other financial instruments to hedge certain William Street commitments not covered by SMFG. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of the Annual Report on Form 10-K and Note 6 to our consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for more information regarding the William Street entities and for a description of the credit loss protection provided by SMFG.

Increasingly, in connection with investment banking transactions, we are being called upon to provide capital commitments that do not meet the criteria established for the William Street entities. These commitments are issued through Goldman Sachs Credit Partners L.P. or our other subsidiaries.

The trend toward consolidation and convergence has significantly increased the capital base and geographic reach of some of our competitors. This trend has also hastened the globalization of the securities and other financial services markets. As a result, we have had to commit capital to support our international operations and to execute large global transactions. To take advantage of some of our most significant challenges and opportunities, we will have to compete successfully with financial institutions that are larger and better capitalized and that may have a stronger local presence and longer operating history outside the United States.

We have experienced intense price competition in some of our businesses in recent years. There has been considerable pressure in the pricing of block trades. Also, equity and debt underwriting discounts, as well as trading spreads, have been under pressure for a number of years and the ability to execute trades electronically, through the Internet and through other alternative trading systems, has increased the pressure on trading commissions. It appears that this trend toward electronic and other "low-touch," low-commission trading will continue. We believe that we



will continue to experience competitive pressures in these and other areas in the future as some of our competitors seek to obtain market share by reducing prices.

## **Regulation**

Goldman Sachs, as a participant in the securities and commodity futures and options industries, is subject to extensive regulation in the United States and elsewhere. As a matter of public policy, regulatory bodies in the United States and the rest of the world are charged with safeguarding the integrity of the securities and other financial markets and with protecting the interests of clients participating in those markets. They are not, however, charged with protecting the interests of Goldman Sachs' shareholders or creditors.

Broker-dealers, in particular, are subject to regulations that cover all aspects of the securities business, including sales methods, trade practices, use and safekeeping of clients' funds and securities, capital structure, recordkeeping, the financing of clients' purchases, and the conduct of directors, officers and employees. A number of our affiliates are regulated by investment advisory laws in and outside the United States. Additional legislation, changes in rules promulgated by self-regulatory organizations, or changes in the interpretation or enforcement of existing laws and rules, either in the United States or elsewhere, may directly affect the operations and profitability of Goldman Sachs.

### **Regulation in the United States**

In the United States, the SEC is the federal agency responsible for the administration of the federal securities laws. The SEC has approved an application by Goldman, Sachs & Co. (GS&Co.), our principal broker-dealer in the United States, to calculate net capital requirements using the alternative method available to a broker-dealer that is part of a Consolidated Supervised Entity. As a condition to GS&Co.'s use of the alternative method, The Goldman Sachs Group, Inc. was required to consent to group-wide supervision and examination by the SEC and to report to the SEC consolidated computations of our capital adequacy on an ongoing basis. Consenting to regulation as a Consolidated Supervised Entity is among the measures we have taken to enable us to comply with the requirements of the European Financial Groups Directive described below under "— Regulation Outside the United States."

GS&Co. is registered as a broker-dealer and as an investment adviser with the SEC and as a broker-dealer in all 50 states and the District of Columbia. Self-regulatory organizations, such as the NYSE and NASD, adopt rules that apply to, and examine, broker-dealers such as GS&Co. In addition, state securities and other regulators also have regulatory or oversight authority over GS&Co. Similarly, our businesses are also subject to regulation by various non-U.S. governmental and regulatory bodies and self-regulatory authorities in virtually all countries where we have offices. Goldman Sachs Execution & Clearing, L.P. (GSEC) and two of its subsidiaries are registered U.S. broker-dealers and are regulated by the SEC and NYSE and GSEC is also regulated by the NASD. Goldman Sachs Financial Markets, L.P. is registered with the SEC as an OTC derivatives dealer and conducts certain OTC derivatives businesses.

The commodity futures and commodity options industry in the United States is subject to regulation under the Commodity Exchange Act, as amended. The Commodity Futures Trading Commission (CFTC) is the federal agency charged with the administration of the Commodity Exchange Act and the regulations thereunder. Several of Goldman Sachs' subsidiaries, including GS&Co. and GSEC, are registered with the CFTC and act as futures commission merchants, commodity pool operators or commodity trading advisors and are subject to the Commodity Exchange Act and the regulations thereunder. The rules and regulations of various self-regulatory organizations, such as the Chicago Board of Trade, other futures exchanges and the National Futures Association, also govern the commodity futures and commodity options businesses of these entities.

GS&Co. and GSEC are registered U.S. broker-dealers and futures commission merchants subject to Rule 15c3-1 of the SEC and Rule 1.17 of the CFTC, which specify minimum net capital levels for their registrants, and also require that a significant part of the registrants' assets be kept in relatively liquid form. GS&Co. and GSEC have elected to compute their minimum capital requirements in accordance with the "Alternative Minimum Net Capital Requirement" as permitted under Rule 15c3-1. As of November 2005, GS&Co. and GSEC had net capital in excess of their minimum capital requirements. In addition to its alternative minimum net capital requirements, GS&Co. is also required to hold tentative net capital in excess of \$1 billion and net capital in excess of \$500 million in accordance with the market and credit risk standards of Appendix E of Rule 15c3-1. GS&Co. is required to notify the SEC in the event that its tentative net capital is less than \$5 billion. As of November 2005, GS&Co. had tentative net capital and net capital in excess of both the minimum and the notification requirements. These net capital requirements may have the effect of prohibiting these entities from distributing or withdrawing capital and may require prior notice to the SEC for certain withdrawals of capital. See Note 15 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.

Goldman Sachs has established three limited purpose trust companies with limited powers under state and federal law. They are not permitted to accept deposits or make loans and, as a result, are not considered to be banks for purposes of the Bank Holding Company Act, nor are they insured by the FDIC or subject to the Community Reinvestment Act. These entities and their regulators are: The Goldman Sachs Trust Company, N.A., a national bank with limited trust powers that is regulated by the Office of the Comptroller of the Currency and is a member bank of the Federal Reserve System; The Goldman Sachs Trust Company, a New York limited purpose trust company that is regulated by the New York State Banking Department; and The Goldman Sachs Trust Company of Delaware, a Delaware limited purpose trust company that is regulated by the Office of the Delaware State Bank Commissioner.

Goldman Sachs has established Goldman Sachs Bank USA (GS Bank), a Utah-chartered industrial bank, to extend credit and to take deposits, other than demand deposits. GS Bank is subject to regulation by the FDIC and the Utah Commissioner of Financial Institutions. Because it does not accept demand deposits, GS Bank is not considered to be a bank for purposes of the Bank Holding Company Act. The deposits maintained at GS Bank are insured by the FDIC to the extent provided by law and GS Bank is subject to the requirements of the Community Reinvestment Act.

J. Aron & Company is authorized by the Federal Energy Regulatory Commission (FERC) to sell wholesale physical power at market-based rates. As a FERC-authorized power marketer, J. Aron & Company is subject to regulation under the Federal Power Act and FERC regulations.

In addition, as a result of our interests in electric power generation facilities, we are subject to extensive and evolving energy, environmental and other governmental laws and regulations, as discussed under "Risk Factors — Our power generation interests subject us to the risks associated with owning power generation facilities" in Part I, Item 1A of the Annual Report on Form 10-K.

Our U.S. insurance subsidiaries are subject to state insurance regulation in the states in which they are domiciled and in the other states in which they are licensed.

The effort to combat money laundering and terrorist financing is a priority in governmental policy with respect to financial institutions. The USA PATRIOT Act of 2001 contains anti-money laundering and financial transparency laws and mandates the implementation of various new regulations applicable to broker-dealers and other financial services companies, including standards for verifying client identification at account opening, and obligations to monitor client transactions and report suspicious activities. Through these and other provisions, the USA PATRIOT Act of 2001 seeks to promote the identification of parties that may be involved in terrorism or money laundering. Anti-money laundering laws outside the United States contain some similar provisions. The obligation of financial institutions, including Goldman Sachs, to identify their clients, to watch for and report suspicious transactions, to respond to requests for information by regulatory authorities and law

enforcement agencies, and to share information with other financial institutions, has required the implementation and maintenance of internal practices, procedures and controls that have increased, and may continue to increase, our costs, and any failure with respect to our programs in this area could subject us to substantial liability and regulatory fines.

### **Regulation Outside the United States**

Goldman Sachs is an active participant in the international fixed income and equity markets. Many of our principal subsidiaries that participate in these markets are subject to comprehensive regulations in the United States and elsewhere that include some form of capital adequacy rules and other customer protection rules. Goldman Sachs provides investment services in and from the United Kingdom under the regulation of the Financial Services Authority (FSA). Various Goldman Sachs entities are regulated by the banking and regulatory authorities of the other European countries in which Goldman Sachs operates, including, among others, the Federal Financial Supervisory Authority (BaFin) and the Bundesbank in Germany, the Autorité des Marchés Financiers and Banque de France in France, Banca d'Italia and the Commissione Nazionale per le Società e la Borsa (CONSOB) in Italy and the Swiss Federal Banking Commission. Goldman Sachs entities are also regulated by the European securities, derivatives and commodities exchanges of which they are members. The investment services that are subject to oversight by the FSA and other European regulators are regulated in accordance with European Union directives requiring, among other things, compliance with certain capital adequacy standards, customer protection requirements and conduct of business rules. These standards, requirements and rules are similarly implemented, under the same directives, throughout the European Union and are broadly comparable in scope and purpose to the regulatory capital and customer protection requirements imposed under the SEC and CFTC rules. Some European Union directives also permit local regulation in each jurisdiction, including those in which we operate, to be more restrictive than the requirements of such directives and these local requirements can result in certain competitive disadvantages to Goldman Sachs.

The European Union's European Financial Groups Directive (Directive 2002/87/EC) introduced certain changes to the way financial conglomerates and other financial services organizations operating in Europe are regulated. As a result of these changes, activities that are conducted in otherwise unregulated entities are now subject to certain forms of regulation, including consolidated supervision and capital adequacy requirements. The measures we have taken to comply with the directive include becoming subject to the Consolidated Supervised Entity rules described above under "— Regulation in the United States."

The European Union's European Markets in Financial Instruments Directive (Directive 2004/39/EC) will affect several of our subsidiaries by imposing detailed pan-European requirements in areas such as internal organization (including conflict management), best execution, real-time disclosure of completed transactions in shares, quoting obligations for internalized client orders in shares, transaction reporting to regulators, client documentation and regulation of investment services related to commodity derivatives. The practical consequences of some of these changes on the European markets are still unclear. The European Parliament and the Council of the European Union are currently considering a new directive that would delay the implementation deadline from April 30, 2006 to November 1, 2007.

In addition, the Financial Services Agency, the Tokyo Stock Exchange, the Osaka Securities Exchange, The Tokyo International Financial Futures Exchange, the Japan Securities Dealers Association, the Tokyo Commodity Exchange and the Ministry of Economy, Trade and Industry in Japan, the Securities and Futures Commission in Hong Kong, the Monetary Authority of Singapore and the China Securities Regulatory Commission, among others, regulate various of our subsidiaries in Asia and also have capital standards and other requirements comparable to the rules of the SEC. Certain of our insurance subsidiaries are regulated by the Bermuda Registrar of Companies.

## **Regulations Applicable in and Outside the United States**

The U.S. and non-U.S. government agencies, regulatory bodies and self-regulatory organizations, as well as state securities commissions in the United States, are empowered to conduct administrative proceedings that can result in censure, fine, the issuance of cease and desist orders, or the suspension or expulsion of a broker-dealer or its directors, officers or employees. From time to time, our subsidiaries have been subject to investigations and proceedings, and sanctions have been imposed for infractions of various regulations relating to our activities, none of which has had a material adverse effect on us or our businesses.

Compliance with the capital adequacy and other regulatory requirements of U.S. and non-U.S. regulators could limit those operations of our subsidiaries that require the intensive use of capital, such as underwriting and trading activities, specialist activities and the financing of client account balances, and also could restrict our ability to withdraw capital from our regulated subsidiaries, which in turn could limit our ability to repay debt or to pay dividends on our preferred and common stock.

In 2004, the Basel Committee on Banking Supervision issued the Basel II capital standards, which are designed to promote enhanced risk management practices among large, international financial services firms by aligning regulatory capital requirements more closely with the underlying risks faced by these firms. Under the currently proposed time schedule, Goldman Sachs International would become subject to the Basel II requirements on January 1, 2008. The Consolidated Supervised Entity rules described above under “— Regulation in the United States,” which provide for group-wide supervision, are consistent with Basel II. Complying with these new standards requires us to develop and apply new and advanced measurement techniques to determine our regulatory capital adequacy.

Our specialist businesses are subject to extensive regulation by a number of securities exchanges. The rules of these exchanges generally require our specialists to maintain orderly markets in the securities in which they are specialists. These requirements, in turn, may require us to commit significant amounts of capital to our specialist businesses.

Changes to the rules and regulations governing stock markets and the conduct of participants in those markets, including the NYSE, may impose additional costs on us, adversely affect our customer-driven or specialist businesses or impair the value of our goodwill and identifiable intangible assets relating to those businesses.

The research areas of investment banks have been and remain the subject of regulatory scrutiny. The SEC, NYSE and NASD have adopted rules imposing restrictions on the interaction between equity research analysts and investment banking personnel at member securities firms. Various non-U.S. jurisdictions have imposed both substantive and disclosure-based requirements with respect to research, and continue to consider additional regulation. In addition, we are a party to a settlement with certain federal and state securities regulators and self-regulatory organizations that imposes restrictions on the interaction between research and investment banking departments and requires us to fund the provision of independent research to our clients.

In connection with the research settlement, the firm has also subscribed to a voluntary initiative imposing restrictions on the allocation of shares in initial public offerings to executives and directors of public companies. The FSA in the United Kingdom has imposed requirements on the conduct of the allocation process in equity and fixed income securities offerings (including initial public offerings and secondary distributions). The SEC, NYSE and NASD have proposed rules that would further affect the manner in which securities are distributed and allocated in registered public offerings. We cannot fully predict the practical effect that these new and proposed requirements will have on our business, and the SEC, NYSE, NASD and non-U.S. regulators, such as the FSA, may adopt additional and more stringent rules with respect to offering procedures and the management of conflicts of interest in the future.

Certain of our businesses are subject to compliance with regulations enacted by U.S. federal and state governments, the European Union or other jurisdictions and/or enacted by various regulatory organizations or exchanges relating to the privacy of client information, and any failure to comply with these regulations could expose us to liability and/or reputational damage.

#### **Item 1A. Risk Factors**

We face a variety of risks that are substantial and inherent in our businesses, including market, liquidity, credit, operational, legal and regulatory risks. Our business, by its nature, does not produce predictable earnings. The following are some of the more important factors that could affect our businesses.

#### ***Our businesses may be adversely affected by conditions in the global financial markets and economic conditions generally.***

We have achieved record earnings per common share in each of our last two fiscal years, reflecting a favorable trading environment in FICC, an improvement in the trading environment for Equities and an increase in investment banking activity. An adverse change in these market conditions may adversely affect our results of operations.

Our businesses are materially affected by conditions in the global financial markets and economic conditions generally and these conditions may change suddenly and dramatically. Unfavorable or uncertain economic and market conditions have adversely affected, and may in the future adversely affect, our business and profitability in many ways, including the following:

- We have been operating in a low interest rate market for the past several years. Increasing or high interest rates and/or widening credit spreads, especially if such changes are rapid, may create a less favorable environment for certain of our businesses.
- We have been committing increasing amounts of capital in many of our businesses and generally maintain large trading, specialist and investing positions. Market fluctuations and volatility may adversely affect the value of those positions, including, but not limited to, our interest rate and credit products, currency, commodity and equity positions and our merchant banking investments, or may reduce our willingness to enter into new transactions. From time to time, we have incurred significant trading losses in periods of market turbulence. Conversely, certain of our trading businesses depend on market volatility to provide trading and arbitrage opportunities, and decreases in volatility may reduce these opportunities and adversely affect the results of these businesses.
- Industry-wide declines in the size and number of underwritings and mergers and acquisitions may have an adverse effect on our revenues and, because we may be unable to reduce expenses correspondingly, our profit margins. In particular, because a significant portion of our investment banking revenues are derived from our participation in large transactions, a decrease in the number of large transactions due to uncertain or unfavorable market conditions may adversely affect our investment banking business.
- Pricing and other competitive pressures have continued, even as the volume and number of investment banking transactions have increased. In addition, the trend in the underwriting business toward multiple book runners and co-managers handling transactions, where previously there would have been a single book runner, may adversely affect our business and reduce our revenues.
- Reductions in the level of the equity markets also tend to reduce the value of our clients' portfolios, which in turn may reduce the fees we earn for managing assets. Even in the absence of uncertain or unfavorable economic or market conditions, investment performance by our asset management business below the performance of benchmarks or competitors could result in a decline in assets under management and in the incentive and management fees we receive.

- Concentration of risk increases the potential for significant losses in our market-making, proprietary trading and investing, block trading, merchant banking, underwriting and lending businesses. This risk may increase to the extent we expand our proprietary trading and investing businesses or commit capital to facilitate customer-driven business. For example, large blocks of securities are increasingly being sold in block trades rather than on a marketed basis, which increases the risk that Goldman Sachs may be unable to resell the purchased securities at favorable prices and may incur significant losses as a result. Moreover, because of concentration of risk, we may suffer losses even when economic and market conditions are generally favorable for others in the industry. We also regularly enter into large transactions as part of our trading businesses. The number and size of such transactions may affect our results of operations in a given period.
- The volume of transactions that we execute for our clients and as a specialist or market maker may decline, which would reduce the revenues we receive from commissions and spreads. In addition, competitive pressures and other industry factors, including the increasing use by our clients of low-cost electronic trading, could cause a reduction in commissions and spreads. In our specialist businesses, we are obligated by stock exchange rules to maintain an orderly market, including by purchasing shares in a declining market. This may result in trading losses and an increased need for liquidity. Weakness in global equity markets and the trading of securities in multiple markets and on multiple exchanges could adversely impact our trading businesses and impair the value of our goodwill and identifiable intangible assets. In addition, competitive pressures have been particularly intense in the context of block trades.

***We may incur losses as a result of ineffective risk management processes and strategies.***

We seek to monitor and control our risk exposure through a variety of separate but complementary financial, credit, operational, compliance and legal reporting systems. Our trading risk management process seeks to balance our ability to profit from trading positions with our exposure to potential losses. While we employ a broad and diversified set of risk monitoring and risk mitigation techniques, those techniques and the judgments that accompany their application cannot anticipate every economic and financial outcome or the specifics and timing of such outcomes. Thus, we may, in the course of our activities, incur losses.

For a further discussion of our risk management policies and procedures, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Risk Management” in Part II, Item 7 of the Annual Report on Form 10-K.

***Our liquidity may be adversely affected by an inability to access the debt capital markets or to sell assets.***

Liquidity is essential to our businesses. Our liquidity could be impaired by an inability to access secured and/or unsecured debt markets, an inability to sell assets or unforeseen outflows of cash or collateral. This situation may arise due to circumstances that we may be unable to control, such as a general market disruption or an operational problem that affects third parties or us. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time.

***A reduction in our credit ratings could adversely affect our liquidity and businesses in many ways.***

Our credit ratings are important to our liquidity. A reduction in our credit ratings could adversely affect our liquidity and competitive position, increase our borrowing costs, limit our access to the capital markets or trigger our obligations under certain bilateral provisions in some of our trading and collateralized financing contracts. Under these provisions, counterparties could be permitted to

terminate contracts with Goldman Sachs or require us to post additional collateral. Termination of our trading and collateralized financing contracts could cause us to sustain losses and impair our liquidity by requiring us to find other sources of financing or to make significant cash payments or securities movements.

***An inability of The Goldman Sachs Group, Inc. to access funds from its subsidiaries could adversely affect its ability to meet its obligations.***

The Goldman Sachs Group, Inc. is a holding company and, therefore, depends on dividends, distributions and other payments from its subsidiaries to fund dividend payments and to fund all payments on its obligations, including debt obligations. Many of our subsidiaries, including GS&Co., are subject to laws that authorize regulatory bodies to block or reduce the flow of funds from those subsidiaries to The Goldman Sachs Group, Inc. Regulatory action of that kind could impede access to funds that The Goldman Sachs Group, Inc. needs to make payments on obligations, including debt obligations, or dividend payments. In addition, to the extent that The Goldman Sachs Group, Inc. (or any other entity) holds equity interests in the firm's regulated or unregulated subsidiaries, its rights as an equity holder to the assets of such subsidiaries are subject to the satisfaction of the claims of the creditors of such subsidiaries.

***Our businesses, profitability and liquidity may be adversely affected by a deterioration in the credit quality of, or defaults by, third parties who owe us money, securities or other assets.***

We are exposed to the risk that third parties that owe us money, securities or other assets will not perform their obligations. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. We are also subject to the risk that our rights against third parties may not be enforceable in all circumstances. In addition, a deterioration in the credit quality of third parties whose securities or obligations we hold could result in losses and/or adversely affect our ability to rehypothecate or otherwise use those securities or obligations for liquidity purposes. The amount and duration of our credit exposures have been increasing over the past several years, as has the breadth of the entities to which we have credit exposures. The scope of our lending businesses has also been expanding and includes loans to small and mid-size businesses, which are not traditional Goldman Sachs clients. As a clearing member firm, we finance our client positions and we could be held responsible for the defaults or misconduct of our clients. In addition, we have experienced, due to competitive factors, pressure to extend and price credit at levels that may not always fully compensate us for the risks we take. In particular, corporate clients sometimes seek to require credit commitments from us in connection with investment banking and other assignments. Although we regularly review credit exposures to specific clients and counterparties and to specific industries, countries and regions that we believe may present credit concerns, default risk may arise from events or circumstances that are difficult to detect or foresee. In addition, concerns about, or a default by, one institution could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect Goldman Sachs.

***Mandatory physical settlement of derivative transactions may expose us to losses if we are unable to deliver the underlying security or obligation.***

Like many participants in the derivatives marketplace, we are party to a large number of derivative transactions, including credit derivatives, that require that we deliver to the counterparty the underlying security or obligation in order to receive payment. In a number of cases, we do not hold the underlying security or obligation and may have difficulty obtaining, or be unable to obtain, the underlying security or obligation through the physical settlement of other transactions. As a result, we are subject to the risk that we may not be able to obtain the security or obligation within the required contractual timeframe for delivery. This could cause us to forfeit the payments due to us under these contracts or result in settlement delays with the attendant credit and operational risk as

well as increased costs to the firm. The derivatives industry is working on various proposals to address this issue. A failure of the industry to address this issue could result in an unwillingness of counterparties to enter into certain types of derivative transactions, which could negatively impact our businesses.

***Unconfirmed derivative transactions and unauthorized assignments of derivatives by counterparties may expose us to unexpected risk and potential losses.***

Derivative contracts and other transactions entered into with third parties are not always confirmed by the counterparties on a timely basis. While the transaction remains unconfirmed, we are subject to heightened credit and operational risk and in the event of a default may find it more difficult to enforce the contract. The growth in the derivatives industry, including credit derivatives and other swap transactions, has also exposed us and other industry participants to an increasing incidence of counterparties seeking to unilaterally assign transactions without required prior notice and consent. Although industry participants have taken steps to eliminate this practice and its effects on a going-forward basis, including through the adoption of the 2005 ISDA Novation Protocol, it is not yet clear how effective these efforts will be, and the steps that have been taken by the industry do not resolve the issue for derivative contracts that were previously entered into. Unauthorized assignments could introduce uncertainty as to the status of a transaction, impair our ability to evaluate credit risk and impede trade reconciliations, which could lead to a higher number of failed transactions and collateral call defaults.

***A failure in our operational systems or infrastructure, or those of third parties, could impair our liquidity, disrupt our businesses, damage our reputation and cause losses.***

Shortcomings or failures in our internal processes, people or systems could lead to impairment of our liquidity, financial loss, disruption of our businesses, liability to clients, regulatory intervention or reputational damage. For example, our businesses are highly dependent on our ability to process, on a daily basis, a large number of transactions across numerous and diverse markets in many currencies. The transactions we process have become increasingly complex and often must adhere to client-specific guidelines, as well as legal and regulatory standards. Our financial, accounting, data processing or other operating systems and facilities may fail to operate properly or become disabled as a result of events that are wholly or partially beyond our control, adversely affecting our ability to process these transactions. The inability of our systems to accommodate an increasing volume of transactions could also constrain our ability to expand our businesses.

We also face the risk of operational failure or termination of any of the clearing agents, exchanges, clearing houses or other financial intermediaries we use to facilitate our securities transactions, and as our interconnectivity with our clients grows, we will increasingly face the risk of operational failure with respect to our clients' systems. Any such failure or termination could adversely affect our ability to effect transactions, service our clients and manage our exposure to risk.

Despite the contingency plans and facilities we have in place, our ability to conduct business may be adversely impacted by a disruption in the infrastructure that supports our businesses and the communities in which we are located. This may include a disruption involving electrical, communications, transportation or other services used by Goldman Sachs or third parties with which we conduct business. These disruptions may occur, for example, as a result of events that affect only the buildings of Goldman Sachs or such third parties, or as a result of events with a broader impact on the cities where those buildings are located. Nearly all of our employees in our primary locations, including New York, London, Frankfurt, Hong Kong and Tokyo, work in close proximity to one another, in one or more buildings. If a disruption occurs in one location and our employees in that location are unable to occupy our offices or communicate with or travel to other locations, our ability to service and interact with our clients may suffer and we may not be able to successfully implement contingency plans that depend on communication or travel.



Our operations rely on the secure processing, storage and transmission of confidential and other information in our computer systems and networks. Although we take protective measures and endeavor to modify them as circumstances warrant, our computer systems, software and networks may be vulnerable to unauthorized access, computer viruses or other malicious code and other events that could have a security impact. If one or more of such events occur, this potentially could jeopardize our or our clients' or counterparties' confidential and other information processed and stored in, and transmitted through, our computer systems and networks, or otherwise cause interruptions or malfunctions in our, our clients', our counterparties' or third parties' operations, which could result in significant losses or reputational damage. We may be required to expend significant additional resources to modify our protective measures or to investigate and remediate vulnerabilities or other exposures, and we may be subject to litigation and financial losses that are either not insured against or not fully covered through any insurance maintained by us.

***Conflicts of interest are increasing and a failure to appropriately deal with conflicts of interest could adversely affect our businesses.***

Our reputation is one of our most important assets. As we have expanded the scope of our businesses and our client base, we increasingly have to address potential conflicts of interest, including those relating to our proprietary activities. For example, conflicts may arise between our position as a financial advisor in a merger transaction and a principal investment we hold in one of the parties to the transaction. In addition, hedge funds and private equity funds are an increasingly important portion of our client base, and also compete with us in a number of our businesses. We have extensive procedures and controls that are designed to address conflicts of interest. However, appropriately dealing with conflicts of interest is complex and difficult and our reputation could be damaged if we fail, or appear to fail, to deal appropriately with conflicts of interest.

In addition, the SEC and other federal and state regulators have increased their scrutiny of potential conflicts of interest. For example, in June 2005, the NASD filed with the SEC proposed rules that would require certain disclosures to be contained in fairness opinions, and would mandate specific procedures to be followed by member firms in connection with issuing these opinions. While we have policies and procedures in place that are intended to ensure that any potential conflicts of interest are appropriately addressed, it is possible that potential or perceived conflicts could give rise to litigation or enforcement actions. It is possible that the regulatory scrutiny of, and litigation in connection with, conflicts of interest will make our clients less willing to enter into transactions in which such a conflict may occur, and will adversely affect our businesses.

***Our businesses and those of our clients are subject to extensive and pervasive regulation around the world.***

Goldman Sachs, as a participant in the financial services industry, is subject to extensive regulation in jurisdictions around the world. We face the risk of significant intervention by regulatory authorities in all jurisdictions in which we conduct our businesses. Among other things, we could be fined, prohibited from engaging in some of our business activities or subject to limitations or conditions on our business activities.

New laws or regulations or changes in enforcement of existing laws or regulations applicable to our business or those of our clients may also adversely affect our businesses. For example, the SEC has adopted rules requiring the registration of certain hedge funds advisers under the Investment Advisers Act of 1940, and the SEC or other regulators may seek to further regulate hedge funds in the future. It is possible that these or other future regulatory developments rules may have a significant impact on our trading, prime brokerage and other business relationships with hedge funds, or on the growth of our prime brokerage and securities lending businesses. In addition, under the European Union's Transparency Directive (Directive 2004/109/EC), which is due to be implemented by member states by January 2007, issuers of securities admitted to listing on regulated markets in the European Union may, depending upon the manner of implementation, be required to provide

expanded ongoing financial disclosure, which could have an adverse impact on our ability or the ability of certain of our non-European Union-based clients to maintain the listing of these securities or to conduct securities offerings in Europe. Furthermore, the SEC's Regulation NMS, which was adopted in 2005 and is expected to become effective in 2006, introduces significant changes to the regulation of trading on securities exchanges and marketplaces. While it is too early to predict the impact that Regulation NMS will have, it could result in the imposition of additional compliance costs on our trading businesses and alter the competitive environment in which these businesses function.

***Many of our businesses are operating in an uncertain and difficult regulatory environment.***

Firms in the financial services industry have been operating in a difficult regulatory environment. The industry has experienced increased scrutiny from a variety of regulators, both within and outside the United States. Penalties and fines sought by regulatory authorities have increased substantially over the last several years. This environment has led some of our clients to be less willing to engage in transactions that may carry a risk of increased scrutiny by regulators. In addition, while the firm always strives to fully comply with all legal and regulatory requirements, this regulatory and enforcement environment has created uncertainty with respect to a number of transactions that had historically been entered into by financial services firms, including our firm, and that were generally believed to be permissible and appropriate. This environment has led us and our competitors to modify transaction structures and, in some cases, to limit or cease our execution of some types of transactions.

***Substantial legal liability or significant regulatory action against Goldman Sachs could have material adverse financial effects or cause significant reputational harm to Goldman Sachs, which in turn could seriously harm our business prospects.***

We face significant legal risks in our businesses, and the volume of claims and amount of damages and penalties claimed in litigation and regulatory proceedings against financial institutions remain high.

***The interaction between our equity research analysts and investment banking businesses has been subject to new requirements and litigation.***

As discussed under "Business — Regulation" in Part I, Item 1 of the Annual Report on Form 10-K, the research areas of investment banks have been and remain the subject of regulatory scrutiny that has led to restrictions on the interaction between equity research analysts and investment banking personnel at securities firms. GS&Co. has agreed to a global settlement to resolve investigations into equity research analysts' alleged conflicts of interest pursuant to which GS&Co. has been subject to certain restrictions and undertakings. Certain of these requirements and restrictions have imposed additional costs and limitations on the conduct of our businesses.

***Litigation and regulatory scrutiny of complex, structured financial transactions remain high.***

Regulators, both within and outside the United States, continue to scrutinize complex, structured finance transactions and have brought enforcement actions against a number of financial institutions in connection with such transactions. In some of the enforcement actions, clients of the financial institutions allegedly engaged in accounting, disclosure or other violations of the securities laws, and the financial institutions allegedly facilitated these improprieties by entering into transactions with the clients. We seek to create innovative solutions to address our clients' needs, and we have entered into, and continue to enter into, structured transactions with clients. While we have policies and procedures in place that are intended to ensure that the structured transactions we enter into are appropriately reviewed and comply with applicable laws and regulations, it is possible that certain of these transactions could give rise to litigation or enforcement actions. It is possible that the regulatory scrutiny of, and litigation in connection with, structured finance transactions will make our clients less willing to enter into these transactions, and will adversely affect our business in this area.

***We are subject to regulatory inquiries and investigations into market timing, late trading and other activities involving mutual funds.***

In recent years, there have been industry-wide and other investigations by federal and state authorities concerning market timing, late trading and other activities involving mutual funds and investment advisers. Federal and state authorities have made informational requests regarding trading practices broadly across all of the major fund companies and broker-dealers. Goldman Sachs has received requests for information and has been fully cooperating with those authorities. While we believe that we have in place reasonable measures to detect and deter disruptive and abusive trading practices and comply with applicable legal and regulatory requirements, we cannot predict the course that these inquiries and areas of focus may take or the impact that any new laws or regulations governing mutual funds may have on our businesses.

***Our specialist business is subject to a global settlement and civil actions.***

Regulators have also been conducting investigations into certain trading practices of specialist firms, including our specialist unit. In March 2004, certain NYSE specialist firms, including our specialist unit, agreed to a global settlement with the SEC and NYSE to resolve charges that the firms violated certain federal securities laws and NYSE rules in connection with their activities as NYSE specialists during the years 1999 through 2003. The global settlement involves, among others, restitution and penalties, a censure, cease and desist order and certain undertakings with respect to our specialist unit's systems and procedures. The settlement did not resolve the related civil actions discussed under "Legal Proceedings — Specialist Matters" in Part I, Item 3 of the Annual Report on Form 10-K, or potential regulatory charges against individuals. As a result of this global settlement and any related developments, other investigations or any new laws or regulations governing specialists, our specialist businesses may be adversely affected and the value of our goodwill and identifiable intangible assets related to these businesses may be impaired.

***Employee misconduct is difficult to detect and prevent and may have an adverse effect on our businesses.***

There have been a number of highly publicized cases involving fraud or other misconduct by employees in the financial services industry in recent years, and we run the risk that employee misconduct could occur. It is not always possible to deter or prevent employee misconduct and the precautions we take to prevent and detect this activity may not be effective in all cases.

***Corporate governance and public disclosure requirements may adversely affect our investment banking businesses.***

Financial scandals in recent years have led to insecurity and uncertainty in the financial markets and contributed to declines in capital markets. In response to these scandals, the Sarbanes-Oxley Act of 2002 and the rules of the SEC, NYSE and NASDAQ have necessitated significant changes to corporate governance and public disclosure. These provisions generally apply to companies with securities listed on U.S. securities exchanges, and some provisions apply to non-U.S. issuers with securities traded on U.S. securities exchanges. To the extent that private companies, to avoid becoming subject to these requirements, decide to forgo initial public offerings, our equity underwriting business may be adversely affected and our ability to successfully exit some of our merchant banking investments may be adversely affected. Similarly, the imposition of those provisions on non-U.S. issuers has made these issuers less likely to list their securities in the United States or undertake merger or acquisition transactions that would result in their securities being listed in the United States. These measures may result in less activity by non-U.S. issuers in the United States and, as a result, the U.S. capital markets and our investment banking business may be adversely affected.

The provisions of the Sarbanes-Oxley Act of 2002 and the NYSE and NASDAQ corporate governance rules have imposed significant compliance costs on public companies and have increased the cost of conducting many types of capital market transactions, including securities offerings and acquisition and disposition transactions. In particular, companies that are or are planning to be public are incurring significant expenses in complying with the SEC and accounting standards relating to internal control over financial reporting, and companies that disclose material weaknesses in such controls under the new standards may have some difficulty accessing the capital markets. These factors, in addition to adopted or proposed accounting and disclosure changes, may have an adverse effect on our investment banking business.

***The financial services industry is highly competitive.***

The financial services industry — and all of our businesses — are intensely competitive, and we expect them to remain so. We compete on the basis of a number of factors, including transaction execution, our products and services, innovation, reputation and price. We believe that we will continue to experience pricing pressures in the future as some of our competitors seek to increase market share by reducing prices. Over time, there has been substantial consolidation and convergence among companies in the financial services industry. U.S. federal legislation, which significantly expanded the activities permissible for firms affiliated with a U.S. bank, may accelerate this consolidation and further increase competition. This trend toward consolidation and convergence has significantly increased the capital base and geographic reach of our competitors. This trend has also hastened the globalization of the securities and other financial services markets. As a result, we have had to commit capital to support our international operations and to execute large global transactions.

***The growth of electronic trading and the introduction of new technology may adversely affect our business and may increase competition.***

Technology is fundamental to our business and our industry. The growth of electronic trading and the introduction of new technologies is changing our businesses and presenting us with new challenges. Securities, futures and options transactions are increasingly occurring electronically, both on our own systems and through other alternative trading systems, and it appears that the trend toward alternative trading systems will continue and probably accelerate. Some of these alternative trading systems compete with our trading businesses, including our specialist businesses, and we may experience continued competitive pressures in these and other areas. In addition, the increased use by our clients of low-cost electronic trading systems and direct electronic access to trading markets could cause a reduction in commissions and spreads.

***Our businesses may be adversely affected if we are unable to hire and retain qualified employees.***

Our performance is largely dependent on the talents and efforts of highly skilled individuals. Competition in the financial services industry for qualified employees is intense. In addition, competition with businesses outside the financial services industry, such as hedge funds, private equity funds and venture capital funds, for the most highly skilled individuals has been intense. Our continued ability to compete effectively in our businesses depends on our ability to attract new employees and to retain and motivate our existing employees. Changes in the business environment may cause us to move employees from one business to another or to reduce the number of employees in certain of our businesses; this may cause temporary disruptions as our employees adapt to new roles and may reduce our ability to take advantage of improvements in the business environment. In addition, current and future laws (including laws relating to immigration and outsourcing) may restrict our ability to move responsibilities or personnel from one jurisdiction to another. This may impact our ability to take advantage of business opportunities or potential efficiencies.

***We may be unable to fully integrate future acquisitions or joint ventures into our businesses and systems.***

We expect to grow in part through acquisitions and joint ventures. We have undertaken joint ventures, including in Australia and China, and may enter into additional joint ventures from time to time. To the extent we make acquisitions or enter into combinations or joint ventures, we face numerous risks and uncertainties combining or integrating the relevant businesses and systems, including the need to combine accounting and data processing systems and management controls and to integrate relationships with clients and business partners. In the case of joint ventures, we are subject to additional risks and uncertainties in that we may be dependent upon, and subject to liability, losses or reputational damage relating to, systems, controls and personnel that are not under our control. In addition, conflicts or disagreements between us and our joint venture partners may negatively impact the benefits to be achieved by the joint venture.

***Our power generation interests subject us to the risks associated with owning power generation facilities.***

We own interests in electric power generation facilities. As a result of these interests and future investments that we may make in the power generation industry, we face numerous risks and uncertainties.

We are a relatively new entrant to the electric power generation industry. As a result, we have less expertise and experience in owning and managing power generation facilities than many of our competitors and we may not be successful in owning and managing our power generation facilities. In particular, in the future we may be unable to attract and retain qualified independent contractors and employees.

The operation of power generation facilities may be disrupted. The continued operation of power generation facilities involves many risks, including the breakdown or failure of power generation equipment, transmission lines or other equipment or processes, and performance below expected levels of output or efficiency. Although our power generation facilities contain various redundancies and backup mechanisms, a breakdown or failure may prevent the affected facilities from performing under applicable power sales agreements or otherwise operating as planned.

The power companies in which we own interests are parties to numerous agreements with third parties, including lenders, suppliers of raw materials, service providers and utilities, which impose significant obligations on the power companies. Some of these obligations may be difficult for the power companies to satisfy, depending, in some cases, on market conditions and other factors. For example, during 2004 we faced difficulties in obtaining and retaining adequate coal inventories at many power generation facilities due to supply constraints on coal and a rationing of services by railroads. Any failure by the power company to satisfy or obtain waivers of their obligations under any of these agreements could cause them to lose the benefits provided by the agreements, subject them to litigation, result in reputational harm or impair their operations or financial results. In addition, the operations or financial results of these power companies could be adversely affected by the failure of any of these third parties to perform their contractual obligations to the power companies.

We are subject to extensive and evolving energy, environmental and other governmental laws and regulations. In the past several years, intensified scrutiny of the energy market by federal, state and local authorities and the public has resulted in increased regulatory and legal proceedings involving energy companies, including those engaged in electric power generation. We may incur substantial costs in complying with current or future laws and regulations relating to power generation, and our overall businesses and reputation may be adversely affected by legal and regulatory proceedings arising out of our power generation business. In particular, our power generation activities are subject to extensive federal, state and local environmental laws and regulations relating to, among others, air quality, water quality, waste management, natural

resources, site remediation and health and safety. Compliance with these environmental laws and regulations may require us to commit significant capital toward environmental monitoring, installation of pollution control equipment, payment of emission fees, and application for, and holding of, permits and licenses at our power generation facilities. In certain instances, compliance with these laws and regulations may require us to cease or curtail operations of one or more of the power generation facilities in which we have an ownership interest.

Our failure to comply with environmental laws or regulations or the associated requirements and provisions of the permits and licenses may result in the assessment of severe civil or criminal liabilities against us and the need to expend substantial additional capital for compliance or remediation. In particular, the Environmental Protection Agency recently issued the Clean Air Interstate Rule, which imposes additional controls over power generation facility emissions and requires significant reductions of emissions by 2010 (for Phase I) and 2015 (for Phase II). We are assessing the impact of this legislation, but it may require us to make significant capital expenditures on our power generation facilities. Other legislation, rules and requirements may be imposed on our power generation activities by the federal government or one or more states. Insurance covering some of these environmental risks with respect to our power generation facilities may not be available, and the proceeds from insurance recovery, if any, may not be adequate to cover our liabilities in a particular incident. As a result, our financial condition and results of operations may be adversely affected by an environmental or a health and safety problem at one of our facilities.

We are subject to the risk of unforeseen or catastrophic events, including terrorist attacks, natural disasters or other hostile or catastrophic events. We may not have insurance against these risks, and, in cases in which we do have insurance, the insurance proceeds may be inadequate to cover our losses.

***In conducting our businesses around the world, we are subject to political, economic, legal, operational and other risks that are inherent in operating in many countries.***

In conducting our businesses and maintaining and supporting our global operations, we are subject to risks of possible nationalization, expropriation, price controls, capital controls, exchange controls and other restrictive governmental actions, as well as the outbreak of hostilities. In many countries, the laws and regulations applicable to the securities and financial services industries are uncertain and evolving, and it may be difficult for us to determine the exact requirements of local laws in every market. Our inability to remain in compliance with local laws in a particular foreign market could have a significant and negative effect not only on our businesses in that market but also on our reputation generally. We are also subject to the enhanced risk that transactions we structure might not be legally enforceable in all cases.

The emergence of a pandemic or other widespread health emergency, or concerns over the possibility of such an emergency, could create economic and financial disruptions in emerging markets and other areas throughout the world, and could lead to operational difficulties (including travel limitations) that could impair our ability to manage our businesses around the world. In addition, unforeseen or catastrophic events, including health emergencies, terrorist attacks or natural disasters, could expose our insurance subsidiaries to significant losses.

Our businesses and operations are increasingly involved in emerging markets throughout the world, and we expect this trend to continue. In the last several years, various emerging market countries have experienced severe economic and financial disruptions, including significant devaluations of their currencies, capital and currency exchange controls, and low or negative growth rates in their economies. The possible effects of any of these conditions include an adverse impact on our businesses and increased volatility in financial markets generally.

## **Item 1B. Unresolved Staff Comments**

There are no material unresolved written comments that were received from the SEC staff 180 days or more before the end of our fiscal year relating to our periodic or current reports under the Securities Exchange Act of 1934.

## **Item 2. Properties**

Our principal executive offices are located at 85 Broad Street, New York, New York, and comprise approximately 1 million rentable square feet of leased space, pursuant to a lease agreement expiring in June 2008 (with options to renew for up to 20 additional years). We also occupy over 680,000 rentable square feet at One New York Plaza under lease agreements expiring primarily in 2009 (with options to renew for up to five additional years), and we lease space at various other locations in the New York metropolitan area. In total, we lease approximately 4.0 million rentable square feet in the New York metropolitan area.

In September 2004, we completed the construction of a new office building at 30 Hudson Street in Jersey City, New Jersey. This building, which includes approximately 1.6 million gross square feet of office space, was constructed to complement our offices in lower Manhattan. The building is being occupied in phases.

In August 2005, we leased from Battery Park City Authority a parcel of land in lower Manhattan, pursuant to a ground lease. We currently intend to construct a 2.1 million gross-square-foot office building on the site that will serve as our world headquarters. Under the lease, Battery Park City Authority holds title to all improvements, including the office building, subject to Goldman Sachs' right of exclusive possession and use for the 64-year duration of the lease.

Under the terms of the ground lease, we are required to make a lump-sum ground rent payment of \$161 million by June 2007 and to make additional periodic payments during the term of the lease. We are obligated under the ground lease to construct the office building by 2011 (subject to extensions in the case of force majeure) in accordance with certain pre-approved design standards. Construction began on the building in November 2005, and we expect initial occupancy of the building by 2009. The building is projected to cost between \$2.3 billion and \$2.5 billion, including acquisition, development, fitout and furnishings, financing and other related costs.

We are receiving a number of benefits from the City and State of New York based on our agreement to construct our world headquarters in lower Manhattan. These benefits are subject to recoupment or recapture if we do not proceed in accordance with our agreements with the City and State of New York.

We have additional offices in the United States and elsewhere in the Americas. Together, these offices comprise approximately 2.1 million rentable square feet of leased space.

We also have offices in Europe, Asia and Africa. In Europe, we have offices that total approximately 2.0 million rentable square feet, which includes our office space in Frankfurt, approximately 55,000 rentable square feet of which we expect to exit by 2006. Our European headquarters is located in London at Peterborough Court, pursuant to a lease expiring in 2026. In total, we lease approximately 1.6 million rentable square feet in London through various leases, relating to various properties.

In Asia, we have offices that total approximately 900,000 rentable square feet. Our headquarters in this region are in Tokyo, at the Roppongi Hills Mori Tower, and in Hong Kong, at the Cheung Kong Center. In Tokyo, we currently lease approximately 290,000 rentable square feet through a lease that will expire in 2018. In Hong Kong, we currently lease approximately 220,000 rentable square feet under lease agreements, the majority of which will expire in fiscal 2012.

Our occupancy expenses include costs associated with office space held in excess of our current requirements. This excess space, the cost of which is charged to earnings as incurred, is

being held for potential growth or to replace currently occupied space that we may exit in the future. We regularly evaluate our current and future space capacity in relation to current and projected staffing levels. We may incur exit costs in 2006 and thereafter to the extent we (i) reduce our space capacity or (ii) commit to, or occupy, new properties in the locations in which we operate and, consequently, dispose of existing space that had been held for potential growth. These exit costs may be material to our results of operations in a given period.

### **Item 3. Legal Proceedings**

We are involved in a number of judicial, regulatory and arbitration proceedings (including those described below) concerning matters arising in connection with the conduct of our businesses. We believe, based on currently available information, that the results of such proceedings, in the aggregate, will not have a material adverse effect on our financial condition, but might be material to our operating results for any particular period, depending, in part, upon the operating results for such period. Given the range of litigation and investigations presently under way, our litigation expenses can be expected to remain high.

#### *IPO Process Matters*

The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. are among the numerous financial services companies that have been named as defendants in a variety of lawsuits alleging improprieties in the process by which those companies participated in the underwriting of public offerings in recent years.

Certain purported class actions have been brought in the U.S. District Court for the Southern District of New York, beginning on November 3, 1998, by purchasers of securities in public offerings as well as certain purported issuers of such offerings, that allege that the defendants have conspired to fix at 7% the discount that underwriting syndicates receive from issuers of shares in certain offerings in violation of federal antitrust laws. On March 15, 1999, the purchaser plaintiffs filed a consolidated amended complaint seeking treble damages as well as injunctive relief. The defendants moved to dismiss the consolidated amended complaint on April 29, 1999. On February 9, 2001, the federal district court granted with prejudice the defendants' motion to dismiss the claims asserted by the purchasers of securities on the ground that they lacked antitrust standing. The plaintiffs in those actions appealed, and by a decision dated December 13, 2002, the U.S. Court of Appeals for the Second Circuit vacated the dismissal on the ground that the lower court had engaged in improper fact-finding on the motion and remanded for consideration of other potential bases for dismissal. On September 28, 2001, the defendants moved to dismiss the complaints filed by the issuer plaintiffs on statute of limitations grounds. On September 25, 2002, the federal district court denied the underwriter defendants' motion to dismiss. On March 26, 2003, defendants moved to dismiss the claims asserted by both the issuers and the purchasers of securities on preemption grounds, but the motion was denied on June 27, 2003. On June 24, 2003, defendants filed a motion to dismiss the claims asserted by the purchasers of securities on standing grounds, and on February 24, 2004, the district court granted the motion to dismiss as to the purchasers' damages claims. Plaintiffs in both actions moved for class certification on September 16, 2004 and for summary judgment on November 16, 2005.

Goldman, Sachs & Co. is one of numerous financial services firms that have been named as defendants in purported class actions filed beginning on March 9, 2001 in the U.S. District Court for the Southern District of New York by purchasers of securities in public offerings, who claim that the defendants engaged in a conspiracy to "tie" allocations in certain offerings to higher customer brokerage commission rates as well as purchase orders in the aftermarket, in violation of federal antitrust laws. The plaintiffs filed a consolidated amended complaint on January 2, 2002 seeking treble damages as well as injunctive relief. The defendants moved to dismiss the consolidated amended complaint on May 24, 2002, and the motion was granted by a decision dated November 3, 2003. Plaintiffs appealed, and by a decision dated September 28, 2005, the U.S. Court



of Appeals for the Second Circuit reversed and remanded the action. Goldman, Sachs & Co. has also, together with other underwriters in certain offerings as well as the issuers and certain of their officers and directors, been named as a defendant in a number of related lawsuits alleging, among other things, that the prospectuses for the offerings violated the federal securities laws by failing to disclose the existence of the alleged “tying” arrangements. On July 1, 2002, the underwriter defendants moved to dismiss those complaints. By an opinion and order dated February 19, 2003, the federal district court denied the motion to dismiss in all material respects relating to the underwriter defendants. By a decision dated October 13, 2004, the federal district court generally granted plaintiffs’ motion for class certification in six “focus cases.” The underwriter defendants petitioned the U.S. Court of Appeals for the Second Circuit to review that certification decision on an interlocutory basis, and the appellate court agreed to review the decision by order dated June 30, 2005. On June 10, 2004, plaintiffs entered into a definitive settlement agreement with respect to their claims against the issuer defendants and the issuers’ present or former officers and directors named in the lawsuits. On June 14, 2004, those parties jointly moved for approval of the proposed settlement, and the district court granted preliminary approval by a decision dated February 15, 2005.

Goldman, Sachs & Co. has been named as a defendant in an action commenced on May 15, 2002 in New York Supreme Court, New York County, by an official committee of unsecured creditors on behalf of eToys, Inc., alleging that the firm intentionally underpriced eToys, Inc.’s initial public offering. The action seeks, among other things, consequential damages resulting from the alleged lower amount of offering proceeds. On August 1, 2002, Goldman, Sachs & Co. moved to dismiss the complaint. On May 2, 2003, the court granted Goldman, Sachs & Co.’s motion to dismiss as to five of the claims; plaintiff appealed from the dismissal of the five claims, and Goldman, Sachs & Co. appealed from the denial of its motion as to the remaining claim. By a decision dated May 20, 2004, the New York Appellate Division, First Department affirmed in part and reversed in part the lower court’s ruling on the firm’s motion to dismiss, permitting all claims to proceed except the claim for fraud, as to which the appellate court granted leave to replead. The Appellate Division granted leave to appeal, and by a decision dated June 7, 2005, the New York Court of Appeals affirmed in part and reversed in part the Appellate Division’s decision, dismissing claims for breach of contract, professional malpractice and unjust enrichment, but permitting claims for breach of fiduciary duty and fraud to continue. On remand to the lower court, Goldman, Sachs & Co. moved to dismiss the claims that survived the appeal or, in the alternative, for summary judgment.

The Goldman Sachs Group, Inc. and certain of its affiliates have, together with various underwriters in certain offerings, received subpoenas and requests for documents and information from various governmental agencies and self-regulatory organizations in connection with investigations relating to the public offering process. Goldman Sachs has cooperated with the investigations. On January 25, 2005, in connection with an investigation by the SEC of certain allocation practices employed by Goldman, Sachs & Co. and other firms, the SEC announced a settlement pursuant to which Goldman, Sachs & Co., without admitting or denying the allegations, (i) consented to the entry of an order permanently enjoining Goldman, Sachs & Co. from violating Rule 101 of Regulation M of the Securities Exchange Act of 1934, by inducing or attempting to induce customers receiving IPO allocations to buy additional shares in the aftermarket; and (ii) agreed to pay a penalty of \$40 million. In connection with effectuation of the settlement, the SEC filed a civil action against Goldman, Sachs & Co. in the U.S. District Court for the Southern District of New York on January 25, 2005, and the district court entered a final judgment on February 7, 2005 approving the settlement and granting the permanent injunctive relief.

#### *Stock Options Litigation*

Hull Trading Co. L.L.C. and Spear, Leeds & Kellogg, L.P. (now known as Goldman Sachs Execution & Clearing, L.P.), affiliates of The Goldman Sachs Group, Inc., are among the numerous

market makers in listed equity options that have been named as defendants, together with five national securities exchanges, in a purported class action brought in the U.S. District Court for the Southern District of New York on behalf of persons who purchased or sold listed equity options. The consolidated class action complaint, filed on October 4, 1999 (which consolidated certain previously pending actions and added Hull Trading Co. L.L.C. and other market makers as defendants), generally alleges that the defendants engaged in a conspiracy to preclude the multiple listing of certain equity options on the exchanges and seeks treble damages under the antitrust laws as well as injunctive relief. Certain of the parties, including Hull Trading Co. L.L.C. and Spear, Leeds & Kellogg, L.P., have entered into a stipulation of settlement, subject to court approval, which originally required Hull Trading Co. L.L.C. to pay an aggregate of \$2.48 million and Spear, Leeds & Kellogg, L.P. an aggregate of \$19.59 million. On February 14, 2001, the federal district court granted the motion of certain non-settling defendants for summary judgment. By a decision dated April 24, 2001, the district court ruled that in light of that order granting summary judgment, the court lacked jurisdiction to entertain the proposed settlement. Plaintiffs appealed, and by a decision dated January 9, 2003, the U.S. Court of Appeals for the Second Circuit affirmed the grant of summary judgment, but held that the decision did not divest the lower court of jurisdiction to entertain the proposed settlement, and remanded for further proceedings. By an Order dated March 17, 2003, the U.S. Court of Appeals denied plaintiffs' motion for rehearing or rehearing en banc of the Court's January 9, 2003 decision. On October 26, 2005, certain defendants, including Spear, Leeds & Kellogg, L.P. and Hull Trading Co. L.L.C., reached an agreement to modify and restate the original settlement agreement, reducing the overall settlement payments by certain market maker defendants by approximately 25% of the original amounts. The modified settlement remains subject to court approval.

#### *Iridium Securities Litigation*

Goldman, Sachs & Co. has been named as a defendant in two purported class action lawsuits commenced, beginning on May 26, 1999, in the U.S. District Court for the District of Columbia brought on behalf of purchasers of Class A common stock of Iridium World Communications, Ltd. in a January 1999 underwritten secondary offering of 7,500,000 shares of Class A common stock at a price of \$33.50 per share, as well as in the secondary market. The defendants in the actions include Iridium, certain of its officers and directors, Motorola, Inc. (an investor in Iridium) and the lead underwriters in the offering, including Goldman, Sachs & Co. The complaints in both actions allege violations of the disclosure requirements of the federal securities laws and seek compensatory and/or rescissory damages. On May 13, 2002, plaintiffs filed a consolidated amended complaint alleging substantively identical claims as the original complaints. On July 15, 2002, the defendants moved to dismiss the consolidated amended complaint, and by a decision dated August 31, 2004, the motion was denied. On September 30, 2005, the underwriter defendants moved for summary judgment. On April 15, 2005, plaintiffs moved for class certification, and the district court granted the motion, certifying two subclasses, by a decision dated January 9, 2006. Goldman, Sachs & Co. underwrote 996,500 shares of common stock and Goldman Sachs International underwrote 320,625 shares of common stock for a total offering price of approximately \$44 million.

On August 13, 1999, Iridium World Communications, Ltd. filed for protection under the U.S. bankruptcy laws.

#### *World Online Litigation*

Several lawsuits have been commenced in the Netherlands courts based on alleged misstatements and omissions relating to the initial public offering of World Online in March 2000. Goldman Sachs and ABN AMRO Rothschild served as joint global coordinators of the approximately €2.9 billion offering. Goldman Sachs International underwrote 20,268,846 shares and Goldman, Sachs & Co. underwrote 6,756,282 shares for a total offering price of approximately €1.16 billion.

On September 11, 2000, several Dutch World Online shareholders as well as a Dutch entity purporting to represent the interests of certain World Online shareholders commenced a proceeding in Amsterdam District Court against "ABN AMRO Bank N.V., also acting under the name of ABN AMRO Rothschild," alleging misrepresentations and omissions relating to the initial public offering of World Online. The lawsuit seeks, among other things, the return of the purchase price of the shares purchased by the plaintiffs or unspecified damages. By a decision dated May 7, 2003, the court held that the claims failed and dismissed the complaint. The plaintiffs appealed, and by a decision dated October 7, 2004, the Amsterdam Court of Appeal affirmed dismissal of the complaint.

In March 2001, a Dutch shareholders association initiated legal proceedings in Amsterdam District Court in connection with the World Online offering. Goldman Sachs International is named as a defendant in the writ served on its Dutch attorneys on March 14, 2001. The amount of damages sought is not specified in the writ. Goldman Sachs International filed its Statement of Defense on January 16, 2002 and a rejoinder on January 14, 2003. By a decision dated December 17, 2003, the court rejected the claims against Goldman Sachs International, but found World Online liable in an amount to be determined. On March 12, 2004, the Dutch shareholders association appealed from the dismissal of their claims against Goldman Sachs International.

#### *Owens Corning Bondholder Litigation*

Goldman, Sachs & Co. has been named as a defendant in a purported class action filed on April 27, 2001 in the U.S. District Court for the District of Massachusetts arising from a 1998 offering by Owens Corning of two series of its notes. The defendants include certain of Owens Corning's officers and directors and the underwriters for the offering (including Goldman, Sachs & Co., which was the lead manager in the offering). The offering included a total of \$550 million principal amount of notes, of which Goldman, Sachs & Co. underwrote \$275 million.

The lawsuit, brought by certain institutional purchasers of the notes, alleges that the prospectus issued in connection with the offering was false and misleading in violation of the disclosure requirements of the federal securities laws. The plaintiffs are seeking, among other things, unspecified damages. The underwriter defendants moved to dismiss the complaint on November 14, 2001. By a decision dated August 26, 2002, the federal district court denied the underwriter defendants' motion to dismiss, and by a decision dated March 9, 2004, granted plaintiffs' motion for class certification. On November 4, 2005, the underwriter defendants reached an agreement in principle to settle all claims against them for an aggregate payment of \$8.25 million, of which Goldman, Sachs & Co. will contribute approximately \$2.5 million. The settlement remains subject to, among other things, documentation and court approval.

On October 5, 2000, Owens Corning filed for protection under the U.S. bankruptcy laws.

#### *Research Independence Matters*

The Goldman Sachs Group, Inc. and its affiliates, together with other financial services firms, have received requests for information from various governmental agencies and self-regulatory organizations in connection with their review of research independence issues. Goldman Sachs has cooperated with the requests.

On April 28, 2003, a final global settlement relating to investment research analysts' alleged conflicts of interest and involving various of the leading securities firms operating in the United States, including Goldman, Sachs & Co., was announced. In that connection, without admitting or denying the allegations, findings or conclusions by various federal and state regulators, Goldman Sachs entered into consents, agreements and other definitive documentation with the SEC, the NYSE, the NASD and the Utah Division of Securities, to resolve their investigations of Goldman, Sachs & Co. relating to those matters. Pursuant to the final arrangements, Goldman, Sachs & Co.

agreed, among other things, to (i) pay an aggregate of \$25 million as penalties, (ii) pay an aggregate of \$25 million as disgorgement of commissions and other monies, (iii) contribute an aggregate of \$50 million over five years to provide independent third-party research to clients, (iv) contribute an aggregate of \$10 million over five years for investor education, (v) adopt various additional policies, systems, procedures and other safeguards to ensure further the integrity of Goldman, Sachs & Co. investment research and (vi) be permanently restrained and enjoined from violating certain rules of the NYSE and the NASD relating to investment research activities. In connection with the global settlement, Goldman, Sachs & Co. and other firms also subscribed to a voluntary initiative imposing restrictions on the allocation of shares in initial public offerings to executives and directors of public companies. In connection with effectuation of the global settlement, in a civil action brought by the SEC in the U.S. District Court for the Southern District of New York against the settling firms, including Goldman, Sachs & Co., on October 31, 2003, the court entered a final judgment imposing the permanent restraint and injunction. In addition, Goldman, Sachs & Co. has entered into settlement stipulations with all 50 states and certain U.S. territories in connection with the global settlement. Current or future civil lawsuits implicating investment research analysts' conflicts of interest were not settled as part of the global settlement. The global settlement also did not resolve potential charges involving individual employees, including supervisors.

Goldman, Sachs & Co. is one of several investment firms that have been named as defendants in substantively identical purported class actions filed in the U.S. District Court for the Southern District of New York alleging violations of the federal securities laws in connection with research coverage of certain issuers and seeking compensatory damages. In one such action, relating to coverage of RSL Communications, Inc. commenced on July 5, 2003, Goldman, Sachs & Co. moved to dismiss the complaint on January 13, 2004, and the motion was denied by a decision dated May 21, 2004. On November 9, 2004, plaintiffs moved for class certification, and the district court granted the motion by a decision dated August 15, 2005. Defendants petitioned the U.S. Court of Appeals for the Second Circuit to review that certification decision on an interlocutory basis and, by an order dated December 22, 2005, the appellate court denied the petition in part and otherwise held the petition in abeyance for consideration by the panel assigned to review the certification decision in the action described under "IPO Process Matters" above. Goldman, Sachs & Co. is also a defendant in several actions relating to research coverage of Exodus Communications, Inc. that commenced beginning in May 2003. The actions were consolidated, and on March 15, 2004, Goldman, Sachs & Co. moved to dismiss.

A purported shareholder derivative action was filed in New York Supreme Court, New York County on June 13, 2003 against The Goldman Sachs Group, Inc. and its board of directors, which, as amended, alleges that the directors breached their fiduciary duties in connection with the firm's research as well as the firm's IPO allocations practices. An amended complaint was filed on March 3, 2004, which was further amended on June 14, 2005.

The Goldman Sachs Group, Inc., Goldman, Sachs & Co. and Henry M. Paulson, Jr. have been named as defendants in a purported class action filed originally on July 18, 2003 in the U.S. District Court for the District of Nevada on behalf of purchasers of The Goldman Sachs Group, Inc. stock from July 1, 1999 through May 7, 2002. The complaint alleges that defendants breached their fiduciary duties and violated the federal securities laws in connection with the firm's research activities. The complaint seeks, among other things, unspecified compensatory damages and/or rescission. The action was transferred on consent to the U.S. District Court for the Southern District of New York, defendants moved to dismiss the amended complaint on August 30, 2004, and the district court granted the motion with leave to amend by order dated February 17, 2005. Plaintiffs filed a second amended complaint on February 25, 2005, and defendants filed a motion to dismiss on March 24, 2005.

### *Enron Litigation Matters*

Goldman Sachs affiliates are defendants in certain actions arising relating to Enron Corp., which filed for protection under the U.S. bankruptcy laws on December 2, 2001.

Goldman, Sachs & Co. and co-managing underwriters have been named as defendants in certain purported securities class and individual actions commenced beginning on December 14, 2001 in the U.S. District Court for the Southern District of Texas and California Superior Court brought by purchasers of \$222,500,000 of Exchangeable Notes of Enron Corp. in August 1999. The notes were mandatorily exchangeable in 2002 into shares of Enron Oil & Gas Company held by Enron Corp. or their cash equivalent. The complaints also name as defendants The Goldman Sachs Group, Inc. as well as certain past and present officers and directors of Enron Corp. and the company's outside accounting firm. The complaints generally allege violations of the disclosure requirements of the federal securities laws and/or state law, and seek compensatory damages. Goldman, Sachs & Co. underwrote \$111,250,000 principal amount of the notes. The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. moved to dismiss the class action complaint in the Texas federal court on March 15, 2004, and by a decision dated December 5, 2005, the motion was granted as to The Goldman Sachs Group, Inc. but denied as to Goldman, Sachs & Co. Plaintiffs in various consolidated actions relating to Enron entered into a settlement with Banc of America Securities LLC on July 2, 2004 and with Citigroup, Inc. on June 10, 2005, including with respect to claims relating to the Exchangeable Notes offering, as to which affiliates of those settling defendants were two of the three underwriters (together with Goldman, Sachs & Co.). The settling parties have yet to announce what portion of the settlement will apply to the Exchangeable Notes offering.

Several funds which allegedly sustained investment losses of approximately \$125 million in connection with secondary market purchases of the Exchangeable Notes as well as Zero Coupon Convertible Notes of Enron Corp. commenced an action in the U.S. District Court for the Southern District of New York on January 16, 2002. As amended, the lawsuit names as defendants the underwriters of the August 1999 offering, the company's outside accounting firm, various former officers and directors of Enron Corp., as well as other financial services firms, and alleges violations of the disclosure requirements of the federal securities laws, fraud and misrepresentation. By an Order dated June 24, 2002, the Judicial Panel on Multidistrict Litigation entered an order transferring that action to the Texas federal district court for purposes of coordinated or consolidated pretrial proceedings with other matters relating to Enron Corp. On March 20, 2002, Goldman, Sachs & Co. moved to dismiss the complaint. By a decision dated December 10, 2003, the motion was granted in part and denied in part. Goldman, Sachs & Co. sought clarification and reconsideration of the decision, and on June 13, 2005, the federal district court granted Goldman, Sachs & Co.'s motion for reconsideration and provided for further briefing on Goldman, Sachs & Co.'s motion to dismiss.

The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. have been named as defendants in two substantively identical purported class actions filed on June 5, 2003 in Oregon Circuit Court, Multnomah County, on behalf of former shareholders of Portland General Corporation. The complaints generally allege that defendants breached their fiduciary duties in connection with Portland General's 1997 merger with Enron Corp., in respect of which Goldman, Sachs & Co. acted as financial advisor to Portland General. The defendants also include Arthur Andersen, LLP, Andersen-U.S., and certain former officers and directors of Portland General. The complaints seek unspecified compensatory damages. In July 2003, defendants removed the actions to the U.S. District Court for the District of Oregon, and the actions were transferred by the Judicial Panel on Multidistrict Litigation to the U.S. District Court for the Southern District of Texas for coordinated proceedings with other actions relating to Enron Corp. On February 25, 2004, The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. moved to dismiss the action, and on August 5, 2004, the federal district court granted the motion to dismiss and denied plaintiffs' motion to remand the actions to state court. On October 14, 2004, plaintiffs moved for reconsideration, and on November 10, 2004, the motion was denied.

Goldman, Sachs & Co. is among numerous defendants in two substantively identical actions filed in the U.S. Bankruptcy Court for the Southern District of New York beginning in November 2003 seeking to recover as fraudulent transfers and/or preferences payments made by Enron Corp. in repurchasing its commercial paper shortly before its bankruptcy filing. Goldman, Sachs & Co., which had acted as a commercial paper dealer for Enron Corp., resold to Enron Corp. approximately \$30 million of commercial paper as principal, and as an agent facilitated Enron Corp.'s repurchase of additional commercial paper from various customers who have also been named as defendants. Goldman, Sachs & Co. moved to dismiss the complaints on February 19, 2004, but the bankruptcy court denied the motion as well as similar motions by other defendants by a decision dated June 15, 2005. On August 1, 2005, various defendants including Goldman, Sachs & Co. petitioned to have the denial of their motion to dismiss reviewed by the U.S. District Court for the Southern District of New York.

#### *Exodus Securities Litigation*

By an amended complaint dated July 11, 2002, Goldman, Sachs & Co. and the other lead underwriters for the February 2001 offering of 13,000,000 shares of common stock and \$575,000,000 of 5<sup>1</sup>/<sub>4</sub>% convertible subordinated notes of Exodus Communications, Inc. were added as defendants in a purported class action pending in the U.S. District Court for the Northern District of California. The complaint, which also names as defendants certain officers and directors of Exodus Communications, Inc., alleges violations of the disclosure requirements of the federal securities laws and seeks compensatory damages. On October 23, 2002, the underwriter defendants moved to dismiss the complaint. By a decision dated August 19, 2003, the district court granted the defendants' motion to dismiss with leave to replead, and the plaintiffs filed a third amended complaint on January 15, 2004. On March 12, 2004, the underwriter defendants moved to dismiss the third amended complaint, and by a decision dated August 5, 2005, the district court denied the motion. The underwriter defendants moved for reconsideration and clarification on August 30, 2005, but the motion was denied by an order dated September 12, 2005. Goldman, Sachs & Co. underwrote 5,200,000 shares of common stock for a total offering price of approximately \$96,200,000, and \$230,000,000 principal amount of the notes.

On September 26, 2001, Exodus Communications, Inc. filed for protection under the U.S. bankruptcy laws.

#### *Montana Power Litigation*

Goldman, Sachs & Co. and The Goldman Sachs Group, Inc. have been named as defendants in a purported class action commenced originally on October 1, 2001 in Montana District Court, Second Judicial District on behalf of former shareholders of Montana Power Company. The complaint generally alleges that Montana Power Company violated Montana law by failing to procure shareholder approval of certain corporate strategies and transactions, that the company's board breached its fiduciary duties in pursuing those strategies and transactions, and that Goldman, Sachs & Co. aided and abetted the board's breaches and rendered negligent advice in its role as financial advisor to the company. The complaint seeks, among other things, compensatory damages. In addition to Goldman, Sachs & Co. and The Goldman Sachs Group, Inc., the defendants include Montana Power Company, certain of its officers and directors, an outside law firm for the Montana Power Company, and certain companies that purchased assets from Montana Power Company and its affiliates. The Montana state court denied motions to dismiss by a decision dated August 1, 2002. On July 18, 2003, following the bankruptcies of certain defendants in the action, defendants removed the action to federal court, the U.S. District Court for the District of Montana, Butte Division.

On October 26, 2004, a creditors committee of Touch America Holdings, Inc. brought an action against Goldman, Sachs & Co., The Goldman Sachs Group, Inc., and a former outside law firm for Montana Power Company in Montana District Court, Second Judicial District. The complaint asserts that Touch America Holdings, Inc. is the successor to Montana Power Corporation and alleges

substantially the same claims as in the purported class action. Defendants removed the action to federal court on November 19, 2004. On January 14, 2005, defendants moved to dismiss the complaint, but the motion was denied by a decision dated June 10, 2005.

#### *WorldCom Bondholders Litigation*

Goldman, Sachs & Co. and other underwriters of WorldCom, Inc. bonds have been named as defendants in certain purported securities class and individual actions commenced beginning on July 19, 2002 alleging that the offering materials issued in connection with certain securities offerings were false and misleading. Certain of the lawsuits (some of which were originally filed in various state courts and removed to federal court) have been transferred by order of the Judicial Panel on Multidistrict Litigation to the U.S. District Court for the Southern District of New York. Goldman, Sachs & Co. underwrote \$75,000,000 principal amount out of a total principal amount of \$5,000,000,000 of notes in a May 24, 2000 offering. Among the defendants in these actions in addition to the underwriters are certain of WorldCom, Inc.'s former officers and/or directors, and/or WorldCom, Inc.'s former outside accounting firm. Each of these actions seeks, among other things, compensatory damages. The district court denied the underwriter defendants' motion to dismiss by a decision dated May 19, 2003 and granted plaintiffs' motion for class certification by an order dated October 24, 2003. On August 20, 2004, the underwriter defendants moved for summary judgment and plaintiffs cross-moved for partial summary judgment as to liability. By a decision dated December 15, 2004, the district court granted in part and denied in part the motions. All defendants, including Goldman, Sachs & Co., have since entered into agreements to settle the class action claims, with Goldman, Sachs & Co. contributing approximately \$12.5 million, and the settlement was approved by the district court by a decision dated September 21, 2005, but several class members have appealed from certain aspects of the approval. That settlement did not resolve claims brought by certain investors who opted out of the class. On June 22, October 27 and December 28, 2005, respectively, the underwriter defendants in certain of the remaining individual actions agreed to settle certain of these actions, and Goldman, Sachs & Co. contributed approximately \$1.94 million toward those settlements.

On July 21, 2002, WorldCom, Inc. filed for protection under the U.S. bankruptcy laws.

#### *Global Crossing and Asia Global Crossing Securities Litigation*

Goldman, Sachs & Co. has been named as a defendant in a consolidated class action lawsuit in the U.S. District Court for the Southern District of New York relating to various securities offerings by Global Crossing, Ltd. and Asia Global Crossing Ltd. in which Goldman, Sachs & Co. acted as an underwriter. The claims had originally been asserted in separate actions, reflected in an amended complaint filed on January 28, 2003 as to Global Crossing, Ltd. and in a complaint filed on November 8, 2002 as to Asia Global Crossing Ltd., but the claims were consolidated into a single amended complaint on August 11, 2003, which was further amended on March 22, 2004 (including to drop The Goldman Sachs Group, Inc. as a defendant). The consolidated action includes claims relating to Global Crossing, Ltd.'s concurrent April 2000 offerings of 43 million shares of common stock at \$33 per share and 4.6 million shares of 6<sup>3</sup>/<sub>4</sub>% cumulative preferred stock at \$250 per share, as well as Asia Global Crossing Ltd.'s October 2000 initial public offering of 68,500,000 shares of common stock at a price of \$7 per share. Goldman, Sachs & Co. acted as a co-lead underwriter of both Global Crossing, Ltd. offerings, underwriting 12.9 million shares of common stock and 1,840,000 shares of convertible preferred stock for a total offering price of approximately \$886 million. Goldman, Sachs & Co. underwrote 20,670,000 shares of common stock in the Asia Global Crossing Ltd. offering for a total offering price of approximately \$145 million. The claims assert violations of the disclosure requirements of the federal securities laws as to such offerings and seek compensatory and/or rescissory damages. In addition to the lead and other underwriters in the offerings, the defendants as to such claims originally included certain officers and directors of

Global Crossing, Ltd. and Asia Global Crossing Ltd. as well as the companies' former outside auditors.

On April 21, 2003, the underwriter defendants as to the Global Crossing, Ltd. offerings moved to dismiss the claims relating to such offerings; the motion was denied in significant part by a decision dated December 18, 2003. On July 23, 2004, the underwriter defendants as to the Asia Global Crossing Ltd. offering moved to dismiss the claims relating to that offering. On March 1, 2005, plaintiffs entered into a definitive settlement agreement with Citigroup, Inc. and certain related parties, including as to claims asserted against such parties in respect of the various offerings in which Goldman, Sachs & Co. participated. The settlement, pursuant to which the Citigroup defendants have agreed to pay \$75 million, does not resolve claims against the other members of the underwriting syndicates, including Goldman, Sachs & Co. The various officer and director defendants as well as the former auditors separately entered into settlement agreements.

Global Crossing, Ltd. filed for protection under the U.S. bankruptcy laws on January 28, 2002, and Asia Global Crossing Ltd. filed for such protection on November 17, 2002.

#### *Adelphia Communications Fraudulent Conveyance Litigations*

Goldman, Sachs & Co. is among numerous entities named as defendants in two adversary proceedings commenced in the U.S. Bankruptcy Court for the Southern District of New York, one on July 6, 2003 by a creditors committee, and the second on or about July 31, 2003 by an equity committee of Adelphia Communications, Inc. The nearly identical complaints seek, among other things, to recover, as fraudulent conveyances, payments made allegedly by Adelphia Communications, Inc. and its affiliates to certain brokerage firms, including approximately \$62.9 million allegedly paid to Goldman, Sachs & Co., in respect of margin calls made in the ordinary course of business on accounts owned by members of the family that formerly controlled Adelphia Communications, Inc.

#### *Specialist Matters*

Spear, Leeds & Kellogg Specialists LLC (SLKS) and certain affiliates have received requests for information from various governmental agencies and self-regulatory organizations as part of an industry-wide investigation relating to activities of floor specialists in recent years. Goldman Sachs has cooperated with the requests.

On March 30, 2004, a final global settlement with the SEC and the NYSE was announced covering certain activities during the years 1999 through 2003 of certain specialist firms on the NYSE, including SLKS. Without admitting or denying the allegations, SLKS and the other specialist firms entered into settlements to resolve these SEC and NYSE investigations of the firms with respect to those activities. The SLKS settlement involves, among other things, (i) findings by the SEC and the NYSE that SLKS violated certain federal securities laws and NYSE rules, and in some cases failed to supervise certain individual specialists, in connection with trades that allegedly disadvantaged customer orders, (ii) a cease and desist order against SLKS, (iii) a censure of SLKS, (iv) SLKS' agreement to pay an aggregate of \$45.3 million in disgorgement and a penalty to be used to compensate customers, (v) certain undertakings with respect to SLKS' systems and procedures, and (vi) SLKS' retention of an independent consultant to review and evaluate certain of SLKS' compliance systems, policies and procedures. Comparable findings were made and sanctions imposed in the settlements with other specialist firms. The settlement did not resolve the related private civil actions against SLKS and other firms or regulatory investigations involving individuals.

SLKS, Spear, Leeds & Kellogg, L.P. and The Goldman Sachs Group, Inc. are among numerous defendants named in purported class actions brought beginning in October 2003 on behalf of investors in the U.S. District Court for the Southern District of New York alleging violations



of the federal securities laws and state common law in connection with NYSE floor specialist activities. The actions seek unspecified compensatory damages, restitution and disgorgement on behalf of purchasers and sellers of unspecified securities between October 17, 1998 and October 15, 2003. Plaintiffs filed a consolidated amended complaint on September 16, 2004, defendants moved to dismiss the amended complaint on November 16, 2004, and the motion was granted in part and denied in part by a decision dated December 13, 2005.

#### *Treasury Matters*

On September 4, 2003, the SEC announced that Goldman, Sachs & Co. had settled an administrative proceeding arising from certain trading in U.S. Treasury bonds over an approximately eight-minute period after Goldman, Sachs & Co. received an October 31, 2001 telephone call from a Washington, D.C.-based political consultant concerning a forthcoming Treasury refunding announcement. The administrative complaint alleged that Goldman, Sachs & Co. (i) violated Section 15(c)(1) and Rule 15c1-2 of the Securities Exchange Act of 1934 as a result of the trading and (ii) violated Section 15(f) of the Securities Exchange Act of 1934 by failing to maintain policies and procedures specifically addressed to the possible misuse of information obtained by consultants from confidential government sources. Without admitting or denying the allegations, Goldman, Sachs & Co. consented to the entry of an order that, among other things, (i) censured Goldman, Sachs & Co.; (ii) directed Goldman, Sachs & Co. to cease and desist from committing or causing any violations of Section 15(c)(1)(A) and (C) and 15(f) of, and Rule 15c1-2 under, the Securities Exchange Act of 1934; (iii) ordered Goldman, Sachs & Co. to pay disgorgement and prejudgment interest in the amount of \$1,742,642, and a civil monetary penalty of \$5 million; and (iv) directed Goldman, Sachs & Co. to conduct a review of its policies and procedures and adopt, implement and maintain policies and procedures consistent with the order and that review. Goldman, Sachs & Co. also undertook to pay \$2,562,740 in disgorgement and interest relating to certain trading in U.S. Treasury bond futures during the same eight-minute period.

Goldman, Sachs & Co. has been named as a defendant in a purported class action filed on March 10, 2004 in the U.S. District Court for the Northern District of Illinois on behalf of holders of short positions in 30-year U.S. Treasury futures and options on the morning of October 31, 2001. The complaint alleges that the firm purchased 30-year bonds and futures prior to the Treasury's refunding announcement that morning based on non-public information about that announcement, and that such purchases increased the costs of covering such short positions. The complaint also names as defendants the Washington, D.C.-based political consultant who allegedly was the source of the information, a former Goldman, Sachs & Co. economist who allegedly received the information, and another company and one of its employees who also allegedly received and traded on the information prior to its public announcement. The complaint alleges violations of the federal commodities and antitrust laws, as well as Illinois statutory and common law, and seeks, among other things, unspecified damages including treble damages under the antitrust laws. On June 28, 2004, Goldman, Sachs & Co. moved to dismiss the complaint, and by a decision dated March 28, 2005, the district court dismissed the antitrust and Illinois state law claims but permitted the federal commodities law claims to proceed.

#### *Mutual Fund Matters*

Goldman, Sachs & Co. and certain mutual fund affiliates have received subpoenas and requests for information from various governmental agencies and self-regulatory organizations including the SEC as part of the industry-wide investigation relating to the practices of mutual funds and their customers. Goldman, Sachs & Co. and its affiliates have cooperated with such requests.

The Goldman Sachs Group, Inc., Goldman, Sachs & Co. and various asset management affiliates and employees have been named as defendants in several putative consolidated class and derivative actions commenced in the U.S. District Court for the Southern District of New York beginning in April 2004 by purported shareholders of certain Goldman Sachs mutual funds. The consolidated complaint also names as nominal defendants certain of the Goldman Sachs family of mutual funds. The cases are brought on behalf of all persons or entities that held shares in these mutual funds between April 2, 1999 and January 9, 2004, and allege violations of the Investment Company Act of 1940, the Investment Advisers Act of 1940 and common law breaches of fiduciary duty. The complaint alleges, among other things, that Goldman Sachs charged the mutual funds improper Rule 12b-1 fees, paid excessive brokerage commissions and made other undisclosed payments to brokers in exchange for selling shares of the mutual funds, and made untrue statements of material fact in registration statements and reports filed pursuant to the Investment Company Act. The complaint further alleges that the funds' trustees, officers and directors breached their fiduciary duties by, among other things, failing to prevent such violations. The complaint seeks compensatory and punitive damages; rescission of the funds' investment advisory agreements with Goldman Sachs and recovery of fees paid; an accounting of all fund-related fees, commissions and other payments; restitution of all unlawfully or discriminatorily-obtained fees and charges; and costs and expenses incurred in connection with these lawsuits. Defendants moved to dismiss the complaint on May 2, 2005, and the motion was granted by a Memorandum and Order dated January 13, 2006.

#### *Refco Securities Litigation*

Goldman, Sachs & Co. and the other lead underwriters for the August 2005 initial public offering of 26,500,000 shares of common stock of Refco Inc. are among the defendants in various putative class actions commenced beginning in October 2005 by Refco Inc. investors and derivative actions filed on behalf of Refco Inc. in response to certain publicly reported events that culminated in the October 17, 2005 filing by Refco Inc. and certain affiliates for protection under U.S. bankruptcy laws. The actions are pending in the U.S. District Court for the Southern District of New York. The putative class actions allege violations of the disclosure requirements of the federal securities laws and seek compensatory damages, while the derivative complaints allege that Refco Inc.'s board breached its fiduciary duties and that the underwriters aided and abetted that breach. In addition to the underwriters, the actions name as defendants Refco Inc. and certain of its affiliates, certain officers and directors of Refco Inc., Thomas H. Lee Partners, L.P. (which held a majority of Refco Inc.'s equity through certain funds it manages) and Grant Thornton (Refco Inc.'s outside auditor). Goldman, Sachs & Co. underwrote 5,639,200 shares of common stock at a price of \$22 per share for a total offering price of approximately \$124 million.

Goldman, Sachs & Co. and the other lead underwriters for Refco Inc.'s initial public offering are also among the defendants in a putative class action filed in January 2006 on behalf of customers that held securities custodied with certain Refco Inc. affiliates. The complaint alleges that the defendants violated federal securities laws by publishing financial statements of Refco Inc., including in the initial public offering prospectus, that were false and misleading and that misled such customers with respect to custodying their securities.

A purported shareholder derivative action was filed in the U.S. District Court for the Southern District of New York on November 2, 2005 on behalf of The Goldman Sachs Group, Inc. against certain of its officers and directors. The complaint alleges that the individual defendants breached their fiduciary duties by failing to ensure that adequate due diligence was conducted in connection with the Refco Inc. initial public offering. On October 17, 2005, Refco Inc. filed for protection under the U.S. bankruptcy laws.

Goldman, Sachs & Co. has, together with other underwriters of the Refco Inc. initial public offering, received requests for information from various governmental agencies and self-regulatory organizations. Goldman, Sachs & Co. is cooperating with those requests.

**Item 4. Submission of Matters to a Vote of Security Holders**

There were no matters submitted to a vote of security holders during the fourth quarter of our fiscal year ended November 25, 2005.

## **EXECUTIVE OFFICERS OF THE GOLDMAN SACHS GROUP, INC.**

Set forth below are the name, age, present title, principal occupation and certain biographical information for our executive officers as of February 1, 2006, all of whom have been appointed by and serve at the pleasure of our board of directors.

### **Henry M. Paulson, Jr., 59**

Mr. Paulson has been our Chairman and Chief Executive Officer since May 1999, and a director since August 1998. He was Co-Chairman and Chief Executive Officer or Co-Chief Executive Officer of The Goldman Sachs Group, L.P., our predecessor, from June 1998 to May 1999, and served as Chief Operating Officer from December 1994 to June 1998. Mr. Paulson is not on the board of any public company other than Goldman Sachs. He is currently the Chairman of the Financial Services Forum. He is affiliated with certain non-profit organizations, including as a member of the Board of Directors of Catalyst. He also serves on the Advisory Board of the Tsinghua University School of Economics and Management. He is Chairman of the Board of Directors of The Nature Conservancy, Co-Chairman of the Asia/Pacific Council of The Nature Conservancy and Chairman Emeritus of The Peregrine Fund, Inc.

### **Lloyd C. Blankfein, 51**

Mr. Blankfein has been our President and Chief Operating Officer since January 2004, and a director since April 2003. Prior to that, from April 2002 until January 2004, he was a Vice Chairman of Goldman Sachs, with management responsibility for the Fixed Income, Currency and Commodities Division (FICC) and the Equities Division. Prior to becoming a Vice Chairman, he had served as Co-Head of FICC since its formation in 1997. From 1994 to 1997, he headed or co-headed the Currency and Commodities Division. Mr. Blankfein is not on the board of any public company other than Goldman Sachs. He is affiliated with certain non-profit organizations, including as a member of the Harvard University Committee on University Resources, as a trustee of the New York Historical Society, as an overseer of the Weill Medical College of Cornell University, as a director of the Partnership for New York City and as a director of The Robin Hood Foundation.

### **Alan M. Cohen, 55**

Mr. Cohen has been an Executive Vice President of Goldman Sachs and our Global Head of Compliance since February 2004. From 1991 until January 2004, he was a partner in the law firm of O'Melveny & Myers LLP. Mr. Cohen is also affiliated with the Chelsea Piers Scholarship Fund, a non-profit organization.

### **Edward C. Forst, 45**

Mr. Forst has been an Executive Vice President of Goldman Sachs and our Chief Administrative Officer since February 2004. Prior to that, he was our Chief of Staff for FICC from November 2003 to February 2004 (after having served in that position earlier from July 2000 to March 2002), our Chief of Staff for the Equities Division from August 2003 to February 2004, and Co-Head of Global Credit Markets in FICC from March 2002 to August 2003. Prior to July 2000, Mr. Forst served as Co-Head of our Global Bank Debt business. Mr. Forst serves as Chairman of the Board of Directors of The Bond Market Association. He also serves as a trustee of the Woods Hole Oceanographic Institution, a non-profit organization, and as co-chairman of the Harvard University Committee on Student Excellence and Opportunity.

**Kevin W. Kennedy, 57**

Mr. Kennedy has been our Executive Vice President — Human Capital Management since December 2001. From 1999 until 2001, he served as a member of the Executive Office. From 1994 to 1999, he served as Head of the Americas Group, in the Investment Banking Division, and, from 1988 to 1994, as Head of Corporate Finance. Mr. Kennedy is a life trustee and a former Chairman of the Board of Hamilton College, a Managing Director and Secretary and Treasurer of the Board of the Metropolitan Opera, a trustee of the New York Public Library, a member of the Board of Directors of the Wallace Foundation and an honorary trustee of the Chewonki Foundation.

**Suzanne M. Nora Johnson, 48**

Ms. Nora Johnson has been a Vice Chairman of Goldman Sachs since November 2004. She has served as chairman of the Global Markets Institute since April 2004 and has headed our Global Investment Research Division since February 2002. Ms. Nora Johnson served as head of our global healthcare business in the Investment Banking Division from 1994 to 2002. She also serves on the boards of The Goldman Sachs Foundation, the Carnegie Institution of Washington, the University of Southern California, RAND Health, Technoserve, Children Now and Women's World Banking, and is a trustee of The Brookings Institution and The Council for Excellence in Government.

**Gregory K. Palm, 57**

Mr. Palm has been an Executive Vice President of Goldman Sachs since May 1999, and our General Counsel and Head or Co-Head of the Legal Department since May 1992.

**Esta E. Stecher, 48**

Ms. Stecher has been an Executive Vice President of Goldman Sachs and our General Counsel and Co-Head of the Legal Department since December 2000. From 1994 to 2000, she was Head of the firm's Tax Department, over which she continues to have senior oversight responsibility. She is also a trustee of Columbia University and a member of the Board of Directors of the Securities Industry Association.

**David A. Viniar, 50**

Mr. Viniar has been an Executive Vice President of Goldman Sachs and our Chief Financial Officer since May 1999. He has been the Head of Operations, Technology and Finance Division since December 2002. He was Head of the Finance Division and Co-Head of Credit Risk Management and Advisory and Firmwide Risk from December 2001 to December 2002. Mr. Viniar was Co-Head of Operations, Finance and Resources from March 1999 to December 2001. He was Chief Financial Officer of The Goldman Sachs Group, L.P. from March 1999 to May 1999. From July 1998 until March 1999, he was Deputy Chief Financial Officer and from 1994 until July 1998, he was Head of Finance, with responsibility for Controllers and Treasury. From 1992 to 1994, he was Head of Treasury and prior to that was in the Structured Finance Department of Investment Banking. He also serves on the Board of Trustees of Union College.

## PART II

### **Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

The principal market on which our common stock is traded is the NYSE. Information relating to the high and low sales prices per share of our common stock, as reported by the Consolidated Tape Association, for each full quarterly period during fiscal 2004 and 2005 is set forth under the heading "Supplemental Financial Information — Common Stock Price Range" in Part II, Item 8 of the Annual Report on Form 10-K. As of January 30, 2006, there were 6,159 holders of record of our common stock.

During fiscal 2004 and 2005, dividends of \$0.25 per share of common stock were declared on December 17, 2003, March 22, 2004, June 21, 2004, September 20, 2004, December 15, 2004, March 16, 2005, June 15, 2005 and September 19, 2005. The holders of our common stock share proportionately on a per share basis in all dividends and other distributions on common stock declared by our board of directors.

The declaration of dividends by Goldman Sachs is subject to the discretion of our board of directors. Our board of directors will take into account such matters as general business conditions, our financial results, capital requirements, contractual, legal and regulatory restrictions on the payment of dividends by us to our shareholders or by our subsidiaries to us, the effect on our debt ratings and such other factors as our board of directors may deem relevant. See "Business — Regulation" in Part I, Item 1 of the Annual Report on Form 10-K for a discussion of potential regulatory limitations on our receipt of funds from our regulated subsidiaries.

The table below sets forth the information with respect to purchases made by or on behalf of The Goldman Sachs Group, Inc. or any “affiliated purchaser” (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934), of our common stock during the fourth quarter of our fiscal year ended November 25, 2005.

<u>Period</u>	<u>Total Number of Shares Purchased</u> <sup>(2)</sup>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u> <sup>(3)</sup>	<u>Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs</u> <sup>(3)</sup>
Month #1 (August 27, 2005 to September 30, 2005) . . . .	4,745,300	\$119.48	4,745,300	58,426,179
Month #2 (October 1, 2005 to October 28, 2005) . . . . .	13,184,100	\$119.22	13,184,100	45,242,079
Month #3 (October 29, 2005 to November 25, 2005) . . . . .	<u>2,528,700</u>	\$128.65	<u>2,528,700</u>	42,713,379
Total <sup>(1)</sup> . . . . .	<u>20,458,100</u>	\$120.45	<u>20,458,100</u>	

<sup>(1)</sup> Goldman Sachs did not repurchase shares of its common stock as part of the repurchase program during a self-imposed “black-out” period from the last two weeks of the fiscal quarter through the date of the earnings release for the quarter.

<sup>(2)</sup> No shares were purchased other than through our publicly announced repurchase program during the fourth quarter of our fiscal year ended November 25, 2005.

<sup>(3)</sup> On March 21, 2000, we announced that our board of directors had approved a repurchase program, pursuant to which up to 15 million shares of our common stock may be repurchased. This repurchase program was increased by an aggregate of 160 million shares by resolutions of our board of directors adopted on June 18, 2001, March 18, 2002, November 20, 2002, January 30, 2004, January 25, 2005 and September 16, 2005. The repurchase program is intended to help maintain our total shareholders’ equity at appropriate levels and to substantially offset increases in share count over time resulting from employee equity-based compensation. The repurchase program has been effected primarily through regular open-market purchases, and is influenced by, among other factors, the level of our common shareholders’ equity, our overall capital position, employee equity awards granted and exercises of employee stock options, the prevailing market price of our common stock and general market conditions. The total remaining authorization under the repurchase program was 29,495,079 shares as of January 30, 2006. The repurchase program has no set expiration or termination date.

Information relating to compensation plans under which equity securities of the Registrant are authorized for issuance is set forth in Part III, Item 12 of the Annual Report on Form 10-K.

**Item 6. Selected Financial Data**

The Selected Financial Data table is set forth under Part II, Item 8 of the Annual Report on Form 10-K.

**Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

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## Introduction

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, financial institutions, governments and high-net-worth individuals.

Our activities are divided into three segments:

- **Investment Banking.** We provide a broad range of investment banking services to a diverse group of corporations, financial institutions, governments and individuals.
- **Trading and Principal Investments.** We facilitate client transactions with a diverse group of corporations, financial institutions, governments and individuals and take proprietary positions through market making in, trading of and investing in fixed income and equity products, currencies, commodities and derivatives on such products. In addition, we engage in specialist and market-making activities on equities and options exchanges and we clear client transactions on major stock, options and futures exchanges worldwide. In connection with our merchant banking and other investing activities, we make principal investments directly and through funds that we raise and manage.
- **Asset Management and Securities Services.** We provide investment advisory and financial planning services and offer investment products across all major asset classes to a diverse group of institutions and individuals worldwide, and provide prime brokerage services, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals worldwide.

Unless specifically stated otherwise, all references to 2005, 2004 and 2003 refer to our fiscal years ended, or the dates, as the context requires, November 25, 2005, November 26, 2004 and November 28, 2003, respectively.

When we use the terms “Goldman Sachs,” “we,” “us” and “our,” we mean The Goldman Sachs Group, Inc. (Group Inc.), a Delaware corporation, and its consolidated subsidiaries. References herein to the Annual Report on Form 10-K are to our Annual Report on Form 10-K for the fiscal year ended November 25, 2005.

In this discussion, we have included statements that may constitute “forward-looking statements” within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are not historical facts but instead represent only our beliefs regarding future events, many of which, by their nature, are inherently uncertain and beyond our control. These statements relate to our future plans and objectives, among other things. By identifying these statements for you in this manner, we are alerting you to the possibility that our actual results may differ, possibly materially, from the results indicated in these forward-looking statements. Important factors, among others, that could cause our results to differ, possibly materially, from those indicated in the forward-looking statements are discussed below under “— Certain Risk Factors That May Affect Our Business” as well as “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K and “Cautionary Statement Pursuant to the Private Securities Litigation Reform Act of 1995” in Part I, Item 1 of the Annual Report on Form 10-K.

## Executive Overview

Our diluted earnings per common share were \$11.21 for 2005, a 26% increase compared with 2004. Return on average tangible common shareholders' equity was 27.6% <sup>(1)</sup> and return on average common shareholders' equity was 21.8%. Our results in 2005 reflected strong growth in net revenues from Trading and Principal Investments and Asset Management and Securities Services as well as higher net revenues in Investment Banking. The increase in Trading and Principal Investments reflected significantly higher net revenues in Fixed Income, Currency and Commodities (FICC), as all major businesses performed well. During 2005, FICC operated in an environment generally characterized by strong customer-driven activity, tight, but volatile, credit spreads, higher energy prices and a flatter yield curve. Net revenues in Equities also improved significantly compared with the prior year, reflecting strong performance across the business. Equities operated in an environment characterized by generally higher equity prices, improved customer-driven activity and continued low levels of market volatility. Net revenues in our Principal Investments business also increased significantly, primarily reflecting a gain on our investment in the convertible preferred stock of Sumitomo Mitsui Financial Group, Inc. (SMFG) as well as gains from real estate principal investments. The strong net revenue growth in Asset Management and Securities Services primarily reflected higher assets under management and higher customer balances in Securities Services. The increase in Investment Banking net revenues was due to significantly higher net revenues in debt underwriting and improved results in Financial Advisory, primarily reflecting an increase in industry-wide corporate activity, partially offset by lower net revenues in equity underwriting. Our investment banking backlog at the end of 2005 was significantly higher than at the end of 2004. <sup>(2)</sup>

Our operating results for 2005 reflected generally favorable market conditions and strong customer-driven activity levels. We continued to see favorable trading and investing opportunities for our clients and ourselves, particularly during the second half of our fiscal year. Consequently, during the second half of 2005 we increased our market risk, particularly in equities and interest rate products, to capitalize on these opportunities. Net revenues in our Equities and FICC businesses surpassed previous peak levels. Our Investment Banking net revenues reflected our best performance in four years as corporate activity continued to recover, particularly in announced and completed mergers and acquisitions and debt underwriting, although competitive pressures remained. We also continued to focus on managing our capital base, with the goal of optimizing our returns while, at the same time, growing our businesses. During 2005, we repurchased 63.7 million shares of our stock at a cost of \$7.11 billion. With respect to the regulatory environment, financial services firms continued to be under intense scrutiny, with the volume and amount of claims against financial institutions and other related costs remaining significant. Given the range of litigation and investigations presently under way, our litigation expenses can be expected to remain high.

Though our operating results were strong in 2005, our business, by its nature, does not produce predictable earnings. Our results in any given period can be materially affected by conditions in global financial markets and economic conditions generally. For a further discussion of these trends and other factors affecting our businesses, see “— Certain Risk Factors That May Affect Our Business” below as well as “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K.

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<sup>(1)</sup> Return on average tangible common shareholders' equity is computed by dividing net earnings applicable to common shareholders by average monthly tangible common shareholders' equity. See “— Results of Operations — Financial Overview” below for further information regarding our calculation of return on average tangible common shareholders' equity.

<sup>(2)</sup> Our investment banking backlog represents an estimate of our future net revenues from investment banking transactions where we believe that future revenue realization is more likely than not.

## Business Environment

As an investment banking, securities and investment management firm, our businesses are materially affected by conditions in the financial markets and economic conditions generally, both in the United States and elsewhere around the world. A favorable business environment is generally characterized by low inflation, low or declining interest rates, and strong equity markets. Over the business cycle, these factors provide a positive climate for our investment banking activities, for many of our trading businesses and for wealth creation, which contributes to growth in our asset management business. Although short-term interest rates, particularly in the United States, continued to rise and the yield curve continued to flatten, economic conditions remained generally favorable during 2005, as global interest rates remained at historically low levels, core inflation was broadly contained, global equity prices generally rose and corporate activity continued to improve. For a further discussion of how market conditions can affect our businesses, see “— Certain Risk Factors That May Affect Our Business” below as well as “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K. A further discussion of the business environment in 2005 is set forth below.

**Global.** After strong growth in 2004, the global economy remained solid in 2005, despite a brief period of weakness during our fiscal second quarter. Worldwide real gross domestic product growth for the calendar year, although lower than the prior year, was slightly above the average of the past 20 years. Energy prices rose significantly during the first nine months of our fiscal year, peaking at the beginning of our fourth quarter, but the sharp increase did not appear to have a significant impact on global growth. In addition, the U.S. economy performed well and the Japanese economy continued to grow at a moderate pace, particularly in the first half of the calendar year. The U.S. Federal Reserve continued to raise rates in 2005, increasing its federal funds rate target by a total of 200 basis points during our fiscal year. Despite the increase in U.S. short-term rates, fixed income markets generally performed well, as long-term bond yields remained generally low and corporate credit spreads remained generally tight. In the currency markets, the U.S. dollar strengthened against the major currencies, although it weakened against a number of emerging market currencies such as the Brazilian real, Mexican peso, Chinese yuan and Korean won. Global equity markets generally rose during the year, with significant increases in many markets around the world. Corporate activity continued to improve during the year. Although equity and equity-related volumes were essentially unchanged from 2004, debt underwriting volumes improved and industry-wide announced and completed mergers and acquisitions increased significantly.

**United States.** The U.S. economy grew at a strong pace during the year. Real gross domestic product rose by approximately 3.5% in the 2005 calendar year, driven principally by continued strength in the housing market and consumer spending. Despite hurricane-related disruptions, consumer spending reached its highest rate of growth during the third calendar quarter. After slowing modestly in the first quarter of 2005, the rate of inflation increased, particularly in the third quarter, as energy prices rose significantly. However, measures of core inflation remained broadly contained. In response to the improving environment and rising inflation, the U.S. Federal Reserve raised its federal funds rate target by 25 basis points in each of its meetings, bringing the rate to 4.00% by the end of our fiscal year. Despite the sharp rise in short-term interest rates, the 10-year U.S. Treasury note yield ended the year only 19 basis points higher. Although the U.S. dollar generally strengthened throughout the year, financial conditions remained generally supportive of economic activity. The Dow Jones Industrial Average, S&P 500 Index and NASDAQ Composite Index increased by 4%, 7% and 8%, respectively, during our fiscal year.

**Europe.** The pace of economic growth in Europe remained slow as real gross domestic product in the Eurozone economies grew by approximately 1.5% in the 2005 calendar year. Economic conditions in the Eurozone economies softened in the first half of the year as business sentiment deteriorated and energy prices rose. However, conditions improved modestly later in the year as continued strength in the global economy and the weakening of the euro supported higher growth in exports and investment spending. The European Central Bank left interest rates unchanged through our fiscal year. In the U.K., real gross domestic product growth appeared to slow

sharply, declining to approximately 1.8% in the 2005 calendar year, reflecting softer growth in consumption and investment spending. The Bank of England reduced interest rates by 25 basis points and long-term bond yields in both the Eurozone and the U.K. ended the year lower. Despite the modest economic growth, the FTSE 100 Index increased by 16% and continental European equity markets also increased significantly during our fiscal year.

**Asia.** Japan's economy grew at its strongest pace since 2000, with real gross domestic product growing by over 2% for the second consecutive calendar year. The recovery in domestic demand and private investment drove much of the improvement, while exports improved in the second half of the calendar year. The unemployment rate fell to 4.4% in 2005 from 4.7% in 2004. The Bank of Japan continued to provide substantial liquidity to the market and continued to hold short-term interest rates at zero percent through the year and long-term bond yields ended the year slightly lower. With short-term interest rates rising in the U.S., the yen weakened and financial conditions remained generally supportive of economic activity. The Nikkei 225 Index increased 36% during our fiscal year.

Elsewhere in Asia, China's real gross domestic product growth remained robust, with growth particularly reliant on higher net exports, as demonstrated by China's large current account surplus. China's modest currency revaluation in July did not result in further significant exchange rate developments in the region. Growth in India remained very strong, which, together with China, supported growth throughout the region. Equity markets across the region generally rose, with markets in South Korea and India posting significant gains during our fiscal year.

### **Certain Risk Factors That May Affect Our Business**

We face a variety of risks that are substantial and inherent in our businesses, including market, liquidity, credit, operational, legal and regulatory risks. For a discussion of how management seeks to manage some of these risks, see "— Risk Management" below. A summary of the more important factors that could affect our business follows below. For a further discussion of these and other important factors that could affect our business, see "Risk Factors" in Part I, Item 1A of the Annual Report on Form 10-K.

**Market Conditions and Market Risk.** Our businesses are materially affected by conditions in the global financial markets and economic conditions generally and these conditions may change suddenly and dramatically. Unfavorable or uncertain economic and market conditions have adversely affected, and may in the future adversely affect, our business and profitability in many ways, including the following:

- We have been operating in a low interest rate market for the past several years. Increasing or high interest rates and/or widening credit spreads, especially if such changes are rapid, may create a less favorable environment for certain of our businesses.
- We have been committing increasing amounts of capital in many of our businesses and generally maintain large trading, specialist and investing positions. Market fluctuations and volatility may adversely affect the value of those positions, including, but not limited to, our interest rate and credit products, currency, commodity and equity positions and our merchant banking investments, or may reduce our willingness to enter into new transactions. From time to time, we have incurred significant trading losses in periods of market turbulence. Conversely, certain of our trading businesses depend on market volatility to provide trading and arbitrage opportunities, and decreases in volatility may reduce these opportunities and adversely affect the results of these businesses.
- Industry-wide declines in the size and number of underwritings and mergers and acquisitions may have an adverse effect on our revenues and, because we may be unable to reduce expenses correspondingly, our profit margins. In particular, because a significant portion of our investment banking revenues are derived from our participation in large transactions, a

decrease in the number of large transactions due to uncertain or unfavorable market conditions may adversely affect our investment banking business.

- Pricing and other competitive pressures have continued, even as the volume and number of investment banking transactions have increased. In addition, the trend in the underwriting business toward multiple book runners and co-managers handling transactions, where previously there would have been a single book runner, may adversely affect our business and reduce our revenues.
- Reductions in the level of the equity markets also tend to reduce the value of our clients' portfolios, which in turn may reduce the fees we earn for managing assets. Even in the absence of uncertain or unfavorable economic or market conditions, investment performance by our asset management business below the performance of benchmarks or competitors could result in a decline in assets under management and in the incentive and management fees we receive.
- Concentration of risk increases the potential for significant losses in our market-making, proprietary trading and investing, block trading, merchant banking, underwriting and lending businesses. This risk may increase to the extent we expand our proprietary trading and investing businesses or commit capital to facilitate customer-driven business. For example, large blocks of securities are increasingly being sold in block trades rather than on a marketed basis, which increases the risk that Goldman Sachs may be unable to resell the purchased securities at favorable prices and may incur significant losses as a result. Moreover, because of concentration of risk, we may suffer losses even when economic and market conditions are generally favorable for others in the industry. We also regularly enter into large transactions as part of our trading businesses. The number and size of such transactions may affect our results of operations in a given period.
- The volume of transactions that we execute for our clients and as a specialist or market maker may decline, which would reduce the revenues we receive from commissions and spreads. In addition, competitive pressures and other industry factors, including the increasing use by our clients of low-cost electronic trading, could cause a reduction in commissions and spreads. In our specialist businesses, we are obligated by stock exchange rules to maintain an orderly market, including by purchasing shares in a declining market. This may result in trading losses and an increased need for liquidity. Weakness in global equity markets and the trading of securities in multiple markets and on multiple exchanges could adversely impact our trading businesses and impair the value of our goodwill and identifiable intangible assets. In addition, competitive pressures have been particularly intense in the context of block trades. For a further discussion of our goodwill and identifiable intangible assets, see “— Critical Accounting Policies — Goodwill and Identifiable Intangible Assets” below.
- While we employ a broad and diversified set of risk monitoring and risk mitigation techniques, those techniques and the judgments that accompany their application cannot anticipate every economic and financial outcome or the specifics and timing of such outcomes. Thus, we may, in the course of our activities, incur losses.

**Liquidity Risk.** Liquidity is essential to our businesses. Our liquidity could be impaired by an inability to access secured and/or unsecured debt markets, an inability to access funds from our subsidiaries, an inability to sell assets or unforeseen outflows of cash or collateral. This situation may arise due to circumstances that we are unable to control, such as a general market disruption or an operational problem that affects third parties or us. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time.

Our credit ratings are important to our liquidity. A reduction in our credit ratings could adversely affect our liquidity and competitive position, increase our borrowing costs, limit our access to the capital markets or trigger our obligations under certain bilateral provisions in some of our trading and collateralized financing contracts. Under these provisions, counterparties could be permitted to terminate contracts with Goldman Sachs or require us to post additional collateral. Termination of our trading and collateralized financing contracts could cause us to sustain losses and impair our liquidity by requiring us to find other sources of financing or to make significant cash payments or securities movements. For a discussion of the potential impact on Goldman Sachs of a reduction in our credit ratings, see “— Capital and Funding — Credit Ratings” below.

**Credit Risk.** We are exposed to the risk that third parties that owe us money, securities or other assets will not perform their obligations. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. We are also subject to the risk that our rights against third parties may not be enforceable in all circumstances. In addition, a deterioration in the credit quality of third parties whose securities or obligations we hold could result in losses and/or adversely affect our ability to rehypothecate or otherwise use those securities or obligations for liquidity purposes. The amount and duration of our credit exposures have been increasing over the past several years, as has the breadth of the entities to which we have credit exposures. The scope of our lending businesses has also been expanding and includes loans to small and mid-size businesses, which are not traditional Goldman Sachs clients. As a clearing member firm, we finance our client positions and we could be held responsible for the defaults or misconduct of our clients. In addition, we have experienced, due to competitive factors, pressure to extend and price credit at levels that may not always fully compensate us for the risks we take. In particular, corporate clients sometimes seek to require credit commitments from us in connection with investment banking and other assignments. Although we regularly review credit exposures to specific clients and counterparties and to specific industries, countries and regions that we believe may present credit concerns, default risk may arise from events or circumstances that are difficult to detect or foresee. In addition, concerns about, or a default by, one institution could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect Goldman Sachs.

**Operational Risk.** Shortcomings or failures in our internal processes, people or systems, or external events could lead to impairment of our liquidity, financial loss, disruption of our businesses, liability to clients, regulatory intervention or reputational damage. For example, our businesses are highly dependent on our ability to process, on a daily basis, a large number of transactions across numerous and diverse markets in many currencies. The transactions we process have become increasingly complex and often must adhere to client-specific guidelines, as well as legal and regulatory standards. Despite the contingency plans and facilities we have in place, our ability to conduct business may be adversely impacted by a disruption in the infrastructure that supports our businesses and the communities in which we are located. This may include a disruption involving electrical, communications, transportation or other services used by Goldman Sachs or third parties with which we conduct business.

**Legal and Regulatory Risk.** We are subject to extensive and evolving regulation in jurisdictions around the world. Substantial legal liability or a significant regulatory action against Goldman Sachs could have material adverse financial effects or cause significant reputational harm to Goldman Sachs, which in turn could seriously harm our business prospects. Firms in the financial services industry have been operating in a difficult regulatory environment. We face significant legal risks in our businesses, and the volume of claims and amount of damages and penalties claimed in litigation and regulatory proceedings against financial institutions remain high. For a discussion of how we account for our legal and regulatory exposures, see “— Use of Estimates” below.

## Critical Accounting Policies

### Fair Value

The use of fair value to measure our financial instruments, with related unrealized gains and losses recognized immediately in our results of operations, is fundamental to our financial statements and is our most critical accounting policy. The fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

In determining fair value, we separate our financial instruments into three categories — cash (i.e., nonderivative) trading instruments, derivative contracts and principal investments, as set forth in the following table:

### Financial Instruments by Category (in millions)

	As of November			
	2005		2004	
	Financial Instruments Owned, At Fair Value	Financial Instruments Sold, But Not Yet Purchased, At Fair Value	Financial Instruments Owned, At Fair Value	Financial Instruments Sold, But Not Yet Purchased, At Fair Value
Cash trading instruments . . . .	\$210,042	\$ 89,735	\$143,376	\$ 68,096
Derivative contracts . . . . .	58,532	57,829	62,495	64,001
Principal investments . . . . .	6,526 <sup>(1)</sup>	1,507 <sup>(2)</sup>	4,654 <sup>(1)</sup>	—
Total . . . . .	<u>\$275,100</u>	<u>\$149,071</u>	<u>\$210,525</u>	<u>\$132,097</u>

<sup>(1)</sup> Excludes assets for which Goldman Sachs is not at risk (e.g., assets related to consolidated employee-owned merchant banking funds) of \$1.93 billion and \$1.28 billion as of November 2005 and November 2004, respectively.

<sup>(2)</sup> Represents an economic hedge on the unrestricted shares of common stock underlying our investment in the convertible preferred stock of SMFG. For a further discussion of our investment in SMFG, see “— Principal Investments” below.

**Cash Trading Instruments.** The following table sets forth the valuation of our cash trading instruments by level of price transparency:

**Cash Trading Instruments by Price Transparency**  
(in millions)

	As of November			
	2005		2004	
	Financial Instruments Owned, At Fair Value	Financial Instruments Sold, But Not Yet Purchased, At Fair Value	Financial Instruments Owned, At Fair Value	Financial Instruments Sold, But Not Yet Purchased, At Fair Value
Quoted prices or alternative pricing sources with reasonable price transparency .....	\$198,233	\$ 89,565	\$130,908	\$ 67,948
Little or no price transparency .....	11,809	170	12,468	148
Total .....	\$210,042	\$ 89,735	\$143,376	\$ 68,096

Fair values of our cash trading instruments are generally obtained from quoted market prices in active markets, broker or dealer price quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued in this manner include U.S. government and agency securities, other sovereign government obligations, liquid mortgage products, investment-grade corporate bonds, listed equities, money market securities, state, municipal and provincial obligations, and physical commodities.

Certain cash trading instruments trade infrequently and have little or no price transparency. Such instruments may include certain high-yield debt, corporate bank loans, mortgage whole loans and distressed debt. We value these instruments initially at cost and generally do not adjust valuations unless there is substantive evidence supporting a change in the value of the underlying instrument or valuation assumptions (such as similar market transactions, changes in financial ratios or changes in the credit ratings of the underlying companies). Where there is evidence supporting a change in the value, we use valuation methodologies such as the present value of known or estimated cash flows.

Cash trading instruments we own (long positions) are marked to bid prices and instruments we have sold but not yet purchased (short positions) are marked to offer prices. If liquidating a position is expected to affect its prevailing market price, our valuation is adjusted generally based on market evidence or predetermined policies. In certain circumstances, such as for highly illiquid positions, management's estimates are used to determine this adjustment.



**Derivative Contracts.** Derivative contracts consist of exchange-traded and over-the-counter (OTC) derivatives. The following table sets forth the fair value of our exchange-traded and OTC derivative assets and liabilities:

**Derivative Assets and Liabilities**  
(in millions)

	As of November			
	2005		2004	
	Assets	Liabilities	Assets	Liabilities
Exchange-traded derivatives .....	\$10,869	\$ 9,083	\$ 5,464	\$ 5,905
OTC derivatives .....	47,663	48,746	57,031	58,096
<b>Total .....</b>	<b><u>\$58,532</u></b> <sup>(1)</sup>	<b><u>\$57,829</u></b> <sup>(2)</sup>	<b><u>\$62,495</u></b> <sup>(1)</sup>	<b><u>\$64,001</u></b> <sup>(2)</sup>

<sup>(1)</sup> Net of cash received pursuant to credit support agreements of \$22.61 billion and \$18.65 billion as of November 2005 and November 2004, respectively.

<sup>(2)</sup> Net of cash paid pursuant to credit support agreements of \$16.10 billion and \$5.45 billion as of November 2005 and November 2004, respectively.

Fair values of our exchange-traded derivatives are generally determined from quoted market prices. OTC derivatives are valued using valuation models. We use a variety of valuation models including the present value of known or estimated cash flows and option-pricing models. The valuation models that we use to derive the fair values of our OTC derivatives require inputs including contractual terms, market prices, yield curves, credit curves, measures of volatility, prepayment rates and correlations of such inputs. The selection of a model to value an OTC derivative depends upon the contractual terms of, and specific risks inherent in, the instrument as well as the availability of pricing information in the market. We generally use similar models to value similar instruments. Where possible, we verify the values produced by our pricing models to market transactions. For OTC derivatives that trade in liquid markets, such as generic forwards, swaps and options, model selection does not involve significant judgment because market prices are readily available. For OTC derivatives that trade in less liquid markets, model selection requires more judgment because such instruments tend to be more complex and pricing information is less available in these markets. Price transparency is inherently more limited for more complex structures because they often combine one or more product types, requiring additional inputs such as correlations and volatilities. As markets continue to develop and more pricing information becomes available, we continue to review and refine the models that we use.

At the inception of an OTC derivative contract (day one), we value the contract at the model value if we can verify all of the significant model inputs to observable market data and verify the model to market transactions. When appropriate, valuations are adjusted to reflect various factors such as liquidity, bid/offer spreads and credit considerations. These adjustments are generally based on market evidence or predetermined policies. In certain circumstances, such as for highly illiquid positions, management's estimates are used to determine these adjustments.

Where we cannot verify all of the significant model inputs to observable market data and verify the model to market transactions, we value the contract at the transaction price at inception and, consequently, record no day one gain or loss in accordance with Emerging Issues Task Force (EITF) Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities."

Following day one, we adjust the inputs to our valuation models only to the extent that changes in these inputs can be verified by similar market transactions, third-party pricing services and/or broker quotes, or can be derived from other substantive evidence such as empirical market data. In circumstances where we cannot verify the model to market transactions, it is possible that a different valuation model could produce a materially different estimate of fair value.

The following tables set forth the fair values of our OTC derivative assets and liabilities by product and by remaining contractual maturity:

**OTC Derivatives**  
(in millions)

As of November 2005						
Assets						
Contract Type	0 - 6 Months	6 - 12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
Interest rates .....	\$ 1,898	\$ 467	\$ 4,634	\$ 5,310	\$ 5,221	\$17,530
Currencies .....	5,825	1,031	1,843	919	1,046	10,664
Commodities .....	3,772	1,369	8,130	1,374	120	14,765
Equities .....	1,168	1,171	832	1,403	130	4,704
Total .....	<u>\$12,663</u>	<u>\$4,038</u>	<u>\$15,439</u>	<u>\$ 9,006</u>	<u>\$ 6,517</u>	<u>\$47,663</u>
As of November 2004						
Liabilities						
Contract Type	0 - 6 Months	6 - 12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
Interest rates .....	\$ 1,956	\$ 590	\$ 5,327	\$ 3,142	\$ 4,970	\$15,985
Currencies .....	6,295	575	3,978	436	924	12,208
Commodities .....	3,852	2,080	5,904	1,865	162	13,863
Equities .....	1,308	1,068	2,079	1,993	242	6,690
Total .....	<u>\$13,411</u>	<u>\$4,313</u>	<u>\$17,288</u>	<u>\$ 7,436</u>	<u>\$ 6,298</u>	<u>\$48,746</u>
Assets						
Contract Type	0 - 6 Months	6 - 12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
Interest rates .....	\$ 1,475	\$ 451	\$ 5,682	\$ 4,250	\$12,743	\$24,601
Currencies .....	9,570	1,499	3,670	2,320	1,198	18,257
Commodities .....	2,943	1,164	5,581	1,108	160	10,956
Equities .....	1,311	813	457	634	2	3,217
Total .....	<u>\$15,299</u>	<u>\$3,927</u>	<u>\$15,390</u>	<u>\$ 8,312</u>	<u>\$14,103</u>	<u>\$57,031</u>
Liabilities						
Contract Type	0 - 6 Months	6 - 12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
Interest rates .....	\$ 1,854	\$ 789	\$ 7,366	\$ 7,136	\$ 5,658	\$22,803
Currencies .....	9,577	1,580	4,456	2,755	1,184	19,552
Commodities .....	3,791	1,425	4,522	814	107	10,659
Equities .....	1,409	1,304	1,114	1,084	171	5,082
Total .....	<u>\$16,631</u>	<u>\$5,098</u>	<u>\$17,458</u>	<u>\$11,789</u>	<u>\$ 7,120</u>	<u>\$58,096</u>

We enter into certain OTC option transactions that provide us or our counterparties with the right to extend the maturity of the underlying contract. The fair value of these option contracts is not material to the aggregate fair value of our OTC derivative portfolio. In the tables above, for option contracts that require settlement by delivery of an underlying derivative instrument, the remaining contractual maturity is generally classified based upon the maturity date of the underlying derivative instrument. In those instances where the underlying instrument does not have a maturity date or either counterparty has the right to settle in cash, the remaining contractual maturity is generally based upon the option expiration date.

**Principal Investments.** In valuing our corporate and real estate principal investments, we separate our portfolio into investments in private companies, investments in public companies (excluding our investment in the convertible preferred stock of SMFG) and our investment in SMFG.

The following table sets forth the carrying value of our principal investments portfolio:

	<b>Principal Investments</b>					
	(in millions)					
	As of November					
	2005			2004		
	<u>Corporate</u>	<u>Real Estate</u>	<u>Total</u>	<u>Corporate</u>	<u>Real Estate</u>	<u>Total</u>
Private .....	\$1,538	\$716	\$2,254	\$ 935	\$769	\$1,704
Public .....	185	29	214	343	51	394
Subtotal <sup>(1)</sup> .....	1,723	745	2,468	1,278	820	2,098
SMFG convertible preferred stock <sup>(2)</sup> .....	4,058	—	4,058 <sup>(3)</sup>	2,556	—	2,556
Total .....	<u>\$5,781</u>	<u>\$745</u>	<u>\$6,526</u>	<u>\$3,834</u>	<u>\$820</u>	<u>\$4,654</u>

<sup>(1)</sup> Excludes assets for which Goldman Sachs is not at risk (e.g., assets related to consolidated employee-owned merchant banking funds) of \$1.93 billion and \$1.28 billion as of November 2005 and November 2004, respectively.

<sup>(2)</sup> The fair value of our Japanese yen-denominated investment in the convertible preferred stock of SMFG includes the effect of foreign exchange revaluation. We hedge our economic exposure to exchange rate movements on our investment in SMFG by borrowing Japanese yen. Foreign exchange revaluation on the investment and the related borrowing are generally equal and offsetting. For example, if the Japanese yen appreciates against the U.S. dollar, the U.S. dollar carrying value of our SMFG investment will increase and the U.S. dollar carrying value of the related borrowing will also increase by an amount that is generally equal and offsetting.

<sup>(3)</sup> Excludes an economic hedge on the unrestricted shares of common stock underlying our investment in the convertible preferred stock of SMFG. As of November 25, 2005, the fair value of this hedge was \$1.51 billion and is reflected in "Financial instruments sold, but not yet purchased, at fair value" in the consolidated statements of financial condition. For a further discussion of the restrictions on our ability to hedge or sell the common stock underlying our investment in SMFG, see below.

Our private principal investments, by their nature, have little or no price transparency. Such investments are initially carried at cost as an approximation of fair value. Adjustments to carrying value are made if there are third-party transactions evidencing a change in value. Downward adjustments are also made, in the absence of third-party transactions, if we determine that the expected realizable value of the investment is less than the carrying value. In reaching that determination, we consider many factors including, but not limited to, the operating cash flows and financial performance of the companies or properties relative to budgets or projections, trends within sectors and/or regions, underlying business models, expected exit timing and strategy, and any specific rights or terms associated with the investment, such as conversion features and liquidation preferences.

Our public principal investments, which tend to be large, concentrated holdings that result from initial public offerings or other corporate transactions, are valued using quoted market prices discounted based on predetermined written policies for nontransferability and illiquidity.

Our investment in the convertible preferred stock of SMFG is carried at fair value, which is derived from a model that incorporates SMFG's common stock price and credit spreads, the impact of nontransferability and illiquidity, and the downside protection on the conversion strike price. The fair value of our investment is particularly sensitive to movements in the SMFG common stock price. As a result of transfer restrictions and the downside protection on the conversion strike price, the relationship between changes in the fair value of our investment and changes in SMFG's common

stock price is nonlinear. During our fiscal year, the fair value of our investment (excluding the economic hedge on the unrestricted shares of common stock underlying one-third of our investment) increased 85% (expressed in Japanese yen), primarily due to an increase in the SMFG common stock price and, to a lesser extent, the impact of passage of time in respect of the transfer restrictions on the underlying common stock.

Our investment in the convertible preferred stock of SMFG is generally nontransferable, but is freely convertible into SMFG common stock. Restrictions on our ability to hedge or sell one-third of the common stock underlying our investment in SMFG lapsed in February 2005. As of November 2005, we were fully hedged with respect to these unrestricted shares. Under our initial agreement with SMFG, restrictions on our ability to hedge or sell the remaining shares of common stock underlying our investment in SMFG lapse in equal installments on February 7, 2006 and February 7, 2007. In connection with a public offering by SMFG of its common stock, we have separately agreed with SMFG that the restrictions that were to lapse on February 7, 2006 will instead lapse on March 9, 2006. Effective February 1, 2006, the conversion price of our SMFG preferred stock into shares of SMFG common stock is ¥320,900. This price is subject to downward adjustment if the price of SMFG common stock at the time of conversion is less than the conversion price (subject to a floor of ¥105,800).

**Controls Over Valuation of Financial Instruments.** A control infrastructure, independent of the trading and investing functions, is fundamental to ensuring that our financial instruments are appropriately valued and that fair value measurements are reliable. This is particularly important in valuing instruments with lower levels of price transparency.

We employ an oversight structure that includes appropriate segregation of duties. Senior management, independent of the trading functions, is responsible for the oversight of control and valuation policies and for reporting the results of these policies to our Audit Committee. We seek to maintain the necessary resources to ensure that control functions are performed to the highest standards. We employ procedures for the approval of new transaction types and markets, price verification, review of daily profit and loss, and review of valuation models by personnel with appropriate technical knowledge of relevant products and markets. These procedures are performed by personnel independent of the revenue-producing units. For trading and principal investments with little or no price transparency, we employ, where possible, procedures that include comparisons with similar observable positions, analysis of actual to projected cash flows, comparisons with subsequent sales and discussions with senior business leaders. For a further discussion of how we manage the risks inherent in our trading and principal investing businesses, see “— Risk Management” below.

### **Goodwill and Identifiable Intangible Assets**

As a result of our acquisitions, principally SLK LLC (SLK) in fiscal 2000, The Ayco Company, L.P. (Ayco) in fiscal 2003, Cogentrix Energy, Inc. (Cogentrix) in fiscal 2004 and National Energy & Gas Transmission, Inc. (NEGT) in fiscal 2005, we have acquired goodwill and identifiable intangible assets. Goodwill is the cost of acquired companies in excess of the fair value of net assets, including identifiable intangible assets, at the acquisition date.

**Goodwill.** We test the goodwill in each of our operating segments for impairment at least annually in accordance with Statement of Financial Accounting Standards (SFAS) No. 142, “Goodwill and Other Intangible Assets,” by comparing the estimated fair value of each operating segment with its estimated net book value. We derive the fair value of each of our operating segments primarily based on price-earnings multiples. We derive the net book value of our operating segments by estimating the amount of shareholders’ equity required to support the assets of each operating segment. Our last annual impairment test was performed during our fiscal 2005 fourth quarter and no impairment was identified.

The following table sets forth the carrying value of our goodwill by operating segment:

**Goodwill by Operating Segment**  
(in millions)

	As of November	
	2005	2004
Investment Banking		
Financial Advisory .....	\$ —	\$ —
Underwriting .....	125	125
Trading and Principal Investments		
FICC .....	91	135
Equities <sup>(1)</sup> .....	2,390	2,382
Principal Investments .....	1	—
Asset Management and Securities Services		
Asset Management <sup>(2)</sup> .....	424	423
Securities Services .....	117	117
Total .....	<u>\$3,148</u>	<u>\$3,182</u>

<sup>(1)</sup> Primarily related to SLK.

<sup>(2)</sup> Primarily related to Ayco.

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**Identifiable Intangible Assets.** We amortize our identifiable intangible assets over their estimated useful lives in accordance with SFAS No. 142, and test for potential impairment whenever events or changes in circumstances suggest that an asset's or asset group's carrying value may not be fully recoverable in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the estimated undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

The following table sets forth the carrying value and range of remaining useful lives of our identifiable intangible assets by major asset class:

**Identifiable Intangible Assets by Asset Class**  
(\$ in millions)

	As of November		
	2005	2004	
	Carrying Value	Range of Remaining Useful Lives (in years)	Carrying Value
Customer lists <sup>(1)</sup> .....	\$ 777	6 – 20	\$ 828
New York Stock Exchange (NYSE) specialist rights .....	580	22 – 24	607
Power contracts <sup>(2)</sup> .....	481	2 – 31	—
Exchange-traded fund (ETF) and option specialist rights .....	111	22	121
Other <sup>(3)</sup> .....	106	2 – 9	133
<b>Total</b> .....	<b><u>\$2,055</u></b>		<b><u>\$1,689</u></b>

<sup>(1)</sup> Primarily includes our clearance and execution and NASDAQ customer lists related to SLK and financial counseling customer lists related to Ayco.

<sup>(2)</sup> Primarily relates to above-market power contracts of consolidated power generation facilities related to Cogentrix and NEGTEC. We closed on our acquisition of NEGTEC and recorded purchase price allocation adjustments for NEGTEC and Cogentrix in fiscal 2005. Substantially all of these power contracts have been pledged as collateral to counterparties in connection with certain of our secured short-term and long-term borrowings.

<sup>(3)</sup> Primarily includes technology-related assets related to SLK.

A prolonged period of weakness in global equity markets and the trading of securities in multiple markets and on multiple exchanges could adversely impact our businesses and impair the value of our goodwill and/or identifiable intangible assets. In addition, certain events could indicate a potential impairment of our identifiable intangible assets, including (i) changes in market structure that could adversely affect our specialist businesses, (ii) an adverse action or assessment by a regulator or (iii) a default event under a power contract or physical damage or other adverse events impacting the underlying power generation facilities.

**Use of Estimates**

The use of generally accepted accounting principles requires management to make certain estimates. In addition to the estimates we make in connection with fair value measurements and the accounting for goodwill and identifiable intangible assets, the use of estimates is also important in determining provisions for potential losses that may arise from litigation and regulatory proceedings and tax audits.

We estimate and provide for potential losses that may arise out of litigation and regulatory proceedings and tax audits to the extent that such losses are probable and can be estimated, in accordance with SFAS No. 5, "Accounting for Contingencies." Significant judgment is required in making these estimates and our final liabilities may ultimately be materially different. Our total liability in respect of litigation and regulatory proceedings is determined on a case-by-case basis and represents an estimate of probable losses after considering, among other factors, the progress of each case or proceeding, our experience and the experience of others in similar cases or proceedings, and the opinions and views of legal counsel. Given the inherent difficulty of predicting the outcome of our litigation and regulatory matters, particularly in cases or proceedings in which

substantial or indeterminate damages or fines are sought, we cannot estimate losses or ranges of losses for cases or proceedings where there is only a reasonable possibility that a loss may be incurred. See “Legal Proceedings” in Part I, Item 3 of the Annual Report on Form 10-K, for information on our judicial, regulatory and arbitration proceedings.

## Results of Operations

The composition of our net revenues has varied over time as financial markets and the scope of our operations have changed. The composition of net revenues can also vary over the shorter term due to fluctuations in U.S. and global economic and market conditions. For a further discussion of the impact of economic and market conditions on our results of operations, see “— Business Environment” and “— Certain Risk Factors That May Affect Our Business” above, and “Risk Factors” in Part I, Item 1A of the Annual Report on Form 10-K.

## Financial Overview

The following table sets forth an overview of our financial results:

### Financial Overview (\$ in millions, except per share amounts)

	Year Ended November		
	2005	2004	2003
Net revenues .....	\$24,782	\$20,550	\$16,012
Pre-tax earnings .....	8,273	6,676	4,445
Net earnings .....	5,626	4,553	3,005
Net earnings applicable to common shareholders .....	5,609	4,553	3,005
Diluted earnings per common share .....	11.21	8.92	5.87
Return on average common shareholders' equity <sup>(1)</sup> .....	21.8%	19.8%	15.0%
Return on average tangible common shareholders' equity <sup>(2)</sup> ...	27.6%	25.2%	19.9%

<sup>(1)</sup> Return on average common shareholders' equity is computed by dividing net earnings applicable to common shareholders by average monthly common shareholders' equity.

<sup>(2)</sup> Tangible common shareholders' equity equals total shareholders' equity less preferred stock and goodwill and identifiable intangible assets. We believe that return on average tangible common shareholders' equity is a meaningful measure of performance because it excludes the portion of our common shareholders' equity attributable to goodwill and identifiable intangible assets. As a result, this calculation measures corporate performance in a manner that treats underlying businesses consistently, whether they were acquired or developed internally. Return on average tangible common shareholders' equity is computed by dividing net earnings applicable to common shareholders by average monthly tangible common shareholders' equity. The following table sets forth the reconciliation of average total shareholders' equity to average tangible common shareholders' equity:

	Average for the Year Ended November		
	2005	2004	2003
	(in millions)		
Total shareholders' equity .....	\$26,264	\$22,975	\$20,031
Deduct: Preferred stock .....	(538)	—	—
Common shareholders' equity .....	\$25,726	\$22,975	\$20,031
Deduct: Goodwill and identifiable intangible assets .....	(5,418)	(4,918)	(4,932)
Tangible common shareholders' equity .....	<u>\$20,308</u>	<u>\$18,057</u>	<u>\$15,099</u>

## **Net Revenues**

**2005 versus 2004.** Our net revenues were \$24.78 billion in 2005, an increase of 21% compared with 2004, reflecting strong growth in Trading and Principal Investments and Asset Management and Securities Services as well as higher net revenues in Investment Banking. The increase in Trading and Principal Investments reflected significantly higher net revenues in FICC, as all major businesses performed well. During 2005, FICC operated in an environment generally characterized by strong customer-driven activity, tight, but volatile, credit spreads, higher energy prices and a flatter yield curve. Net revenues in Equities also improved significantly compared with the prior year, reflecting strong performance across the business. Equities operated in an environment characterized by generally higher equity prices, improved customer-driven activity and continued low levels of market volatility. Net revenues in our Principal Investments business also increased significantly, primarily reflecting a gain on our investment in the convertible preferred stock of SMFG as well as gains from real estate principal investments. The strong net revenue growth in Asset Management and Securities Services primarily reflected higher assets under management and higher customer balances in Securities Services. The increase in Investment Banking net revenues was due to significantly higher net revenues in debt underwriting and improved results in Financial Advisory, primarily reflecting an increase in industry-wide corporate activity, partially offset by lower net revenues in equity underwriting.

**2004 versus 2003.** Our net revenues were \$20.55 billion in 2004, an increase of 28% compared with 2003, reflecting strong growth in Trading and Principal Investments, Asset Management and Securities Services, and Investment Banking. The increase in Trading and Principal Investments reflected significantly higher net revenues in FICC, as all major businesses and regions performed well in a generally favorable environment. Net revenues in our Principal Investments business also increased significantly, due to an unrealized gain on our investment in the convertible preferred stock of SMFG, as well as gains from other corporate principal investments. In addition, Equities net revenues improved, primarily reflecting higher customer-driven activity and favorable market conditions early in 2004. Equities operated in a less favorable environment after our first fiscal quarter of 2004, as volatility levels continued to decline and markets generally lacked direction before moving higher in the last several weeks of our fiscal year. Asset Management and Securities Services generated strong revenue growth, primarily reflecting higher assets under management, increased incentive fees and significantly higher customer balances in Securities Services. In Investment Banking, net revenues also increased, highlighted by strong growth in both our Financial Advisory and equity underwriting businesses, primarily reflecting an increase in industry-wide corporate activity.



## Operating Expenses

Our operating expenses are primarily influenced by compensation, headcount and levels of business activity. A substantial portion of our compensation expense represents discretionary bonuses, with our overall compensation and benefits expenses generally targeted at 50% (plus or minus a few percentage points) of consolidated net revenues. In addition to the level of net revenues, our compensation expense in any given year is influenced by, among other factors, prevailing labor markets, business mix and the structure of our equity-based compensation programs.

The following table sets forth our operating expenses and number of employees:

### Operating Expenses and Employees (\$ in millions)

	Year Ended November		
	2005	2004	2003
Compensation and benefits <sup>(1) (2) (3)</sup> .....	\$11,688	\$ 9,652	\$ 7,515
Brokerage, clearing and exchange fees .....	1,109	952	829
Market development .....	378	374	264
Communications and technology .....	490	461	478
Depreciation and amortization .....	501	499	562
Amortization of identifiable intangible assets .....	124	125	319
Occupancy .....	728	646	722
Professional fees .....	475	338	253
Other expenses .....	1,016	827	625
Total non-compensation expenses .....	<u>4,821</u>	<u>4,222</u>	<u>4,052</u>
Total operating expenses .....	<u>\$16,509</u>	<u>\$13,874</u>	<u>\$11,567</u>
Employees at year end <sup>(2) (3)</sup> .....	22,425	20,722	19,476

<sup>(1)</sup> Includes the amortization of employee initial public offering and acquisition awards of \$19 million, \$61 million and \$122 million for the years ended November 2005, November 2004 and November 2003, respectively.

<sup>(2)</sup> Excludes 1,437, 1,206 and 1,228 employees as of November 2005, November 2004 and November 2003, respectively, of Goldman Sachs' consolidated property management and loan servicing subsidiaries. Compensation and benefits includes \$182 million, \$164 million and \$134 million for the years ended November 2005, November 2004 and November 2003, respectively, attributable to these subsidiaries, the majority of which is reimbursed to Goldman Sachs by the investment funds for which these subsidiaries manage properties and perform loan servicing. Such reimbursements are recorded in net revenues.

<sup>(3)</sup> Excludes 7,143, 293 and 279 employees as of November 2005, November 2004 and November 2003, respectively, of consolidated entities held for investment purposes. Compensation and benefits includes \$128 million, \$11 million and \$3 million for the years ended November 2005, November 2004 and November 2003, respectively, attributable to these consolidated entities. Consolidated entities held for investment purposes includes entities that are held strictly for capital appreciation, have a defined exit strategy and are engaged in activities that are not closely related to our principal businesses.

The following table sets forth non-compensation expenses of consolidated entities held for investment purposes and our remaining non-compensation expenses by line item:

**Non-Compensation Expenses**  
(in millions)

	Year Ended November		
	2005	2004	2003
Non-compensation expenses of consolidated investments <sup>(1)</sup> . . . . .	\$ 265	\$ 21	\$ 7
Non-compensation expenses excluding consolidated investments			
Brokerage, clearing and exchange fees . . . . .	1,109	952	829
Market development . . . . .	361	374	264
Communications and technology . . . . .	487	461	478
Depreciation and amortization . . . . .	467	499	562
Amortization of identifiable intangible assets . . . . .	124	125	319
Occupancy . . . . .	674	646	722
Professional fees . . . . .	468	338	253
Other expenses . . . . .	866	806	618
Subtotal . . . . .	<u>4,556</u>	<u>4,201</u>	<u>4,045</u>
Total non-compensation expenses, as reported . . . . .	<u>\$4,821</u>	<u>\$4,222</u>	<u>\$4,052</u>

<sup>(1)</sup> Consolidated entities held for investment purposes includes entities that are held strictly for capital appreciation, have a defined exit strategy and are engaged in activities that are not closely related to our principal businesses. For example, these investments include consolidated entities that hold real estate assets such as golf courses and hotels in Asia, but exclude investments in entities that primarily hold financial assets. We believe that it is meaningful to review non-compensation expenses excluding expenses related to these consolidated entities in order to evaluate trends in non-compensation expenses related to our principal business activities. Revenues related to such entities are included in "Trading and principal investments" in the consolidated statements of earnings.

**2005 versus 2004.** Operating expenses were \$16.51 billion for 2005, 19% above 2004. Compensation and benefits expenses of \$11.69 billion increased 21% compared with 2004, resulting from higher discretionary compensation, reflecting higher net revenues, and increased levels of employment. The ratio of compensation and benefits to net revenues for 2005 was 47.2% compared with 46.7% <sup>(2)</sup> for 2004. Employment levels increased 8% compared with November 2004.

Non-compensation expenses of \$4.82 billion for 2005 increased 14% compared with 2004. Excluding non-compensation expenses related to consolidated entities held for investment purposes, non-compensation expenses were 8% higher than 2004, primarily due to higher brokerage, clearing and exchange fees, reflecting higher transaction volumes in FICC and Equities, increased professional fees, reflecting higher legal and consulting fees, and higher other expenses, primarily reflecting increased levels of business activity and higher charitable contributions.

Non-compensation expenses in 2005 included \$37 million of net provisions for litigation and regulatory proceedings (included in other expenses) and \$36 million of real estate costs associated with the relocation of office space (included in occupancy). Non-compensation expenses in 2004 included \$103 million of net provisions for litigation and regulatory proceedings, \$62 million in connection with the establishment of our joint venture in China (included in market development) and \$41 million of real estate exit costs associated with reductions in our office space (included in occupancy and depreciation and amortization).

<sup>(2)</sup> For the year ended November 2004, including the amortization of employee initial public offering and acquisition awards of \$61 million, the ratio of compensation and benefits to net revenues was 47.0%.

**2004 versus 2003.** Operating expenses were \$13.87 billion for 2004, 20% above 2003. Compensation and benefits expenses of \$9.65 billion increased 28% compared with 2003, due to higher discretionary compensation, reflecting higher net revenues, and increased employment levels. The ratio of compensation and benefits to net revenues for 2004 was 46.7% compared with 46.2% for 2003. <sup>(1)</sup> Employment levels increased 6% compared with November 2003.

Non-compensation expenses of \$4.22 billion for 2004 increased 4% compared with 2003. Other expenses included net provisions for litigation and regulatory proceedings of \$103 million for 2004 compared with \$159 million for 2003. Excluding these provisions, other expenses increased \$258 million, primarily due to the acquisition of consolidated investments, increased levels of business activity and higher charitable contributions. Brokerage, clearing and exchange fees increased, reflecting higher transaction volumes in certain of our businesses, and market development expenses were higher, primarily reflecting \$62 million in connection with the establishment of our joint venture in China, as well as higher levels of business activity. In addition, professional fees were higher, primarily due to higher legal and consulting fees. These increases were partially offset by decreased amortization of identifiable intangible assets (2003 included impairment charges of \$188 million, primarily in respect of option specialist rights) as well as lower occupancy and depreciation and amortization expenses. Total exit costs associated with reductions in our global office space (included in occupancy and depreciation and amortization) were \$41 million for 2004 compared with \$153 million for 2003.

### ***Provision for Taxes***

The effective income tax rate for 2005 was 32.0% compared with 31.8% for 2004. Excluding the impact of audit settlements in 2005, the effective income tax rate for 2005 would have been 33.3%. <sup>(2)</sup> Excluding the impact of audit settlements, the increase in the effective income tax rate for 2005 compared with 2004 was primarily due to a lower benefit from tax credits in 2005. The effective income tax rate for 2004 was 31.8%, down from 32.4% for 2003. The decrease in the effective income tax rate for 2004 as compared with 2003 reflected lower state and local taxes and the effect of audit settlements.

Our effective income tax rate can vary from period to period depending on, among other factors, the geographic and business mix of our earnings, the level of our tax credits and the effect of tax audits. Certain of these and other factors, including our history of pre-tax earnings, are taken into account in assessing our ability to realize our net deferred tax assets. See Note 14 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our provision for taxes.

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<sup>(1)</sup> For the years ended November 2004 and November 2003, including the amortization of employee initial public offering and acquisition awards of \$61 million and \$122 million, respectively, the ratio of compensation and benefits to net revenues was 47.0% and 46.9%, respectively.

<sup>(2)</sup> The effective income tax rate excluding the impact of audit settlements is calculated by dividing the provision for taxes, adjusted to exclude the impact of audit settlements, by pre-tax earnings. The impact of audit settlements decreased the effective income tax rate by 1.3% for 2005. We believe that the effective income tax rate excluding the impact of audit settlements provides a meaningful basis for period-to-period comparisons of our effective income tax rates.

## Segment Operating Results

The following table sets forth the net revenues, operating expenses and pre-tax earnings of our segments:

		Segment Operating Results (in millions)		
		Year Ended November		
		2005	2004	2003
<b>Investment Banking</b>	Net revenues . . . . .	\$ 3,671	\$ 3,374	\$ 2,711
	Operating expenses . . . . .	3,258	2,973	2,504
	Pre-tax earnings . . . . .	<u>\$ 413</u>	<u>\$ 401</u>	<u>\$ 207</u>
<b>Trading and Principal Investments</b>	Net revenues . . . . .	\$16,362	\$13,327	\$10,443
	Operating expenses . . . . .	10,144	8,287	6,938
	Pre-tax earnings . . . . .	<u>\$ 6,218</u>	<u>\$ 5,040</u>	<u>\$ 3,505</u>
<b>Asset Management and Securities Services</b>	Net revenues . . . . .	\$ 4,749	\$ 3,849	\$ 2,858
	Operating expenses . . . . .	3,070	2,430	1,890
	Pre-tax earnings . . . . .	<u>\$ 1,679</u>	<u>\$ 1,419</u>	<u>\$ 968</u>
<b>Total</b>	Net revenues . . . . .	\$24,782	\$20,550	\$16,012
	Operating expenses <sup>(1)</sup> . . . . .	16,509	13,874	11,567
	Pre-tax earnings . . . . .	<u>\$ 8,273</u>	<u>\$ 6,676</u>	<u>\$ 4,445</u>

<sup>(1)</sup> Includes the following expenses that have not been allocated to our segments: (i) the amortization of employee initial public offering awards, net of forfeitures, of \$19 million and \$80 million for the years ended November 2004 and November 2003, respectively; (ii) net provisions for a number of litigation and regulatory proceedings of \$37 million, \$103 million and \$155 million for the years ended November 2005, November 2004 and November 2003, respectively; and (iii) \$62 million in connection with the establishment of our joint venture in China for the year ended November 2004.

Net revenues in our segments include allocations of interest income and interest expense to specific securities, commodities and other positions in relation to the cash generated by, or funding requirements of, such underlying positions. See Note 16 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our segments.

The cost drivers of Goldman Sachs taken as a whole — compensation, headcount and levels of business activity — are broadly similar in each of our business segments. Compensation expenses within our segments reflect, among other factors, the overall performance of Goldman Sachs as well as the performance of individual business units. Consequently, pre-tax margins in one segment of our business may be significantly affected by the performance of our other business segments. A discussion of segment operating results follows.

## Investment Banking

Our Investment Banking segment is divided into two components:

- **Financial Advisory.** Financial Advisory includes advisory assignments with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings and spin-offs.
- **Underwriting.** Underwriting includes public offerings and private placements of equity, equity-related and debt instruments.

The following table sets forth the operating results of our Investment Banking segment:

	Year Ended November		
	2005	2004	2003
Financial Advisory .....	\$1,905	\$1,737	\$1,202
Equity underwriting .....	704	819	678
Debt underwriting .....	1,062	818	831
Total Underwriting .....	1,766	1,637	1,509
Total net revenues .....	3,671	3,374	2,711
Operating expenses .....	3,258	2,973	2,504
Pre-tax earnings .....	<u>\$ 413</u>	<u>\$ 401</u>	<u>\$ 207</u>

The following table sets forth our financial advisory and underwriting transaction volumes:

	Year Ended November		
	2005	2004	2003
Announced mergers and acquisitions .....	\$ 865	\$ 403	\$ 414
Completed mergers and acquisitions .....	599	502	355
Equity and equity-related offerings <sup>(2)</sup> .....	47	52	40
Debt offerings <sup>(3)</sup> .....	260	236	250

<sup>(1)</sup> Source: Thomson Financial. Announced and completed mergers and acquisitions volumes are based on full credit to each of the advisors in a transaction. Equity and equity-related offerings and debt offerings are based on full credit for single book managers and equal credit for joint book managers. Transaction volumes may not be indicative of net revenues in a given period.

<sup>(2)</sup> Includes public common stock offerings and convertible offerings.

<sup>(3)</sup> Includes non-convertible preferred stock, mortgage-backed securities, asset-backed securities and taxable municipal debt. Includes publicly registered and Rule 144A issues.

**2005 versus 2004.** Net revenues in Investment Banking of \$3.67 billion for 2005 increased 9% compared with 2004. Net revenues in Financial Advisory of \$1.91 billion increased 10% compared with 2004, primarily reflecting an increase in industry-wide completed mergers and acquisitions. Net revenues in our Underwriting business of \$1.77 billion increased 8% compared with 2004, reflecting higher net revenues in debt underwriting, primarily due to an increase in leveraged finance and mortgage activity, partially offset by lower net revenues in equity underwriting. Our investment banking backlog at the end of 2005 was significantly higher than at the end of 2004. <sup>(4)</sup>

<sup>(4)</sup> Our investment banking backlog represents an estimate of our future net revenues from investment banking transactions where we believe that future revenue realization is more likely than not.

Operating expenses of \$3.26 billion for 2005 increased 10% compared with 2004, primarily due to increased compensation and benefits expenses resulting from higher levels of discretionary compensation and increased amortization expense related to prior year equity awards. In addition, other expenses increased principally due to higher levels of business activity, and professional fees were higher driven by increased legal and consulting fees. Pre-tax earnings of \$413 million in 2005 increased 3% compared with 2004.

**2004 versus 2003.** Net revenues in Investment Banking of \$3.37 billion for 2004 increased 24% compared with 2003. Net revenues in Financial Advisory of \$1.74 billion increased 45% compared with 2003, primarily reflecting a significant increase in industry-wide completed mergers and acquisitions. Net revenues in our Underwriting business of \$1.64 billion increased 8% compared with 2003, reflecting a significant increase in industry-wide public common stock offerings and industry-wide initial public offerings. The increase in Investment Banking net revenues primarily reflects higher levels of activity in the industrial and consumer sectors. Our investment banking backlog at the end of 2004 was higher than at the end of 2003.<sup>(1)</sup>

Operating expenses of \$2.97 billion for 2004 increased 19% compared with 2003, primarily due to increased compensation and benefits expenses resulting from higher discretionary compensation and increased levels of employment. These increases were partially offset by lower occupancy expenses, primarily reflecting lower exit costs associated with reductions in our global office space, and reduced amortization of identifiable intangible assets, as 2003 included impairment charges in respect of certain distribution rights. Depreciation and amortization expenses were also lower. Pre-tax earnings of \$401 million in 2004 increased 94% compared with 2003.

### ***Trading and Principal Investments***

Our Trading and Principal Investments segment is divided into three components:

- **FICC.** We make markets in and trade interest rate and credit products, mortgage-backed securities and loans, currencies, and commodities, structure and enter into a wide variety of derivative transactions and engage in proprietary trading and investing.
- **Equities.** We make markets in, trade and act as a specialist for equities and equity-related products, structure and enter into equity derivative transactions and engage in proprietary trading. We also execute and clear client transactions on major stock, options and futures exchanges worldwide.
- **Principal Investments.** We generate net revenues from our corporate and real estate merchant banking investments, including the increased share of the income and gains derived from our merchant banking funds when the return on a fund's investments exceeds certain threshold returns (merchant banking overrides), as well as gains or losses related to our investment in the convertible preferred stock of SMFG.

Substantially all of our inventory is marked-to-market daily and, therefore, its value and our net revenues are subject to fluctuations based on market movements. In addition, net revenues derived from our principal investments in privately held concerns and in real estate may fluctuate significantly depending on the revaluation or sale of these investments in any given period. We also regularly enter into large transactions as part of our trading businesses. The number and size of such transactions may affect our results of operations in a given period.

Net revenues from Principal Investments do not include management fees generated from our merchant banking funds. These management fees are included in the net revenues of the Asset Management and Securities Services segment.

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<sup>(1)</sup> Our investment banking backlog represents an estimate of our future net revenues from investment banking transactions where we believe that future revenue realization is more likely than not.

The following table sets forth the operating results of our Trading and Principal Investments segment:

**Trading and Principal Investments Operating Results**  
(in millions)

	Year Ended November		
	2005	2004	2003
FICC .....	\$ 8,484	\$ 7,322	\$ 5,596
Equities trading .....	2,675	1,969	1,738
Equities commissions .....	2,975	2,704	2,543
Total Equities .....	5,650	4,673	4,281
SMFG .....	1,475	771	293
Gross gains .....	767	855	593
Gross losses .....	(198)	(399)	(437)
Net other corporate and real estate investments .....	569	456	156
Overrides .....	184	105	117
Total Principal Investments .....	2,228	1,332	566
Total net revenues .....	16,362	13,327	10,443
Operating expenses .....	10,144	8,287	6,938
Pre-tax earnings .....	<u>\$ 6,218</u>	<u>\$ 5,040</u>	<u>\$ 3,505</u>

**2005 versus 2004.** Net revenues in Trading and Principal Investments of \$16.36 billion for 2005 increased 23% compared with 2004. Net revenues in FICC of \$8.48 billion increased 16% compared with 2004, primarily reflecting significantly higher net revenues in credit products (which includes distressed investing) and, to a lesser extent, interest rate products and currencies. Net revenues in commodities and mortgages were strong, but essentially unchanged compared with 2004. During 2005, FICC operated in an environment generally characterized by strong customer-driven activity, tight, but volatile, credit spreads, higher energy prices and a flatter yield curve. Net revenues in Equities of \$5.65 billion increased 21% compared with 2004, reflecting significantly higher net revenues in our customer franchise and principal strategies businesses. The increase in our customer franchise businesses reflected improved results in derivatives and shares, particularly in Europe and Asia, as well as in convertibles. In addition, results in principal strategies reflected strength across all regions. During 2005, Equities operated in an environment characterized by generally higher equity prices, improved customer-driven activity and continued low levels of market volatility. Principal Investments recorded net revenues of \$2.23 billion, due to a \$1.48 billion gain related to our investment in the convertible preferred stock of SMFG and \$753 million in gains and overrides from other corporate and, to a lesser extent, real estate principal investments.

Operating expenses of \$10.14 billion for 2005 increased 22% compared with 2004, primarily due to increased compensation and benefits expenses, reflecting higher discretionary compensation and increased levels of employment and, to a lesser extent, higher non-compensation expenses related to consolidated entities held for investment purposes. Excluding non-compensation expenses related to consolidated entities held for investment purposes, the increase in non-compensation expenses was primarily attributable to higher brokerage, clearing and exchange fees, principally due to increased transaction volumes in FICC and Equities, and higher professional fees, due to increased legal and consulting fees. Pre-tax earnings of \$6.22 billion in 2005 increased 23% compared with 2004.

**2004 versus 2003.** Net revenues in Trading and Principal Investments of \$13.33 billion for 2004 increased 28% compared with 2003. Net revenues in FICC of \$7.32 billion increased 31% compared with 2003, primarily due to significantly higher net revenues in credit products and commodities, as well as improved performances in currencies and mortgages. In addition, net revenues in interest rate products were strong, but were lower compared with 2003. During 2004, FICC operated in an environment generally characterized by strong customer-driven activity, rising energy prices, narrow corporate credit spreads and low, although rising, interest rates. The yield curve remained steep in 2004, but flattened in the second half of the year. Net revenues in Equities of \$4.67 billion increased 9% compared with 2003, reflecting higher net revenues in our customer franchise business, primarily due to increased activity in shares and derivatives. In addition, net revenues were higher in our principal strategies business. During 2004, Equities operated in an environment characterized by improved customer-driven activity, particularly early in the year, and generally higher equity prices. However, volatility levels continued to decline during 2004. Principal Investments recorded net revenues of \$1.33 billion, primarily due to an unrealized gain related to our investment in the convertible preferred stock of SMFG of \$771 million, as well as gains and overrides from other corporate principal investments.

Operating expenses of \$8.29 billion for 2004 increased 19% compared with 2003, primarily due to increased compensation and benefits expenses resulting from higher discretionary compensation and increased levels of employment. Other expenses also increased, principally due to the acquisition of consolidated investments and increased levels of business activity. In addition, brokerage, clearing and exchange fees were higher, reflecting higher transaction volumes in certain of our businesses, professional fees increased, primarily due to higher consulting and legal fees, and market development expenses increased, primarily due to higher levels of business activity. These increases were partially offset by lower amortization of identifiable intangible assets, as 2003 included impairment charges in respect of option specialist rights. In addition, occupancy expenses decreased, primarily reflecting lower exit costs associated with reductions in our global office space, and depreciation and amortization expenses were lower. Pre-tax earnings of \$5.04 billion in 2004 increased 44% compared with 2003.

### ***Asset Management and Securities Services***

Our Asset Management and Securities Services segment is divided into two components:

- **Asset Management.** Asset Management provides investment advisory and financial planning services and offers investment products across all major asset classes to a diverse group of institutions and individuals worldwide and primarily generates revenues in the form of management and incentive fees.
- **Securities Services.** Securities Services provides prime brokerage services, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals worldwide, and generates revenues primarily in the form of interest rate spreads or fees.

Assets under management typically generate fees as a percentage of asset value. In certain circumstances, we are also entitled to receive asset management incentive fees based on a percentage of a fund's return or when the return on assets under management exceeds specified benchmark returns or other performance targets. Incentive fees are recognized when the performance period ends and they are no longer subject to adjustment. We have numerous incentive fee arrangements, many of which have annual performance periods that end on December 31 and are not subject to adjustment thereafter. For that reason, incentive fees are seasonally weighted each year to our first fiscal quarter. Depending on the level of net revenues in our first fiscal quarter of 2006, these incentive fees may be material to the results of operations in that quarter.



The following table sets forth the operating results of our Asset Management and Securities Services segment:

**Asset Management and Securities Services Operating Results**  
(in millions)

	Year Ended November		
	2005	2004	2003
Asset Management .....	\$2,956	\$2,553	\$1,853
Securities Services .....	1,793	1,296	1,005
Total net revenues .....	4,749	3,849	2,858
Operating expenses .....	3,070	2,430	1,890
Pre-tax earnings .....	<u>\$1,679</u>	<u>\$1,419</u>	<u>\$ 968</u>

Assets under management include our mutual funds, alternative investment funds and separately managed accounts for institutional and individual investors. Substantially all assets under management are valued as of calendar month end.

The following table sets forth our assets under management by asset class:

**Assets Under Management by Asset Class**  
(in billions)

	As of November 30		
	2005	2004	2003
Money markets .....	\$ 101	\$ 90	\$ 89
Fixed income and currency .....	159	139	115
Equity <sup>(1)</sup> .....	158	126	98
Alternative investments <sup>(2)</sup> .....	114	97	71
Total .....	<u>\$ 532</u>	<u>\$ 452</u>	<u>\$ 373</u>

<sup>(1)</sup> Includes both our fundamental equity and quantitative equity strategies.

<sup>(2)</sup> Primarily includes private equity funds, hedge funds, real estate funds, certain currency and asset allocation strategies and other assets allocated to external investment managers.

The following table sets forth a summary of the changes in our assets under management:

**Changes in Assets Under Management**  
(in billions)

	<u>Year Ended November 30</u>		
	<u>2005</u>	<u>2004</u>	<u>2003 <sup>(1)</sup></u>
Balance, beginning of year .....	\$452	\$373	\$348
Net asset inflows/(outflows)			
Money markets .....	11	1	(19)
Fixed income and currency .....	18	14	10
Equity .....	20	13	(1)
Alternative investments .....	14	24	6
Total net asset inflows/(outflows) .....	63	52	(4)
Net market appreciation/(depreciation) .....	17	27	29
Balance, end of year .....	<u>\$532</u>	<u>\$452</u>	<u>\$373</u>

<sup>(1)</sup> Includes \$4 billion in non-money market assets from our acquisition of Ayco and \$16 billion in non-money market net asset outflows resulting from British Coal Pension Schemes' planned program of diversification among its asset managers.

**2005 versus 2004.** Net revenues in Asset Management and Securities Services of \$4.75 billion for 2005 increased 23% compared with 2004. Asset Management net revenues of \$2.96 billion increased 16% compared with 2004, primarily due to higher management fees, driven by growth in assets under management. During 2005, assets under management increased 18% to \$532 billion, reflecting net asset inflows of \$63 billion across all asset classes as well as market appreciation of \$17 billion, primarily in equity assets. Securities Services net revenues of \$1.79 billion for 2005 increased 38% compared with 2004, primarily reflecting significantly higher global customer balances in securities lending and margin lending.

Operating expenses of \$3.07 billion for 2005 increased 26% compared with 2004, primarily due to increased compensation and benefits expenses resulting from higher discretionary compensation and increased levels of employment. Other expenses also increased and professional fees were higher, principally due to increased consulting and legal fees. Pre-tax earnings of \$1.68 billion increased 18% compared with 2004.

**2004 versus 2003.** Net revenues in Asset Management and Securities Services of \$3.85 billion for 2004 increased 35% compared with 2003. Asset Management net revenues of \$2.55 billion increased 38% compared with 2003, primarily due to higher assets under management, significantly higher incentive fees and a full year contribution from Ayco. During 2004, assets under management increased 21% to \$452 billion, reflecting net asset inflows of \$52 billion across all asset classes, as well as market appreciation of \$27 billion, primarily in equity and fixed income assets. Securities Services net revenues of \$1.30 billion increased 29% compared with 2003, primarily due to significantly higher customer balances in securities lending and margin lending.

Operating expenses of \$2.43 billion for 2004 increased 29% compared with 2003, primarily due to increased compensation and benefits expenses resulting from higher discretionary compensation and increased levels of employment. In addition, other expenses increased, principally due to higher levels of business activity, including increased Asset Management distribution costs. Professional fees were also higher, primarily reflecting increased legal and consulting fees. These increases were partially offset by lower depreciation and amortization and occupancy expenses, primarily reflecting lower exit costs associated with reductions in our global office space. Pre-tax earnings of \$1.42 billion increased 47% compared with 2003.

## **Geographic Data**

For a summary of the net revenues and pre-tax earnings of Goldman Sachs by geographic region, see Note 16 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.

## **Off-Balance-Sheet Arrangements**

We have various types of off-balance-sheet arrangements that we enter into in the ordinary course of business. Our involvement in these arrangements can take many different forms, including purchasing or retaining residual and other interests in mortgage-backed and other asset-backed securitization vehicles; holding senior and subordinated debt, interests in limited and general partnerships, and preferred and common stock in other nonconsolidated vehicles; entering into interest rate, foreign currency, equity, commodity and credit derivatives; entering into operating leases; and providing guarantees, indemnifications, loan commitments, letters of credit, representations and warranties.

We enter into these arrangements for a variety of business purposes, primarily related to the securitization of commercial and residential mortgages, home equity and auto loans, government and corporate bonds, and other types of financial assets. Other reasons for entering into these arrangements include underwriting client securitization transactions; providing secondary market liquidity; making investments in performing and nonperforming debt, equity, real estate and other assets; providing investors with credit-linked and asset-repackaged notes; and receiving or providing letters of credit to satisfy margin requirements and to facilitate the clearance and settlement process.

Variable interest entities (VIEs) and qualifying special-purpose entities (QSPEs) are critical to the functioning of several significant investor markets, including the mortgage-backed and other asset-backed securities markets, since they provide market liquidity to financial assets by offering investors access to specific cash flows and risks created through the securitization process. Our financial interests in, and derivative transactions with, such nonconsolidated entities are accounted for at fair value, in the same manner as our other financial instruments, except in cases where we exert significant influence over an entity and apply the equity method of accounting.

The following table sets forth where a discussion of these and other off-balance-sheet arrangements may be found in Part II, Items 7 and 8 of the Annual Report on Form 10-K:

<b>Type of Off-Balance-Sheet Arrangement</b>	<b>Disclosure in Annual Report on Form 10-K</b>
Retained interests or contingent interests in assets transferred by us to nonconsolidated entities	See Note 3 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.
Other obligations, including contingent obligations, arising out of variable interests we have in nonconsolidated entities	See Note 3 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.
Derivative contracts	See “— Critical Accounting Policies” above and “— Risk Management” below and Note 3 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.
Guarantees	See Note 6 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.
Leases, letters of credit, and loans and other commitments	See “— Capital and Funding” below and Note 6 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K.

In addition, see Note 2 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for a discussion of our consolidation policies.

## **Capital and Funding**

### **Capital**

The amount of capital we hold is principally determined by regulatory capital requirements, rating agency guidelines, subsidiary capital requirements and our overall risk profile, which is largely driven by the size and composition of our trading and investing positions. Goldman Sachs’ total capital (total shareholders’ equity and long-term borrowings) increased 21% to \$128.01 billion as of November 2005 compared with \$105.78 billion as of November 2004. See “— Risk Management — Liquidity Risk — Cash Flows” below for a discussion of how we deployed capital raised as part of our financing activities.

The increase in total capital resulted primarily from an increase in long-term borrowings to \$100.01 billion as of November 2005 from \$80.70 billion as of November 2004. The weighted average maturity of our long-term borrowings as of November 2005 was approximately seven years. We swap a substantial portion of our long-term borrowings into U.S. dollar obligations with short-term floating interest rates in order to minimize our exposure to interest rates and foreign exchange movements. See Note 5 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our long-term borrowings.

Over the past several years, our ratio of long-term borrowings to total shareholders’ equity has been increasing. The growth in our long-term borrowings has been driven primarily by (i) our ability to replace a portion of our short-term borrowings with long-term borrowings and pre-fund near-term refinancing requirements, in light of the favorable debt financing environment, and (ii) the need to increase total capital in response to growth in our trading and investing businesses.

Total shareholders' equity increased by 12% to \$28.00 billion (common equity of \$26.25 billion and preferred stock of \$1.75 billion) as of November 2005 from \$25.08 billion as of November 2004. During 2005, Goldman Sachs issued 70,000 shares of preferred stock in three series as set forth in the following table:

#### Preferred Stock by Series

Series	Description	Date Issued	Shares Issued	Shares Authorized	Earliest Redemption Date	Redemption Value (in millions)
A	Perpetual Floating Rate Non-Cumulative	April 25, 2005	30,000	50,000	April 25, 2010	\$ 750
B	Perpetual 6.20% Non-Cumulative	October 31, 2005	32,000	50,000	October 31, 2010	800
C	Perpetual Floating Rate Non-Cumulative	October 31, 2005	8,000	25,000	October 31, 2010	200
			<u>70,000</u>	<u>125,000</u>		<u>\$1,750</u>

Each share of preferred stock has a par value of \$0.01, has a liquidation preference of \$25,000, is represented by 1,000 depositary shares and is redeemable at our option at a redemption price equal to \$25,000 plus declared and unpaid dividends. Our ability to declare or pay dividends on, or purchase, redeem or otherwise acquire, our common stock is subject to certain restrictions in the event we fail to pay or set aside full dividends on our preferred stock for the latest completed dividend period. All preferred stock also has a preference over our common stock upon liquidation.

Our stock repurchase program is intended to help maintain our total shareholders' equity at appropriate levels and to substantially offset increases in share count over time resulting from employee equity-based compensation. The repurchase program has been effected primarily through regular open-market purchases and is influenced by, among other factors, the level of our common shareholders' equity, our overall capital position, employee equity awards granted and exercises of employee stock options, the prevailing market price of our common stock and general market conditions.

During 2005, we repurchased 63.7 million shares of our common stock at a total cost of \$7.11 billion, and during 2004, we repurchased 18.7 million shares of our common stock at a total cost of \$1.81 billion. The average price paid per share for repurchased shares was \$111.57 and \$96.29 for the years ended November 2005 and November 2004, respectively. The increase in the level of repurchases in 2005 compared with 2004 primarily reflects our decision to manage the growth of our common shareholders' equity. In addition, to satisfy minimum statutory employee tax withholding requirements related to the delivery of shares underlying restricted stock units, we cancelled 1.6 million restricted stock units at a total cost of \$163 million in 2005 and we cancelled 9.1 million restricted stock units at a total cost of \$870 million in 2004. As of November 2005, we were authorized to repurchase up to 42.7 million additional shares of stock pursuant to our repurchase program. For additional information on our repurchase program, see "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" in Part II, Item 5 of the Annual Report on Form 10-K.

The following table sets forth information on our assets, shareholders' equity, leverage ratios and book value per common share:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(\$ in millions, except per share amounts)	
Total assets	\$706,804	\$531,379
Adjusted assets <sup>(1)</sup>	466,019	347,082
Total shareholders' equity	28,002	25,079
Tangible equity capital <sup>(2)</sup>	25,549	22,958
Leverage ratio <sup>(3)</sup>	25.2x	21.2x
Adjusted leverage ratio <sup>(4)</sup>	18.2x	15.1x
Debt to equity ratio <sup>(5)</sup>	3.6x	3.2x
Common shareholders' equity	26,252	25,079
Tangible common shareholders' equity <sup>(6)</sup>	21,049	20,208
Book value per common share <sup>(7)</sup>	\$ 57.02	\$ 50.77
Tangible book value per common share <sup>(8)</sup>	45.72	40.91

<sup>(1)</sup> Adjusted assets excludes (i) low-risk collateralized assets generally associated with our matched book and securities lending businesses (which we calculate by adding our securities purchased under agreements to resell and securities borrowed, and then subtracting our nonderivative short positions), (ii) cash and securities we segregate for regulatory and other purposes and (iii) goodwill and identifiable intangible assets. The following table sets forth a reconciliation of total assets to adjusted assets:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Total assets	\$ 706,804	\$ 531,379
Deduct: Securities purchased under agreements to resell	(83,619)	(44,257)
Securities borrowed	(191,800)	(155,086)
Add: Financial instruments sold, but not yet purchased, at fair value	149,071	132,097
Less derivative liabilities	(57,829)	(64,001)
Subtotal	91,242	68,096
Deduct: Cash and securities segregated for regulatory and other purposes	(51,405)	(48,179)
Goodwill and identifiable intangible assets	(5,203)	(4,871)
Adjusted assets	<u>\$ 466,019</u>	<u>\$ 347,082</u>

<sup>(2)</sup> Tangible equity capital equals total shareholders' equity and junior subordinated debt issued to a trust less goodwill and identifiable intangible assets. We consider junior subordinated debt issued to a trust to be a component of our tangible equity capital base due to the inherent characteristics of these securities, including the long-term nature of the securities, our ability to defer coupon interest for up to ten consecutive semiannual periods and the subordinated nature of the obligations in our capital structure. The following table sets forth the reconciliation of total shareholders' equity to tangible equity capital:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Total shareholders' equity	\$ 28,002	\$ 25,079
Add: Junior subordinated debt issued to a trust	2,750	2,750
Deduct: Goodwill and identifiable intangible assets	(5,203)	(4,871)
Tangible equity capital	<u>\$ 25,549</u>	<u>\$ 22,958</u>

- (3) Leverage ratio equals total assets divided by total shareholders' equity.
- (4) Adjusted leverage ratio equals adjusted assets divided by tangible equity capital. We believe that the adjusted leverage ratio is a more meaningful measure of our capital adequacy than the leverage ratio because it excludes certain low-risk collateralized assets that are generally supported with little or no capital and reflects the tangible equity capital deployed in our businesses.
- (5) Debt to equity ratio equals long-term borrowings divided by total shareholders' equity.
- (6) Tangible common shareholders' equity equals total shareholders' equity less preferred stock and goodwill and identifiable intangible assets. The following table sets forth a reconciliation of total shareholders' equity to tangible common shareholders' equity:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Total shareholders' equity .....	\$28,002	\$25,079
Deduct: Preferred stock .....	(1,750)	—
Common shareholders' equity .....	\$26,252	\$25,079
Deduct: Goodwill and identifiable intangible assets .....	(5,203)	(4,871)
Tangible common shareholders' equity .....	<u>\$21,049</u>	<u>\$20,208</u>

- (7) Book value per common share is based on common shares outstanding, including restricted stock units granted to employees with no future service requirements, of 460.4 million and 494.0 million as of November 2005 and November 2004, respectively.
- (8) Tangible book value per common share is computed by dividing tangible common shareholders' equity by the number of common shares outstanding, including restricted stock units granted to employees with no future service requirements.

## Short-Term Borrowings

Goldman Sachs obtains secured and unsecured short-term borrowings primarily through the issuance of promissory notes, commercial paper and bank loans. Short-term borrowings also include the portion of long-term borrowings maturing within one year of our financial statement date and certain long-term borrowings that are redeemable within one year of our financial statement date at the option of the holder.

The following table sets forth our short-term borrowings by product:

### Short-Term Borrowings (in millions)

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
Promissory notes .....	\$17,339	\$19,513
Commercial paper .....	5,154	4,355
Bank loans and other .....	15,975	13,474
Current portion of long-term borrowings .....	<u>16,751</u>	<u>17,617</u>
Total .....	<u>\$55,219</u>	<u>\$54,959</u>

Our liquidity depends to an important degree on our ability to refinance these borrowings on a continuous basis. Investors who hold our outstanding promissory notes (short-term unsecured debt that is nontransferable and in which Goldman Sachs does not make a market) and commercial paper have no obligation to purchase new instruments when the outstanding instruments mature.

The following table sets forth our secured and unsecured short-term borrowings:

	<u>As of November</u>	
	<u>2005</u>	<u>2004</u>
	(in millions)	
Secured short-term borrowings .....	\$ 7,972	\$ 8,558
Unsecured short-term borrowings .....	<u>47,247</u>	<u>46,401</u>
Total short-term borrowings .....	<u>\$55,219</u>	<u>\$54,959</u>

A large portion of our secured short-term borrowings are similar in nature to our other collateralized financing sources such as securities sold under agreements to repurchase. These secured short-term borrowings provide Goldman Sachs with a more stable source of liquidity than unsecured short-term borrowings, as they are less sensitive to changes in our credit ratings due to underlying collateral. Our unsecured short-term borrowings include extendible debt if the earliest maturity occurs within one year of our financial statement date. Extendible debt is debt that allows the holder the right to extend the maturity date at predetermined periods during the contractual life of the instrument. These borrowings can be, and in the past generally have been, extended. See “— Risk Management — Liquidity Risk” below for a discussion of the principal liquidity policies we have in place to manage the liquidity risk associated with our short-term borrowings. For a discussion of factors that could impair our ability to access the capital markets, see “— Certain Risk Factors That May Affect Our Business” above. See Note 4 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our short-term borrowings.

### Credit Ratings

We rely upon the short-term and long-term debt capital markets to fund a significant portion of our day-to-day operations. The cost and availability of debt financing is influenced by our credit ratings. Credit ratings are important when we are competing in certain markets and when we seek to engage in longer term transactions, including OTC derivatives. We believe our credit ratings are primarily based on the credit rating agencies’ assessment of our liquidity, market, credit and operational risk management practices, the level and variability of our earnings, our capital base, our franchise, reputation and management, our corporate governance and the external operating environment. See “— Certain Risk Factors That May Affect Our Business” above for a discussion of the risks associated with a reduction in our credit ratings.

The following table sets forth our unsecured credit ratings as of November 2005:

	<u>Short-Term Debt</u>	<u>Long-Term Debt</u>	<u>Preferred Stock</u>
Dominion Bond Rating Service Limited <sup>(1)</sup>	R-1 (middle)	A (high)	N/A
Fitch, Inc. ....	F1+	AA–	A+
Moody’s Investors Service .....	P-1	Aa3	A2
Standard & Poor’s <sup>(2)</sup> .....	A-1	A+	A–

<sup>(1)</sup> On November 22, 2005, Dominion Bond Rating Service Limited placed Goldman Sachs’ long-term debt issuer rating “under review with positive implications.”

<sup>(2)</sup> On October 11, 2005, Standard & Poor’s affirmed Goldman Sachs’ long-term debt rating and revised its outlook from “stable” to “positive.”



As of November 2005, collateral or termination payments pursuant to bilateral agreements with certain counterparties of approximately \$384 million would have been required in the event of a one-level reduction in our long-term credit ratings. In evaluating our liquidity requirements, we consider additional collateral or termination payments that would be required in the event of further reductions in our long-term credit ratings, as well as collateral that has not been called by counterparties, but is available to them. For a further discussion of our excess liquidity policies, see “— Risk Management — Liquidity Risk — Excess Liquidity — Maintenance of a Pool of Highly Liquid Securities” below.

### Contractual Obligations and Contingent Commitments

Goldman Sachs has contractual obligations to make future payments under long-term debt and long-term noncancelable lease agreements and has contingent commitments under a variety of commercial arrangements.

The following table sets forth our contractual obligations as of November 2005:

<b>Contractual Obligations</b>					
(in millions)					
	<u>2006</u>	<u>2007- 2008</u>	<u>2009- 2010</u>	<u>2011- Thereafter</u>	<u>Total</u>
Long-term borrowings by contract maturity <sup>(1) (2)</sup> .....	\$ —	\$23,613	\$26,444	\$49,950	\$100,007
Minimum rental payments .....	399	875	594	2,134	4,002

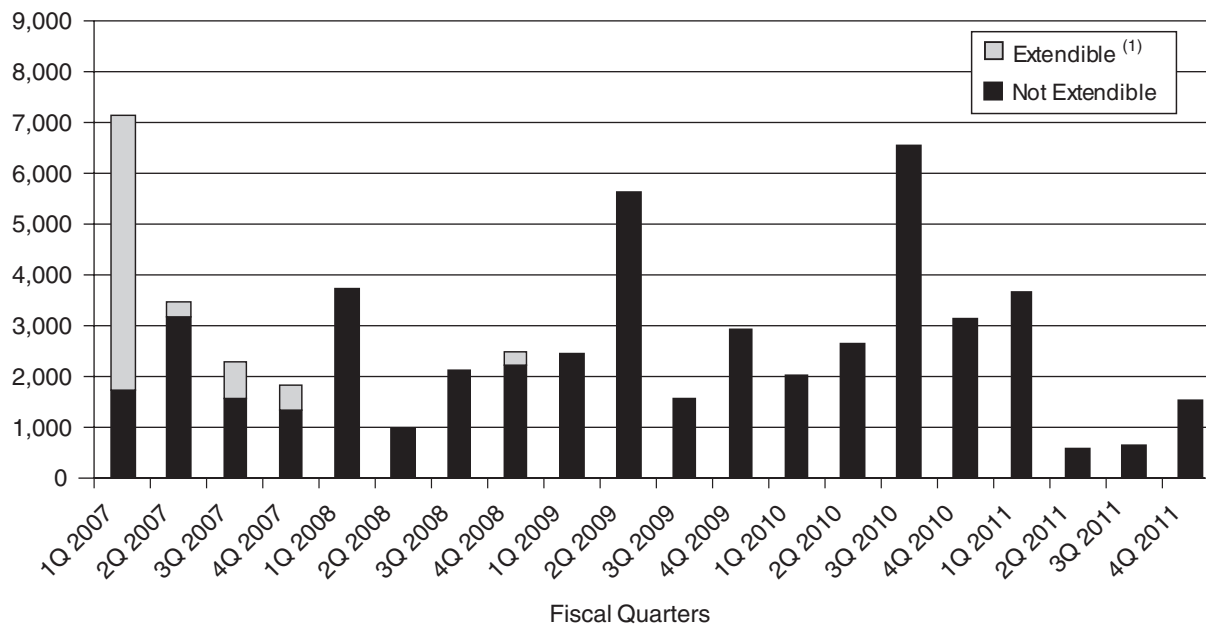
<sup>(1)</sup> Long-term borrowings maturing within one year of our financial statement date and certain long-term borrowings that are redeemable within one year of our financial statement date at the option of the holder are included as short-term borrowings in the consolidated statements of financial condition.

<sup>(2)</sup> Long-term borrowings repayable at the option of Goldman Sachs are reflected at their contractual maturity dates. Certain long-term borrowings that are redeemable prior to maturity at the option of the holder are reflected at the dates such options become exercisable.

As of November 2005, our long-term borrowings were \$100.01 billion and consisted principally of senior borrowings with maturities extending to 2035. These long-term borrowings consisted of \$15.67 billion in secured long-term borrowings and \$84.34 billion in unsecured long-term borrowings. As of November 2005, long-term borrowings included nonrecourse debt of \$13.63 billion, consisting of \$5.11 billion issued by William Street Funding Corporation (a wholly owned subsidiary of Group Inc. formed to raise funding to support loan commitments to investment-grade clients made by another wholly owned William Street entity), and \$8.52 billion issued by other consolidated entities, of which \$1.33 billion was related to our power generation facilities. Nonrecourse debt is debt that only the issuing subsidiary or, if applicable, a subsidiary guaranteeing the debt is obligated to repay. See Note 5 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our long-term borrowings.

The following table sets forth our quarterly long-term borrowings maturity profile through fiscal 2011:

**Long-Term Borrowings Maturity Profile**  
(\$ in millions)



<sup>(1)</sup> Our long-term borrowings include extendible debt if the earliest maturity is one year or greater from our financial statement date. Extendible debt is categorized in the maturity profile at the earliest possible maturity date even though the debt can be, and in the past generally has been, extended.

As of November 2005, our future minimum rental payments, net of minimum sublease rentals, under noncancelable leases were \$4.00 billion. These lease commitments, principally for office space, expire on various dates through 2069. Certain agreements are subject to periodic escalation provisions for increases in real estate taxes and other charges.

During our third fiscal quarter of 2005, we announced plans for a new world headquarters in New York City, with initial occupancy scheduled for 2009, at an expected cost of \$2.3 billion to \$2.5 billion. Goldman Sachs will partially finance the project with tax-exempt Liberty Bonds. As of November 2005, we borrowed approximately \$1.4 billion through the issuance of Liberty Bonds and may borrow up to an additional \$250 million through the issuance of additional Liberty Bonds before 2010. As of November 2005, we had outstanding construction-related commitments of \$47 million in connection with this project. Included in our future minimum rental payments under noncancelable lease agreements is \$309 million related to a 64-year ground lease for the land on which our world headquarters will be constructed, of which \$161 million is a lump-sum payment due by June 2007. See Note 6 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our leases.

Our occupancy expenses include costs associated with office space held in excess of our current requirements. This excess space, the cost of which is charged to earnings as incurred, is being held for potential growth or to replace currently occupied space that we may exit in the future. We regularly evaluate our current and future space capacity in relation to current and projected staffing levels. We may incur exit costs in 2006 and thereafter to the extent we (i) reduce our space capacity or (ii) commit to, or occupy, new properties in the locations in which we operate and, consequently, dispose of existing space that had been held for potential growth. These exit costs may be material to our results of operations in a given period.

The following table sets forth our contingent commitments as of November 2005:

### Contingent Commitments

(in millions)

	Commitment Amount by Period of Expiration				Total
	2006	2007- 2008	2009- 2010	2011- Thereafter	
Commitments to extend credit					
William Street program . . . . .	\$ 1,811	\$ 1,788	\$ 9,385	\$ 1,521	\$14,505
Other commercial lending:					
Investment-grade . . . . .	9,592	5,893	1,008	1,099	17,592
Non-investment-grade . . . . .	1,783	1,361	3,569	11,823	18,536
Warehouse financing . . . . .	7,614	2,746	10	119	10,489
Total commitments to extend credit . .	20,800	11,788	13,972	14,562	61,122
Commitments under letters of credit					
issued by banks to counterparties	9,205	17	12	—	9,234
Other commercial commitments <sup>(1)</sup> . . .	1,069	324	3,127	238	4,758
Total . . . . .	\$31,074	\$12,129	\$17,111	\$14,800	\$75,114

<sup>(1)</sup> Includes our corporate and real estate investment fund commitments, construction-related commitments and other purchase commitments.

Our commitments to extend credit are agreements to lend to counterparties that have fixed termination dates and are contingent on the satisfaction of all conditions to borrowing set forth in the contract. In connection with our lending activities, we had outstanding commitments of \$61.12 billion as of November 2005 compared with \$27.72 billion as of November 2004. The increase primarily related to our commercial lending activities outside the William Street credit extension program, and such commitments were generally extended in connection with contingent acquisition financing and other types of corporate lending. Since these commitments may expire unused, the total commitment amount does not necessarily reflect the actual future cash flow requirements. We may reduce our credit risk on these commitments by syndicating all or substantial portions of commitments to other investors. In addition, commitments that are extended for contingent acquisition financing are often short-term in nature, as borrowers often replace them with other funding sources. With respect to the William Street credit extension program, substantially all of the commitments extended are to investment-grade corporate borrowers. With respect to these commitments, we have credit loss protection provided to us by SMFG, which is generally limited to 95% of the first loss we realize on approved loan commitments, subject to a maximum of \$1.00 billion. In addition, subject to the satisfaction of certain conditions, upon our request, SMFG will provide protection for 70% of the second loss on such commitments, subject to a maximum of \$1.13 billion. We also use other financial instruments to hedge certain William Street commitments not covered by SMFG.

As of November 2005, we had commitments to enter into forward secured financing transactions, including certain repurchase and resale agreements and secured borrowing and lending arrangements, of \$49.93 billion.

See Note 6 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our commitments, contingencies and guarantees.

## **Regulation**

During our second fiscal quarter of 2005, Goldman Sachs became regulated by the U.S. Securities and Exchange Commission (SEC) as a Consolidated Supervised Entity (CSE). As such, Goldman Sachs is subject to group-wide supervision and examination by the SEC and is subject to minimum capital requirements on a consolidated basis. As of November 2005, Goldman Sachs was in compliance with the CSE capital requirements.

The European Union's European Financial Groups Directive (Directive 2002/87/EC) introduced certain changes to the way financial conglomerates and other financial services organizations operating in Europe are regulated. As a result of these changes, activities that are conducted in otherwise unregulated entities are now subject to certain forms of regulation, including consolidated supervision and capital adequacy requirements. The measures we have taken to comply with the directive include becoming regulated as a CSE.

In addition, many of our principal subsidiaries are subject to separate regulation in the United States and/or elsewhere. Goldman, Sachs & Co. and Goldman Sachs Execution & Clearing, L.P. are registered U.S. broker-dealers and futures commissions merchants, and their primary regulators include the SEC, the Commodity Futures Trading Commission, the Chicago Board of Trade, the NYSE, the National Association of Securities Dealers, Inc. and the National Futures Association. Goldman Sachs International, a regulated U.K. broker-dealer, is subject to regulation primarily by the Financial Services Authority. Goldman Sachs (Japan) Ltd., a regulated broker-dealer based in Tokyo, is subject to regulation by the Financial Services Agency, the Tokyo Stock Exchange, the Osaka Securities Exchange, The Tokyo International Financial Futures Exchange, the Japan Securities Dealers Association, the Tokyo Commodity Exchange, and the Ministry of Economy, Trade and Industry. Several other subsidiaries of Goldman Sachs are regulated by securities, investment advisory, banking, and other regulators and authorities around the world, such as the Federal Financial Supervisory Authority (BaFin) and the Bundesbank in Germany, the Autorité des Marchés Financiers and Banque de France in France, Banca d'Italia and the Commissione Nazionale per le Società e la Borsa (CONSOB) in Italy, the Swiss Federal Banking Commission, the Securities and Futures Commission in Hong Kong, the Monetary Authority of Singapore and the China Securities Regulatory Commission. See Note 15 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our regulated subsidiaries. For a discussion of our potential inability to access funds from our regulated entities, see "— Risk Management — Liquidity Risk — Intercompany Funding" below.

## **Risk Management**

Management believes that effective risk management is of primary importance to the success of Goldman Sachs. Accordingly, we have a comprehensive risk management process to monitor, evaluate and manage the principal risks we assume in conducting our activities. These risks include market, credit, liquidity, operational, legal and reputational exposures.

### **Risk Management Structure**

We seek to monitor and control our risk exposure through a variety of separate but complementary financial, credit, operational, compliance and legal reporting systems. In addition, a number of committees are responsible for monitoring risk exposures and for general oversight of our risk management process. These committees, whose responsibilities are described below, meet regularly and consist of senior members of both our revenue-producing units and departments that are independent of our revenue-producing units.

Segregation of duties and management oversight are fundamental elements of our risk management process. In addition to the committees described below, functions that are independent of the revenue-producing units, such as Compliance, Finance, Legal, Management Controls (Internal Audit) and Operations, perform risk management functions, which include monitoring, analyzing and evaluating risk.

**Management Committee.** All risk control functions ultimately report to our Management Committee. Through both direct and delegated authority, the Management Committee approves all of our operating activities, trading risk parameters and customer review guidelines.

**Risk Committees.** The Firmwide Risk Committee reviews the activities of existing businesses, approves new businesses and products, approves firmwide and divisional market risk limits, reviews business unit market risk limits, approves market risk limits for selected sovereign markets and business units, approves sovereign credit risk limits and credit risk limits by ratings group, and reviews scenario analyses based on abnormal or “catastrophic” market movements.

The Divisional Risk Committee sets market risk limits for our trading activities subject to overall firmwide risk limits, based on a number of measures, including Value-at-Risk (VaR), stress tests and scenario analyses. Several other committees oversee various risk, valuation, operational, credit and business practice issues related to our asset management business.

Business unit risk limits are established by the various risk committees and may be further allocated by the business unit managers to individual trading desks. Trading desk managers have the first line of responsibility for managing risk within prescribed limits. These managers have in-depth knowledge of the primary sources of risk in their respective markets and the instruments available to hedge their exposures.

Market risk limits are monitored by the Finance Division and are reviewed regularly by the appropriate risk committee. Limit violations are reported to the appropriate risk committee and business unit managers and addressed, as necessary. Credit risk limits are also monitored by the Finance Division and reviewed by the appropriate risk committee.

**Business Practices Committee.** The Business Practices Committee assists senior management in its oversight of compliance, legal and operational risks and related reputational concerns, such as potential conflicts of interest. The Business Practices Committee also reviews the firm’s business practices, policies, and procedures for consistency with our business principles. The Business Practices Committee reviews these areas and makes recommendations for improvements as necessary to mitigate potential risks and assist in achieving adherence to our business principles.

**Capital Committee.** The Capital Committee reviews and approves transactions involving commitments of our capital. Such capital commitments include extensions of credit, alternative liquidity commitments, certain bond underwritings, certain distressed debt and principal finance activities, and certain equity-linked structured products. The Capital Committee is also responsible for ensuring that business and reputational standards for capital commitments are maintained on a global basis.

**Commitments Committee.** The Commitments Committee reviews and approves underwriting and distribution activities, primarily with respect to offerings of equity and equity-related securities, and sets and maintains policies and procedures designed to ensure that legal, reputational, regulatory and business standards are maintained in conjunction with these activities. In addition to reviewing specific transactions, the Commitments Committee periodically conducts strategic reviews of industry sectors and products and establishes policies in connection with transaction practices.

**Credit Policy Committee.** The Credit Policy Committee establishes and reviews broad credit policies and parameters that are implemented by the Credit Department.

**Finance Committee.** The Finance Committee establishes and ensures compliance with our liquidity policies, approves balance sheet limits and has oversight responsibility for liquidity risk, the size and composition of our balance sheet and capital base, and our credit ratings. The Finance Committee regularly reviews our balance sheet, funding position and capitalization and makes adjustments in light of current events, risks and exposures.

**New Products Committee.** The New Products Committee, under the oversight of the Firmwide Risk Committee, is responsible for reviewing and approving new products and businesses globally.

**Operational Risk Committee.** The Operational Risk Committee provides oversight of the ongoing development and implementation of our operational risk policies, framework and methodologies, and monitors the effectiveness of operational risk management.

**Structured Products Committee.** The Structured Products Committee reviews and approves structured product transactions entered into with our clients that raise legal, regulatory, tax or accounting issues or present reputational risk to Goldman Sachs.

## **Market Risk**

The potential for changes in the market value of our trading and investing positions is referred to as market risk. Such positions result from market-making, specialist, proprietary trading and investing, and underwriting activities.

Categories of market risk include exposures to interest rates, equity prices, currency rates and commodity prices. A description of each market risk category is set forth below:

- Interest rate risks primarily result from exposures to changes in the level, slope and curvature of the yield curve, the volatility of interest rates, mortgage prepayment speeds and credit spreads.
- Equity price risks result from exposures to changes in prices and volatilities of individual equities, equity baskets and equity indices.
- Currency rate risks result from exposures to changes in spot prices, forward prices and volatilities of currency rates.
- Commodity price risks result from exposures to changes in spot prices, forward prices and volatilities of commodities, such as electricity, natural gas, crude oil, petroleum products, and precious and base metals.

We seek to manage these risks by diversifying exposures, controlling position sizes and establishing hedges in related securities or derivatives. For example, we may hedge a portfolio of common stocks by taking an offsetting position in a related equity-index futures contract. The ability to manage an exposure may, however, be limited by adverse changes in the liquidity of the security or the related hedge instrument and in the correlation of price movements between the security and related hedge instrument.

In addition to applying business judgment, senior management uses a number of quantitative tools to manage our exposure to market risk. These tools include:

- risk limits based on a summary measure of market risk exposure referred to as VaR, which are updated and monitored on a daily basis;
- scenario analyses, stress tests and other analytical tools that measure the potential effects on our net revenues of various market events, including, but not limited to, a large widening of credit spreads, a substantial decline in equity markets and significant moves in selected sovereign markets; and
- inventory position limits for selected business units.

### **VaR**

VaR is the potential loss in value of Goldman Sachs' trading positions due to adverse market movements over a defined time horizon with a specified confidence level.

For the VaR numbers reported below, a one-day time horizon and a 95% confidence level were used. This means that there is a 1 in 20 chance that daily trading net revenues will fall below the expected daily trading net revenues by an amount at least as large as the reported VaR. Thus, shortfalls from expected trading net revenues on a single trading day greater than the reported VaR would be anticipated to occur, on average, about once a month. Shortfalls on a single day can exceed reported VaR by significant amounts. Shortfalls can also accumulate over a longer time horizon such as a number of consecutive trading days.

The VaR numbers below are shown separately for interest rate, equity, currency and commodity products, as well as for our overall trading positions. The VaR numbers in each risk category include the underlying product positions and related hedges that may include positions in other product areas. For example, the hedge of a foreign exchange forward may include an interest rate futures position, and the hedge of a long corporate bond position may include a short position in the related equity.

The modeling of the risk characteristics of our trading positions involves a number of assumptions and approximations. While management believes that these assumptions and approximations are reasonable, there is no standard methodology for estimating VaR, and different assumptions and/or approximations could produce materially different VaR estimates.

We use historical data to estimate our VaR and, to better reflect current asset volatilities, we generally weight historical data to give greater importance to more recent observations. Given its reliance on historical data, VaR is most effective in estimating risk exposures in markets in which there are no sudden fundamental changes or shifts in market conditions. An inherent limitation of VaR is that the distribution of past changes in market risk factors may not produce accurate predictions of future market risk. Different VaR methodologies and distributional assumptions could produce a materially different VaR. Moreover, VaR calculated for a one-day time horizon does not fully capture the market risk of positions that cannot be liquidated or offset with hedges within one day. Changes in VaR between reporting periods are generally due to changes in levels of exposure, volatilities and/or correlations among asset classes.

The following tables set forth the daily VaR:

**Average Daily VaR <sup>(1)</sup>**  
(in millions)

<u>Risk Categories</u>	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
Interest rates .....	\$ 37	\$ 36	\$ 38
Equity prices .....	34	32	27
Currency rates .....	17	20	18
Commodity prices .....	26	20	18
Diversification effect <sup>(2)</sup> .....	(44)	(41)	(43)
<b>Total .....</b>	<b><u>\$ 70</u></b>	<b><u>\$ 67</u></b>	<b><u>\$ 58</u></b>

<sup>(1)</sup> During the second quarter of 2004, we began to exclude from our calculation other debt portfolios that cannot be properly measured in VaR. The effect of excluding these portfolios was not material to prior periods and, accordingly, such periods have not been adjusted. For a further discussion of the market risk associated with these portfolios, see “— Other Debt Portfolios” below.

<sup>(2)</sup> Equals the difference between total VaR and the sum of the VaRs for the four risk categories. This effect arises because the four market risk categories are not perfectly correlated.

Our average daily VaR increased to \$70 million in 2005 from \$67 million in 2004. The increase was primarily due to higher levels of exposure to commodity prices, equity prices and interest rates, partially offset by reduced exposures to currency rates, as well as reduced volatilities, particularly in interest rate and equity assets.

Our average daily VaR increased to \$67 million in 2004 from \$58 million in 2003, primarily due to higher levels of exposure to equity prices, currency rates and commodity prices, partially offset by reduced exposures to interest rates, as well as reduced volatilities, particularly in interest rate and equity assets.

**Daily VaR**  
(in millions)

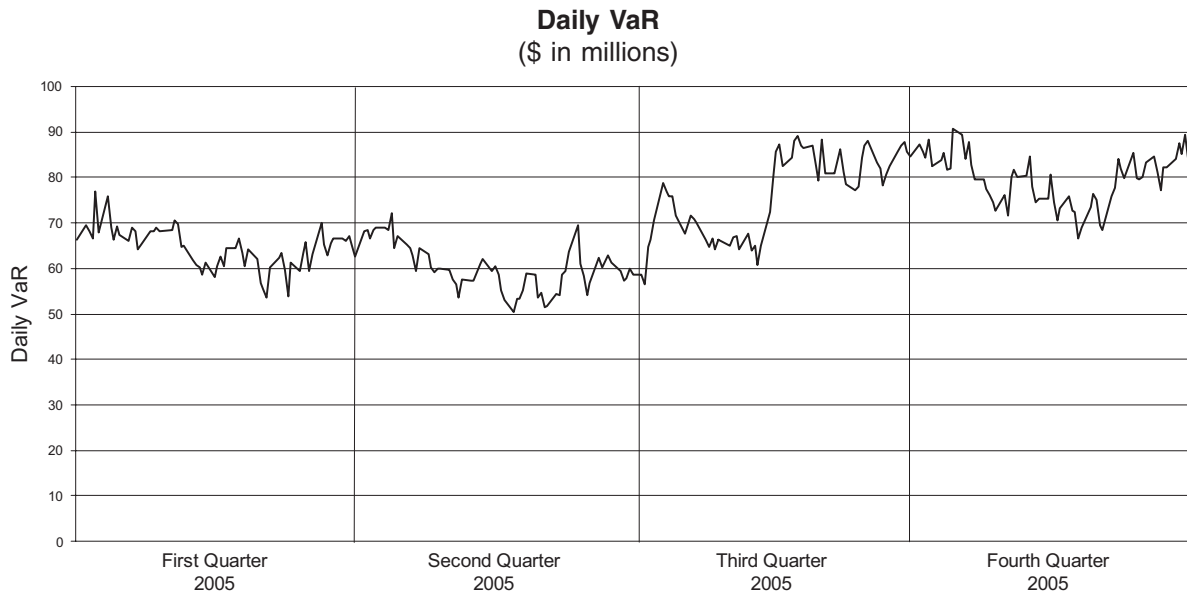
<u>Risk Categories</u>	<u>As of November</u>		<u>Year Ended November 2005</u>	
	<u>2005</u>	<u>2004</u>	<u>High</u>	<u>Low</u>
Interest rates .....	\$ 45	\$ 28	\$53	\$26
Equity prices .....	54	25	62	21
Currency rates .....	10	18	31	9
Commodity prices .....	18	35	37	16
Diversification effect <sup>(1)</sup> .....	(44)	(40)		
<b>Total .....</b>	<b><u>\$ 83</u></b>	<b><u>\$ 66</u></b>	<b>\$91</b>	<b>\$51</b>

<sup>(1)</sup> Equals the difference between total VaR and the sum of the VaRs for the four risk categories. This effect arises because the four market risk categories are not perfectly correlated.

Our daily VaR increased to \$83 million as of November 2005 from \$66 million as of November 2004. The increase was primarily due to higher levels of exposure to equity prices and interest rates, partially offset by reduced exposures to commodity prices and currency rates, as well as reduced volatilities in equity, currency and commodity assets.

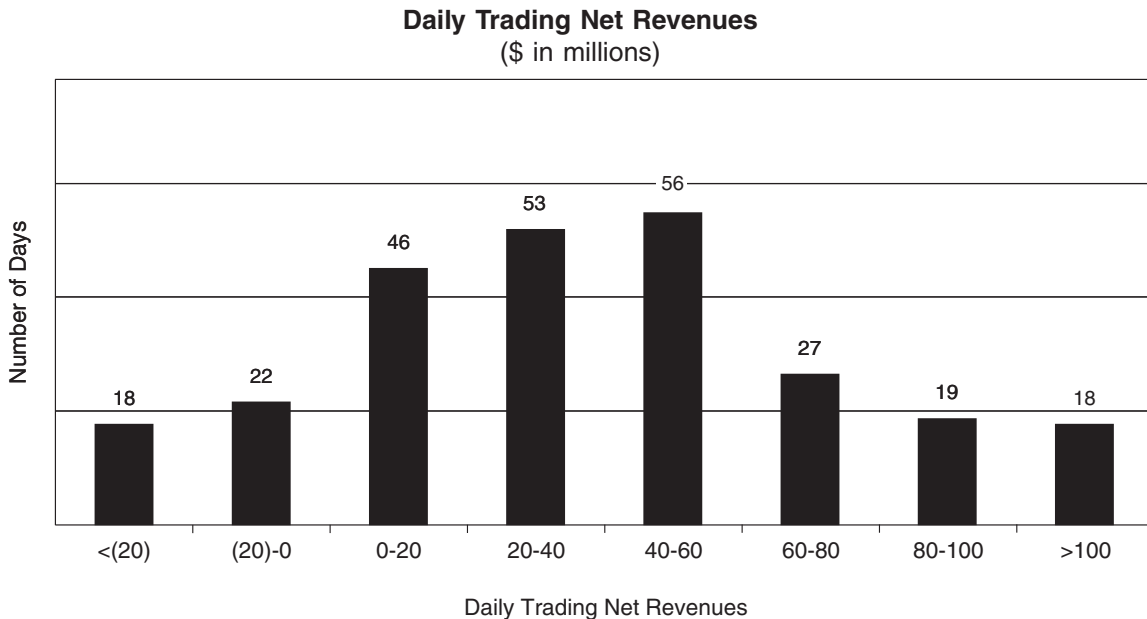


The following chart presents our daily VaR during 2005:



**Trading Net Revenues Distribution**

Substantially all of our inventory positions are marked-to-market on a daily basis and changes are recorded in net revenues. The following chart sets forth the frequency distribution of our daily trading net revenues for substantially all inventory positions included in VaR for the year ended November 2005:



As part of our overall risk control process, daily trading net revenues are compared with VaR calculated as of the end of the prior business day. Trading losses incurred on a single day did not exceed our 95% one-day VaR during 2005.

### **Other Debt Portfolios**

The market risk associated with portfolios in our credit products business that cannot be properly measured in VaR (primarily due to inadequate historical data on the underlying assets in the aggregate) is measured based on a potential 10% decline in the asset value of such portfolios. The market values of the underlying positions are sensitive to changes in a number of factors, including discount rates and the projected timing and amount of future cash flows. As of November 2005, the potential impact of a 10% decline in the asset value of these portfolios was \$669 million compared with \$416 million as of November 2004. The increase in 2005 is primarily due to new investments in the Americas and Asia.

### **Nontrading Risk**

**SMFG.** The market risk of our investment in the convertible preferred stock of SMFG, net of the economic hedge on the unrestricted shares of common stock underlying a portion of our investment, is measured using a sensitivity analysis that estimates the potential reduction in our net revenues associated with a 10% decline in the SMFG common stock price. As of November 2005, the sensitivity of our investment to a 10% decline in the SMFG common stock price was \$262 million compared with \$236 million as of November 2004. The change is primarily due to an increase in the SMFG common stock price and, to a lesser extent, the impact of the passage of time in respect of the transfer restrictions on the underlying common stock, partially offset by the effect of hedging the unrestricted shares of common stock underlying our investment. This sensitivity should not be extrapolated to other movements in the SMFG common stock price, as the relationship between the fair value of our investment and the SMFG common stock price is nonlinear.

**Other Principal Investments.** The market risk for financial instruments in our nontrading portfolio, including our merchant banking investments but excluding our investment in the convertible preferred stock of SMFG, is measured using a sensitivity analysis that estimates the potential reduction in our net revenues associated with a 10% decline in equity markets. This sensitivity analysis is based on certain assumptions regarding the relationship between changes in stock price indices and changes in the fair value of the individual financial instruments in our nontrading portfolio. Different assumptions could produce materially different risk estimates. As of November 2005, the sensitivity of our nontrading portfolio (excluding our investment in the convertible preferred stock of SMFG) to a 10% equity market decline was \$181 million compared with \$118 million as of November 2004, primarily reflecting new private investments.

### **Credit Risk**

Credit risk represents the loss that we would incur if a counterparty or an issuer of securities or other instruments we hold fails to perform under its contractual obligations to us, or upon a deterioration in the credit quality of third parties whose securities or obligations we hold. To reduce our credit exposures, we seek to enter into netting agreements with counterparties that permit us to offset receivables and payables with such counterparties. In addition, we attempt to further reduce credit risk with certain counterparties by (i) entering into agreements that enable us to obtain collateral from a counterparty or to terminate or reset the terms of transactions after specified time periods or upon the occurrence of credit-related events, (ii) seeking third-party guarantees of the counterparty's obligations, and/or (iii) using credit derivatives and other structures and techniques.

For most businesses, counterparty credit limits are established by the Credit Department, which is independent of the revenue-producing departments, based on guidelines set by the Firmwide Risk Committee and the Credit Policy Committee. For most products, we measure and limit credit exposures by reference to both current and potential exposure. We typically measure potential exposure based on projected worst-case market movements over the life of a transaction within a 95% confidence interval. For collateralized transactions, we also evaluate potential exposure over a shorter collection period, and give effect to the value of collateral received. We further seek to measure credit exposure through the use of scenario analyses, stress tests and other quantitative

tools. Our global credit management systems monitor current and potential credit exposure to individual counterparties and on an aggregate basis to counterparties and their affiliates. These systems also provide management, including the Firmwide Risk and Credit Policy Committees, with information regarding overall credit risk by product, industry sector, country and region.

As of both November 2005 and November 2004, we held U.S. government and federal agency obligations that represented 7% and 5% of our total assets, respectively. In addition, most of our securities purchased under agreements to resell are collateralized by U.S. government, federal agency and other sovereign obligations. As of November 2005 and November 2004, we did not have credit exposure to any other counterparty that exceeded 5% of our total assets. However, over the past several years, the amount and duration of our credit exposures have been increasing, due to, among other factors, the growth of our lending and OTC derivative activities. A further discussion of our derivative activities follows below.

## Derivatives

Derivative contracts are instruments, such as futures, forwards, swaps or option contracts, that derive their value from underlying assets, indices, reference rates or a combination of these factors. Derivative instruments may be privately negotiated contracts, which are often referred to as OTC derivatives, or they may be listed and traded on an exchange.

Substantially all of our derivative transactions are entered into for trading purposes, to facilitate client transactions, to take proprietary positions or as a means of risk management. In addition to derivative transactions entered into for trading purposes, we enter into derivative contracts to hedge our net investment in non-U.S. operations and to manage the interest rate and currency exposure on our long-term borrowings and certain short-term borrowings.

Derivatives are used in many of our businesses, and we believe that the associated market risk can only be understood relative to all of the underlying assets or risks being hedged, or as part of a broader trading strategy. Accordingly, the market risk of derivative positions is managed together with our nonderivative positions.

Fair values of our derivative contracts are reflected net of cash paid or received pursuant to credit support agreements and are reported on a net-by-counterparty basis in our consolidated statements of financial condition when management believes a legal right of setoff exists under an enforceable netting agreement. For an OTC derivative, our credit exposure is directly with our counterparty and continues until the maturity or termination of such contract.

The following table sets forth the distribution, by credit rating, of substantially all of our exposure with respect to OTC derivatives as of November 2005, after taking into consideration the effect of netting agreements. The categories shown reflect our internally determined public rating agency equivalents.

### Over-the-Counter Derivative Credit Exposure

(\$ in millions)

<u>Credit Rating Equivalent</u>	<u>Exposure <sup>(1)</sup></u>	<u>Collateral Held</u>	<u>Exposure Net of Collateral</u>	<u>Percentage of Total Exposure Net of Collateral</u>
AAA/Aaa .....	\$ 4,332	\$ 222	\$ 4,110	12%
AA/Aa2 .....	9,721	1,801	7,920	22
A/A2 .....	13,166	3,332	9,834	28
BBB/Baa2 .....	10,209	2,809	7,400	21
BB/Ba2 or lower .....	8,859	3,330	5,529	15
Unrated .....	1,376	582	794	2
Total .....	<u>\$47,663</u>	<u>\$12,076</u>	<u>\$35,587</u>	<u>100%</u>

<sup>(1)</sup> Net of cash received pursuant to credit support agreements of \$22.61 billion.

The following tables set forth our OTC derivative credit exposure, net of collateral, by remaining contractual maturity:

**Exposure Net of Collateral**  
(in millions)

<u>Credit Rating Equivalent</u>	<u>0 - 6 Months</u>	<u>6 - 12 Months</u>	<u>1 - 5 Years</u>	<u>5 - 10 Years</u>	<u>10 Years or Greater</u>	<u>Total <sup>(1)</sup></u>
AAA/Aaa .....	\$ 858	\$ 367	\$ 1,053	\$1,074	\$ 758	\$ 4,110
AA/Aa2 .....	1,897	596	1,954	2,228	1,245	7,920
A/A2 .....	3,049	1,009	2,542	1,841	1,393	9,834
BBB/Baa2 .....	2,151	621	2,700	409	1,519	7,400
BB/Ba2 or lower .....	1,558	352	2,850	508	261	5,529
Unrated .....	293	124	193	168	16	794
Total .....	<u>\$9,806</u>	<u>\$3,069</u>	<u>\$11,292</u>	<u>\$6,228</u>	<u>\$5,192</u>	<u>\$35,587</u>

<u>Contract Type</u>	<u>0 - 6 Months</u>	<u>6 - 12 Months</u>	<u>1 - 5 Years</u>	<u>5 - 10 Years</u>	<u>10 Years or Greater</u>	<u>Total <sup>(1)</sup></u>
Interest rates .....	\$1,591	\$ 346	\$ 3,212	\$4,237	\$3,946	\$13,332
Currencies .....	4,395	609	1,506	739	1,022	8,271
Commodities .....	3,381	1,240	6,082	711	116	11,530
Equities .....	439	874	492	541	108	2,454
Total .....	<u>\$9,806</u>	<u>\$3,069</u>	<u>\$11,292</u>	<u>\$6,228</u>	<u>\$5,192</u>	<u>\$35,587</u>

<sup>(1)</sup> Where we have obtained collateral from a counterparty under a master trading agreement that covers multiple products and transactions, we have allocated the collateral ratably based on exposure before giving effect to such collateral.

Derivative transactions may also involve legal risks including the risk that they are not authorized or appropriate for a counterparty, that documentation has not been properly executed or that executed agreements may not be enforceable against the counterparty. We attempt to minimize these risks by obtaining advice of counsel on the enforceability of agreements as well as on the authority of a counterparty to effect the derivative transaction. In addition, certain derivative transactions involve the risk that we may have difficulty obtaining, or be unable to obtain, the underlying security or obligation in order to satisfy any physical settlement requirement or that the derivative may have been assigned to a different counterparty without our knowledge or consent.

**Liquidity Risk**

Liquidity is of critical importance to companies in the financial services sector. Most failures of financial institutions have occurred in large part due to insufficient liquidity resulting from adverse circumstances. Accordingly, Goldman Sachs has in place a comprehensive set of liquidity and funding policies that are intended to maintain significant flexibility to address both firm-specific and broader industry or market liquidity events. Our principal objective is to be able to fund Goldman Sachs and to enable our core businesses to continue to generate revenue even under adverse circumstances.

Management has implemented a number of policies according to the following liquidity risk management framework:

- Excess Liquidity — maintain substantial excess liquidity to meet a broad range of potential cash outflows in a stressed environment including financing obligations.
- Asset-Liability Management — ensure we fund our assets with appropriate financing.
- Intercompany Funding — maintain parent company liquidity and manage the distribution of liquidity across the group structure.
- Crisis Planning — ensure all funding and liquidity management is based on stress-scenario planning and feeds into our liquidity crisis plan.

## **Excess Liquidity**

**Maintenance of a Pool of Highly Liquid Securities.** Our most important liquidity policy is to pre-fund what we estimate will be our likely cash needs during a liquidity crisis and hold such excess liquidity in the form of unencumbered, highly liquid securities that may be sold or pledged to provide same-day liquidity. This “Global Core Excess” liquidity is intended to allow us to meet immediate obligations without needing to sell other assets or depend on additional funding from credit-sensitive markets. We believe that this pool of excess liquidity provides us with a resilient source of funds and gives us significant flexibility in managing through a difficult funding environment. Our Global Core Excess reflects the following principles:

- The first days or weeks of a liquidity crisis are the most critical to a company’s survival.
- Focus must be maintained on all potential cash and collateral outflows, not just disruptions to financing flows. Goldman Sachs’ businesses are diverse, and its cash needs are driven by many factors, including market movements, collateral requirements and client commitments, all of which can change dramatically in a difficult funding environment.
- During a liquidity crisis, credit-sensitive funding, including unsecured debt and some types of secured financing agreements, may be unavailable and the terms or availability of other types of secured financing may change.
- As a result of our policy to pre-fund liquidity that we estimate may be needed in a crisis, we hold more unencumbered securities and larger unsecured debt balances than our businesses would otherwise require. We believe that our liquidity is stronger with greater balances of highly liquid unencumbered securities, even though it increases our unsecured liabilities.

The following table sets forth the average loan value (the estimated amount of cash that would be advanced by counterparties against these securities) of our Global Core Excess:

	<b>Year Ended November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
U.S. dollar-denominated . . . . .	\$35,310	\$33,858
Non-U.S. dollar-denominated . . . . .	<u>11,029</u>	<u>8,135</u>
Total Global Core Excess . . . . .	<u>\$46,339</u>	<u>\$41,993</u>

The U.S. dollar-denominated excess is comprised of only unencumbered U.S. government and agency securities and highly liquid mortgage securities, all of which are Federal Reserve repo-eligible, as well as overnight cash deposits. Our non-U.S. dollar-denominated excess is comprised of only unencumbered French, German, United Kingdom and Japanese government bonds and euro, British pound and Japanese yen overnight cash deposits. We strictly limit our Global Core Excess to this narrowly defined list of securities and cash that we believe are highly liquid, even in a difficult funding environment.

The majority of our Global Core Excess is structured such that it is available to meet the liquidity requirements of our parent company, Group Inc., and all of its subsidiaries. The remainder is held in our principal non-U.S. operating entities, primarily to better match the currency and timing requirements for those entities’ potential liquidity obligations.

The size of our Global Core Excess is determined by an internal liquidity model together with a qualitative assessment of the condition of the financial markets and of Goldman Sachs. Our liquidity model identifies and estimates cash and collateral outflows over a short-term horizon in a liquidity crisis, including, but not limited to:

- upcoming maturities of unsecured debt and letters of credit;
- potential buybacks of a portion of our outstanding negotiable unsecured debt;
- adverse changes in the terms or availability of secured funding;
- derivatives and other margin and collateral outflows, including those due to market moves or increased requirements;
- additional collateral that could be called in the event of a downgrade in our credit ratings;
- draws on our unfunded commitments not supported by William Street Funding Corporation<sup>(1)</sup>; and
- upcoming cash outflows, such as tax and other large payments.

**Other Unencumbered Assets.** In addition to our Global Core Excess described above, we have a significant amount of other unencumbered securities as a result of our business activities. These assets, which are located in the United States, Europe and Asia, include other government bonds, high-grade money market securities, corporate bonds and marginable equities. We do not include these securities in our Global Core Excess.

We maintain Global Core Excess and other unencumbered assets in an amount that, if pledged or sold, would provide the funds necessary to replace at least 110% of our unsecured obligations that are scheduled to mature (or where holders have the option to redeem) within the next 12 months. This implies that we could fund our positions on a secured basis for one year in the event we were unable to issue new unsecured debt or liquidate assets. We assume conservative loan values that are based on stress-scenario borrowing capacity and we regularly review these assumptions asset-by-asset. The estimated aggregate loan value of our Global Core Excess and our other unencumbered assets averaged \$125.36 billion in 2005 and \$100.51 billion in 2004.

### ***Asset-Liability Management***

**Asset Quality and Balance Sheet Composition.** We seek to maintain a highly liquid balance sheet and substantially all of our inventory is marked-to-market daily. We utilize aged inventory limits for certain financial instruments as a disincentive to our businesses to hold inventory over longer periods of time. We believe that these limits provide a complementary mechanism for ensuring appropriate balance sheet liquidity in addition to our standard position limits. In addition, we periodically reduce the size of certain parts of our balance sheet to comply with period end limits set by management. Because of these periodic reductions and certain other factors including seasonal activity, market conventions and periodic market opportunities in certain of our businesses that result in larger positions during the middle of our reporting periods, our balance sheet fluctuates between financial statement dates and is lower at fiscal period end than would be observed on an average basis. Over the last six quarters, our total assets and adjusted assets at quarter end have been, on average, 9% and 11% lower, respectively, than amounts that would have been observed, based on a weekly average, over that period. These differences, however, have not resulted in material changes to our credit risk, market risk or liquidity position because they are generally in highly liquid assets that are typically financed on a secured basis.

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<sup>(1)</sup> The Global Core Excess excludes liquid assets held separately to support the William Street credit extension program.

Certain financial instruments may be more difficult to fund on a secured basis during times of market stress and, accordingly, we generally hold higher levels of capital for these assets than more liquid types of financial instruments. The table below sets forth our aggregate holdings in these categories of financial instruments:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Mortgage whole loans and collateralized debt obligations <sup>(1)</sup> .....	\$31,459	\$18,346
Bank loans <sup>(2)</sup> .....	13,843	8,900
High-yield securities .....	8,822	6,057
Emerging market debt securities .....	1,789	1,653
SMFG convertible preferred stock .....	4,058	2,556
Other corporate principal investments <sup>(3)</sup> .....	1,723	1,278
Real estate principal investments <sup>(3)</sup> .....	745	820

<sup>(1)</sup> Includes certain mortgage-backed interests held in QSPEs. See Note 3 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding our securitization activities.

<sup>(2)</sup> Includes funded commitments and inventory held in connection with our origination and secondary trading activities.

<sup>(3)</sup> Excludes assets for which Goldman Sachs is not at risk (e.g., assets related to consolidated employee-owned merchant banking funds) of \$1.93 billion and \$1.28 billion as of November 2005 and November 2004, respectively.

A large portion of these assets are funded on a secured basis through secured funding markets or nonrecourse financing. We focus on demonstrating a consistent ability to fund these assets on a secured basis for extended periods of time to reduce refinancing risk and to help ensure that these assets have an established amount of loan value in order that they can be funded in periods of market stress.

See Note 3 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding the financial instruments we hold.

**Appropriate Financing of Asset Base.** We seek to manage the maturity profile of our funding base such that we should be able to liquidate our assets prior to our liabilities coming due, even in times of prolonged or severe liquidity stress. We generally do not rely on immediate sales of assets (other than our Global Core Excess) to maintain liquidity in a distressed environment. However, we recognize that orderly asset sales may be prudent and necessary in a persistent liquidity crisis.

In order to avoid reliance on asset sales, our goal is to ensure that we have sufficient total capital (long-term borrowings plus total shareholders' equity) to fund our balance sheet for at least one year. We seek to maintain total capital in excess of the aggregate of the following long-term financing requirements:

- the portion of financial instruments owned that we believe could not be funded on a secured basis in periods of market stress, assuming conservative loan values;
- goodwill and identifiable intangible assets, property, leasehold improvements and equipment, and other illiquid assets;
- derivative and other margin and collateral requirements;
- anticipated draws on our unfunded loan commitments; and
- capital or other forms of financing in our regulated subsidiaries that is in excess of their long-term financing requirements. See “— Intercompany Funding” below for a further discussion of how we fund our subsidiaries.

Our total capital of \$128.01 billion and \$105.78 billion as of November 2005 and November 2004, respectively, exceeded the aggregate of these requirements.

**Conservative Liability Structure.** We structure our liabilities conservatively to reduce refinancing risk as well as the risk that we may redeem or repurchase certain of our borrowings prior to their contractual maturity. For example, we may repurchase Goldman Sachs' commercial paper through the ordinary course of business as a market maker. As such, we emphasize the use of promissory notes (in which Goldman Sachs does not make a market) over commercial paper in order to improve the stability of our short-term unsecured financing base. We have also created internal guidelines regarding the principal amount of debt maturing on any one day or during any single week or year and have average maturity targets for our unsecured debt programs.

We seek to maintain broad and diversified funding sources globally for both secured and unsecured funding. We have imposed various internal guidelines, including the amount of our commercial paper that can be owned and letters of credit that can be issued by any single investor or group of investors. We benefit from distributing our debt issuances through our own sales force to a large, diverse global creditor base and we believe that our relationships with our creditors are critical to our liquidity.

We access funding in a variety of markets in the United States, Europe and Asia. We issue debt through syndicated U.S. registered offerings, U.S. registered and 144A medium-term note programs, offshore medium-term note offerings and other bond offerings, U.S. and non-U.S. commercial paper and promissory note issuances, and other methods. We make extensive use of the repurchase agreement and securities lending markets and arrange for letters of credit to be issued on our behalf.

Additionally, unsecured debt issued by Group Inc. does not contain provisions that would, based solely upon an adverse change in our credit ratings, financial ratios, earnings, cash flows or our stock price, trigger a requirement for an early payment, collateral support, change in terms, acceleration of maturity or the creation of an additional financial obligation.

### ***Intercompany Funding***

**Subsidiary Funding Policies.** Substantially all of our unsecured funding is raised by our parent company, Group Inc. The parent company then lends the necessary funds to its subsidiaries, some of which are regulated, to meet their asset financing and capital requirements. In addition, the parent company provides its regulated subsidiaries with the necessary capital to meet their regulatory requirements. The benefits of this approach to subsidiary funding include enhanced control and greater flexibility to meet the funding requirements of our subsidiaries.

Our intercompany funding policies are predicated on an assumption that, unless legally provided for, funds or securities are not freely available from a subsidiary to its parent company or other subsidiaries. In particular, many of our subsidiaries are subject to laws that authorize regulatory bodies to block or limit the flow of funds from those subsidiaries to Group Inc. Regulatory action of that kind could impede access to funds that Group Inc. needs to make payments on obligations, including debt obligations. As such, we assume that capital or other financing provided to our regulated subsidiaries is not available to our parent company or other subsidiaries. In addition, we assume that the Global Core Excess held in our principal non-U.S. operating entities will not be available to our parent company or other subsidiaries and therefore is available only to meet the potential liquidity requirements of those entities.

We also manage our intercompany exposure by requiring senior and subordinated intercompany loans to have maturities equal to or shorter than the maturities of the aggregate borrowings of the parent company. This policy ensures that the subsidiaries' obligations to the parent company will generally mature in advance of the parent company's third-party borrowings. In addition, many of our subsidiaries and affiliates pledge collateral at loan value to the parent company to cover their intercompany borrowings (other than subordinated debt) in order to mitigate parent company liquidity risk.



Equity investments in subsidiaries are generally funded with parent company equity capital. As of November 2005, Group Inc.'s equity investment in subsidiaries was \$25.26 billion compared with its total shareholders' equity of \$28.00 billion.

Group Inc. has provided substantial amounts of equity and subordinated indebtedness, directly or indirectly, to its regulated subsidiaries; for example, as of November 2005, Group Inc. had \$17.04 billion of such equity and subordinated indebtedness invested in Goldman, Sachs & Co., its principal U.S. registered broker-dealer; \$16.06 billion invested in Goldman Sachs International, a regulated U.K. broker-dealer; \$2.41 billion invested in Goldman Sachs Execution & Clearing, L.P., a U.S. registered broker-dealer; and \$1.98 billion invested in Goldman Sachs (Japan) Ltd., a regulated broker-dealer based in Tokyo. Group Inc. also had \$44.52 billion of unsubordinated loans to these entities as of November 2005, as well as significant amounts of capital invested in and loans to its other regulated subsidiaries.

**Subsidiary Foreign Exchange Policies.** Our capital invested in non-U.S. subsidiaries is generally exposed to foreign exchange risk, substantially all of which is hedged. In addition, we generally hedge the nontrading exposure to foreign exchange risk that arises from transactions denominated in currencies other than the transacting entity's functional currency.

### ***Crisis Planning***

In order to be prepared for a liquidity event, or a period of market stress, we base our liquidity risk management framework and our resulting funding and liquidity policies on conservative stress-scenario planning.

In addition, we maintain a liquidity crisis plan that specifies an approach for analyzing and responding to a liquidity-threatening event. The plan provides the framework to estimate the likely impact of a liquidity event on Goldman Sachs based on some of the risks identified above and outlines which and to what extent liquidity maintenance activities should be implemented based on the severity of the event. It also lists the crisis management team and internal and external parties to be contacted to ensure effective distribution of information.

### ***Cash Flows***

As a global financial institution, our cash flows are complex and interrelated and bear little relation to our net earnings and net assets and, consequently, we believe that traditional cash flow analysis is less meaningful in evaluating our liquidity position than the excess liquidity and asset-liability management policies described above. Cash flow analysis may, however, be helpful in highlighting certain macro trends and strategic initiatives in our business.

**Year Ended November 2005.** Our cash and cash equivalents increased by \$5.90 billion to \$10.26 billion at the end of 2005. We raised \$19.37 billion in net cash from financing activities, primarily in long-term debt, in light of the favorable debt financing environment, partially offset by common stock repurchases. We used net cash of \$13.48 billion in our operating and investing activities, primarily to capitalize on trading and investing opportunities for ourselves and our clients.

**Year Ended November 2004.** Our cash and cash equivalents decreased by \$2.72 billion to \$4.37 billion at the end of 2004. We raised \$31.75 billion in net cash from financing activities, primarily in long-term debt, in light of the favorable debt financing environment. We used net cash of \$34.47 billion in our operating and investing activities, primarily to capitalize on trading and investing opportunities for ourselves and our clients, to meet additional collateral requirements at securities exchanges and clearing organizations and to provide additional funding support for our William Street loan commitments program.

**Year Ended November 2003.** Our cash and cash equivalents increased by \$2.27 billion to \$7.09 billion at the end of 2003. We raised \$20.58 billion in net cash from financing activities, primarily in long-term debt. We used net cash of \$18.32 billion in our operating and investing activities primarily to capitalize on opportunities in our trading and principal investing businesses, including the purchase of investments that could be difficult to fund in periods of market stress. We also increased our Global Core Excess, provided funding support for our William Street loan commitments program, invested in the convertible preferred stock of SMFG and financed the acquisition of East Coast Power L.L.C.

## **Operational Risk**

Operational risk relates to the risk of loss arising from shortcomings or failures in internal processes, people or systems, and from external events. Operational risk can arise from many factors ranging from routine processing errors to potentially costly incidents arising, for example, from major systems failures. Operational risk may also cause reputational harm. Thus, efforts to identify, manage and mitigate operational risk must be equally sensitive to the risk of reputational damage as well as the risk of financial loss.

We manage operational risk through the application of long-standing, but continuously evolving, firmwide control standards: the training, supervision and development of our people; the active participation and commitment of senior management in a continuous process of identifying and mitigating key operational risks across the firm; and a framework of strong and independent control departments that monitor operational risk on a daily basis. Together, these elements form a strong firmwide control culture that serves as the foundation of our efforts to minimize events that create operational risk and the damage they can cause.

The Operational Risk Department, an independent risk management function, is responsible for developing and implementing a standardized framework to identify, measure, monitor and manage operational risk across the firm. This framework, which evolves with the changing needs of our businesses and regulatory guidance, takes into account internal and external operational risk events, business environment and internal control factors, the ongoing analysis of business-specific risk metrics and the use of scenario analysis. While individual business units have direct responsibility for the control and mitigation of operational risk, this framework provides a consistent methodology for identifying and monitoring operational risk factors at the business unit and firmwide level.

## **Recent Accounting Developments**

In December 2004, the Financial Accounting Standards Board (FASB) issued a revision to SFAS No. 123, "Accounting for Stock-Based Compensation," SFAS No. 123-R, "Share-Based Payment." SFAS No. 123-R establishes standards of accounting for transactions in which an entity exchanges its equity instruments for goods and services. SFAS No. 123-R focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. Two key differences between SFAS No. 123 and SFAS No. 123-R relate to attribution of compensation costs to reporting periods and accounting for award forfeitures. SFAS No. 123-R generally requires the immediate expensing of equity-based awards granted to retirement-eligible employees. However, awards granted subject to a substantive non-compete agreement are generally expensed over the non-compete period. SFAS No. 123-R also requires expected forfeitures to be included in determining stock-based employee compensation expense. See Note 2 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K, "Significant Accounting Policies — Stock-Based Compensation" for a discussion of how we currently account for equity-based awards granted to retirement-eligible employees and forfeitures. We will adopt SFAS No. 123-R in the first quarter of fiscal 2006. Management is currently evaluating the effect of adoption of SFAS No. 123-R on our results of operations with respect to awards granted to retirement-eligible employees that are subject to a non-compete agreement.

The following table sets forth the pro forma net earnings that would have been reported for each year if equity-based awards granted to retirement-eligible employees had been expensed over the non-compete period and if expected forfeitures had been accrued as required by SFAS No. 123-R:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Net earnings applicable to common shareholders, as reported .....	\$ 5,609	\$4,553	\$3,005
Add: Stock-based employee compensation expense, net of related tax effects, included in reported net earnings .....	1,133	790	458
Deduct: Stock-based employee compensation expense, net of related tax effects, determined under SFAS No. 123-R .....	<u>(1,106)</u>	<u>(802)</u>	<u>(503)</u>
Pro forma net earnings applicable to common shareholders	<u>\$ 5,636</u>	<u>\$4,541</u>	<u>\$2,960</u>

In June 2005, the EITF reached consensus on Issue No. 04-5, “Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights,” which requires general partners (or managing members in the case of limited liability companies) to consolidate their partnerships or to provide limited partners with rights to remove the general partner or to terminate the partnership. Goldman Sachs, as the general partner of numerous merchant banking and asset management partnerships, is required to adopt the provisions of EITF 04-5 (i) immediately for partnerships formed or modified after June 29, 2005 and (ii) in the first quarter of fiscal 2007 for partnerships formed on or before June 29, 2005 that have not been modified. We generally expect to provide limited partners in these funds with rights to remove Goldman Sachs or rights to terminate the partnerships and, therefore, do not expect that EITF 04-5 will have a material effect on our financial condition, results of operations or cash flows.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Quantitative and qualitative disclosure about market risk is set forth under “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Risk Management” in Part II, Item 7 of the Annual Report on Form 10-K.

## Item 8. Financial Statements and Supplementary Data

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## **Management's Report on Internal Control over Financial Reporting**

Management of The Goldman Sachs Group, Inc., together with its consolidated subsidiaries (the firm), is responsible for establishing and maintaining adequate internal control over financial reporting. The firm's internal control over financial reporting is a process designed under the supervision of the firm's principal executive and principal financial officers to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the firm's financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

As of the end of the firm's 2005 fiscal year, management conducted an assessment of the effectiveness of the firm's internal control over financial reporting based on the framework established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that the firm's internal control over financial reporting as of November 25, 2005 was effective.

Our internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and the directors of the firm; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the firm's assets that could have a material effect on our financial statements.

Management's assessment of the effectiveness of the firm's internal control over financial reporting as of November 25, 2005 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report appearing on pages 100 and 101, which expresses unqualified opinions on management's assessment and on the effectiveness of the firm's internal control over financial reporting as of November 25, 2005.

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and the Shareholders of  
The Goldman Sachs Group, Inc.:

We have completed integrated audits of The Goldman Sachs Group, Inc.'s 2005 and 2004 consolidated financial statements and of its internal control over financial reporting as of November 25, 2005 and an audit of its 2003 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions on The Goldman Sachs Group, Inc.'s 2005, 2004, and 2003 consolidated financial statements and on its internal control over financial reporting as of November 25, 2005, based on our audits, are presented below.

### Consolidated financial statements and financial statement schedule

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of The Goldman Sachs Group, Inc. and its subsidiaries (the Company) at November 25, 2005 and November 26, 2004, and the results of its operations and its cash flows for each of the three fiscal years in the period ended November 25, 2005 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

### Internal control over financial reporting

Also, in our opinion, management's assessment, included in Management's Report on Internal Control over Financial Reporting appearing on page 99, that the Company maintained effective internal control over financial reporting as of November 25, 2005 based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of November 25, 2005, based on criteria established in *Internal Control — Integrated Framework* issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PRICEWATERHOUSECOOPERS LLP

New York, New York  
February 3, 2006

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EARNINGS**

	<b>Year Ended November</b>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions, except per share amounts)		
<b>Revenues</b>			
Investment banking .....	\$ 3,599	\$ 3,286	\$ 2,400
Trading and principal investments .....	15,452	11,984	8,555
Asset management and securities services .....	3,090	2,655	1,917
Interest income .....	<u>21,250</u>	<u>11,914</u>	<u>10,751</u>
Total revenues .....	43,391	29,839	23,623
Interest expense .....	18,153	8,888	7,600
Cost of power generation .....	<u>456</u>	<u>401</u>	<u>11</u>
Revenues, net of interest expense and cost of power generation .....	24,782	20,550	16,012
<b>Operating expenses</b>			
Compensation and benefits .....	11,688	9,652	7,515
Brokerage, clearing and exchange fees .....	1,109	952	829
Market development .....	378	374	264
Communications and technology .....	490	461	478
Depreciation and amortization .....	501	499	562
Amortization of identifiable intangible assets .....	124	125	319
Occupancy .....	728	646	722
Professional fees .....	475	338	253
Other expenses .....	<u>1,016</u>	<u>827</u>	<u>625</u>
Total non-compensation expenses .....	4,821	4,222	4,052
Total operating expenses .....	<u>16,509</u>	<u>13,874</u>	<u>11,567</u>
Pre-tax earnings .....	8,273	6,676	4,445
Provision for taxes .....	<u>2,647</u>	<u>2,123</u>	<u>1,440</u>
Net earnings .....	5,626	4,553	3,005
Preferred stock dividend .....	<u>17</u>	<u>—</u>	<u>—</u>
Net earnings applicable to common shareholders .....	<u>\$ 5,609</u>	<u>\$ 4,553</u>	<u>\$ 3,005</u>
<b>Earnings per common share</b>			
Basic .....	\$ 11.73	\$ 9.30	\$ 6.15
Diluted .....	11.21	8.92	5.87
<b>Average common shares outstanding</b>			
Basic .....	478.1	489.5	488.4
Diluted .....	500.2	510.5	511.9

The accompanying notes are an integral part of these consolidated financial statements.



**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION**

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions, except share and per share amounts)	
<b>Assets</b>		
Cash and cash equivalents .....	\$ 10,261	\$ 4,365
Cash and securities segregated for regulatory and other purposes .....	51,405	48,179
Receivables from brokers, dealers and clearing organizations .....	15,150	14,458
Receivables from customers and counterparties .....	60,231	38,087
Securities borrowed .....	191,800	155,086
Securities purchased under agreements to resell .....	83,619	44,257
Financial instruments owned, at fair value .....	238,043	183,880
Financial instruments owned and pledged as collateral, at fair value .....	38,983	27,924
Total financial instruments owned, at fair value .....	277,026	211,804
Other assets .....	17,312	15,143
Total assets .....	<b>\$706,804</b>	<b>\$531,379</b>
<b>Liabilities and shareholders' equity</b>		
Secured short-term borrowings .....	\$ 7,972	\$ 8,558
Unsecured short-term borrowings .....	47,247	46,401
Total short-term borrowings, including the current portion of long-term borrowings ...	55,219	54,959
Payables to brokers, dealers and clearing organizations .....	10,014	8,000
Payables to customers and counterparties .....	178,304	153,221
Securities loaned .....	23,331	19,394
Securities sold under agreements to repurchase .....	149,026	47,573
Financial instruments sold, but not yet purchased, at fair value .....	149,071	132,097
Other liabilities and accrued expenses .....	13,830	10,360
Secured long-term borrowings .....	15,669	12,087
Unsecured long-term borrowings .....	84,338	68,609
Total long-term borrowings .....	100,007	80,696
Total liabilities .....	678,802	506,300
<b>Commitments, contingencies and guarantees</b>		
<b>Shareholders' equity</b>		
Preferred stock, par value \$0.01 per share; 150,000,000 shares authorized, 70,000 shares issued and outstanding as of November 2005 with liquidation preference of \$25,000 per share .....	1,750	—
Common stock, par value \$0.01 per share; 4,000,000,000 shares authorized, 573,970,935 and 554,063,234 shares issued as of November 2005 and November 2004, respectively, and 437,170,695 and 480,959,660 shares outstanding as of November 2005 and November 2004, respectively .....	6	6
Restricted stock units and employee stock options .....	3,415	2,013
Nonvoting common stock, par value \$0.01 per share; 200,000,000 shares authorized, no shares issued and outstanding .....	—	—
Additional paid-in capital .....	17,159	15,501
Retained earnings .....	19,085	13,970
Unearned compensation .....	—	(117)
Accumulated other comprehensive income .....	—	11
Common stock held in treasury, at cost, par value \$0.01 per share; 136,800,240 and 73,103,574 shares as of November 2005 and November 2004, respectively .....	(13,413)	(6,305)
Total shareholders' equity .....	28,002	25,079
Total liabilities and shareholders' equity .....	<b>\$706,804</b>	<b>\$531,379</b>

The accompanying notes are an integral part of these consolidated financial statements.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**

	<b>Year Ended November</b>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions, except per share amounts)		
<b>Preferred stock</b>			
Balance, beginning of year	\$ —	\$ —	\$ —
Issued	<u>1,750</u>	<u>—</u>	<u>—</u>
Balance, end of year	1,750	—	—
<b>Common stock, par value \$0.01 per share</b>			
Balance, beginning of year	6	5	5
Issued	<u>—</u>	<u>1</u>	<u>—</u>
Balance, end of year	6	6	5
<b>Restricted stock units and employee stock options</b>			
Balance, beginning of year	2,013	2,984	3,517
Issued	1,871	1,050	339
Delivered	(423)	(1,948)	(714)
Forfeited	(37)	(62)	(156)
Options exercised	<u>(9)</u>	<u>(11)</u>	<u>(2)</u>
Balance, end of year	3,415	2,013	2,984
<b>Additional paid-in capital</b>			
Balance, beginning of year	15,501	13,562	12,750
Issuance of common stock	1,417	1,609	709
Preferred stock issuance costs	(31)	—	—
Excess net tax benefit related to delivery of stock-based awards	<u>272</u>	<u>330</u>	<u>103</u>
Balance, end of year	17,159	15,501	13,562
<b>Retained earnings</b>			
Balance, beginning of year	13,970	9,914	7,259
Net earnings	5,626	4,553	3,005
Dividends declared on common stock	(494)	(497)	(350)
Dividends declared on preferred stock	<u>(17)</u>	<u>—</u>	<u>—</u>
Balance, end of year	19,085	13,970	9,914
<b>Unearned compensation</b>			
Balance, beginning of year	(117)	(339)	(845)
Restricted stock units granted	—	—	(6)
Restricted stock units forfeited	—	11	48
Amortization of restricted stock units	<u>117</u>	<u>211</u>	<u>464</u>
Balance, end of year	—	(117)	(339)
<b>Accumulated other comprehensive income/(loss)</b>			
Balance, beginning of year	11	6	(122)
Currency translation adjustment, net of tax	(27)	5	128
Minimum pension liability adjustment, net of tax	(11)	—	—
Net gains on cash flow hedges, net of tax	9	—	—
Net unrealized holdings gain, net of tax	<u>18</u>	<u>—</u>	<u>—</u>
Balance, end of year	—	11	6
<b>Common stock held in treasury, at cost</b>			
Balance, beginning of year	(6,305)	(4,500)	(3,561)
Repurchased	<u>(7,108)</u>	<u>(1,805)</u>	<u>(939)</u>
Balance, end of year	(13,413)	(6,305)	(4,500)
<b>Total shareholders' equity</b>	<u>\$ 28,002</u>	<u>\$ 25,079</u>	<u>\$ 21,632</u>

The accompanying notes are an integral part of these consolidated financial statements.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended November		
	2005	2004	2003
	(in millions)		
<b>Cash flows from operating activities</b>			
Net earnings .....	\$ 5,626	\$ 4,553	\$ 3,005
Noncash items included in net earnings			
Depreciation and amortization .....	689	720	826
Amortization of identifiable intangible assets .....	165	125	319
Deferred income taxes .....	(450)	1,040	93
Stock-based compensation .....	1,756	1,224	711
Changes in operating assets and liabilities			
Cash and securities segregated for regulatory and other purposes	(3,226)	(18,437)	(9,311)
Net receivables from brokers, dealers and clearing organizations	1,322	(776)	(1,797)
Net payables to customers and counterparties .....	2,953	36,669	7,826
Securities borrowed, net of securities loaned .....	(32,777)	(24,102)	(10,249)
Securities sold under agreements to repurchase, net of securities purchased under agreements to resell .....	62,269	(12,912)	2,081
Financial instruments owned, at fair value .....	(66,899)	(52,366)	(30,264)
Financial instruments sold, but not yet purchased, at fair value ...	16,974	29,429	19,227
Other, net .....	(815)	1,442	794
Net cash used for operating activities .....	(12,413)	(33,391)	(16,739)
<b>Cash flows from investing activities</b>			
Purchase of property, leasehold improvements and equipment .....	(1,421)	(829)	(856)
Proceeds from sales of property, leasehold improvements and equipment .....	639	—	—
Business acquisitions, net of cash acquired .....	(556)	(255)	(721)
Proceeds from sales of investments .....	274	—	—
Net cash used for investing activities .....	(1,064)	(1,084)	(1,577)
<b>Cash flows from financing activities</b>			
Short-term borrowings, net .....	2,233	3,901	729
Issuance of long-term borrowings .....	43,177	39,283	28,238
Repayment of long-term borrowings, including the current portion of long-term borrowings .....	(22,340)	(10,198)	(7,471)
Derivative contracts with a financing element, net .....	1,060	548	231
Common stock repurchased .....	(7,108)	(1,805)	(939)
Dividends paid on common and preferred stock .....	(511)	(497)	(350)
Proceeds from issuance of preferred stock, net of issuance costs ...	1,719	—	—
Proceeds from issuance of common stock .....	1,143	521	143
Net cash provided by financing activities .....	19,373	31,753	20,581
Net increase/(decrease) in cash and cash equivalents .....	5,896	(2,722)	2,265
Cash and cash equivalents, beginning of year .....	4,365	7,087	4,822
Cash and cash equivalents, end of year .....	\$ 10,261	\$ 4,365	\$ 7,087

**SUPPLEMENTAL DISCLOSURES:**

Cash payments for interest, net of capitalized interest, were \$17.49 billion, \$8.55 billion and \$7.21 billion for the years ended November 2005, November 2004 and November 2003, respectively.

Cash payments for income taxes, net of refunds, were \$2.47 billion, \$1.02 billion and \$846 million for the years ended November 2005, November 2004 and November 2003, respectively.

*Noncash activities:*

The firm assumed \$1.15 billion and \$1.63 billion of debt in connection with business acquisitions for the years ended November 2005 and November 2004, respectively.

The value of common stock issued in connection with business acquisitions was \$165 million for the year ended November 2003.

The accompanying notes are an integral part of these consolidated financial statements.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Net earnings . . . . .	\$5,626	\$4,553	\$3,005
Currency translation adjustment, net of tax . . . . .	(27)	5	128
Minimum pension liability adjustment, net of tax . . . . .	(11)	—	—
Net gains on cash flow hedges, net of tax . . . . .	9	—	—
Net unrealized holding gains, net of tax . . . . .	<u>18</u>	<u>—</u>	<u>—</u>
Comprehensive income . . . . .	<u>\$5,615</u>	<u>\$4,558</u>	<u>\$3,133</u>

The accompanying notes are an integral part of these consolidated financial statements.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Description of Business**

The Goldman Sachs Group, Inc. (Group Inc.), a Delaware corporation, together with its consolidated subsidiaries (collectively, the firm), 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, financial institutions, governments and high-net-worth individuals.

The firm's activities are divided into three segments:

- **Investment Banking.** The firm provides a broad range of investment banking services to a diverse group of corporations, financial institutions, governments and individuals.
- **Trading and Principal Investments.** The firm facilitates client transactions with a diverse group of corporations, financial institutions, governments and individuals and takes proprietary positions through market making in, trading of and investing in fixed income and equity products, currencies, commodities and derivatives on such products. In addition, the firm engages in specialist and market-making activities on equities and options exchanges and clears client transactions on major stock, options and futures exchanges worldwide. In connection with the firm's merchant banking and other investing activities, the firm makes principal investments directly and through funds that the firm raises and manages.
- **Asset Management and Securities Services.** The firm provides investment advisory and financial planning services and offers investment products across all major asset classes to a diverse group of institutions and individuals worldwide, and provides prime brokerage services, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals worldwide.

**Note 2. Significant Accounting Policies**

***Basis of Presentation***

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles that require management to make certain estimates and assumptions. The most important of these estimates and assumptions relate to fair value measurements, the accounting for goodwill and identifiable intangible assets and the provision for potential losses that may arise from litigation and regulatory proceedings and tax audits. Although these and other estimates and assumptions are based on the best available information, actual results could be materially different from these estimates.

These consolidated financial statements include the accounts of Group Inc. and all other entities in which the firm has a controlling financial interest. All material intercompany transactions and balances have been eliminated.

The firm determines whether it has a controlling financial interest in an entity by first evaluating whether the entity is a voting interest entity, a variable interest entity (VIE) or a qualifying special-purpose entity (QSPE) under generally accepted accounting principles.

- **Voting Interest Entities.** Voting interest entities are entities in which (i) the total equity investment at risk is sufficient to enable the entity to finance its activities independently and (ii) the equity holders have the obligation to absorb losses, the right to receive residual returns and the right to make decisions about the entity's activities. Voting interest entities are consolidated in accordance with Accounting Research Bulletin (ARB) No. 51, "Consolidated Financial Statements," as amended. ARB No. 51 states that the usual

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

condition for a controlling financial interest in an entity is ownership of a majority voting interest. Accordingly, the firm consolidates voting interest entities in which it has a majority voting interest.

- **Variable Interest Entities.** VIEs are entities that lack one or more of the characteristics of a voting interest entity. A controlling financial interest in a VIE is present when an enterprise has a variable interest, or a combination of variable interests, that will absorb a majority of the VIE's expected losses, receive a majority of the VIE's expected residual returns, or both. The enterprise with a controlling financial interest, known as the primary beneficiary, consolidates the VIE. In accordance with Financial Accounting Standards Board (FASB) Interpretation (FIN) No. 46-R, "Consolidation of Variable Interest Entities," the firm consolidates all VIEs of which it is the primary beneficiary.

The firm determines whether it is the primary beneficiary of a VIE by first performing a qualitative analysis of the VIE that includes a review of, among other factors, its capital structure, contractual terms, which interests create or absorb variability, related party relationships and the design of the VIE. Where qualitative analysis is not conclusive, the firm performs a quantitative analysis. For purposes of allocating a VIE's expected losses and expected residual returns to its variable interest holders, the firm utilizes the "top down" method. Under that method, the firm calculates its share of the VIE's expected losses and expected residual returns using the specific cash flows that would be allocated to it, based on contractual arrangements and/or the firm's position in the capital structure of the VIE, under various probability-weighted scenarios.

- **QSPEs.** QSPEs are passive entities that are commonly used in mortgage and other securitization transactions. Statement of Financial Accounting Standards (SFAS) No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," sets forth the criteria an entity must satisfy to be a QSPE. These criteria include the types of assets a QSPE may hold, limits on asset sales, the use of derivatives and financial guarantees, and the level of discretion a servicer may exercise in attempting to collect receivables. These criteria may require management to make judgments about complex matters, including whether a derivative is considered passive and the degree of discretion a servicer may exercise. In accordance with SFAS No. 140 and FIN No. 46-R, the firm does not consolidate QSPEs.
- **Equity-Method Investments.** When the firm does not have a controlling financial interest in an entity but exerts significant influence over the entity's operating and financial policies (generally defined as owning a voting interest of 20% to 50%) and has an investment in common stock or in-substance common stock, the firm accounts for its investment in accordance with the equity method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock."
- **Other.** If the firm does not consolidate an entity or apply the equity method of accounting, the firm accounts for its investment at fair value. The firm also has formed numerous nonconsolidated investment funds with third-party investors that are typically organized as limited partnerships. The firm acts as general partner for these funds and does not hold a majority of the economic interests in any fund. For funds established on or before June 29, 2005 in which the firm holds more than a minor interest and for funds established or modified after June 29, 2005, the firm has provided the third-party investors with rights to terminate the funds (see "— Recent Accounting Developments" below). These fund investments are included in "Financial instruments owned, at fair value" in the consolidated statements of financial condition.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Unless otherwise stated herein, all references to November 2005, November 2004 and November 2003 refer to the firm's fiscal years ended, or the dates, as the context requires, November 25, 2005, November 26, 2004 and November 28, 2003, respectively. Certain reclassifications have been made to previously reported amounts to conform to the current presentation.

***Revenue Recognition***

**Investment Banking.** Underwriting revenues and fees from mergers and acquisitions and other financial advisory assignments are recognized in the consolidated statements of earnings when the services related to the underlying transaction are completed under the terms of the engagement. Expenses associated with such transactions are deferred until the related revenue is recognized or the engagement is otherwise concluded. Underwriting revenues are presented net of related expenses. Expenses associated with financial advisory transactions are recorded as non-compensation expenses, net of client reimbursements.

**Financial Instruments.** "Total financial instruments owned, at fair value" and "Financial instruments sold, but not yet purchased, at fair value" are reflected in the consolidated statements of financial condition on a trade-date basis and consist of financial instruments carried at fair value or amounts that approximate fair value, with related unrealized gains or losses recognized in the consolidated statements of earnings. The fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

In determining fair value, the firm separates its financial instruments into three categories — cash (i.e., nonderivative) trading instruments, derivative contracts and principal investments.

- **Cash Trading Instruments.** Fair values of the firm's cash trading instruments are generally obtained from quoted market prices in active markets, broker or dealer price quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued in this manner include U.S. government and agency securities, other sovereign government obligations, liquid mortgage products, investment-grade corporate bonds, listed equities, money market securities, state, municipal and provincial obligations, and physical commodities.

Certain cash trading instruments trade infrequently and have little or no price transparency. Such instruments may include certain high-yield debt, corporate bank loans, mortgage whole loans and distressed debt. The firm values these instruments initially at cost and generally does not adjust valuations unless there is substantive evidence supporting a change in the value of the underlying instrument or valuation assumptions (such as similar market transactions, changes in financial ratios or changes in the credit ratings of the underlying companies). Where there is evidence supporting a change in the value, the firm uses valuation methodologies such as the present value of known or estimated cash flows.

Cash trading instruments owned by the firm (long positions) are marked to bid prices and instruments sold but not yet purchased (short positions) are marked to offer prices. If liquidating a position is expected to affect its prevailing market price, the valuation is adjusted generally based on market evidence or predetermined policies. In certain circumstances, such as for highly illiquid positions, management's estimates are used to determine this adjustment.

- **Derivative Contracts.** Fair values of the firm's derivative contracts consist of exchange-traded and over-the-counter (OTC) derivatives and are reflected net of cash that the firm has paid and received (for example, option premiums or cash paid or received pursuant to credit support agreements). Fair values of the firm's exchange-traded derivatives are generally

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
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determined from quoted market prices. OTC derivatives are valued using valuation models. The firm uses a variety of valuation models including the present value of known or estimated cash flows and option-pricing models. The valuation models used to derive the fair values of the firm's OTC derivatives require inputs including contractual terms, market prices, yield curves, credit curves, measures of volatility, prepayment rates and correlations of such inputs. The selection of a model to value an OTC derivative depends upon the contractual terms of, and specific risks inherent in, the instrument as well as the availability of pricing information in the market. The firm generally uses similar models to value similar instruments. Where possible, the firm verifies the values produced by its pricing models to market transactions. For OTC derivatives that trade in liquid markets, such as generic forwards, swaps and options, model selection does not involve significant judgment because market prices are readily available. For OTC derivatives that trade in less liquid markets, model selection requires more judgment because such instruments tend to be more complex and pricing information is less available in these markets. Price transparency is inherently more limited for more complex structures because they often combine one or more product types, requiring additional inputs such as correlations and volatilities. As markets continue to develop and more pricing information becomes available, the firm continues to review and refine the models it uses.

At the inception of an OTC derivative contract (day one), the firm values the contract at the model value if the firm can verify all of the significant model inputs to observable market data and verify the model to market transactions. When appropriate, valuations are adjusted to reflect various factors such as liquidity, bid/offer spreads and credit considerations. These adjustments are generally based on market evidence or predetermined policies. In certain circumstances, such as for highly illiquid positions, management's estimates are used to determine these adjustments.

Where the firm cannot verify all of the significant model inputs to observable market data and verify the model to market transactions, the firm values the contract at the transaction price at inception and, consequently, records no day one gain or loss in accordance with Emerging Issues Task Force (EITF) Issue No. 02-3, "Issues Involved in Accounting for Derivative Contracts Held for Trading Purposes and Contracts Involved in Energy Trading and Risk Management Activities."

Following day one, the firm adjusts the inputs to its valuation models only to the extent that changes in these inputs can be verified by similar market transactions, third-party pricing services and/or broker quotes, or can be derived from other substantive evidence such as empirical market data. In circumstances where the firm cannot verify the model to market transactions, it is possible that a different valuation model could produce a materially different estimate of fair value.

- **Principal Investments.** In valuing corporate and real estate principal investments, the firm's portfolio is separated into investments in private companies, investments in public companies (excluding the firm's investment in the convertible preferred stock of Sumitomo Mitsui Financial Group, Inc. (SMFG)) and the firm's investment in SMFG.

The firm's private principal investments, by their nature, have little or no price transparency. Such investments are initially carried at cost as an approximation of fair value. Adjustments to carrying value are made if there are third-party transactions evidencing a change in value. Downward adjustments are also made, in the absence of third-party transactions, if it is determined that the expected realizable value of the investment is less than the carrying value. In reaching that determination, many factors are considered including, but not limited to, the operating cash flows and financial performance of the companies or properties relative to budgets or projections, trends within sectors and/or regions, underlying business



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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

models, expected exit timing and strategy, and any specific rights or terms associated with the investment, such as conversion features and liquidation preferences.

The firm's public principal investments, which tend to be large, concentrated holdings that result from initial public offerings or other corporate transactions, are valued using quoted market prices discounted based on predetermined written policies for nontransferability and illiquidity.

The firm's investment in the convertible preferred stock of SMFG is carried at fair value, which is derived from a model that incorporates SMFG's common stock price and credit spreads, the impact of nontransferability and illiquidity, and the downside protection on the conversion strike price. The firm's investment in the convertible preferred stock of SMFG is generally nontransferable, but is freely convertible into SMFG common stock. Restrictions on the firm's ability to hedge or sell one-third of the common stock underlying its investment in SMFG lapsed in February 2005. As of November 2005, the firm was fully hedged with respect to these unrestricted shares. Under the firm's initial agreement with SMFG, restrictions on the firm's ability to hedge or sell the remaining shares of common stock underlying its investment in SMFG lapse in equal installments on February 7, 2006 and February 7, 2007. In connection with a public offering by SMFG of its common stock, the firm has separately agreed with SMFG that the restrictions that were to lapse on February 7, 2006 will instead lapse on March 9, 2006. Effective February 1, 2006, the conversion price of the firm's SMFG preferred stock into shares of SMFG common stock is ¥320,900. This price is subject to downward adjustment if the price of SMFG common stock at the time of conversion is less than the conversion price (subject to a floor of ¥105,800).

In general, transfers of financial assets are accounted for as sales under SFAS No. 140 when the firm has relinquished control over the transferred assets. For transfers accounted for as sales, any related gains or losses are recognized in net revenues. Transfers that are not accounted for as sales are accounted for as collateralized financing arrangements, with the related interest expense recognized in net revenues over the lives of the transactions.

**Collateralized Financing Arrangements.** Collateralized financing arrangements consist of repurchase agreements and securities borrowed and loaned. Interest income or expense on repurchase agreements and securities borrowed and loaned is recognized in net revenues over the life of the transaction.

- **Resale and Repurchase Agreements.** Securities purchased under agreements to resell and securities sold under agreements to repurchase, principally U.S. government, federal agency and investment-grade foreign sovereign obligations, represent short-term collateralized financing transactions and are carried in the consolidated statements of financial condition at their contractual amounts plus accrued interest. These amounts are presented on a net-by-counterparty basis when the requirements of FIN No. 41, "Offsetting of Amounts Related to Certain Repurchase and Reverse Repurchase Agreements," or FIN No. 39, "Offsetting of Amounts Related to Certain Contracts," are satisfied. The firm receives securities purchased under agreements to resell, makes delivery of securities sold under agreements to repurchase, monitors the market value of these securities on a daily basis and delivers or obtains additional collateral as appropriate.
- **Securities Borrowed and Loaned.** Securities borrowed and loaned are recorded based on the amount of cash collateral advanced or received. These transactions are generally collateralized by cash, securities or letters of credit. The firm receives securities borrowed,

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

makes delivery of securities loaned, monitors the market value of securities borrowed and loaned, and delivers or obtains additional collateral as appropriate.

**Power Generation.** Power generation revenues associated with the firm's consolidated power generation facilities are included in "Trading and principal investments" in the consolidated statements of earnings when power is delivered. "Cost of power generation" in the consolidated statement of earnings includes all of the direct costs of these facilities (e.g., fuel, operations and maintenance), as well as the depreciation and amortization associated with the facility and related contractual assets.

The following table sets forth the power generation revenues and costs directly associated with the firm's consolidated power generation facilities:

	<b>Year Ended November</b>		
	<b>2005</b>	<b>2004</b>	<b>2003 <sup>(2)</sup></b>
	(in millions)		
Revenues <sup>(1)</sup> .....	\$496	\$488	\$15
Cost of power generation .....	456	401	11

<sup>(1)</sup> Excludes revenues from nonconsolidated power generation facilities, accounted for in accordance with the equity method of accounting, as well as revenues associated with the firm's power trading activities.

<sup>(2)</sup> The firm acquired its first consolidated power generation facility in October 2003.

**Commissions.** Commission revenues from executing and clearing client transactions on stock, options and futures markets worldwide are recognized in "Trading and principal investments" in the consolidated statements of earnings on a trade date basis.

**Merchant Banking Overrides.** The firm is entitled to receive merchant banking overrides (i.e., an increased share of a fund's income and gains) when the return on the funds' investments exceeds certain threshold returns. Overrides are based on investment performance over the life of each merchant banking fund, and future investment underperformance may require amounts of override previously distributed to the firm to be returned to the funds. Accordingly, overrides are recognized in the consolidated statements of earnings only when all material contingencies have been resolved. Overrides are included in "Trading and principal investments" in the consolidated statements of earnings.

**Asset Management.** Management fees are recognized over the period that the related service is provided based upon average net asset values. In certain circumstances, the firm is also entitled to receive asset management incentive fees based on a percentage of a fund's return or when the return on assets under management exceeds specified benchmark returns or other performance targets. Incentive fees are generally based on investment performance over a 12-month period and are subject to adjustment prior to the end of the measurement period. Accordingly, incentive fees are recognized in the consolidated statements of earnings when the measurement period ends. Asset management fees and incentive fees are included in "Asset management and securities services" in the consolidated statements of earnings.

***Stock-Based Compensation***

Effective for fiscal 2003, the firm began to account for stock-based employee compensation in accordance with the fair-value method prescribed by SFAS No. 123, "Accounting for Stock-Based Compensation," as amended by SFAS No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure," using the prospective adoption method. Under this method of adoption, compensation expense is recognized over the relevant service period based on the fair value of stock options and restricted stock units granted for fiscal 2003 and future years. No unearned

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compensation is included in "Shareholders' equity" for such stock options and restricted stock units granted. Rather, such stock options and restricted stock units are included in "Shareholders' equity" under SFAS No. 123 when services required from employees in exchange for the awards are rendered and expensed.

Compensation expense resulting from stock options and restricted stock units granted for the year ended November 29, 2002 and prior years is accounted for under the intrinsic-value-based method prescribed by APB Opinion No. 25, "Accounting for Stock Issued to Employees," as permitted by SFAS No. 123. Therefore, no compensation expense is recognized for unmodified stock options issued for years prior to fiscal 2003 that had no intrinsic value on the date of grant. Compensation expense for restricted stock units issued for the years prior to fiscal 2003 was, and continues to be, recognized over the relevant service periods using amortization schedules based on the applicable vesting provisions.

Employees who meet the retirement criteria are subject to a non-compete agreement from the date of retirement through the date that shares underlying the awards are delivered. Equity awards granted to employees who have satisfied the retirement eligibility criteria are expensed over the stated service period for the award. In the event a retirement-eligible employee retires, any unamortized grant date value is immediately expensed. A reduction to compensation expense is recorded upon forfeiture related to employees who meet the retirement criteria and violate their non-compete agreements.

The firm pays cash dividend equivalents on outstanding restricted stock units. Dividend equivalents paid on restricted stock units accounted for under SFAS No. 123 are charged to retained earnings when paid. Dividend equivalents paid on restricted stock units that are later forfeited by employees are reclassified to compensation expense from retained earnings. Dividend equivalents paid on restricted stock units granted for the year ended November 29, 2002 and prior years, accounted for under APB Opinion No. 25, are charged to compensation expense.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

If the firm were to recognize compensation expense over the relevant service period under the fair value method of SFAS No. 123 with respect to stock options granted for the year ended November 29, 2002 and all prior years, net earnings would have decreased, resulting in pro forma net earnings and earnings per common share (EPS) as set forth below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions, except per share amounts)		
Net earnings applicable to common shareholders, as reported .....	\$ 5,609	\$4,553	\$3,005
Add: Stock-based employee compensation expense, net of related tax effects, included in reported net earnings .....	1,133	790	458
Deduct: Stock-based employee compensation expense, net of related tax effects, determined under the fair value method for all awards .....	<u>(1,178)</u>	<u>(947)</u>	<u>(782)</u>
Pro forma net earnings applicable to common shareholders .....	<u>\$ 5,564</u>	<u>\$4,396</u>	<u>\$2,681</u>
EPS, as reported			
Basic .....	\$ 11.73	\$ 9.30	\$ 6.15
Diluted .....	11.21	8.92	5.87
Pro forma EPS			
Basic .....	\$ 11.64	\$ 8.98	\$ 5.49
Diluted .....	11.12	8.61	5.24

***Goodwill***

Goodwill is the cost of acquired companies in excess of the fair value of identifiable net assets at acquisition date. In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," goodwill is tested at least annually for impairment. An impairment loss is triggered if the estimated fair value of an operating segment is less than its estimated net book value. Such loss is calculated as the difference between the estimated fair value of goodwill and its carrying value.

***Identifiable Intangible Assets***

Identifiable intangible assets, which consist primarily of customer lists, above-market power contracts and specialist rights, are amortized over their estimated useful lives. Identifiable intangible assets are tested for potential impairment whenever events or changes in circumstances suggest that an asset's or asset group's carrying value may not be fully recoverable in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the estimated undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

***Property, Leasehold Improvements and Equipment***

Property, leasehold improvements and equipment, net of accumulated depreciation and amortization, are included in "Other assets" in the consolidated statements of financial condition.

Property and equipment placed in service prior to December 1, 2001 are depreciated under the accelerated cost recovery method. Property and equipment placed in service on or after December 1, 2001 are depreciated on a straight-line basis over the useful life of the asset.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
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Leasehold improvements for which the useful life of the improvement is shorter than the term of the lease are amortized under the accelerated cost recovery method if placed in service prior to December 1, 2001. All other leasehold improvements are amortized on a straight-line basis over the useful life of the improvement or the term of the lease, whichever is shorter. Certain costs of software developed or obtained for internal use are amortized on a straight-line basis over the useful life of the software.

Property, leasehold improvements and equipment are tested for potential impairment whenever events or changes in circumstances suggest that an asset's or asset group's carrying value may not be fully recoverable in accordance with SFAS No. 144. An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the expected undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

The firm's operating leases include space held in excess of current needs. Rent expense relating to space held for growth is included in "Occupancy" in the consolidated statements of earnings. In accordance with SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," the firm records a liability, based on the remaining lease rentals reduced by any potential or existing sublease rentals, for leases where the firm has ceased using the space and management has concluded that the firm will not derive any future economic benefits. Costs to terminate a lease before the end of its term are recognized and measured at fair value upon termination.

***Foreign Currency Translation***

Assets and liabilities denominated in non-U.S. currencies are translated at rates of exchange prevailing on the date of the consolidated statement of financial condition, and revenues and expenses are translated at average rates of exchange for the fiscal year. Gains or losses on translation of the financial statements of a non-U.S. operation, when the functional currency is other than the U.S. dollar, are included, net of hedges and taxes, on the consolidated statements of comprehensive income. The firm seeks to reduce its net investment exposure to fluctuations in foreign exchange rates through the use of foreign currency forward contracts and foreign currency-denominated debt. For foreign currency forward contracts, hedge effectiveness is assessed based on changes in forward exchange rates; accordingly, forward points are reflected as a component of the currency translation adjustment in the consolidated statements of comprehensive income. For foreign currency-denominated debt, hedge effectiveness is assessed based on changes in spot rates. Foreign currency remeasurement gains or losses on transactions in nonfunctional currencies are included in the consolidated statements of earnings.

***Income Taxes***

Deferred tax assets and liabilities are recognized for temporary differences between the financial reporting and tax bases of the firm's assets and liabilities. Valuation allowances are established to reduce deferred tax assets to the amount that more likely than not will be realized. The firm's tax assets and liabilities are presented as a component of "Other assets" and "Other liabilities and accrued expenses," respectively, in the consolidated statements of financial condition. Tax provisions are computed in accordance with SFAS No. 109, "Accounting for Income Taxes." Contingent liabilities related to income taxes are recorded when the criteria for loss recognition under SFAS No. 5, "Accounting for Contingencies," as amended, have been met.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Earnings Per Common Share***

Basic EPS is calculated by dividing net earnings applicable to common shareholders by the weighted average number of common shares outstanding. Common shares outstanding includes common stock and restricted stock units for which no future service is required as a condition to the delivery of the underlying common stock. Diluted EPS includes the determinants of basic EPS and, in addition, reflects the dilutive effect of the common stock deliverable pursuant to stock options and to restricted stock units for which future service is required as a condition to the delivery of the underlying common stock.

***Cash and Cash Equivalents***

The firm defines cash equivalents as highly liquid overnight deposits held in the ordinary course of business.

***Recent Accounting Developments***

In December 2004, the FASB issued a revision to SFAS No. 123, SFAS No. 123-R, "Share-Based Payment." SFAS No. 123-R establishes standards of accounting for transactions in which an entity exchanges its equity instruments for goods and services. SFAS No. 123-R focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. Two key differences between SFAS No. 123 and SFAS No. 123-R relate to attribution of compensation costs to reporting periods and accounting for award forfeitures. SFAS No. 123-R generally requires the immediate expensing of equity-based awards granted to retirement-eligible employees. However, awards granted subject to a substantive non-compete agreement are generally expensed over the non-compete period. SFAS No. 123-R also requires expected forfeitures to be included in determining stock-based employee compensation expense (see "— Stock-Based Compensation" above for a discussion of how the firm currently accounts for equity-based awards granted to retirement-eligible employees and forfeitures). The firm will adopt SFAS No. 123-R in the first quarter of fiscal 2006. Management is currently evaluating the effect of adoption of SFAS No. 123-R on the firm's results of operations with respect to awards granted to retirement-eligible employees that are subject to a non-compete agreement.

The following table sets forth the pro forma net earnings that would have been reported for each year if equity-based awards granted to retirement-eligible employees had been expensed over the non-compete period and if expected forfeitures had been accrued as required by SFAS No. 123-R:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Net earnings applicable to common shareholders, as reported .....	\$ 5,609	\$4,553	\$3,005
Add: Stock-based employee compensation expense, net of related tax effects, included in reported net earnings .....	1,133	790	458
Deduct: Stock-based employee compensation expense, net of related tax effects, determined under SFAS No. 123-R.....	<u>(1,106)</u>	<u>(802)</u>	<u>(503)</u>
Pro forma net earnings applicable to common shareholders .....	<u>\$ 5,636</u>	<u>\$4,541</u>	<u>\$2,960</u>

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In June 2005, the EITF reached consensus on Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights," which requires general partners (or managing members in the case of limited liability companies) to consolidate their partnerships or to provide limited partners with rights to remove the general partner or to terminate the partnership. The firm, as the general partner of numerous merchant banking and asset management partnerships, is required to adopt the provisions of EITF 04-5 (i) immediately for partnerships formed or modified after June 29, 2005 and (ii) in the first quarter of fiscal 2007 for partnerships formed on or before June 29, 2005 that have not been modified. The firm generally expects to provide limited partners in these funds with rights to remove the firm or rights to terminate the partnerships and, therefore, does not expect that EITF 04-5 will have a material effect on the firm's financial condition, results of operations or cash flows.

**Note 3. Financial Instruments**

***Fair Value of Financial Instruments***

The following table sets forth the firm's financial instruments owned, at fair value, including those pledged as collateral, and financial instruments sold, but not yet purchased, at fair value:

	As of November			
	2005		2004	
	<u>Assets</u>	<u>Liabilities</u>	<u>Assets</u>	<u>Liabilities</u>
	(in millions)			
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$ 14,609 <sup>(1)</sup>	\$ —	\$ 7,386 <sup>(1)</sup>	\$ —
U.S. government, federal agency and sovereign obligations . . . . .	68,688	51,458	46,777	40,866
Corporate and other debt obligations				
Mortgage whole loans and collateralized debt obligations . . . . .	31,459	223	18,346	671
Investment-grade corporate bonds . . . . .	12,415	4,232	11,783	5,163
Bank loans . . . . .	13,843	288	8,900	428
High-yield securities . . . . .	8,822	2,072	6,057	1,725
Preferred stock . . . . .	7,315	71	4,792	109
Other . . . . .	877	278	885	248
	<u>74,731</u>	<u>7,164</u>	<u>50,763</u>	<u>8,344</u>
Equities and convertible debentures . . . . .	56,656	32,565	42,263	18,766
State, municipal and provincial obligations . . . . .	2,524	—	1,308	—
Derivative contracts . . . . .	58,532 <sup>(2)</sup>	57,829 <sup>(3)</sup>	62,495 <sup>(2)</sup>	64,001 <sup>(3)</sup>
Physical commodities . . . . .	1,286	55	812	120
Total . . . . .	<u>\$277,026</u>	<u>\$149,071</u>	<u>\$211,804</u>	<u>\$132,097</u>

<sup>(1)</sup> Includes \$6.12 billion and \$5.84 billion, as of November 2005 and November 2004, respectively, of money market instruments held by William Street Funding Corporation to support the William Street credit extension program.

<sup>(2)</sup> Net of cash received pursuant to credit support agreements of \$22.61 billion and \$18.65 billion as of November 2005 and November 2004, respectively.

<sup>(3)</sup> Net of cash paid pursuant to credit support agreements of \$16.10 billion and \$5.45 billion as of November 2005 and November 2004, respectively.

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***Credit Concentrations***

Credit concentrations may arise from trading, underwriting and securities borrowing activities and may be impacted by changes in economic, industry or political factors. As of November 2005 and November 2004, the firm held U.S. government and federal agency obligations that represented 7% and 5% of the firm's total assets, respectively. In addition, most of the firm's securities purchased under agreements to resell are collateralized by U.S. government, federal agency and other sovereign obligations. As of November 2005 and November 2004, the firm did not have credit exposure to any other counterparty that exceeded 5% of the firm's total assets.

***Derivative Activities***

Derivative contracts are instruments, such as futures, forwards, swaps or option contracts that derive their value from underlying assets, indices, reference rates or a combination of these factors. Derivative instruments may be privately negotiated contracts, which are often referred to as OTC derivatives, or they may be listed and traded on an exchange. Derivatives may involve future commitments to purchase or sell financial instruments or commodities, or to exchange currency or interest payment streams. The amounts exchanged are based on the specific terms of the contract with reference to specified rates, securities, commodities, currencies or indices.

Certain cash instruments, such as mortgage-backed securities, interest-only and principal-only obligations, and indexed debt instruments, are not considered derivatives even though their values or contractually required cash flows are derived from the price of some other security or index. However, certain commodity-related contracts are included in the firm's derivatives disclosure, as these contracts may be settled in cash or are readily convertible into cash.

Substantially all of the firm's derivative transactions are entered into for trading purposes, to facilitate client transactions, to take proprietary positions or as a means of risk management. Risk exposures are managed through diversification, by controlling position sizes and by establishing hedges in related securities or derivatives. For example, the firm may hedge a portfolio of common stock by taking an offsetting position in a related equity-index futures contract. Gains and losses on derivatives used for trading purposes are generally included in "Trading and principal investments" in the consolidated statements of earnings.

In addition to derivative transactions entered into for trading purposes, the firm enters into derivative contracts to hedge its net investment in non-U.S. operations (see Note 2 for further information regarding the firm's policy on foreign currency translation) and to manage the interest rate and currency exposure on its long-term borrowings and certain short-term borrowings. To manage exposure on its borrowings, the firm uses derivatives to effectively convert a substantial portion of its long-term borrowings into U.S. dollar-based floating rate obligations. The firm applies fair value hedge accounting to derivative contracts that hedge the benchmark interest rate (i.e., London Interbank Offered Rate (LIBOR)) on its fixed rate long-term borrowings. The firm also applies cash flow hedge accounting to derivative contracts that hedge changes in interest rates associated with floating rate long-term borrowings related to its power generation facilities.



**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Fair values of the firm's derivative contracts are reflected net of cash paid or received pursuant to credit support agreements and are reported on a net-by-counterparty basis in the firm's consolidated statements of financial condition when management believes a legal right of setoff exists under an enforceable netting agreement. The fair value of derivative financial instruments, computed in accordance with the firm's netting policy, is set forth below:

	As of November			
	2005		2004	
	Assets	Liabilities	Assets	Liabilities
	(in millions)			
Forward settlement contracts . . . . .	\$13,921	\$15,345	\$13,137	\$14,578
Swap agreements . . . . .	25,865	22,001	34,727	30,836
Option contracts . . . . .	<u>18,746</u>	<u>20,483</u>	<u>14,631</u>	<u>18,587</u>
Total . . . . .	<u>\$58,532</u>	<u>\$57,829</u>	<u>\$62,495</u>	<u>\$64,001</u>

**Securitization Activities**

The firm securitizes commercial and residential mortgages, home equity and auto loans, government and corporate bonds and other types of financial assets. The firm acts as underwriter of the beneficial interests that are sold to investors. The firm derecognizes financial assets transferred in securitizations provided it has relinquished control over such assets. Transferred assets are accounted for at fair value prior to securitization. Net revenues related to these underwriting activities are recognized in connection with the sales of the underlying beneficial interests to investors.

The firm may retain interests in securitized financial assets. Retained interests are accounted for at fair value and included in "Total financial instruments owned, at fair value" in the consolidated statements of financial condition.

During the years ended November 2005 and November 2004, the firm securitized \$92.00 billion and \$62.93 billion, respectively, of financial assets, including \$65.18 billion and \$47.46 billion, respectively, of residential mortgage-backed securities. Cash flows received on retained interests were approximately \$908 million and \$984 million for the years ended November 2005 and November 2004, respectively.

As of November 2005 and November 2004, the firm held \$6.07 billion and \$4.33 billion of retained interests, respectively, including \$5.62 billion and \$4.11 billion, respectively, held in QSPEs. The fair value of retained interests valued using quoted market prices in active markets was \$1.34 billion and \$949 million as of November 2005 and November 2004, respectively.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table sets forth the weighted average key economic assumptions used in measuring retained interests for which fair value is based on alternative pricing sources with reasonable, little or no price transparency and the sensitivity of those fair values to immediate adverse changes of 10% and 20% in those assumptions:

	As of November 2005		As of November 2004	
	Type of Retained Interests		Type of Retained Interests	
	Mortgage-Backed	Corporate Debt and Other <sup>(3)</sup>	Mortgage-Backed	Corporate Debt and Other <sup>(3)</sup>
	(\$ in millions)			
Fair value of retained interests . . . . .	\$2,928	\$1,799	\$1,798	\$1,578
Weighted average life (years) . . . . .	5.7	5.1	4.2	3.7
Annual constant prepayment rate . . . . .	18.6%	N/A	21.5%	N/A
Impact of 10% adverse change . . . . .	\$ (44)	\$ —	\$ (6)	\$ —
Impact of 20% adverse change . . . . .	(73)	—	(10)	—
Annual credit losses <sup>(1)</sup> . . . . .	5.0%	2.5%	4.0%	4.1%
Impact of 10% adverse change <sup>(2)</sup> . . .	\$ (25)	\$ (4)	\$ (10)	\$ (1)
Impact of 20% adverse change <sup>(2)</sup> . . .	(48)	(9)	(14)	(2)
Annual discount rate . . . . .	7.4%	6.5%	8.5%	4.9%
Impact of 10% adverse change . . . . .	\$ (70)	\$ (13)	\$ (39)	\$ (24)
Impact of 20% adverse change . . . . .	(136)	(29)	(75)	(48)

<sup>(1)</sup> Annual percentage credit loss is based only on positions in which expected credit loss is a key assumption in the determination of fair values.

<sup>(2)</sup> The impacts of adverse change take into account credit mitigants incorporated in the retained interests, including over-collateralization and subordination provisions.

<sup>(3)</sup> Includes retained interests in bonds and other types of financial assets that are not subject to prepayment risk.

The preceding table does not give effect to the offsetting benefit of other financial instruments that are held to hedge risks inherent in these retained interests. Changes in fair value based on a 10% adverse variation in assumptions generally cannot be extrapolated because the relationship of the change in assumptions to the change in fair value is not usually linear. In addition, the impact of a change in a particular assumption is calculated independently of changes in any other assumption. In practice, simultaneous changes in assumptions might magnify or counteract the sensitivities disclosed above.

In addition to the retained interests described above, the firm also held interests in residential mortgage QSPEs purchased in connection with secondary market-making activities. These purchased interests approximated \$5 billion as of both November 2005 and November 2004.

In connection with the issuance of asset-repackaged notes to investors, the firm had derivative receivables from QSPEs, to which the firm has transferred assets, with a fair value of \$108 million and \$126 million as of November 2005 and November 2004, respectively. These receivables are collateralized by a first-priority interest in the assets held by each QSPE.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Variable Interest Entities (VIEs)***

The firm, in the ordinary course of its business, retains interests in VIEs in connection with its securitization activities. The firm also purchases and sells variable interests in VIEs, which primarily issue mortgage-backed and other asset-backed securities and collateralized debt obligations (CDOs), in connection with its market-making activities and makes investments in and loans to VIEs that hold performing and nonperforming debt, equity, real estate, power-related and other assets. In addition, the firm utilizes VIEs to provide investors with credit-linked and asset-repackaged notes designed to meet their objectives.

VIEs generally purchase assets by issuing debt and equity instruments. In certain instances, the firm provides guarantees to VIEs or holders of variable interests in VIEs. In such cases, the maximum exposure to loss included in the tables set forth below is the notional amount of such guarantees. Such amounts do not represent anticipated losses in connection with these guarantees.

The firm's variable interests in VIEs include senior and subordinated debt; limited and general partnership interests; preferred and common stock; interest rate, foreign currency, equity, commodity and credit derivatives; guarantees; and residual interests in mortgage-backed and asset-backed securitization vehicles and CDOs. The firm's exposure to the obligations of VIEs is generally limited to its interests in these entities.

The following table sets forth the firm's total assets and maximum exposure to loss associated with its significant variable interests in consolidated VIEs where the firm does not hold a majority voting interest:

	<u>As of November</u>	
	<u>2005</u>	<u>2004</u>
	(in millions)	
Consolidated VIE assets <sup>(1)</sup> .....	\$4,143	\$5,197
Maximum exposure to loss .....	1,481	782

<sup>(1)</sup> Consolidated VIE assets include assets financed by nonrecourse short-term and long-term debt. Nonrecourse debt is debt that only the issuing subsidiary or, if applicable, a subsidiary guaranteeing the debt is obligated to repay.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following tables set forth total assets in nonconsolidated VIEs in which the firm holds significant variable interests and the firm's maximum exposure to loss associated with these interests:

As of November 2005						
Maximum Exposure to Loss in Nonconsolidated VIEs						
VIE Assets	Purchased and Retained Interests	Commitments and Guarantees	Derivatives	Loans and Investments	Total	
	(in millions)					
Collateralized debt obligations	\$19,437	\$780	\$ —	\$2,074	\$ —	\$2,854
Asset repackagings and credit-linked notes . . . . .	3,189	—	—	1,995	—	1,995
Power-related . . . . .	6,667	2	95	—	1,070	1,167
Investments in loans and real estate . . . . .	14,232	—	11	—	1,082	1,093
Mortgage-backed and other asset-backed . . . . .	<u>6,378</u>	<u>208</u>	<u>248</u>	<u>52</u>	<u>426</u>	<u>934</u>
Total . . . . .	<u>\$49,903</u>	<u>\$990</u>	<u>\$354</u>	<u>\$4,121</u>	<u>\$2,578</u>	<u>\$8,043</u>

As of November 2004						
Maximum Exposure to Loss in Nonconsolidated VIEs						
VIE Assets	Purchased and Retained Interests	Commitments and Guarantees	Derivatives	Loans and Investments	Total	
	(in millions)					
Collateralized debt obligations	\$ 5,989	\$139	\$ —	\$ 268	\$ 180	\$ 587
Asset repackagings and credit-linked notes . . . . .	204	—	—	73	—	73
Power-related . . . . .	5,340	—	52	—	571	623
Investments in loans and real estate . . . . .	9,853	—	—	—	1,195	1,195
Mortgage-backed and other asset-backed . . . . .	<u>7,308</u>	<u>30</u>	<u>277</u>	<u>38</u>	<u>711</u>	<u>1,056</u>
Total . . . . .	<u>\$28,694</u>	<u>\$169</u>	<u>\$329</u>	<u>\$ 379</u>	<u>\$2,657</u>	<u>\$3,534</u>

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Secured Borrowing and Lending Activities***

The firm obtains secured short-term financing principally through the use of repurchase agreements, securities lending agreements and other financings. In these transactions, the firm receives cash or securities in exchange for other securities, including U.S. government, federal agency and sovereign obligations, corporate debt and other debt obligations, equities and convertibles, letters of credit and other assets.

The firm obtains securities as collateral principally through the use of resale agreements, securities borrowing agreements, derivative transactions, customer margin loans and other secured borrowing activities to finance inventory positions, to meet customer needs and to satisfy settlement requirements. In many cases, the firm is permitted to sell or repledge securities held as collateral. These securities may be used to secure repurchase agreements, to enter into securities lending or derivative transactions, or to cover short positions. As of November 2005 and November 2004, the fair value of securities received as collateral by the firm that it was permitted to sell or repledge was \$629.94 billion and \$511.98 billion, respectively, of which the firm sold or repledged \$550.33 billion and \$451.79 billion, respectively.

The firm also pledges securities it owns. Counterparties may or may not have the right to sell or repledge the securities. Securities owned and pledged to counterparties that have the right to sell or repledge are reported as "Financial instruments owned and pledged as collateral, at fair value" in the consolidated statements of financial condition and were \$38.98 billion and \$27.92 billion as of November 2005 and November 2004, respectively. Securities owned and pledged in connection with repurchase and securities lending agreements to counterparties that did not have the right to sell or repledge are included in "Financial instruments owned, at fair value" in the consolidated statements of financial condition and were \$93.90 billion and \$46.86 billion as of November 2005 and November 2004, respectively.

In addition to repurchase and securities lending agreements, the firm also pledges securities and other assets it owns to counterparties that do not have the right to sell or repledge, in order to collateralize secured short-term and long-term borrowings. In connection with these transactions, the firm pledged assets of \$27.84 billion and \$22.81 billion as collateral as of November 2005 and November 2004, respectively. See Note 4 and Note 5 for further information regarding the firm's secured short-term and long-term borrowings.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 4. Short-Term Borrowings**

The firm obtains secured and unsecured short-term borrowings primarily through the issuance of promissory notes, commercial paper and bank loans. As of November 2005 and November 2004, secured short-term borrowings were \$7.97 billion and \$8.56 billion, respectively. Unsecured short-term borrowings were \$47.25 billion and \$46.40 billion as of November 2005 and November 2004, respectively. Short-term borrowings also include the portion of long-term borrowings maturing within one year of the financial statement date and certain long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder. The carrying value of these short-term obligations approximates fair value due to their short-term nature.

Short-term borrowings are set forth below:

	<u>As of November</u>	
	<u>2005</u>	<u>2004</u>
	(in millions)	
Promissory notes .....	\$17,339	\$19,513
Commercial paper .....	5,154	4,355
Bank loans and other .....	15,975	13,474
Current portion of long-term borrowings .....	<u>16,751</u>	<u>17,617</u>
Total <sup>(1)</sup> .....	<u>\$55,219</u>	<u>\$54,959</u>

<sup>(1)</sup> As of November 2005 and November 2004, the weighted average interest rates for short-term borrowings, including commercial paper, were 3.98% and 2.73%, respectively. The weighted average interest rates, after giving effect to hedging activities, were 3.86% and 2.30% as of November 2005 and November 2004, respectively.

**Note 5. Long-Term Borrowings**

The firm obtains secured and unsecured long-term borrowings, which consist principally of senior borrowings with maturities extending to 2035. As of November 2005 and November 2004, secured long-term borrowings were \$15.67 billion and \$12.09 billion, respectively. Unsecured long-term borrowings were \$84.34 billion and \$68.61 billion as of November 2005 and November 2004, respectively.

Long-term borrowings are set forth below:

	<u>As of November</u>	
	<u>2005</u>	<u>2004</u>
	(in millions)	
Fixed rate obligations <sup>(1)</sup>		
U.S. dollar .....	\$ 35,530	\$32,078
Non-U.S. dollar .....	16,224	12,553
Floating rate obligations <sup>(2)</sup>		
U.S. dollar .....	31,952	26,033
Non-U.S. dollar .....	<u>16,301</u>	<u>10,032</u>
Total .....	<u>\$100,007</u>	<u>\$80,696</u>

<sup>(1)</sup> As of November 2005 and November 2004, interest rates on U.S. dollar fixed rate obligations ranged from 3.72% to 12.00% and from 2.85% to 12.00%, respectively. As of November 2005 and November 2004, interest rates on non-U.S. dollar fixed rate obligations ranged from 0.65% to 8.88% and from 0.70% to 8.88%, respectively.

<sup>(2)</sup> Floating interest rates generally are based on LIBOR or the federal funds rate. Certain equity-linked and indexed instruments are included in floating rate obligations.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Long-term borrowings include nonrecourse debt issued by the following subsidiaries, as set forth in the table below. Nonrecourse debt is debt that only the issuing subsidiary or, if applicable, a subsidiary guaranteeing the debt is obligated to repay.

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
William Street Funding Corporation .....	\$ 5,107	\$ 5,144
Variable interest entities .....	5,568	4,546
Other subsidiaries <sup>(1)</sup> .....	<u>2,951</u>	<u>2,364</u>
<b>Total</b> .....	<b><u>\$13,626</u></b>	<b><u>\$12,054</u></b>

<sup>(1)</sup> Includes \$1.33 billion and \$978 million of nonrecourse debt related to the firm's consolidated power generation facilities as of November 2005 and November 2004, respectively.

Long-term borrowings by fiscal maturity date are set forth below:

	<b>As of November</b>					
	<b>2005 <sup>(1)(2)</sup></b>			<b>2004 <sup>(1)(2)</sup></b>		
	<b>U.S. Dollar</b>	<b>Non-U.S. Dollar</b>	<b>Total</b>	<b>U.S. Dollar</b>	<b>Non-U.S. Dollar</b>	<b>Total</b>
	(in millions)					
2006 .....	\$ —	\$ —	\$ —	\$10,691	\$ 2,616	\$13,307
2007 .....	13,662	861	14,523	7,116	948	8,064
2008 .....	6,218	2,872	9,090	4,626	3,179	7,805
2009 .....	9,241	3,094	12,335	9,061	4,116	13,177
2010 .....	6,411	7,698	14,109	2,515	2,918	5,433
2011-thereafter .....	<u>31,950</u>	<u>18,000</u>	<u>49,950</u>	<u>24,102</u>	<u>8,808</u>	<u>32,910</u>
<b>Total</b> .....	<b><u>\$67,482</u></b>	<b><u>\$32,525</u></b>	<b><u>\$100,007</u></b>	<b><u>\$58,111</u></b>	<b><u>\$22,585</u></b>	<b><u>\$80,696</u></b>

<sup>(1)</sup> Long-term borrowings maturing within one year of the financial statement date and certain long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder are included as short-term borrowings in the consolidated statements of financial condition.

<sup>(2)</sup> Long-term borrowings repayable at the option of the firm are reflected at their contractual maturity dates. Certain long-term borrowings that are redeemable prior to maturity at the option of the holder are reflected at the dates such options become exercisable.

The firm enters into derivative contracts, such as interest rate futures contracts, interest rate swap agreements, currency swap agreements, equity-linked and indexed contracts, to effectively convert a substantial portion of its long-term borrowings into U.S. dollar-based floating rate obligations. Accordingly, the aggregate carrying value of these long-term borrowings and related hedges approximates fair value.

The effective weighted average interest rates for long-term borrowings, after hedging activities, are set forth below:

	<b>As of November</b>			
	<b>2005</b>		<b>2004</b>	
	<b>Amount</b>	<b>Rate</b>	<b>Amount</b>	<b>Rate</b>
	(\$ in millions)			
Fixed rate obligations .....	\$ 3,468	5.48%	\$ 2,383	6.56%
Floating rate obligations .....	<u>96,539</u>	4.31	<u>78,313</u>	2.48
<b>Total</b> .....	<b><u>\$100,007</u></b>	<b>4.35</b>	<b><u>\$80,696</u></b>	<b>2.60</b>

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Deferrable Interest Junior Subordinated Debentures***

In February 2004, Goldman Sachs Capital I (the Trust), a wholly owned Delaware statutory trust, was formed by the firm for the exclusive purposes of (i) issuing \$2.75 billion of guaranteed preferred beneficial interests and \$85 million of common beneficial interests in the Trust, (ii) investing the proceeds from the sale to purchase junior subordinated debentures from Group Inc. and (iii) engaging in only those other activities necessary or incidental to these purposes. The preferred beneficial interests were purchased by third parties, and, as of November 2005, the firm held all of the common beneficial interests.

The Trust is a wholly owned finance subsidiary of the firm for legal and regulatory purposes. However, for accounting purposes, under FIN No. 46-R, the Trust is not a consolidated subsidiary of the firm because the firm's ownership of the common beneficial interest is not considered at risk, since the Trust's principal asset is the \$2.84 billion of junior subordinated debentures issued by the firm. The firm pays interest semiannually on these debentures at an annual rate of 6.345% and the debentures mature on February 15, 2034. The coupon rate and payment dates applicable to the beneficial interests are the same as the interest rate and payment dates applicable to the debentures. See Note 6 for further information regarding the firm's guarantee of the preferred beneficial interests issued by the Trust.

The firm has the right, from time to time, to defer payment of interest on the junior subordinated debentures, and, therefore, cause payment of dividends on the Trust's preferred beneficial interests to be deferred, in each case for up to ten consecutive semiannual periods, and during any such extension period Group Inc. will not be permitted to, among other things, pay dividends on or make certain repurchases of its common stock. The Trust is not permitted to pay any distributions on the common beneficial interests held by the firm unless all dividends payable on the preferred beneficial interests have been paid in full.

**Note 6. Commitments, Contingencies and Guarantees**

***Commitments***

**Forward Secured Financings.** The firm had commitments to enter into forward secured financing transactions, including certain repurchase and resale agreements and secured borrowing and lending arrangements, of \$49.93 billion and \$48.32 billion as of November 2005 and November 2004, respectively.

**Commitments to Extend Credit.** In connection with its lending activities, the firm had outstanding commitments of \$61.12 billion and \$27.72 billion as of November 2005 and November 2004, respectively. The firm's commitments to extend credit are agreements to lend to counterparties that have fixed termination dates and are contingent on the satisfaction of all conditions to borrowing set forth in the contract. Since these commitments may expire unused, the total commitment amount does not necessarily reflect the actual future cash flow requirements. The firm accounts for these commitments at fair value.



**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table summarizes the firm's commitments to extend credit at November 2005 and November 2004.

**Commitments to Extend Credit**  
(in millions)

	<u>Year Ended November</u>	
	<u>2005</u>	<u>2004</u>
William Street program .....	\$14,505	\$ 9,400
Other commercial lending commitments		
Investment-grade .....	17,592	4,984
Non-investment-grade .....	18,536	7,334
Warehouse financing .....	<u>10,489</u>	<u>5,998</u>
Total commitments to extend credit .....	<u>\$61,122</u>	<u>\$27,716</u>

- **William Street program.** Substantially all of the commitments provided under the William Street credit extension program are to investment-grade corporate borrowers. Commitments under the William Street credit extension program are issued by William Street Commitment Corporation (Commitment Corp.), a consolidated wholly owned subsidiary of Group Inc. whose assets and liabilities are legally separated from other assets and liabilities of the firm, and also by other subsidiaries of Group Inc. William Street Funding Corporation (Funding Corp.), another consolidated wholly owned subsidiary of Group Inc. whose assets and liabilities are legally separated from other assets and liabilities of the firm, was formed to raise funding to support the William Street credit extension program. The assets of Commitment Corp. and of Funding Corp. will not be available to their respective shareholders until the claims of their respective creditors have been paid. In addition, no affiliate of either Commitment Corp. or Funding Corp., except in limited cases as expressly agreed in writing, is responsible for any obligation of either entity. With respect to these commitments, the firm has credit loss protection provided to it by SMFG, which is generally limited to 95% of the first loss the firm realizes on approved loan commitments, subject to a maximum of \$1.00 billion. In addition, subject to the satisfaction of certain conditions, upon the firm's request, SMFG will provide protection for 70% of the second loss on such commitments, subject to a maximum of \$1.13 billion. The firm also uses other financial instruments to hedge certain William Street commitments not covered by SMFG.
- **Other commercial lending commitments.** In addition to the commitments issued under the William Street credit extension program, the firm extends other credit commitments, primarily in connection with contingent acquisition financing and other types of corporate lending. As part of its ongoing credit origination activities, the firm may reduce its credit risk on commitments by syndicating all or substantial portions to other investors. Additionally, commitments that are extended for contingent acquisition financing are often short-term in nature, as borrowers often replace them with other funding sources.
- **Warehouse financing.** The firm's commitments to extend credit also include mortgage and other forms of warehouse financing. These financings are expected to be repaid from the proceeds of related securitizations for which the firm may or may not act as underwriter. These arrangements are secured by the warehoused assets, primarily consisting of mortgage-backed and other asset-backed securities, residential and commercial mortgages and corporate debt instruments.

**Letters of Credit.** The firm provides letters of credit issued by various banks to counterparties in lieu of securities or cash to satisfy various collateral and margin deposit requirements. Letters of credit outstanding were \$9.23 billion and \$11.15 billion as of November 2005 and November 2004, respectively.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Merchant Banking Commitments.** The firm acts as an investor in merchant banking transactions, which includes making long-term investments in equity and debt securities in privately negotiated transactions, corporate acquisitions and real estate transactions. In connection with these activities, the firm had commitments to invest up to \$3.54 billion and \$1.04 billion in corporate and real estate investment funds as of November 2005 and November 2004, respectively.

**Construction-Related Commitments.** During the third fiscal quarter of 2005, the firm announced plans for a new world headquarters in New York City, with initial occupancy scheduled for 2009, at an expected cost of \$2.3 billion to \$2.5 billion. The firm will partially finance the project with tax-exempt Liberty Bonds. As of November 2005, the firm borrowed approximately \$1.4 billion through the issuance of Liberty Bonds and may borrow up to an additional \$250 million through the issuance of additional Liberty Bonds before 2010. As of November 2005, the firm had outstanding construction-related commitments of \$47 million in connection with this project. Included in the firm's future minimum rental payments under noncancelable lease agreements (included below) is \$309 million related to a 64-year ground lease for the land on which the firm's world headquarters will be constructed, of which \$161 million is a lump-sum payment due by June 2007.

In addition, the firm had other construction-related commitments of \$98 million and \$107 million as of November 2005 and November 2004, respectively.

**Other.** In August 2005, the firm entered into an agreement to acquire the variable annuity and variable life insurance business of The Hanover Insurance Group, Inc. (formerly Allmerica Financial Corporation), including its wholly owned life insurance subsidiary, Allmerica Financial Life Insurance and Annuity Company. The transaction closed on December 30, 2005 at a purchase price of approximately \$271 million upfront and an estimated \$34 million over three years, subject to final adjustments.

The firm had other purchase commitments of \$773 million and \$242 million as of November 2005 and November 2004, respectively.

**Leases.** The firm has contractual obligations under long-term noncancelable lease agreements, principally for office space, expiring on various dates through 2069. Certain agreements are subject to periodic escalation provisions for increases in real estate taxes and other charges. Future minimum rental payments, net of minimum sublease rentals, and rent charged to operating expense for the last three years are set forth below:

	(in millions)
Minimum rental payments	
2006 .....	\$ 399
2007 .....	537
2008 .....	338
2009 .....	340
2010 .....	254
2011-thereafter .....	<u>2,134</u>
Total .....	<u>\$4,002</u>
Net rent expense	
2003 .....	\$ 360
2004 .....	356
2005 .....	359

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Contingencies***

The firm is involved in a number of judicial, regulatory and arbitration proceedings concerning matters arising in connection with the conduct of its businesses. Management believes, based on currently available information, that the results of such proceedings, in the aggregate, will not have a material adverse effect on the firm's financial condition, but may be material to the firm's operating results for any particular period, depending, in part, upon the operating results for such period. Given the inherent difficulty of predicting the outcome of the firm's litigation and regulatory matters, particularly in cases or proceedings in which substantial or indeterminate damages or fines are sought, the firm cannot estimate losses or ranges of losses for cases or proceedings where there is only a reasonable possibility that a loss may be incurred.

***Guarantees***

The firm enters into various derivative contracts that meet the definition of a guarantee under FIN No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others." Such derivative contracts include credit default swaps, written equity and commodity put options, written currency contracts and interest rate caps, floors and swaptions. FIN No. 45 does not require disclosures about derivative contracts if such contracts may be cash settled and the firm has no basis to conclude it is probable that the counterparties held, at inception, the underlying instruments related to the derivative contracts. The firm has concluded that these conditions have been met for certain large, internationally active commercial and investment bank end users and certain other users. Accordingly, the firm has not included such contracts in the tables below.

The firm, in its capacity as an agency lender, indemnifies most of its securities lending customers against losses incurred in the event that borrowers do not return securities and the collateral held is insufficient to cover the market value of the securities borrowed. In connection with certain asset sales and securitization transactions, the firm guarantees the collection of contractual cash flows. In connection with its merchant banking activities, the firm may issue loan guarantees to secure financing. In addition, the firm provides letters of credit and other guarantees, on a limited basis, to enable clients to enhance their credit standing and complete transactions.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In connection with the firm's establishment of the Trust, Group Inc. effectively provided for the full and unconditional guarantee of the beneficial interests in the Trust held by third parties. Timely payment by Group Inc. of interest on the junior subordinated debentures and other amounts due and performance of its other obligations under the transaction documents will be sufficient to cover payments due by the Trust on its beneficial interests. As a result, management believes that it is unlikely the firm will have to make payments related to the Trust other than those required under the junior subordinated debentures and in connection with certain expenses incurred by the Trust.

The following tables set forth certain information about the firm's derivative contracts that meet the definition of a guarantee and certain other guarantees as of November 2005 and November 2004:

		<b>As of November 2005</b>				
		<b>Maximum Payout/Notional Amount by Period of Expiration <sup>(4)</sup></b>				
	<b>Carrying Value</b>	<b>2006</b>	<b>2007-2008</b>	<b>2009-2010</b>	<b>2011-Thereafter</b>	<b>Total</b>
		(in millions)				
Derivatives <sup>(1)</sup> . . . . .	\$8,217	\$356,131	\$244,163	\$259,332	\$289,459	\$1,149,085
Securities lending indemnifications <sup>(2)</sup> . . . . .	—	16,324	—	—	—	16,324
Guarantees of trust preferred beneficial interest <sup>(3)</sup> . . . . .	—	174	349	349	6,851	7,723
Guarantee of the collection of contractual cash flows . . . . .	—	147	2	95	20	264
Merchant banking fund-related commitments . . . . .	—	15	23	6	56	100
Letters of credit and other guarantees . . . . .	4	354	119	129	101	703

		<b>As of November 2004</b>				
		<b>Maximum Payout/Notional Amount by Period of Expiration <sup>(4)</sup></b>				
	<b>Carrying Value</b>	<b>2005</b>	<b>2006-2007</b>	<b>2008-2009</b>	<b>2010-Thereafter</b>	<b>Total</b>
		(in millions)				
Derivatives <sup>(1)</sup> . . . . .	\$6,752	\$269,246	\$ 96,829	\$175,910	\$349,789	\$ 891,774
Securities lending indemnifications <sup>(2)</sup> . . . . .	—	14,737	—	—	—	14,737
Guarantees of trust preferred beneficial interest <sup>(3)</sup> . . . . .	—	174	349	349	7,025	7,897
Guarantee of the collection of contractual cash flows . . . . .	16	47	162	57	20	286
Merchant banking fund-related commitments . . . . .	—	19	41	—	5	65
Letters of credit and other guarantees . . . . .	44	93	123	9	80	305

<sup>(1)</sup> The carrying value excludes the effect of a legal right of setoff that may exist under an enforceable netting agreement.

<sup>(2)</sup> Collateral held by the lenders in connection with securities lending indemnifications was \$16.89 billion and \$15.28 billion as of November 2005 and November 2004, respectively.

<sup>(3)</sup> Includes the guarantee of all payments scheduled to be made over the life of the Trust, which could be shortened in the event the firm redeemed the junior subordinated debentures issued to fund the Trust. (See Note 5 for further information regarding the Trust.)

<sup>(4)</sup> Such amounts do not represent the anticipated losses in connection with these contracts.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In the normal course of its business, the firm indemnifies and guarantees certain service providers, such as clearing and custody agents, trustees and administrators, against specified potential losses in connection with their acting as an agent of, or providing services to, the firm or its affiliates. The firm also indemnifies some clients against potential losses incurred in the event specified third-party service providers, including sub-custodians and third-party brokers, improperly execute transactions. In addition, the firm is a member of payment, clearing and settlement networks as well as securities exchanges around the world that may require the firm to meet the obligations of such networks and exchanges in the event of member defaults. In connection with its prime brokerage and clearing businesses, the firm agrees to clear and settle on behalf of its clients the transactions entered into by them with other brokerage firms. The firm's obligations in respect of such transactions are secured by the assets in the client's account as well as any proceeds received from the transactions cleared and settled by the firm on behalf of the client. In connection with joint venture investments, the firm may issue loan guarantees under which it may be liable in the event of fraud, misappropriation, environmental liabilities and certain other matters involving the borrower. The firm is unable to develop an estimate of the maximum payout under these guarantees and indemnifications. However, management believes that it is unlikely the firm will have to make any material payments under these arrangements, and no liabilities related to these guarantees and indemnifications have been recognized in the consolidated statements of financial condition as of November 2005 and November 2004.

The firm provides representations and warranties to counterparties in connection with a variety of commercial transactions and occasionally indemnifies them against potential losses caused by the breach of those representations and warranties. The firm may also provide indemnifications protecting against changes in or adverse application of certain U.S. tax laws in connection with ordinary-course transactions such as securities issuances, borrowings or derivatives. In addition, the firm may provide indemnifications to some counterparties to protect them in the event additional taxes are owed or payments are withheld, due either to a change in or an adverse application of certain non-U.S. tax laws. These indemnifications generally are standard contractual terms and are entered into in the normal course of business. Generally, there are no stated or notional amounts included in these indemnifications, and the contingencies triggering the obligation to indemnify are not expected to occur. The firm is unable to develop an estimate of the maximum payout under these guarantees and indemnifications. However, management believes that it is unlikely the firm will have to make any material payments under these arrangements, and no liabilities related to these arrangements have been recognized in the consolidated statements of financial condition as of November 2005 and November 2004.

**Note 7. Shareholders' Equity**

Dividends declared per common share were \$1.00 in fiscal 2005, \$1.00 in fiscal 2004 and \$0.74 in fiscal 2003. On December 14, 2005, the Board of Directors of Group Inc. (the Board) declared a dividend of \$0.25 per share to be paid on February 23, 2006 to common shareholders of record on January 24, 2006.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

During fiscal 2005, the firm issued 70,000 shares of preferred stock in three series as set forth in the following table:

**Preferred Stock by Series**

<u>Series</u>	<u>Description</u>	<u>Date Issued</u>	<u>Shares Issued</u>	<u>Shares Authorized</u>	<u>Earliest Redemption Date</u>	<u>Redemption Value (in millions)</u>
A	Perpetual Floating Rate Non-Cumulative	April 25, 2005	30,000	50,000	April 25, 2010	\$ 750
B	Perpetual 6.20% Non-Cumulative	October 31, 2005	32,000	50,000	October 31, 2010	800
C	Perpetual Floating Rate Non-Cumulative	October 31, 2005	8,000	25,000	October 31, 2010	200
			<u>70,000</u>	<u>125,000</u>		<u>\$1,750</u>

Each share of preferred stock has a par value of \$0.01, has a liquidation preference of \$25,000, is represented by 1,000 depository shares and is redeemable at the firm's option at a redemption price equal to \$25,000 plus declared and unpaid dividends. The firm's ability to declare or pay dividends on, or purchase, redeem or otherwise acquire, its common stock is subject to certain restrictions in the event that the firm fails to pay or set aside full dividends on the preferred stock for the latest completed dividend period. All preferred stock also has a preference over the firm's common stock upon liquidation.

Dividends declared per share of Series A preferred stock were \$578.72 in fiscal 2005. On December 14, 2005, the Board declared a dividend per preferred share of \$323.28, \$430.56 and \$353.68 for Series A, Series B and Series C preferred stock, respectively, to be paid on February 10, 2006 to preferred shareholders of record on January 26, 2006.

During fiscal 2005, the firm repurchased 63.7 million shares of its common stock at a total cost of \$7.11 billion, and during fiscal 2004, the firm repurchased 18.7 million shares of its common stock at a total cost of \$1.81 billion. The average price paid per share for repurchased shares was \$111.57 and \$96.29 for the years ended November 2005 and November 2004, respectively. In addition, to satisfy minimum statutory employee tax withholding requirements related to the delivery of shares underlying restricted stock units, the firm cancelled 1.6 million restricted stock units at a total cost of \$163 million in fiscal 2005, and it cancelled 9.1 million restricted stock units at a total cost of \$870 million in fiscal 2004.

The following table sets forth the firm's accumulated other comprehensive income by type:

	<b>As of November</b>	
	<u>2005</u>	<u>2004</u>
	(in millions)	
Currency translation adjustment, net of tax . . . . .	\$(16)	\$11
Minimum pension liability adjustment, net of tax . . . . .	(11)	—
Net gains on cash flow hedges, net of tax . . . . .	9	—
Net unrealized holding gains, net of tax <sup>(1)</sup> . . . . .	18	—
Total accumulated other comprehensive income, net of tax . . . . .	<u>\$ —</u>	<u>\$11</u>

<sup>(1)</sup> Consists of net unrealized gains on available-for-sale securities held by investments accounted for under the equity method.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 8. Earnings Per Common Share**

The computations of basic and diluted earnings per common share are set forth below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions, except per share amounts)		
Numerator for basic and diluted EPS — earnings applicable to common shareholders .....	<u>\$5,609</u>	<u>\$4,553</u>	<u>\$3,005</u>
Denominator for basic EPS — weighted average number of common shares .....	478.1	489.5	488.4
Effect of dilutive securities			
Restricted stock units .....	9.9	9.6	16.0
Stock options .....	<u>12.2</u>	<u>11.4</u>	<u>7.5</u>
Dilutive potential common shares .....	<u>22.1</u>	<u>21.0</u>	<u>23.5</u>
Denominator for diluted EPS — weighted average number of common shares and dilutive potential common shares <sup>(1)</sup> .....	<u>500.2</u>	<u>510.5</u>	<u>511.9</u>
Basic EPS .....	\$11.73	\$ 9.30	\$ 6.15
Diluted EPS .....	11.21	8.92	5.87

<sup>(1)</sup> The diluted EPS computations do not include the antidilutive effect of the following options:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Number of antidilutive options, end of period .....	<u>1</u>	<u>1</u>	<u>27</u>

**Note 9. Goodwill and Identifiable Intangible Assets**

***Goodwill***

As of November 2005 and November 2004, goodwill of \$3.15 billion and \$3.18 billion, respectively, was included in “Other assets” in the consolidated statements of financial condition.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Identifiable Intangible Assets**

The following table sets forth the gross carrying amount, accumulated amortization and net carrying amount of identifiable intangible assets:

		<u>As of November</u>	
		<u>2005</u>	<u>2004</u>
		(in millions)	
<b>Customer lists</b> <sup>(1)</sup>	Gross carrying amount . . . . .	\$1,021	\$1,021
	Accumulated amortization . . . . .	<u>(244)</u>	<u>(193)</u>
	Net carrying amount . . . . .	<u>\$ 777</u>	<u>\$ 828</u>
<b>New York Stock Exchange (NYSE) specialist rights</b>	Gross carrying amount . . . . .	\$ 714	\$ 714
	Accumulated amortization . . . . .	<u>(134)</u>	<u>(107)</u>
	Net carrying amount . . . . .	<u>\$ 580</u>	<u>\$ 607</u>
<b>Power contracts</b> <sup>(2)</sup>	Gross carrying amount . . . . .	\$ 497	\$ —
	Accumulated amortization . . . . .	<u>(16)</u>	<u>—</u>
	Net carrying amount . . . . .	<u>\$ 481</u>	<u>\$ —</u>
<b>Exchange-traded fund (ETF) and option specialist rights</b>	Gross carrying amount . . . . .	\$ 138	\$ 145
	Accumulated amortization . . . . .	<u>(27)</u>	<u>(24)</u>
	Net carrying amount . . . . .	<u>\$ 111</u>	<u>\$ 121</u>
<b>Other</b> <sup>(3)</sup>	Gross carrying amount . . . . .	\$ 312	\$ 298
	Accumulated amortization . . . . .	<u>(206)</u>	<u>(165)</u>
	Net carrying amount . . . . .	<u>\$ 106</u>	<u>\$ 133</u>
<b>Total</b>	Gross carrying amount . . . . .	\$2,682	\$2,178
	Accumulated amortization . . . . .	<u>(627)</u>	<u>(489)</u>
	Net carrying amount . . . . .	<u>\$2,055</u>	<u>\$1,689</u>

<sup>(1)</sup> Primarily includes the firm's clearance and execution and NASDAQ customer lists related to SLK LLC (SLK) and financial counseling customer lists related to The Ayco Company, L.P.

<sup>(2)</sup> Primarily relates to above-market power contracts of consolidated power generation facilities related to Cogentrix Energy, Inc. and National Energy & Gas Transmission Co. (NEGT). The firm closed on its acquisition of NEGTE and recorded purchase price allocation adjustments for NEGTE and Cogentrix Energy, Inc. in fiscal 2005. Substantially all of these power contracts have been pledged as collateral to counterparties in connection with certain of the firm's secured short-term and long-term borrowings. The weighted average remaining life of these power contracts is approximately 15 years.

<sup>(3)</sup> Primarily includes technology-related assets related to SLK.

Identifiable intangible assets are amortized over their estimated useful lives. The weighted average remaining life of the firm's identifiable intangibles is approximately 16 years. There were no identifiable intangible assets that were considered to be indefinite-lived and, therefore, not subject to amortization.

Amortization expense associated with identifiable intangible assets was \$165 million for the fiscal year ended November 2005, including amortization associated with the firm's consolidated power generation facilities reported within "Cost of power generation" in the consolidated statements of earnings. Amortization expense associated with identifiable intangible assets was \$125 million and \$319 million (including \$188 million of impairment charges) for the fiscal years ended November 2004 and November 2003, respectively.



**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Estimated future amortization expense for existing identifiable intangible assets is set forth below:

	(in millions)
2006 .....	\$173
2007 .....	158
2008 .....	130
2009 .....	129
2010 .....	129

**Note 10. Other Assets and Other Liabilities**

***Other Assets***

Other assets are generally less liquid, nonfinancial assets. The following table sets forth the firm's other assets by type:

	As of November	
	2005	2004
	(in millions)	
Goodwill and identifiable intangible assets <sup>(1)</sup> .....	\$ 5,203	\$ 4,871
Property, leasehold improvements and equipment <sup>(2)</sup> .....	5,097	4,083
Equity-method investments and joint ventures .....	2,965	2,447
Income tax-related assets .....	1,304	777
Miscellaneous receivables and other .....	2,743	2,965
Total .....	\$17,312	\$15,143

<sup>(1)</sup> See Note 9 for further information regarding the firm's goodwill and identifiable intangible assets.

<sup>(2)</sup> Net of accumulated depreciation and amortization of \$4.62 billion and \$4.23 billion for November 2005 and November 2004, respectively.

***Other Liabilities***

Other liabilities and accrued expenses primarily includes compensation and benefits, minority interest in certain consolidated entities, litigation liabilities, tax-related payables, deferred revenue and other payables. The following table sets forth the firm's other liabilities and accrued expenses by type:

	As of November	
	2005	2004
	(in millions)	
Compensation and benefits .....	\$ 6,598	\$ 5,571
Minority interest .....	3,164	1,809
Accrued expenses and other payables .....	4,068	2,980
Total .....	\$13,830	\$10,360

**Note 11. Employee Benefit Plans**

The firm sponsors various pension plans and certain other postretirement benefit plans, primarily healthcare and life insurance. The firm also provides certain benefits to former or inactive employees prior to retirement. A summary of these plans is set forth below.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Defined Benefit Pension Plans and Postretirement Plans***

The firm maintains a defined benefit pension plan for substantially all U.S. employees hired prior to November 1, 2003. As of November 2004, this plan has been closed to new participants and no further benefits will be accrued to existing participants. Employees of certain non-U.S. subsidiaries participate in various local defined benefit pension plans. These plans generally provide benefits based on years of credited service and a percentage of the employee's eligible compensation. In addition, the firm has unfunded postretirement benefit plans that provide medical and life insurance for eligible retirees and their dependents covered under the U.S. benefits program.

The following table provides a summary of the changes in the plans' benefit obligations and the fair value of assets for November 2005 and November 2004 and a statement of the funded status of the plans as of November 2005 and November 2004:

	As of or for the Year Ended November					
	2005			2004		
	U.S. Pension	Non-U.S. Pension	Post- retirement	U.S. Pension	Non-U.S. Pension	Post- retirement
	(in millions)					
Benefit obligation						
Balance, beginning of year	\$355	\$474	\$ 215	\$294	\$335	\$ 196
Service cost	—	44	23	10	44	9
Interest cost	19	20	13	18	16	12
Plan amendments	—	—	—	—	(2)	—
Actuarial loss	25	65	32	37	58	4
Benefits paid	(6)	(67)	(6)	(4)	(14)	(6)
Effect of foreign exchange rates	—	(50)	—	—	37	—
Balance, end of year	<u>\$393</u>	<u>\$486</u>	<u>\$ 277</u>	<u>\$355</u>	<u>\$474</u>	<u>\$ 215</u>
Fair value of plan assets						
Balance, beginning of year	\$318	\$382	\$ —	\$277	\$304	\$ —
Actual return on plan assets	32	64	—	25	26	—
Firm contributions	10	30	6	20	34	6
Employee contributions	—	1	—	—	—	—
Benefits paid	(6)	(43)	(6)	(4)	(14)	(6)
Effect of foreign exchange rates	—	(42)	—	—	32	—
Balance, end of year	<u>\$354</u>	<u>\$392</u>	<u>\$ —</u>	<u>\$318</u>	<u>\$382</u>	<u>\$ —</u>
Prepaid/(accrued) benefit cost						
Funded status	\$ (39)	\$ (94)	\$(277)	\$ (37)	\$ (92)	\$ (215)
Unrecognized loss	129	143	88	108	152	58
Unrecognized transition (asset)/obligation	(20)	5	1	(22)	6	1
Unrecognized prior service cost	—	4	12	—	3	14
Adjustment to recognize additional minimum liability	(18)	(1)	—	—	(1)	—
Prepaid/(accrued) benefit cost	<u>\$ 52</u>	<u>\$ 57</u>	<u>\$(176)</u>	<u>\$ 49</u>	<u>\$ 68</u>	<u>\$(142)</u>

The accumulated benefit obligation for all defined benefit pension plans was \$795 million and \$742 million as of November 2005 and November 2004, respectively.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

For plans in which the accumulated benefit obligation exceeded plan assets, the aggregate projected benefit obligation and accumulated benefit obligation was \$135 million and \$126 million, respectively, as of November 2005, and \$184 million and \$154 million, respectively, as of November 2004. The fair value of plan assets for each of these plans was \$64 million and \$104 million as of November 2005 and November 2004, respectively.

The components of pension (income)/expense and postretirement expense are set forth below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
U.S. pension			
Service cost .....	\$ —	\$ 10	\$ 8
Interest cost .....	19	18	13
Expected return on plan assets .....	(27)	(23)	(16)
Net amortization .....	6	5	5
Total .....	<u>\$ (2)</u>	<u>\$ 10</u>	<u>\$ 10</u>
Non-U.S. pension			
Service cost .....	\$ 44	\$ 44	\$ 41
Interest cost .....	20	16	12
Expected return on plan assets .....	(23)	(20)	(15)
Net amortization .....	12	8	8
Other <sup>(1)</sup> .....	(17)	—	—
Total .....	<u>\$ 36</u>	<u>\$ 48</u>	<u>\$ 46</u>
Postretirement			
Service cost .....	\$ 23	\$ 9	\$ 8
Interest cost .....	13	12	12
Net amortization .....	4	11	11
Total .....	<u>\$ 40</u>	<u>\$ 32</u>	<u>\$ 31</u>

<sup>(1)</sup> Represents a benefit as a result of the termination of a Japanese pension plan.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The weighted average assumptions used to develop net periodic pension cost and the actuarial present value of the projected benefit obligation are set forth below. These assumptions represent a weighted average of the assumptions used for the U.S. and non-U.S. plans and are based on the economic environment of each applicable country.

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
Defined benefit pension plans			
U.S. pension — projected benefit obligation			
Discount rate .....	5.25%	5.50%	6.00%
Rate of increase in future compensation levels .....	N/A	N/A	5.00
U.S. pension — net periodic benefit cost			
Discount rate .....	5.50	6.00	6.59
Rate of increase in future compensation levels .....	N/A	5.00	5.00
Expected long-term rate of return on plan assets .....	7.50	8.50	8.50
Non-U.S. pension — projected benefit obligation			
Discount rate .....	4.81	4.63	4.76
Rate of increase in future compensation levels .....	4.75	4.49	4.37
Non-U.S. pension — net periodic benefit cost			
Discount rate .....	4.63	4.76	4.78
Rate of increase in future compensation levels .....	4.49	4.37	4.14
Expected long-term rate of return on plan assets .....	6.35	6.25	5.86
Postretirement plans — benefit obligation			
Discount rate .....	5.25%	5.50%	6.00%
Rate of increase in future compensation levels .....	5.00	5.00	5.00
Postretirement plans — net periodic benefit cost			
Discount rate .....	5.50	6.00	6.75
Rate of increase in future compensation levels .....	5.00	5.00	5.00

Generally, the firm determined the discount rates for its defined benefit plans by referencing indices for long-term, high-quality bonds and ensuring that the discount rate does not exceed the yield reported for those indices after adjustment for the duration of the plans' liabilities.

The firm's approach in determining the long-term rate of return for plan assets is based upon historical financial market relationships that have existed over time with the presumption that this trend will generally remain constant in the future.

For measurement purposes, an annual growth rate in the per capita cost of covered healthcare benefits of 11.46% was assumed for the fiscal year ending November 2006. The rate was assumed to decrease ratably to 5.00% for the fiscal year ending November 2015 and remain at that level thereafter.

The assumed cost of healthcare has an effect on the amounts reported for the firm's postretirement plans. A 1% change in the assumed healthcare cost trend rate would have the following effects:

	<u>1% Increase</u>		<u>1% Decrease</u>	
	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>
	(in millions)			
Cost .....	\$ 6	\$ 5	\$ (5)	\$ (4)
Obligation .....	48	37	(37)	(29)

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table sets forth the composition of plan assets for the U.S. and non-U.S. defined benefit pension plans by asset category:

	As of November			
	2005		2004	
	U.S. Pension	Non-U.S. Pension	U.S. Pension	Non-U.S. Pension
Equity securities .....	64%	70%	66%	66%
Debt securities .....	21	8	22	8
Other .....	15	22	12	26
Total .....	100%	100%	100%	100%

The investment approach of the firm's U.S. and major non-U.S. defined benefit pension plans involves employing a sufficient level of flexibility to capture investment opportunities as they occur, while maintaining reasonable parameters to ensure that prudence and care are exercised in the execution of the investment programs. The plans employ a total return on investment approach, whereby a mix, which is broadly similar to the actual asset allocation as of November 2005, of equity securities, debt securities and other assets, is targeted to maximize the long-term return on assets for a given level of risk. Investment risk is measured and monitored on an ongoing basis by the firm's Retirement Committee through periodic portfolio reviews, meetings with investment managers and annual liability measurements.

The firm will contribute a minimum of \$13 million to its pension plans and \$7 million to its postretirement plans in fiscal 2006.

The following table sets forth benefits projected to be paid from the firm's U.S. and non-U.S. defined benefit pension and postretirement plans (net of Medicare subsidy receipts) and reflects expected future service, where appropriate:

	U.S. Pension	Non-U.S. Pension	Post- retirement
		(in millions)	
2006 .....	\$ 6	\$ 4	\$ 7
2007 .....	6	5	8
2008 .....	7	5	8
2009 .....	8	5	9
2010 .....	9	5	10
2011-2015 .....	61	28	54

**Defined Contribution Plans**

The firm contributes to employer-sponsored U.S. and non-U.S. defined contribution plans. The firm's contribution to these plans was \$305 million, \$189 million and \$199 million for the years ended November 2005, November 2004 and November 2003, respectively.

The firm previously maintained a nonqualified defined contribution plan for certain senior employees which held shares of common stock. All shares were distributed to participants and there were no remaining assets in the plan as of January 2005. Plan expense was immaterial for the years ended November 2005, November 2004 and November 2003.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 12. Employee Incentive Plans**

***Stock Incentive Plan***

The firm sponsors a stock incentive plan, The Goldman Sachs Amended and Restated Stock Incentive Plan (the Amended SIP), which provides for grants of incentive stock options, nonqualified stock options, stock appreciation rights, dividend equivalent rights, restricted stock, restricted stock units and other stock-based awards. In the second quarter of fiscal 2003, the Amended SIP was approved by the firm's shareholders, effective for grants after April 1, 2003, and no further awards were or will be made under the original plan after that date, although awards granted under the original plan prior to that date remain outstanding.

The total number of shares of common stock that may be issued under the Amended SIP through fiscal 2008 may not exceed 250 million shares and, in each fiscal year thereafter, may not exceed 5% of the issued and outstanding shares of common stock, determined as of the last day of the immediately preceding fiscal year, increased by the number of shares available for awards in previous fiscal years but not covered by awards granted in such years. As of November 2005 and November 2004, 196.6 million and 218.9 million shares, respectively, were available for grant under the Amended SIP, after taking into account stock-based compensation awards that were issued subsequent to year end, as part of year-end compensation.

***Other Compensation Arrangements***

In November 2004, the firm adopted new deferred compensation plans for eligible employees for fiscal 2005. In general, under the plans, participants are able to defer payment of a portion of their cash year-end compensation. During the deferral period, participants are able to nominally invest their deferrals in certain alternatives available under the plans. Generally, under current tax law, participants are not subject to income tax on amounts deferred or on any notional investment earnings until the returns are distributed, and the firm is not entitled to a corresponding tax deduction until the amounts are distributed. The firm has recognized compensation expense for the amounts deferred under these plans. As of November 2005, \$134 million related to these plans was included in "Other liabilities and accrued expenses" in the consolidated statements of financial condition.

In November 2004, the firm adopted a discount stock program through which eligible senior executives may acquire restricted stock units in fiscal 2005 and fiscal 2006 under the firm's Amended SIP at an effective 25% discount. The 25% discount is effected by an additional grant of restricted stock units equal to one-third of the number of restricted stock units purchased by qualifying participants. The purchased restricted stock units are 100% vested when granted, but the shares underlying them are not able to be sold or transferred (other than to satisfy tax obligations) before the third anniversary of the grant date. The shares underlying the restricted stock units that are granted in order to effect the 25% discount will generally vest in equal installments on the second and third anniversaries following the grant date and will not be transferable before the third anniversary of the grant date. Compensation expense related to these restricted stock units is recognized over the vesting period. The total value of restricted stock units granted in fiscal 2005 in order to effect the 25% discount was \$79 million.

***Restricted Stock Units***

The firm issued restricted stock units to employees under the Amended SIP, primarily in connection with year-end compensation and acquisitions. Of the total restricted stock units outstanding as of November 2005 and November 2004, (i) 30.1 million units and 24.9 million units, respectively, required future service as a condition to the delivery of the underlying shares of common stock and (ii) 25.0 million units and 13.0 million units, respectively, did not require future service.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

In all cases, delivery of the underlying shares of common stock is conditioned on the grantees satisfying certain other requirements outlined in the award agreements. The activity related to these restricted stock units is set forth below:

	<u>Restricted Stock Units Outstanding</u>	
	<u>No Future Service Required</u>	<u>Future Service Required</u>
Outstanding, November 2002 .....	18,315,938	29,895,000
Granted <sup>(1)</sup> .....	3,615,366	9,357,593
Forfeited .....	(179,708)	(1,886,420)
Delivered .....	(11,261,989)	—
Vested .....	<u>12,824,458</u>	<u>(12,824,458)</u>
Outstanding, November 2003 .....	23,314,065	24,541,715
Granted <sup>(1)</sup> .....	6,629,717	11,253,970
Forfeited .....	(142,163)	(879,420)
Delivered .....	(26,806,448)	—
Vested .....	<u>10,032,240</u>	<u>(10,032,240)</u>
Outstanding, November 2004 .....	13,027,411	24,884,025
Granted <sup>(1)</sup> .....	10,048,356	12,217,764
Forfeited .....	(23,621)	(819,840)
Delivered .....	(4,222,409)	—
Vested .....	<u>6,164,129</u>	<u>(6,164,129)</u>
Outstanding, November 2005 .....	<u>24,993,866</u>	<u>30,117,820</u>

<sup>(1)</sup> Includes restricted stock units granted to employees subsequent to year end as part of year-end compensation.

Total employee stock compensation expense, net of forfeitures, was \$1.76 billion, \$1.22 billion and \$711 million for the years ended November 2005, November 2004 and November 2003, respectively.

**Stock Options**

As of November 2004, all stock options granted to employees in May 1999 in connection with the firm's initial public offering are fully vested and exercisable. Stock options granted to employees subsequent to the firm's initial public offering generally vest as outlined in the applicable stock option agreement and first become exercisable on the third anniversary of the grant date. Year-end stock options for 2005 become exercisable in January 2009 and expire on November 27, 2015. Shares received on exercise prior to January 2010 will not be transferable until January 2010. All employee stock option agreements provide that vesting is accelerated in certain circumstances, such as upon retirement, death and extended absence. In general, all stock options expire on the tenth anniversary of the grant date, although they may be subject to earlier termination or cancellation in certain circumstances in accordance with the terms of the Amended SIP and the applicable stock option agreement. The dilutive effect of the firm's outstanding stock options is included in "Average common shares outstanding — Diluted" in the consolidated statements of earnings.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The activity related to these stock options is set forth below:

	<u>Options Outstanding</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Life (years)</u>
Outstanding, November 2002 .....	94,269,101	\$74.53	8.08
Granted .....	902,511	95.81	
Exercised .....	(2,686,955)	52.76	
Forfeited .....	<u>(3,428,692)</u>	73.08	
Outstanding, November 2003 .....	89,055,965	75.47	7.17
Granted .....	22,500	96.08	
Exercised .....	(9,025,867)	57.80	
Forfeited .....	<u>(1,496,863)</u>	81.00	
Outstanding, November 2004 .....	78,555,735	77.40	6.33
Granted <sup>(1)</sup> .....	3,390,480	131.64	
Exercised .....	(17,285,849)	66.20	
Forfeited .....	<u>(422,679)</u>	82.98	
Outstanding, November 2005 .....	<u>64,237,687</u>	83.24	5.84
Exercisable, November 2005 .....	<u>46,422,603</u>	<u>\$80.75</u>	5.17

<sup>(1)</sup> Includes stock options granted to employees subsequent to year end as part of year-end compensation.

The options outstanding as of November 2005 are set forth below:

<u>Exercise Price</u>	<u>Options Outstanding</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Life (years)</u>
\$ 45.00 – \$ 59.99 .....	9,921,971	\$ 52.98	3.5
60.00 – 74.99 .....	—	—	—
75.00 – 89.99 .....	27,661,787	80.89	6.00
90.00 – 104.99 .....	23,263,449	91.89	6.06
105.00 – 119.99 .....	—	—	—
120.00 – 134.99 .....	<u>3,390,480</u>	131.64	9.92
Outstanding, November 2005 .....	<u>64,237,687</u>		

The weighted average fair value of options granted for fiscal 2005, fiscal 2004 and fiscal 2003 was \$32.91 per option, \$32.22 per option and \$31.31 per option, respectively. Fair value was estimated as of the grant date based on a binomial option-pricing model using the following weighted average assumptions:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
Risk-free interest rate .....	4.5%	3.4%	3.4%
Expected volatility .....	30.0	35.0	35.0
Dividend yield .....	0.9	1.0	1.0
Expected life .....	7.5 years	5 years	5 years



**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The fair value of options granted in fiscal 2005 reflects an additional discount for sales restrictions on the shares of common stock underlying such options that apply until January 2010. The expected life of the options granted in fiscal 2005 has been extended to 7.5 years to reflect the estimated impact of the sales restrictions on the expected life of the awards.

**Note 13. Affiliated Funds**

The firm has formed numerous nonconsolidated investment funds with third-party investors. The firm generally acts as the investment manager for these funds and, as such, is entitled to receive management fees and, in certain cases, advisory fees, incentive fees or overrides from these funds. These fees amounted to \$2.08 billion, \$1.72 billion and \$1.17 billion for the years ended November 2005, November 2004 and November 2003, respectively. As of November 2005 and November 2004, the fees receivable from these funds were \$388 million and \$445 million, respectively. Additionally, the firm may invest alongside the third-party investors in certain funds. The aggregate carrying value of the firm's interests in these funds was \$2.17 billion and \$1.72 billion as of November 2005 and November 2004, respectively. In addition, the firm had commitments to invest up to \$3.54 billion and \$1.04 billion in these funds as of November 2005 and November 2004, respectively. In the normal course of business, the firm may also engage in other activities with these funds, including among others, securities lending, trade execution, trading and custody.

**Note 14. Income Taxes**

The components of the net tax expense reflected in the consolidated statements of earnings are set forth below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Current taxes			
U.S. federal .....	\$1,504	\$ 374	\$ 680
State and local .....	213	46	115
Non-U.S. ....	<u>1,380</u>	<u>663</u>	<u>552</u>
Total current tax expense .....	<u>3,097</u>	<u>1,083</u>	<u>1,347</u>
Deferred taxes			
U.S. federal .....	3	827	22
State and local .....	(4)	98	27
Non-U.S. ....	<u>(449)</u>	<u>115</u>	<u>44</u>
Total deferred tax (benefit)/expense .....	<u>(450)</u>	<u>1,040</u>	<u>93</u>
Net tax expense .....	<u>\$2,647</u>	<u>\$2,123</u>	<u>\$1,440</u>

Deferred income taxes reflect the net tax effects of temporary differences between the financial reporting and tax bases of assets and liabilities. These temporary differences result in taxable or deductible amounts in future years and are measured using the tax rates and laws that will be in effect when such differences are expected to reverse.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Significant components of the firm's deferred tax assets and liabilities are set forth below:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Deferred tax assets		
Compensation and benefits .....	\$1,563	\$ 920
Other, net .....	319	227
	1,882	1,147
Valuation allowance <sup>(1)</sup> .....	(6)	(21)
Total deferred tax assets .....	<u>1,876</u>	<u>1,126</u>
Deferred tax liabilities		
Depreciation and amortization .....	625	383
Unrealized gains .....	455	180
Total deferred tax liabilities .....	<u>\$1,080</u>	<u>\$ 563</u>

<sup>(1)</sup> Relates primarily to the ability to utilize losses of certain foreign entities and state and local tax credits.

The firm permanently reinvests eligible earnings of certain foreign subsidiaries and, accordingly, does not accrue any U.S. income taxes that would arise if such earnings were repatriated. As of November 2005, this policy resulted in an unrecognized net deferred tax liability of \$172 million attributable to reinvested earnings of \$2.4 billion.

Additionally, during fiscal 2005, the valuation allowance was decreased by \$15 million, primarily due to the utilization of certain state and local tax credits. Acquired federal net operating loss carryforwards of \$24 million as of November 2005 and \$88 million as of November 2004 are subject to annual limitations on utilization and will begin to expire in 2020. Acquired state and local net operating loss carryforwards of \$328 million as of November 2005 and \$436 million as of November 2004 are subject to annual limitations on utilization. Acquired alternative minimum tax credit carryforwards of \$7 million as of November 2005 and \$32 million as of November 2004 are subject to annual limitations on utilization, but can be carried forward indefinitely.

The firm is subject to examination by the Internal Revenue Service (IRS) and other tax authorities in certain countries, such as Japan and the United Kingdom, and states in which the firm has significant business operations, such as New York. The IRS is currently examining the firm's 2003 and 2004 fiscal years. During fiscal 2005, the IRS concluded its examination of 1999 through 2002, and New York State and City substantially concluded their examinations covering periods through fiscal year 2003. The firm regularly assesses the likelihood of additional assessments by each jurisdiction to which the firm pays taxes resulting from the impact of current and future examinations. Tax reserves have been established, which the firm believes are adequate in relation to the potential for additional assessments. The resolution of tax matters is not expected to have a material effect on the firm's financial condition but may be material to the firm's operating results for a particular period, depending, in part, upon the operating results for that period and the firm's effective tax rate for that period.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

A reconciliation of the U.S. federal statutory income tax rate to the firm's effective income tax rate is set forth below:

	Year Ended November		
	2005	2004	2003
U.S. federal statutory income tax rate .....	35.0%	35.0%	35.0%
Increase related to state and local taxes, net of U.S. income tax effects .....	1.6	1.4	2.1
Tax credits .....	(1.6)	(3.6)	(3.1)
Foreign operations .....	(1.2)	(1.2)	(1.2)
Tax-exempt income, including dividends .....	(0.6)	(0.7)	(1.0)
Other .....	(1.2) <sup>(1)</sup>	0.9	0.6
Effective income tax rate .....	32.0%	31.8%	32.4%

<sup>(1)</sup> Primarily includes the effect of audit settlements.

Tax benefits of approximately \$272 million in November 2005, \$330 million in November 2004 and \$103 million in November 2003, related to the delivery of restricted stock units and the exercise of options, were credited directly to "Additional paid-in capital" in the consolidated statements of financial condition and changes in shareholders' equity.

**Note 15. Regulation**

During the firm's second fiscal quarter of 2005, the firm became regulated by the U.S. Securities and Exchange Commission (SEC) as a Consolidated Supervised Entity (CSE). As such, it is subject to group-wide supervision and examination by the SEC and is subject to minimum capital requirements on a consolidated basis. As of November 2005, the firm was in compliance with the CSE capital requirements.

The firm's principal U.S. regulated subsidiaries include Goldman, Sachs & Co. (GS&Co.) and Goldman Sachs Execution & Clearing, L.P. (GSEC). GS&Co. and GSEC are registered U.S. broker-dealers and futures commission merchants subject to Rule 15c3-1 of the SEC and Rule 1.17 of the Commodity Futures Trading Commission, which specify uniform minimum net capital requirements, as defined, for their registrants. GS&Co. and GSEC have elected to compute their minimum capital requirements in accordance with the "Alternative Net Capital Requirement" as permitted by Rule 15c3-1. As of November 2005, GS&Co. and GSEC had net capital in excess of their minimum capital requirements. In addition to its alternative minimum net capital requirements, GS&Co. is also required to hold tentative net capital in excess of \$1 billion and net capital in excess of \$500 million in accordance with the market and credit risk standards of Appendix E of Rule 15c3-1. GS&Co. is also required to notify the SEC in the event that its tentative net capital is less than \$5 billion. As of November 2005, GS&Co. had tentative net capital and net capital in excess of both the minimum and the notification requirements.

The firm's principal international regulated subsidiaries include Goldman Sachs International (GSI) and Goldman Sachs (Japan) Ltd. (GSJL). GSI, a regulated U.K. broker-dealer, is subject to the capital requirements of the U.K.'s Financial Services Authority, and GSJL, a regulated broker-dealer based in Tokyo, is subject to the capital requirements of Japan's Financial Services Agency. As of November 2005 and November 2004, GSI and GSJL were in compliance with their local capital adequacy requirements.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Certain other subsidiaries of the firm are also subject to capital adequacy requirements promulgated by authorities of the countries in which they operate. As of November 2005 and November 2004, these subsidiaries were in compliance with their local capital adequacy requirements.

**Note 16. Business Segments**

In reporting to management, the firm's operating results are categorized into the following three segments: Investment Banking, Trading and Principal Investments, and Asset Management and Securities Services.

***Basis of Presentation***

In reporting segments, certain of the firm's business lines have been aggregated where they have similar economic characteristics and are similar in each of the following areas: (i) the nature of the services they provide, (ii) their methods of distribution, (iii) the types of clients they serve and (iv) the regulatory environments in which they operate.

The cost drivers of the firm taken as a whole — compensation, headcount and levels of business activity — are broadly similar in each of the firm's business segments. Compensation expenses within the firm's segments reflect, among other factors, the overall performance of the firm as well as performance of individual business units. Consequently, pre-tax margins in one segment of the firm's business may be significantly affected by the performance of the firm's other business segments.

The firm allocates revenues and expenses among the three segments. Due to the integrated nature of the business segments, estimates and judgments have been made in allocating certain revenue and expense items. Transactions between segments are based on specific criteria or approximate third-party rates. Total operating expenses include corporate items that have not been allocated to individual business segments. The allocation process is based on the manner in which management views the business of the firm.

The segment information presented in the table below is prepared according to the following methodologies:

- Revenues and expenses directly associated with each segment are included in determining pre-tax earnings.
- Net revenues in the firm's segments include allocations of interest income and interest expense to specific securities, commodities and other positions in relation to the cash generated by, or funding requirements of, such underlying positions. Net interest is included within segment net revenues as it is consistent with the way in which management assesses segment performance.
- Overhead expenses not directly allocable to specific segments are allocated ratably based on direct segment expenses.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Segment Operating Results**

Management believes that the following information provides a reasonable representation of each segment's contribution to consolidated pre-tax earnings and total assets:

		<u>As of or for the Year Ended November</u>		
		<u>2005</u>	<u>2004</u>	<u>2003</u>
		(in millions)		
<b>Investment Banking</b>	Net revenues <sup>(1)</sup> .....	\$ 3,671	\$ 3,374	\$ 2,711
	Operating expenses .....	3,258	2,973	2,504
	Pre-tax earnings <sup>(3)</sup> .....	\$ 413	\$ 401	\$ 207
	Segment assets .....	<u>\$ 4,869</u>	<u>\$ 4,759</u>	<u>\$ 4,867</u>
<b>Trading and Principal Investments</b>	Net revenues <sup>(1)</sup> .....	\$ 16,362	\$ 13,327	\$ 10,443
	Operating expenses .....	10,144	8,287	6,938
	Pre-tax earnings <sup>(3)</sup> .....	\$ 6,218	\$ 5,040	\$ 3,505
	Segment assets .....	<u>\$505,536</u>	<u>\$358,137</u>	<u>\$250,490</u>
<b>Asset Management and Securities Services</b>	Net revenues <sup>(1)</sup> .....	\$ 4,749	\$ 3,849	\$ 2,858
	Operating expenses .....	3,070	2,430	1,890
	Pre-tax earnings <sup>(3)</sup> .....	\$ 1,679	\$ 1,419	\$ 968
	Segment assets .....	<u>\$196,399</u>	<u>\$167,957</u>	<u>\$147,647</u>
<b>Total</b>	Net revenues <sup>(1)</sup> .....	\$ 24,782	\$ 20,550	\$ 16,012
	Operating expenses <sup>(2)</sup> .....	16,509	13,874	11,567
	Pre-tax earnings <sup>(3)</sup> .....	\$ 8,273	\$ 6,676	\$ 4,445
	Total assets <sup>(4)</sup> .....	<u>\$706,804</u>	<u>\$531,379</u>	<u>\$403,799</u>

<sup>(1)</sup> Net revenues include net interest and cost of power generation as set forth in the table below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Investment Banking .....	\$ 72	\$ 88	\$ 311
Trading and Principal Investments .....	910	1,343	1,888
Asset Management and Securities Services .....	1,659	1,194	941
Total net interest and cost of power generation .....	<u>\$2,641</u>	<u>\$2,625</u>	<u>\$3,140</u>

<sup>(2)</sup> Includes the following expenses that have not been allocated to the firm's segments: (i) the amortization of employee initial public offering awards, net of forfeitures, of \$19 million and \$80 million for the years ended November 2004 and November 2003, respectively; (ii) net provisions for a number of litigation and regulatory proceedings of \$37 million, \$103 million and \$155 million for the years ended November 2005, November 2004 and November 2003, respectively; and (iii) \$62 million in connection with the establishment of the firm's joint venture in China for the year ended November 2004.

<sup>(3)</sup> Pre-tax earnings include total depreciation and amortization as set forth in the table below:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Investment Banking .....	\$143	\$183	\$ 253
Trading and Principal Investments .....	565	513	726
Asset Management and Securities Services .....	146	149	166
Total depreciation and amortization .....	<u>\$854</u>	<u>\$845</u>	<u>\$1,145</u>

<sup>(4)</sup> Includes deferred tax assets relating to the firm's conversion to corporate form and certain assets that management believes are not allocable to a particular segment for the years ended November 2004 and November 2003.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Geographic Information***

Due to the highly integrated nature of international financial markets, the firm manages its businesses based on the profitability of the enterprise as a whole. Accordingly, management believes that profitability by geographic region is not necessarily meaningful.

The firm's revenues and expenses are generally allocated based on the country of domicile of the legal entity providing the service.

The following table sets forth the total net revenues and pre-tax earnings of the firm and its consolidated subsidiaries by geographic region allocated on the basis described above:

	<u>Year Ended November</u>		
	<u>2005</u>	<u>2004</u>	<u>2003</u>
	(in millions)		
Net revenues			
United States .....	\$ 14,315	\$ 12,932	\$ 10,040
Europe .....	6,804	5,222	4,037
Asia .....	3,389	2,368	1,704
Other .....	274	28	231
Total net revenues .....	<u>\$ 24,782</u>	<u>\$ 20,550</u>	<u>\$ 16,012</u>
Pre-tax earnings			
United States .....	\$ 5,312	\$ 4,761	\$ 3,105
Europe .....	1,444	984	700
Asia .....	1,308	1,121	658
Other .....	246	(6)	217
Corporate <sup>(1)</sup> .....	(37)	(184)	(235)
Total pre-tax earnings .....	<u>\$ 8,273</u>	<u>\$ 6,676</u>	<u>\$ 4,445</u>

<sup>(1)</sup> Includes the following expenses that have not been allocated to the firm's segments: (i) the amortization of employee initial public offering awards, net of forfeitures, of \$19 million and \$80 million for the years ended November 2004 and November 2003, respectively; (ii) net provisions for a number of litigation and regulatory proceedings of \$37 million, \$103 million and \$155 million for the years ended November 2005, November 2004 and November 2003, respectively; and (iii) \$62 million in connection with the establishment of the firm's joint venture in China for the year ended November 2004.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 17. Subsequent Event**

In January 2006, the firm entered into a definitive agreement to invest \$2.58 billion in the Industrial and Commercial Bank of China Limited (ICBC), with investment funds managed by the firm assuming a substantial portion of the firm's economic interest. In addition, the firm and ICBC have entered into a strategic cooperation agreement under which the firm will assist ICBC in developing further ICBC's corporate governance, risk management and internal controls, as well as providing expertise to enhance ICBC's capabilities in treasury, asset management, corporate and investment banking, nonperforming loans disposal and product innovation. The transactions are expected to close by May 2006, subject to receipt of regulatory approvals and other closing conditions.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Quarterly Results (unaudited)

The following represents the firm's unaudited quarterly results for fiscal 2005 and fiscal 2004. These quarterly results were prepared in accordance with generally accepted accounting principles and reflect all adjustments that are, in the opinion of management, necessary for a fair statement of the results. These adjustments are of a normal recurring nature.

	<b>2005 Fiscal Quarter</b>			
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>
	(in millions, except per share data)			
Total revenues .....	\$9,964	\$8,949	\$12,333	\$12,145
Interest expense .....	3,449	4,022	4,940	5,742
Cost of power generation .....	<u>110</u>	<u>121</u>	<u>108</u>	<u>117</u>
Revenues, net of interest expense and cost of power generation .....	6,405	4,806	7,285	6,286
Operating expenses .....	<u>4,260</u>	<u>3,562</u>	<u>4,880</u>	<u>3,807</u>
Pre-tax earnings .....	2,145	1,244	2,405	2,479
Provision for taxes .....	<u>633</u>	<u>379</u>	<u>788</u>	<u>847</u>
Net earnings .....	1,512	865	1,617	1,632
Preferred stock dividend .....	—	—	9	8
Net earnings applicable to common shareholders .....	<u>\$1,512</u>	<u>\$ 865</u>	<u>\$ 1,608</u>	<u>\$ 1,624</u>
Earnings per common share				
Basic .....	\$ 3.06	\$ 1.78	\$ 3.40	\$ 3.53
Diluted .....	2.94	1.71	3.25	3.35
Dividends declared per common share .....	0.25	0.25	0.25	0.25
	<b>2004 Fiscal Quarter</b>			
	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Fourth</b>
	(in millions, except per share data)			
Total revenues .....	\$7,905	\$7,676	\$6,803	\$7,455
Interest expense .....	1,873	2,038	2,156	2,821
Cost of power generation .....	<u>104</u>	<u>127</u>	<u>117</u>	<u>53</u>
Revenues, net of interest expense and cost of power generation .....	5,928	5,511	4,530	4,581
Operating expenses .....	<u>3,999</u>	<u>3,771</u>	<u>3,237</u>	<u>2,867</u>
Pre-tax earnings .....	1,929	1,740	1,293	1,714
Provision for taxes .....	<u>636</u>	<u>553</u>	<u>414</u>	<u>520</u>
Net earnings applicable to common shareholders .....	<u>\$1,293</u>	<u>\$1,187</u>	<u>\$ 879</u>	<u>\$1,194</u>
Earnings per common share				
Basic .....	\$ 2.63	\$ 2.43	\$ 1.80	\$ 2.44
Diluted .....	2.50	2.31	1.74	2.36
Dividends declared per common share .....	0.25	0.25	0.25	0.25



## SUPPLEMENTAL FINANCIAL INFORMATION

### Common Stock Price Range

The following table sets forth, for the fiscal quarters indicated, the high and low sales prices per share of the firm's common stock as reported by the Consolidated Tape Association.

	Sales Price					
	Fiscal 2005		Fiscal 2004		Fiscal 2003	
	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
First quarter .....	\$113.93	\$101.79	\$108.00	\$95.73	\$80.90	\$63.75
Second quarter .....	114.25	95.16	109.29	90.08	81.67	61.02
Third quarter .....	114.87	94.75	95.15	83.29	91.98	81.50
Fourth quarter .....	134.99	108.86	105.40	88.46	97.39	83.64

As of January 30, 2006, there were approximately 6,159 holders of record of the firm's common stock.

On January 30, 2006, the last reported sales price for the firm's common stock on the New York Stock Exchange was \$139.87 per share.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Selected Financial Data

	As of or for the Year Ended November				
	2005	2004	2003	2002	2001
Income statement data (in millions)					
Total revenues . . . . .	\$ 43,391	\$ 29,839	\$ 23,623	\$ 22,854	\$ 31,138
Interest expense . . . . .	18,153	8,888	7,600	8,868	15,327
Cost of power generation <sup>(1)</sup> . . . . .	456	401	11	—	—
Revenues, net of interest expense and cost of power generation . . . . .	24,782	20,550	16,012	13,986	15,811
Compensation and benefits . . . . .	11,688	9,652	7,515	7,037	8,164
Other operating expenses . . . . .	4,821	4,222	4,052	3,696	3,951
Pre-tax earnings . . . . .	\$ 8,273	\$ 6,676	\$ 4,445	\$ 3,253	\$ 3,696
Balance sheet data (in millions)					
Total assets . . . . .	\$706,804	\$531,379	\$403,799	\$355,574	\$312,218
Long-term borrowings <sup>(2)</sup> . . . . .	100,007	80,696	57,482	38,711	31,016
Total liabilities . . . . .	678,802	506,300	382,167	336,571	293,987
Total shareholders' equity . . . . .	28,002	25,079	21,632	19,003	18,231
Common share data (in millions, except per share amounts)					
Earnings per common share					
Basic . . . . .	\$ 11.73	\$ 9.30	\$ 6.15	\$ 4.27	\$ 4.53
Diluted . . . . .	11.21	8.92	5.87	4.03	4.26
Dividends declared per common share . .	1.00	1.00	0.74	0.48	0.48
Book value per common share <sup>(3)</sup> . . . . .	57.02	50.77	43.60	38.69	36.33
Average common shares outstanding					
Basic . . . . .	478.1	489.5	488.4	495.6	509.7
Diluted . . . . .	500.2	510.5	511.9	525.1	541.8
Selected data (unaudited)					
Employees					
United States . . . . .	13,945	13,278	12,786	12,511	14,565
International . . . . .	8,480	7,444	6,690	7,228	8,112
Total employees . . . . .	22,425	20,722	19,476	19,739	22,677
Assets under management (in billions) <sup>(4)</sup>					
Asset class					
Money markets . . . . .	\$ 101	\$ 90	\$ 89	\$ 108	\$ 122
Fixed income and currency . . . . .	159	139	115	96	71
Equity <sup>(5)</sup> . . . . .	158	126	98	86	96
Alternative investments <sup>(6)</sup> . . . . .	114	97	71	58	62
Total assets under management . . . . .	\$ 532	\$ 452	\$ 373 <sup>(7)</sup>	\$ 348	\$ 351

<sup>(1)</sup> Cost of power generation includes all of the direct costs of the firm's power generation facilities (e.g., fuel, operations and maintenance), as well as the depreciation and amortization associated with the facility and related contractual assets.

<sup>(2)</sup> Long-term borrowings include \$13.63 billion of nonrecourse debt issued by William Street Funding Corporation, consolidated VIEs and other consolidated entities. Nonrecourse debt is debt that only the issuing subsidiary or, if applicable, a subsidiary guaranteeing the debt is obligated to repay.

<sup>(3)</sup> Book value per common share is based on common shares outstanding, including restricted stock units granted to employees with no future service requirements, of 460.4 million, 494.0 million, 496.1 million, 491.2 million and 501.8 million as of November 2005, November 2004, November 2003, November 2002 and November 2001, respectively.

<sup>(4)</sup> Substantially all assets under management are valued as of calendar month end.

<sup>(5)</sup> Includes both the firm's fundamental equity and quantitative equity strategies.

<sup>(6)</sup> Primarily includes private equity funds, hedge funds, real estate funds, certain currency and asset allocation strategies and other assets allocated to external investment managers.

<sup>(7)</sup> Includes \$4 billion in non-money market assets related to the firm's acquisition of Ayco.

**Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure**

There were no changes in or disagreements with accountants on accounting and financial disclosure during the last two fiscal years.

**Item 9A. Controls and Procedures**

As of the end of the period covered by this report, an evaluation was carried out by Goldman Sachs' management, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that these disclosure controls and procedures were effective as of the end of the period covered by this report. In addition, no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) occurred during the fourth quarter of our fiscal year ended November 25, 2005 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal Control over Financial Reporting and the Report of Independent Registered Public Accounting Firm thereon are set forth in Part II, Item 8 of the Annual Report on Form 10-K.

**Item 9B. Other Information**

Not applicable.

## PART III

### Item 10. Directors and Executive Officers of the Registrant

Information relating to the Registrant's executive officers is included on pages 42 to 43 of the Annual Report on Form 10-K. Information relating to directors of the Registrant, including its audit committee and audit committee financial experts, and its executive officers will be in the Registrant's definitive Proxy Statement for its 2006 Annual Meeting of Shareholders to be held on March 31, 2006, which will be filed within 120 days of the end of our fiscal year ended November 25, 2005 (the 2006 Proxy Statement) and is incorporated herein by reference. Information relating to the Registrant's Code of Business Conduct and Ethics that applies to its senior financial officers, as defined in the Code, is included in Part I, Item 1 of the Annual Report on Form 10-K.

### Item 11. Executive Compensation

Information relating to the Registrant's executive officer and director compensation will be in the 2006 Proxy Statement and is incorporated herein by reference.

### Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information relating to security ownership of certain beneficial owners of the Registrant's common stock and information relating to the security ownership of the Registrant's management will be in the 2006 Proxy Statement and is incorporated herein by reference.

The following table provides information as of November 25, 2005, the last day of fiscal 2005, regarding securities issued under our equity compensation plans that were in effect during fiscal 2005, including those granted on December 13, 2005 in respect of fiscal 2005 performance as part of the firm's Discount Stock Program.

	Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in the Second Column)
Equity compensation plans approved by security holders	The Goldman Sachs Amended and Restated Stock Incentive Plan <sup>(1)</sup>	64,237,687 <sup>(2)</sup>	\$83.2431 <sup>(2)</sup>	250,020,377 <sup>(3)</sup>
Equity compensation plans not approved by security holders	None	—	—	—
<b>Total</b>		<u>64,237,687</u> <sup>(2)</sup>		<u>250,020,377</u> <sup>(3)(4)</sup>

<sup>(1)</sup> The Goldman Sachs Amended and Restated Stock Incentive Plan (the SIP) was approved by the shareholders of Goldman Sachs at our 2003 Annual Meeting of Shareholders and is a successor plan to The Goldman Sachs 1999 Stock Incentive Plan (the 1999 Plan), which was approved by our shareholders immediately prior to our initial public offering in May 1999 and under which no additional awards have been granted since approval of the SIP.

<sup>(2)</sup> Includes options that are subject to vesting and other conditions. The number of securities to be issued upon exercise of outstanding options, warrants and rights, as well as the weighted average exercise price of the outstanding options, warrants and rights, excludes approximately 65,000 options granted with a strike price of \$0.01 in foreign jurisdictions that were intended to replicate the economic effect of our restricted stock units.

<sup>(3)</sup> Of these shares, 55,086,037 shares may be issued pursuant to outstanding restricted stock units, including 48,602,805 shares granted under the SIP and 6,483,232 shares granted under the 1999 Plan.

<sup>(4)</sup> Represents shares remaining to be issued under the SIP (243,537,145 shares) and the 1999 Plan (6,483,232 shares). The total number of shares of common stock that may be delivered pursuant to awards granted under the SIP initially may not exceed 250,000,000 shares. Beginning November 29, 2008 and each fiscal year thereafter, the number of shares of common stock that may be delivered pursuant to awards granted after April 1, 2003 under the SIP may not exceed 5% of our issued and outstanding shares of common stock, determined as of the last day of the immediately preceding fiscal year, increased by the number of shares that were available for awards in previous fiscal years but were not, at the date of determination, covered by awards granted in previous years.

**Item 13. Certain Relationships and Related Transactions**

Information regarding certain relationships and related transactions will be in the 2006 Proxy Statement and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services**

Information regarding principal accountant fees and services will be in the 2006 Proxy Statement and is incorporated herein by reference.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules

#### (a) Documents filed as part of this Report:

##### 1. Consolidated Financial Statements

The consolidated financial statements required to be filed in the Annual Report on Form 10-K are listed on page F-1 hereof and in Part II, Item 8 hereof.

##### 2. Financial Statement Schedule

The financial statement schedule required in the Annual Report on Form 10-K is listed on page F-1 hereof. The required schedule appears on pages F-2 through F-16 hereof.

##### 3. Exhibits

- 2.1 Plan of Incorporation (incorporated by reference to the corresponding exhibit to the Registrant's registration statement on Form S-1 (No. 333-74449)).
- 3.1 Restated Certificate of Incorporation of The Goldman Sachs Group, Inc.
- 3.2 Amended and Restated By-Laws of The Goldman Sachs Group, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 8-K, filed September 20, 2005).
- 4.1 Indenture, dated as of May 19, 1999, between The Goldman Sachs Group, Inc. and The Bank of New York, as trustee (incorporated by reference to Exhibit 6 to the Registrant's registration statement on Form 8-A, filed June 29, 1999).
- 4.2 Subordinated Debt Indenture, dated as of February 20, 2004, between The Goldman Sachs Group, Inc. and The Bank of New York, as trustee (incorporated by reference to Exhibit 4.2 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 28, 2003).  
*Certain instruments defining the rights of holders of long-term debt securities of the Registrant and its subsidiaries are omitted pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant hereby undertakes to furnish to the SEC, upon request, copies of any such instruments.*
- 10.1 The Goldman Sachs Amended and Restated Stock Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended February 28, 2003). †
- 10.2 The Goldman Sachs Defined Contribution Plan (incorporated by reference to Exhibit 10.16 to the Registrant's registration statement on Form S-1 (No. 333-75213)). †
- 10.3 The Goldman Sachs Restricted Partner Compensation Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the period ended February 28, 2003). †
- 10.4 Form of Employment Agreement (incorporated by reference to Exhibit 10.19 to the Registrant's registration statement on Form S-1 (No. 333-75213)). †
- 10.5 Form of Agreement Relating to Noncompetition and Other Covenants (incorporated by reference to Exhibit 10.20 to the Registrant's registration statement on Form S-1 (No. 333-75213)). †
- 10.6 Form of Option Agreement (Discretionary Options) (incorporated by reference to Exhibit 10.24 to the Registrant's registration statement on Form S-1 (No. 333-75213)). †
- 10.7 Tax Indemnification Agreement, dated as of May 7, 1999, by and among The Goldman Sachs Group, Inc. and various parties (incorporated by reference to Exhibit 10.25 to the Registrant's registration statement on Form S-1 (No. 333-75213)).

- 10.8 Amended and Restated Shareholders' Agreement, dated June 22, 2004, among The Goldman Sachs Group, Inc. and various parties (incorporated by reference to Exhibit M to Amendment No. 54 to Schedule 13D, filed June 23, 2004, relating to the Registrant's common stock).
- 10.9 Instrument of Indemnification (incorporated by reference to Exhibit 10.27 to the Registrant's registration statement on Form S-1 (No. 333-75213)).
- 10.10 Form of Indemnification Agreement (incorporated by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 26, 1999).
- 10.11 Registration Rights Instrument, dated as of December 10, 1999 (incorporated by reference to Exhibit G to Amendment No. 1 to Schedule 13D, filed December 17, 1999, relating to the Registrant's common stock (No. 005-56295)).
- 10.12 Supplemental Registration Rights Instrument, dated as of December 10, 1999 (incorporated by reference to Exhibit H to Amendment No. 1 to Schedule 13D, filed December 17, 1999, relating to the Registrant's common stock).
- 10.13 Form of Indemnification Agreement (incorporated by reference to Exhibit 10.44 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 26, 1999).
- 10.14 Form of Indemnification Agreement, dated as of July 5, 2000 (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 25, 2000).
- 10.15 Amendment No. 1, dated as of September 5, 2000, to the Tax Indemnification Agreement, dated as of May 7, 1999 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 25, 2000).
- 10.16 Supplemental Registration Rights Instrument, dated as of December 21, 2000 (incorporated by reference to Exhibit AA to Amendment No. 12 to Schedule 13D, filed January 23, 2001, relating to the Registrant's common stock).
- 10.17 Supplemental Registration Rights Instrument, dated as of December 21, 2001 (incorporated by reference to Exhibit 4.4 to Registrant's registration statement on Form S-3 (No. 333-74006)).
- 10.18 Supplemental Registration Rights Instrument, dated as of December 20, 2002 (incorporated by reference to Exhibit 4.4 to Registrant's registration statement on Form S-3 (No. 333-101093)).
- 10.19 Letter, dated February 6, 2001, from The Goldman Sachs Group, Inc. to Dr. Ruth J. Simmons (incorporated by reference to Exhibit 10.63 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2000). †
- 10.20 Letter, dated February 6, 2001, from The Goldman Sachs Group, Inc. to Mr. John H. Bryan (incorporated by reference to Exhibit 10.64 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2000). †
- 10.21 Letter, dated February 6, 2001, from The Goldman Sachs Group, Inc. to Mr. James A. Johnson (incorporated by reference to Exhibit 10.65 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2000). †
- 10.22 Letter, dated February 6, 2001, from The Goldman Sachs Group, Inc. to Lord Browne of Madingley (incorporated by reference to Exhibit 10.66 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2000). †
- 10.23 Letter, dated December 18, 2002, from The Goldman Sachs Group, Inc. to Mr. William W. George (incorporated by reference to Exhibit 10.39 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 29, 2002). †

- 10.24 Letter, dated June 20, 2003, from The Goldman Sachs Group, Inc. to Mr. Claes Dahlbäck (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended May 30, 2003). †
- 10.25 Letter, dated June 20, 2003, from The Goldman Sachs Group, Inc. to Mr. Edward M. Liddy (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the period ended May 30, 2003). †
- 10.26 Supplemental Registration Rights Instrument, dated as of December 19, 2003 (incorporated by reference to Exhibit 4.4 to the Registrant's registration statement on Form S-3 (No. 333-110371)).
- 10.27 Letter, dated March 31, 2004, from The Goldman Sachs Group, Inc. to Ms. Lois D. Juliber (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended May 28, 2004). †
- 10.28 Letter, dated April 6, 2005, from The Goldman Sachs Group, Inc. to Mr. Stephen Friedman (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed April 8, 2005). †
- 10.29 Form of Amendment, dated November 27, 2004, to Agreement Relating to Noncompetition and Other Covenants, dated May 7, 1999 (incorporated by reference to Exhibit 10.32 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 26, 2004). †
- 10.30 Form of 2005 RSU Award Agreement for PMD Discount Stock Program (subject to transfer restrictions). †
- 10.31 Form of 2005 RSU Award Agreement for PMD Discount Stock Program (not subject to transfer restrictions). †
- 10.32 The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Participating Managing Directors. †
- 10.33 The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Extended Managing Directors and Other Select Employees (incorporated by reference to Exhibit 10.36 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 26, 2004). †
- 10.34 The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.K. Participating Managing Directors. †
- 10.35 The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation for U.K. Extended Managing Directors and Other Select U.K. Employees (incorporated by reference to Exhibit 10.38 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 26, 2004). †
- 10.36 Form of Year-End Option Award Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed December 9, 2005). †
- 10.37 Form of Year-End RSU Award Agreement (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, filed December 9, 2005). †
- 10.38 Form of Year-End Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K, filed December 9, 2005). †
- 10.39 Form of Non-Employee Director Option Award Agreement (incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K, filed December 9, 2005). †
- 10.40 Form of Non-Employee Director RSU Award Agreement (incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K, filed December 9, 2005). †



- 10.41 Description of Non-Employee Director Compensation. †
- 10.42 Description of Certain Benefits for Participating Managing Directors. †
- 10.43 Form of One-Time RSU Award Agreement. †
- 10.44 Ground Lease, dated August 23, 2005, between Battery Park City Authority d/b/a/ Hugh L. Carey Battery Park City Authority, as Landlord, and Goldman Sachs Headquarters LLC, as Tenant (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed August 26, 2005).
- 10.45 General Guarantee Agreement, dated January 30, 2006, made by The Goldman Sachs Group, Inc.
  - 12.1 Statement re: computation of ratios of earnings to fixed charges and ratios of earnings to combined fixed charges and preferred stock dividends.
  - 21.1 List of significant subsidiaries of The Goldman Sachs Group, Inc.
  - 23.1 Consent of Independent Registered Public Accounting Firm.
  - 24.1 Powers of Attorney (included on signature page).
  - 31.1 Rule 13a-14(a) Certifications.
  - 32.1 Section 1350 Certifications.
  - 99.1 Report of Independent Registered Public Accounting Firm on Selected Financial Data.

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† This exhibit is a management contract or a compensatory plan or arrangement.

**THE GOLDMAN SACHS GROUP, INC.**  
**INDEX TO FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULE**  
**ITEMS 15(a)(1) AND 15(a)(2)**

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Schedules not listed are omitted because of the absence of the conditions under which they are required or because the information is in the consolidated financial statements and notes thereto.

**SCHEDULE I**

**THE GOLDMAN SACHS GROUP, INC.  
(PARENT COMPANY ONLY)**

**CONDENSED NONCONSOLIDATED STATEMENTS OF EARNINGS**

	Year Ended November		
	2005	2004	2003
	(in millions)		
<b>Revenues</b>			
Equity in earnings of subsidiaries .....	\$ 4,763	\$4,785	\$3,476
Principal investments .....	1,927	1,561	561
Interest income .....	5,351	2,843	2,181
Total revenues .....	12,041	9,189	6,218
Interest expense .....	5,069	2,834	2,154
Revenues, net of interest expense .....	6,972	6,355	4,064
<b>Operating expenses</b>			
Compensation and benefits .....	348	296	226
Other expenses .....	74	87	2
Total operating expenses .....	422	383	228
Pre-tax earnings .....	6,550	5,972	3,836
Provision for taxes .....	924	1,419	831
Net earnings .....	5,626	4,553	3,005
Preferred stock dividend .....	17	—	—
Net earnings applicable to common shareholders .....	\$ 5,609	\$4,553	\$3,005

The accompanying notes are an integral part of these condensed nonconsolidated financial statements.

**SCHEDULE I**

**THE GOLDMAN SACHS GROUP, INC.  
(PARENT COMPANY ONLY)**

**CONDENSED NONCONSOLIDATED STATEMENTS OF FINANCIAL CONDITION**

	As of November	
	2005	2004
	(in millions, except share and per share amounts)	
<b>Assets</b>		
Cash and cash equivalents .....	\$ 1,570	\$ 40
Receivables from affiliates .....	5,797	3,846
Loans to affiliates .....	83,876	74,262
Subordinated loans to affiliates .....	27,848	23,178
Investments in subsidiaries .....	25,260	23,667
Financial instruments owned, at fair value .....	10,026	9,894
Other assets .....	2,572	1,725
Total assets .....	<u>\$156,949</u>	<u>\$136,612</u>
<b>Liabilities and shareholders' equity</b>		
Unsecured short-term borrowings		
With third parties .....	\$ 39,976	\$ 39,628
With affiliates .....	1,439	871
Total unsecured short-term borrowings, including the current portion of long-term borrowings .....	41,415	40,499
Payables to affiliates .....	331	1,019
Financial instruments sold, but not yet purchased, at fair value .....	1,970	139
Other liabilities and accrued expenses .....	2,005	877
Unsecured long-term borrowings		
With third parties .....	79,756	65,391
With affiliates .....	3,470	3,608
Total unsecured long-term borrowings .....	83,226	68,999
Total liabilities .....	128,947	111,533
<b>Commitments, contingencies and guarantees</b>		
<b>Shareholders' equity</b>		
Preferred stock, par value \$0.01 per share; 150,000,000 shares authorized, 70,000 shares issued and outstanding as of November 2005 with liquidation preference of \$25,000 per share .....	1,750	—
Common stock, par value \$0.01 per share; 4,000,000,000 shares authorized, 573,970,935 and 554,063,234 shares issued as of November 2005 and November 2004, respectively, and 437,170,695 and 480,959,660 shares outstanding as of November 2005 and November 2004, respectively .....	6	6
Restricted stock units and employee stock options .....	3,415	2,013
Nonvoting common stock, par value \$0.01 per share; 200,000,000 shares authorized, no shares issued and outstanding .....	—	—
Additional paid-in capital .....	17,159	15,501
Retained earnings .....	19,085	13,970
Unearned compensation .....	—	(117)
Accumulated other comprehensive income .....	—	11
Common stock held in treasury, at cost, par value \$0.01 per share; 136,800,240 and 73,103,574 shares as of November 2005 and November 2004, respectively .....	(13,413)	(6,305)
Total shareholders' equity .....	28,002	25,079
Total liabilities and shareholders' equity .....	<u>\$156,949</u>	<u>\$136,612</u>

The accompanying notes are an integral part of these condensed nonconsolidated financial statements.

**SCHEDULE I**

**THE GOLDMAN SACHS GROUP, INC.  
(PARENT COMPANY ONLY)**

**CONDENSED NONCONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended November		
	2005	2004	2003
	(in millions)		
<b>Cash flows from operating activities</b>			
Net earnings	\$ 5,626	\$ 4,553	\$ 3,005
Noncash items included in net earnings			
Undistributed earnings of subsidiaries	(4,293)	(3,663)	(1,323)
Depreciation and amortization	43	98	99
Deferred income taxes	464	1,017	225
Stock-based compensation	177	124	67
Changes in operating assets and liabilities			
Financial instruments owned, at fair value	(661)	(3,317)	(2,126)
Financial instruments sold, but not yet purchased, at fair value	1,832	110	15
Receivables from affiliates, net	(1,020)	2,730	915
Other, net	670	(1,000)	382
Net cash provided by operating activities	2,838	652	1,259
<b>Cash flows from investing activities</b>			
Loans to affiliates	(13,053)	(10,175)	(13,270)
Subordinated loans to affiliates	(4,670)	(6,394)	(3,472)
Investments in subsidiaries, net	2,413	750	(165)
Purchase of property, leasehold improvements and equipment	(162)	(46)	(8)
Business acquisitions, net of cash	—	—	(740)
Purchase of other investments	—	—	339
Net cash used for investing activities	(15,472)	(15,865)	(17,316)
<b>Cash flows from financing activities</b>			
Short-term borrowings, net	1,118	(2,869)	398
Issuance of long-term borrowings	31,382	30,004	22,168
Repayment of long-term borrowings, including the current portion of long-term borrowings	(13,579)	(10,102)	(5,363)
Common stock repurchased	(7,108)	(1,805)	(939)
Dividends paid on common and preferred stock	(511)	(497)	(350)
Proceeds from issuance of preferred stock, net of issuance costs	1,719	—	—
Proceeds from issuance of common stock	1,143	521	143
Net cash provided by financing activities	14,164	15,252	16,057
Net increase in cash and cash equivalents	1,530	39	—
Cash and cash equivalents, beginning of year	40	1	1
Cash and cash equivalents, end of year	\$ 1,570	\$ 40	\$ 1

**SUPPLEMENTAL DISCLOSURES:**

Cash payments for interest, net of capitalized interest, were \$5.52 billion, \$2.59 billion and \$1.97 billion for the years ended November 2005, November 2004 and November 2003, respectively.

Cash payments for income taxes, net of refunds, were \$1.52 billion, \$284 million and \$324 million for the years ended November 2005, November 2004 and November 2003, respectively.

*Noncash activities:*

The value of common stock issued in connection with business acquisitions was \$165 million for the year ended November 2003.

Stock-based compensation expense included in subsidiary net earnings was \$1.58 billion, \$1.10 billion and \$644 million for the years ended November 2005, November 2004 and November 2003, respectively.

The accompanying notes are an integral part of these condensed nonconsolidated financial statements.

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Significant Accounting Policies**

***Basis of Presentation***

The condensed nonconsolidated financial statements of The Goldman Sachs Group, Inc. (the parent company), a Delaware corporation, should be read in conjunction with the consolidated financial statements of The Goldman Sachs Group, Inc. and subsidiaries (the firm) and notes thereto (the consolidated financial statements), which are included in Part II, Item 8 of the Annual Report on Form 10-K. These condensed nonconsolidated financial statements reflect the results of operations, financial condition and cash flows for the parent company only. Investments in subsidiaries are accounted for using the equity method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock."

These condensed nonconsolidated financial statements have been prepared in accordance with generally accepted accounting principles that require management to make certain estimates and assumptions. The most important of these estimates and assumptions relate to fair value measurements, the accounting for goodwill and identifiable intangible assets and the provision for potential losses that may arise from litigation and regulatory proceedings and tax audits. Although these and other estimates and assumptions are based on the best available information, actual results could be materially different from these estimates.

The parent company has formed numerous nonconsolidated investment funds with third-party investors that are typically organized as limited partnerships. The parent company, through its subsidiaries, acts as general partner for these funds and does not hold a majority of the economic interests in any fund. For funds established on or before June 29, 2005 in which the parent company, through its subsidiaries, holds more than a minor interest and for funds established or modified after June 29, 2005, the parent company has provided the third-party investors with rights to terminate the funds (see "— Recent Accounting Developments" in Note 2 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K). Such fund investments are included in "Financial instruments owned, at fair value" in the condensed nonconsolidated statements of financial condition.

Unless otherwise stated herein, all references to November 2005, November 2004 and November 2003 refer to the parent company's fiscal years ended, or the dates, as the context requires, November 25, 2005, November 26, 2004 and November 28, 2003, respectively. Certain reclassifications have been made to previously reported amounts to conform to the current presentation.

***Revenue Recognition***

**Financial Instruments.** "Financial instruments owned, at fair value" and "Financial instruments sold, but not yet purchased, at fair value" are reflected in the condensed nonconsolidated statements of financial condition on a trade-date basis and consist of financial instruments carried at fair value or amounts that approximate fair value, with related unrealized gains or losses recognized in the condensed nonconsolidated statements of earnings. The fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

In determining fair value, the parent company separates its financial instruments into two categories — derivative contracts and principal investments.

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

- **Derivative Contracts.** Fair values of the parent company's derivative contracts consist of exchange-traded and over-the-counter (OTC) derivatives entered into with affiliates and are reflected net of cash that the parent company has paid and received. Fair values of the parent company's exchange-traded derivatives are generally determined from quoted market prices. OTC derivatives are valued using valuation models. The parent company uses a variety of valuation models including the present value of known or estimated cash flows and option-pricing models.
- **Principal Investments.** In valuing corporate and real estate principal investments, the parent company's portfolio is separated into investments in private companies, investments in public companies (excluding the parent company's investment in the convertible preferred stock of Sumitomo Mitsui Financial Group, Inc. (SMFG)) and the parent company's investment in SMFG.

The parent company's private principal investments, by their nature, have little or no price transparency. Such investments are initially carried at cost as an approximation of fair value. Adjustments to carrying value are made if there are third-party transactions evidencing a change in value. Downward adjustments are also made, in the absence of third-party transactions, if it is determined that the expected realizable value of the investment is less than the carrying value. In reaching that determination, many factors are considered including, but not limited to, the operating cash flows and financial performance of the companies or properties relative to budgets or projections, trends within sectors and/or regions, underlying business models, expected exit timing and strategy, and any specific rights or terms associated with the investment, such as conversion features and liquidation preferences.

The parent company's public principal investments, which tend to be large, concentrated holdings that result from initial public offerings or other corporate transactions, are valued using quoted market prices discounted based on predetermined written policies for nontransferability and illiquidity.

The parent company's investment in the convertible preferred stock of SMFG is carried at fair value, which is derived from a model that incorporates SMFG's common stock price and credit spreads, the impact of nontransferability and illiquidity, and the downside protection on the conversion strike price. The parent company's investment in the convertible preferred stock of SMFG is generally nontransferable, but is freely convertible into SMFG common stock. Restrictions on the parent company's ability to hedge or sell one-third of the common stock underlying its investment in SMFG lapsed in February 2005. As of November 2005, the parent company was fully hedged with respect to these unrestricted shares. Under the parent company's initial agreement with SMFG, restrictions on the parent company's ability to hedge or sell the remaining shares of common stock underlying its investment in SMFG lapse in equal installments on February 7, 2006 and February 7, 2007. In connection with a public offering by SMFG of its common stock, the parent company has separately agreed with SMFG that the restrictions that were to lapse on February 7, 2006 will instead lapse on March 9, 2006. Effective February 1, 2006, the conversion price of the parent company's SMFG preferred stock into shares of SMFG common stock is ¥320,900. This price is subject to downward adjustment if the price of SMFG common stock at the time of conversion is less than the conversion price (subject to a floor of ¥105,800).

**Merchant Banking Overrides.** The parent company is entitled to receive merchant banking overrides (i.e., an increased share of a fund's income and gains) when the return on the funds'

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

investments exceeds certain threshold returns. Overrides are based on investment performance over the life of each merchant banking fund, and future investment underperformance may require amounts of override previously distributed to the parent company to be returned to the funds. Accordingly, overrides are recognized in the condensed nonconsolidated statements of earnings only when all material contingencies have been resolved. Overrides are included in "Principal investments" in the condensed nonconsolidated statements of earnings.

***Goodwill***

Goodwill is the cost of acquired companies in excess of the fair value of identifiable net assets at acquisition date. In accordance with Statement of Financial Accounting Standards (SFAS) No. 142, "Goodwill and Other Intangible Assets," goodwill is tested at least annually for impairment. An impairment loss is triggered if the estimated fair value of an operating segment is less than its estimated net book value. Such loss is calculated as the difference between the estimated fair value of goodwill and its carrying value.

***Property, Leasehold Improvements and Equipment***

Property, leasehold improvements and equipment, net of accumulated depreciation and amortization, are included in "Other assets" in the condensed nonconsolidated statements of financial condition.

Property and equipment placed in service prior to December 1, 2001 are depreciated under the accelerated cost recovery method. Property and equipment placed in service on or after December 1, 2001 are depreciated on a straight-line basis over the useful life of the asset. Leasehold improvements for which the useful life of the improvement is shorter than the term of the lease are amortized under the accelerated cost recovery method if placed in service prior to December 1, 2001. All other leasehold improvements are amortized on a straight-line basis over the useful life of the improvement or the term of the lease, whichever is shorter.

Property, leasehold improvements and equipment are tested for potential impairment whenever events or changes in circumstances suggest that an asset's or asset group's carrying value may not be fully recoverable in accordance with SFAS No. 144. An impairment loss, calculated as the difference between the estimated fair value and the carrying value of an asset or asset group, is recognized if the sum of the expected undiscounted cash flows relating to the asset or asset group is less than the corresponding carrying value.

***Foreign Currency Translation***

Assets and liabilities denominated in non-U.S. currencies are translated at rates of exchange prevailing on the date of the condensed nonconsolidated statements of financial condition, and revenues and expenses are translated at average rates of exchange for the fiscal year. The parent company seeks to reduce its net investment exposure to fluctuations in foreign exchange rates through the use of foreign currency forward contracts and foreign currency-denominated debt. For foreign currency forward contracts, hedge effectiveness is assessed based on changes in forward exchange rates; accordingly, forward points are reflected as a component of the currency translation adjustment in "Accumulated other comprehensive income" in the condensed nonconsolidated statements of financial condition. For foreign currency-denominated debt, hedge effectiveness is assessed based on changes in spot rates. Foreign currency remeasurement gains or losses on transactions in nonfunctional currencies are included in the condensed nonconsolidated statements of earnings.



**THE GOLDMAN SACHS GROUP, INC.  
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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Income Taxes***

Deferred tax assets and liabilities are recognized for temporary differences between the financial reporting and tax bases of the parent company's assets and liabilities. Valuation allowances are established to reduce deferred tax assets to the amount that more likely than not will be realized. The parent company's tax assets and liabilities are presented as a component of "Other assets" and "Other liabilities and accrued expenses," respectively, in the condensed nonconsolidated statements of financial condition. Tax provisions are computed in accordance with SFAS No. 109, "Accounting for Income Taxes." Contingent liabilities related to income taxes are recorded when the criteria for loss recognition under SFAS No. 5, "Accounting for Contingencies," as amended, have been met.

***Cash and Cash Equivalents***

The parent company defines cash equivalents as highly liquid overnight deposits held in the ordinary course of business.

***Affiliate Transactions***

Substantially all of the firm's unsecured liquidity is raised by the parent company. The parent company then lends the necessary funds to its subsidiaries and affiliates, some of which are regulated, to meet their financing and capital requirements. In addition, the parent company advances its regulated subsidiaries the necessary capital to meet their regulatory requirements. Such funding is included in "Loans to affiliates" and "Subordinated loans to affiliates" in the condensed nonconsolidated statements of financial condition. Intercompany exposure is managed by requiring senior and subordinated intercompany loans to have maturities equal to or shorter than the maturities of the aggregate borrowings of the parent company. This policy ensures that the subsidiaries' obligations to the parent company will generally mature in advance of the parent company's third-party borrowings. In addition, many of the subsidiaries and affiliates pledge collateral at loan value to cover their intercompany borrowings (other than subordinated debt) in order to mitigate parent company liquidity risk. Equity investments in subsidiaries are generally funded with equity capital and included in "Investments in subsidiaries" in the condensed nonconsolidated statements of financial condition.

The parent company enters into derivative contracts with affiliates to hedge its net investment in non-U.S. operations and to manage the interest rate and currency exposure on its long-term borrowings and certain short-term borrowings. To manage exposure on its borrowings, the parent company uses derivatives to effectively convert a substantial portion of its long-term borrowings into U.S. dollar-based floating rate obligations. The parent company applies fair-value hedge accounting to derivative contracts that hedge the benchmark interest rate (i.e., London Interbank Offered Rate (LIBOR)) on its fixed rate long-term borrowings. Derivative balances with affiliates, included in "Financial instruments owned, at fair value" and "Financial instruments sold, but not yet purchased, at fair value" in the condensed nonconsolidated statements of financial condition, were \$2.79 billion and \$464 million, and \$7.40 billion and \$139 million, as of November 2005 and November 2004, respectively.

Interest income is largely generated from loans made to affiliates.

The parent company also allocates substantially all rental and other costs relating to properties occupied by certain subsidiaries and affiliates. The parent company additionally allocates the cost of stock-based compensation programs to subsidiaries and affiliates relating to costs associated with employees of those subsidiaries and affiliates.

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Note 2. Short-Term Borrowings**

The parent company obtains third-party unsecured short-term borrowings primarily through the issuance of promissory notes, commercial paper and bank loans. Short-term borrowings also include the portion of long-term borrowings maturing within one year of the financial statement date and certain long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder. The carrying value of these short-term obligations approximates fair value due to their short-term nature.

Short-term borrowings with third parties are set forth below:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Promissory notes .....	\$17,339	\$19,513
Commercial paper .....	5,098	4,040
Bank loans and other .....	3,634	3,197
Current portion of long-term borrowings .....	<u>13,905</u>	<u>12,878</u>
Total <sup>(1)</sup> .....	<u>\$39,976</u>	<u>\$39,628</u>

<sup>(1)</sup> As of November 2005 and November 2004, the weighted average interest rates for short-term borrowings, including commercial paper, were 4.17% and 2.61%, respectively. The weighted average interest rates, after giving effect to hedging activities, were 4.16% and 2.24% as of November 2005 and November 2004, respectively.

In addition, the parent company may borrow overnight funds from certain subsidiaries and affiliates on an unsecured basis. As of November 2005 and November 2004, such amounts were \$1.44 billion and \$871 million, respectively, and included in "Unsecured short-term borrowings — With affiliates" in the condensed nonconsolidated statements of financial condition.

**Note 3. Long-Term Borrowings**

The parent company obtains unsecured long-term borrowings, which consist principally of senior borrowings with maturities extending to 2035.

Long-term borrowings with third parties are set forth below:

	<b>As of November</b>	
	<b>2005</b>	<b>2004</b>
	(in millions)	
Fixed rate obligations <sup>(1)</sup>		
U.S. dollar .....	\$33,053	\$30,799
Non-U.S. dollar .....	15,739	11,408
Floating rate obligations <sup>(2)</sup>		
U.S. dollar .....	22,065	18,046
Non-U.S. dollar .....	<u>8,899</u>	<u>5,138</u>
Total .....	<u>\$79,756</u>	<u>\$65,391</u>

<sup>(1)</sup> As of November 2005 and November 2004, interest rates on U.S. dollar fixed rate obligations ranged from 3.88% to 12.00% and from 2.85% to 12.00%, respectively. As of November 2005 and November 2004, interest rates on non-U.S. dollar fixed rate obligations ranged from 0.67% to 8.88% and from 0.70% to 8.88%, respectively.

<sup>(2)</sup> Floating interest rates generally are based on LIBOR or the federal funds rate. Certain equity-linked and indexed instruments are included in floating rate obligations.

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Long-term borrowings with third parties by fiscal maturity date are set forth below:

	As of November					
	2005 <sup>(1)(2)</sup>			2004 <sup>(1)(2)</sup>		
	U.S. Dollar	Non-U.S. Dollar	Total	U.S. Dollar	Non-U.S. Dollar	Total
	(in millions)					
2006 .....	\$ —	\$ —	\$ —	\$ 9,289	\$ 1,777	\$11,066
2007 .....	11,193	768	11,961	6,122	697	6,819
2008 .....	4,705	2,286	6,991	2,721	2,538	5,259
2009 .....	6,091	2,610	8,701	6,275	2,583	8,858
2010 .....	5,192	4,388	9,580	1,248	2,919	4,167
2011-thereafter .....	<u>27,937</u>	<u>14,586</u>	<u>42,523</u>	<u>23,190</u>	<u>6,032</u>	<u>29,222</u>
Total .....	<u>\$55,118</u>	<u>\$24,638</u>	<u>\$79,756</u>	<u>\$48,845</u>	<u>\$16,546</u>	<u>\$65,391</u>

<sup>(1)</sup> Long-term borrowings maturing within one year of the financial statement date and certain long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder are included as short-term borrowings in the condensed nonconsolidated statements of financial condition.

<sup>(2)</sup> Long-term borrowings repayable at the option of the parent company are reflected at their contractual maturity dates. Certain long-term borrowings that are redeemable prior to maturity at the option of the holder are reflected at the dates such options become exercisable.

The parent company enters into derivative contracts with affiliates, such as interest rate futures contracts, interest rate swap agreements, currency swap agreements, equity-linked and indexed contracts, to effectively convert a substantial portion of its long-term borrowings into U.S. dollar-based floating rate obligations. Accordingly, the aggregate carrying value of these long-term borrowings and related hedges approximates fair value.

The effective weighted average interest rates for long-term borrowings with third parties, after hedging activities, are set forth below:

	As of November			
	2005		2004	
	Amount	Rate	Amount	Rate
	(\$ in millions)			
Fixed rate obligations .....	\$ 337	6.76%	\$ 445	10.68%
Floating rate obligations .....	<u>79,419</u>	4.49	<u>64,946</u>	2.50
Total .....	<u>\$79,756</u>	4.50	<u>\$65,391</u>	2.56

**THE GOLDMAN SACHS GROUP, INC.  
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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Long-term borrowings with affiliates are set forth below:

	As of November	
	2005	2004
	(in millions)	
Fixed rate obligations <sup>(1)</sup>		
U.S. dollar .....	\$ 682	\$ 682
Non-U.S. dollar .....	689	1,120
Floating rate obligations <sup>(2)</sup>		
U.S. dollar .....	1,797	1,797
Non-U.S. dollar .....	<u>302</u>	<u>9</u>
Total .....	<u>\$3,470</u>	<u>\$3,608</u>

<sup>(1)</sup> As of both November 2005 and November 2004, the interest rate on U.S. dollar fixed rate obligations was 5.78%. As of November 2005 and November 2004, interest rates on non-U.S. dollar fixed rate obligations ranged from 4.68% to 6.00% and 3.35% to 6.17%, respectively.

<sup>(2)</sup> Floating interest rates generally are based on LIBOR or the federal funds rate.

Long-term borrowings with affiliates by fiscal maturity date are set forth below:

	As of November					
	2005 <sup>(1)</sup>			2004 <sup>(1)</sup>		
	U.S. Dollar	Non-U.S. Dollar	Total	U.S. Dollar	Non-U.S. Dollar	Total
	(in millions)					
2006 .....	\$ —	\$ —	\$ —	\$ 297	\$ —	\$ 297
2007 .....	297	12	309	—	100	100
2008 .....	—	268	268	—	192	192
2009 .....	—	173	173	—	838	838
2010 .....	—	538	538	—	—	—
2011-thereafter .....	<u>2,182</u>	<u>—</u>	<u>2,182</u>	<u>2,181</u>	<u>—</u>	<u>2,181</u>
Total .....	<u>\$2,479</u>	<u>\$991</u>	<u>\$3,470</u>	<u>\$2,478</u>	<u>\$1,130</u>	<u>\$3,608</u>

<sup>(1)</sup> Long-term borrowings maturing within one year of the financial statement date and certain long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder are included as short-term borrowings in the condensed nonconsolidated statements of financial condition.

***Deferrable Interest Junior Subordinated Debentures***

In February 2004, Goldman Sachs Capital I (the Trust), a wholly owned Delaware statutory trust, was formed by the parent company for the exclusive purposes of (i) issuing \$2.75 billion of guaranteed preferred beneficial interests and \$85 million of common beneficial interests in the Trust, (ii) investing the proceeds from the sale to purchase junior subordinated debentures from the parent company and (iii) engaging in only those other activities necessary or incidental to these purposes. The preferred beneficial interests were purchased by third parties, and, as of November 2005, the parent company held all of the common beneficial interests.

The parent company has the right, from time to time, to defer payment of interest on the junior subordinated debentures, and, therefore, cause payment of dividends on the Trust's preferred beneficial interests to be deferred, in each case for up to ten consecutive semiannual periods, and during any such extension period the parent company will not be permitted to, among other things,

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

pay dividends on or make certain repurchases of its common stock. The Trust is not permitted to pay any distributions on the common beneficial interests held by the parent company unless all dividends payable on the preferred beneficial interests have been paid in full.

**Note 4. Commitments, Contingencies and Guarantees**

**Commitments**

**Letters of Credit.** The parent company provides letters of credit issued by various banks to counterparties in lieu of securities or cash to satisfy various collateral requirements. Letters of credit outstanding were \$25 million as of both November 2005 and November 2004.

**Merchant Banking Commitments.** The parent company acts as an investor in merchant banking transactions, which includes making long-term investments in equity and debt securities in privately negotiated transactions, corporate acquisitions and real estate transactions. In connection with these activities, the parent company had commitments to invest up to \$3.49 billion and \$1.04 billion in corporate and real estate investment funds as of November 2005 and November 2004, respectively.

**Construction-Related Commitments.** The parent company had construction-related commitments of \$19 million as of both November 2005 and November 2004.

**Other.** In August 2005, the parent company entered into an agreement to acquire the variable annuity and variable life insurance business of The Hanover Insurance Group, Inc. (formerly Allmerica Financial Corporation), including its wholly owned life insurance subsidiary, Allmerica Financial Life Insurance and Annuity Company. The transaction closed on December 30, 2005 at a purchase price of approximately \$271 million upfront and an estimated \$34 million over three years, subject to final adjustments.

The parent company had other purchase commitments of \$10 million as of November 2004.

**Leases.** The parent company has contractual obligations under long-term noncancelable lease agreements, principally for office space, expiring on various dates through 2029. Certain agreements are subject to periodic escalation provisions for increases in real estate taxes and other charges. Future minimum rental payments, net of minimum sublease rentals, which are generally reimbursed by affiliates, are set forth below:

	(in millions)
Minimum rental payments	
2006 .....	\$ 123
2007 .....	125
2008 .....	128
2009 .....	155
2010 .....	80
2011-thereafter .....	<u>770</u>
Total .....	<u>\$1,381</u>

**THE GOLDMAN SACHS GROUP, INC.  
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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Contingencies***

The parent company is involved in a number of judicial, regulatory and arbitration proceedings concerning matters arising in connection with the conduct of its businesses. Management believes, based on currently available information, that the results of such proceedings, in the aggregate, will not have a material adverse effect on the parent company's financial condition, but may be material to the parent company's operating results for any particular period, depending, in part, upon the operating results for such period. Given the inherent difficulty of predicting the outcome of the parent company's litigation and regulatory matters, particularly in cases or proceedings in which substantial or indeterminate damages or fines are sought, the parent company cannot estimate losses or ranges of losses for cases or proceedings where there is only a reasonable possibility that a loss may be incurred.

***Guarantees***

Effective January 30, 2006, the parent company has guaranteed the payment obligations of Goldman, Sachs & Co., its principal U.S. broker-dealer subsidiary (other than nonrecourse payment obligations). In addition, the parent company guarantees many of the obligations of its other consolidated subsidiaries on a transaction-by-transaction basis, as negotiated with the counterparty. The parent company is unable to develop an estimate of the maximum payout under its subsidiary guarantees; however, because these guaranteed obligations are also obligations of consolidated subsidiaries and included in the consolidated statements of financial condition or disclosed in Note 6 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K, the parent company's liabilities as guarantor are not separately disclosed herein.

In connection with certain asset sales and securitization transactions, the parent company may guarantee the collection of contractual cash flows. In connection with its merchant banking activities, the parent company may issue loan guarantees to secure financing. In addition, the parent company provides letters of credit and other guarantees, on a limited basis, to enable clients to enhance their credit standing and complete transactions.

In connection with the parent company's establishment of the Trust, the parent company effectively provided for the full and unconditional guarantee of the beneficial interests in the Trust held by third parties. Timely payment by the parent company of interest on the junior subordinated debentures and other amounts due and performance of its other obligations under the transaction documents will be sufficient to cover payments due by the Trust on its beneficial interests. As a result, management believes that it is unlikely the parent company will have to make payments related to the Trust other than those required under the junior subordinated debentures and in connection with certain expenses incurred by the Trust.

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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following tables set forth certain information about the parent company's guarantees as of November 2005 and November 2004:

As of November 2005						
Maximum Payout/Notional Amount by Period of Expiration <sup>(2)</sup>						
	Carrying Value	2006	2007 - 2008	2009 - 2010	2011 - Thereafter	Total
		(in millions)				
Guarantees of trust preferred beneficial interest <sup>(1)</sup> .....	\$—	\$174	\$349	\$349	\$6,851	\$7,723
Merchant banking fund-related commitments .....	—	15	23	6	56	100
Letters of credit and other guarantees .....	4	13	114	128	90	345

As of November 2004						
Maximum Payout/Notional Amount by Period of Expiration <sup>(2)</sup>						
	Carrying Value	2005	2006 - 2007	2008 - 2009	2010 - Thereafter	Total
		(in millions)				
Guarantees of trust preferred beneficial interest <sup>(1)</sup> .....	\$—	\$174	\$349	\$349	\$7,025	\$7,897
Guarantee of the collection of contractual cash flows .....	3	41	—	15	2	58
Merchant banking fund-related commitments .....	—	19	41	—	5	65
Letters of credit and other guarantees .....	28	67	115	8	43	233

<sup>(1)</sup> Includes the guarantee of all payments scheduled to be made over the life of the Trust, which could be shortened in the event the parent company redeemed the junior subordinated debentures issued to fund the Trust. (See Note 5 to the consolidated financial statements in Part II, Item 8 of the Annual Report on Form 10-K for further information regarding the Trust.)

<sup>(2)</sup> Such amounts do not represent the anticipated losses in connection with these contracts.

In the normal course of its business, the parent company indemnifies and guarantees certain service providers, such as clearing and custody agents, trustees and administrators, against specified potential losses in connection with their acting as an agent of, or providing services to, the parent company or its subsidiaries or affiliates. The parent company also indemnifies some clients against potential losses incurred in the event specified third-party service providers, including sub-custodians and third-party brokers, improperly execute transactions. The parent company is unable to develop an estimate of the maximum payout under these guarantees and indemnifications. However, management believes that it is unlikely the parent company will have to make material payments under these arrangements, and no liabilities related to these guarantees and indemnifications have been recognized in the condensed nonconsolidated statements of financial condition as of November 2005 and November 2004.

**THE GOLDMAN SACHS GROUP, INC.  
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**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The parent company provides representations and warranties to counterparties in connection with a variety of commercial transactions and occasionally indemnifies them against potential losses caused by the breach of those representations and warranties. The parent company may also provide indemnifications protecting against changes in or adverse application of certain U.S. tax laws in connection with ordinary-course transactions such as securities issuances, borrowings or derivatives. In addition, the parent company may provide indemnifications to some counterparties to protect them in the event additional taxes are owed or payments are withheld, due either to a change in or an adverse application of certain non-U.S. tax laws. These indemnifications generally are standard contractual terms and are entered into in the normal course of business. Generally, there are no stated or notional amounts included in these indemnifications, and the contingencies triggering the obligation to indemnify are not expected to occur. The parent company is unable to develop an estimate of the maximum payout under these guarantees and indemnifications. However, management believes that it is unlikely the parent company will have to make any material payments under these arrangements, and no liabilities related to these arrangements have been recognized in the condensed nonconsolidated statements of financial condition as of November 2005 and November 2004.

**Note 5. Shareholders' Equity**

Dividends declared per common share were \$1.00 in fiscal 2005, \$1.00 in fiscal 2004 and \$0.74 in fiscal 2003. On December 14, 2005, the Board of Directors of the parent company (the Board) declared a dividend of \$0.25 per share to be paid on February 23, 2006 to common shareholders of record on January 24, 2006.

During fiscal 2005, the parent company issued 70,000 shares of preferred stock in three series as set forth in the following table:

<b>Preferred Stock by Series</b>						
<u>Series</u>	<u>Description</u>	<u>Date Issued</u>	<u>Shares Issued</u>	<u>Shares Authorized</u>	<u>Earliest Redemption Date</u>	<u>Redemption Value (in millions)</u>
A	Perpetual Floating Rate Non-Cumulative	April 25, 2005	30,000	50,000	April 25, 2010	\$ 750
B	Perpetual 6.20% Non-Cumulative	October 31, 2005	32,000	50,000	October 31, 2010	800
C	Perpetual Floating Rate Non-Cumulative	October 31, 2005	8,000	25,000	October 31, 2010	200
			<u>70,000</u>	<u>125,000</u>		<u>\$1,750</u>

Each share of preferred stock has a par value of \$0.01, has a liquidation preference of \$25,000, is represented by 1,000 depository shares and is redeemable at the parent company's option at a redemption price equal to \$25,000 plus declared and unpaid dividends. The parent company's ability to declare or pay dividends on, or purchase, redeem or otherwise acquire, its common stock is subject to certain restrictions in the event that the parent company fails to pay or set aside full dividends on the preferred stock for the latest completed dividend period. All preferred stock also has a preference over the parent company's common stock upon liquidation.



**THE GOLDMAN SACHS GROUP, INC.  
(PARENT COMPANY ONLY)**

**NOTES TO CONDENSED NONCONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Dividends declared per share of Series A preferred stock were \$578.72 in fiscal 2005. On December 14, 2005, the Board declared a dividend per preferred share of \$323.28, \$430.56 and \$353.68 for Series A, Series B and Series C preferred stock, respectively, to be paid on February 10, 2006 to preferred shareholders of record on January 26, 2006.

During fiscal 2005, the parent company repurchased 63.7 million shares of its common stock at a total cost of \$7.11 billion, and during fiscal 2004, the parent company repurchased 18.7 million shares of its common stock at a total cost of \$1.81 billion. The average price paid per share for repurchased shares was \$111.57 and \$96.29 for the years ended November 2005 and November 2004, respectively. In addition, to satisfy minimum statutory employee tax withholding requirements related to the delivery of shares underlying restricted stock units, the parent company cancelled 1.6 million restricted stock units at a total cost of \$163 million in fiscal 2005, and it cancelled 9.1 million restricted stock units at a total cost of \$870 million in fiscal 2004.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE GOLDMAN SACHS GROUP, INC.

By: /s/ DAVID A. VINIAR \_\_\_\_\_

Name: David A. Viniar

Title: Chief Financial Officer

Date: February 7, 2006

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Henry M. Paulson, Jr., Lloyd C. Blankfein, David A. Viniar, Gregory K. Palm and Esta E. Stecher, and each of them severally, his or her true and lawful attorney-in-fact with power of substitution and resubstitution to sign in his or her name, place and stead, in any and all capacities, to do any and all things and execute any and all instruments that such attorney may deem necessary or advisable under the Securities Exchange Act of 1934 and any rules, regulations and requirements of the U.S. Securities and Exchange Commission in connection with the Annual Report on Form 10-K and any and all amendments hereto, as fully for all intents and purposes as he or she might or could do in person, and hereby ratifies and confirms all said attorneys-in-fact and agents, each acting alone, and his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
/s/ <u>HENRY M. PAULSON, JR.</u> Henry M. Paulson, Jr.	Director, Chairman and Chief Executive Officer (Principal Executive Officer)	February 7, 2006
/s/ <u>LLOYD C. BLANKFEIN</u> Lloyd C. Blankfein	Director	February 7, 2006
/s/ <u>LORD BROWNE OF MADINGLEY</u> Lord Browne of Madingley	Director	February 7, 2006
/s/ <u>JOHN H. BRYAN</u> John H. Bryan	Director	February 7, 2006
/s/ <u>CLAES DAHLBÄCK</u> Claes Dahlbäck	Director	February 7, 2006
/s/ <u>STEPHEN FRIEDMAN</u> Stephen Friedman	Director	February 7, 2006
/s/ <u>WILLIAM W. GEORGE</u> William W. George	Director	February 7, 2006
/s/ <u>JAMES A. JOHNSON</u> James A. Johnson	Director	February 7, 2006
/s/ <u>LOIS D. JULIBER</u> Lois D. Juliber	Director	February 7, 2006
/s/ <u>EDWARD M. LIDDY</u> Edward M. Liddy	Director	February 7, 2006
/s/ <u>RUTH J. SIMMONS</u> Ruth J. Simmons	Director	February 7, 2006
/s/ <u>DAVID A. VINIAR</u> David A. Viniar	Chief Financial Officer (Principal Financial Officer)	February 7, 2006
/s/ <u>SARAH E. SMITH</u> Sarah E. Smith	Principal Accounting Officer	February 7, 2006

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE GOLDMAN SACHS GROUP, INC.**

THE GOLDMAN SACHS GROUP, INC., a corporation organized and existing under the Delaware General Corporation Law (the “Corporation”), does hereby certify:

1. The name of the Corporation is The Goldman Sachs Group, Inc. The date of filing of its original certificate of incorporation with the Secretary of State of the State of Delaware was July 21, 1998.
2. This Restated Certificate of Incorporation restates and integrates and does not further amend the provisions of the certificate of incorporation of the Corporation as heretofore amended or supplemented. There is no discrepancy between the provisions of this Restated Certificate of Incorporation and the provisions of the certificate of incorporation of the Corporation as heretofore amended or supplemented. This Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware. The text of the certificate of incorporation is hereby restated to read herein as set forth in full:

FIRST. The name of the Corporation is The Goldman Sachs Group, Inc.

SECOND. The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law. Without limiting the generality of the foregoing, the Corporation shall have all of the powers conferred on corporations by the Delaware General Corporation Law and other law, including the power and authority to make an initial charitable contribution (as defined in Section 170(c) of the Internal Revenue Code of 1986, as currently in effect or as the same may hereafter be amended) of up to an aggregate of \$200,000,000 to one or more entities (the “Contribution”), and to make other charitable contributions from time to time thereafter, in such amounts, on such terms and conditions and for such purposes as may be lawful.

FOURTH. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 4,350,000,000, of which 4,000,000,000 shares of the par value of \$0.01 per share shall be a separate class designated as Common Stock, 200,000,000 shares of the par value of \$0.01 per share shall be a separate class designated as Nonvoting Common Stock and 150,000,000 shares of the par value of \$0.01 per share shall be a separate class designated as Preferred Stock.

## COMMON STOCK AND NONVOTING COMMON STOCK

Except as set forth in this Article FOURTH, the Common Stock and the Nonvoting Common Stock (together, the “Common Shares”) shall have the same rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters.

(i) Voting. Except as may be provided in this Restated Certificate of Incorporation or required by law, the Common Stock shall have voting rights in the election of directors and on all other matters presented to stockholders, with each holder of Common Stock being entitled to one vote for each share of Common Stock held of record by such holder on such matters. The Nonvoting Common Stock shall have no voting rights other than such rights as may be required by the first sentence of Section 242(b)(2) of the Delaware General Corporation Law or any similar provision hereafter enacted; provided that an amendment of this Restated Certificate of Incorporation to increase or decrease the number of authorized shares of Nonvoting Common Stock (but not below the number of shares thereof then outstanding) may be adopted by resolution adopted by the board of directors of the Corporation and approved by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law or any similar provision hereafter enacted, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class, and no vote of the holders of any shares of Nonvoting Common Stock, voting separately as a class, shall be required therefor.

(ii) Dividends. Subject to the rights of the holders of any series of Preferred Stock, holders of Common Stock and holders of Nonvoting Common Stock shall be entitled to receive such dividends and distributions (whether payable in cash or otherwise) as may be declared on the Common Shares by the board of directors of the Corporation from time to time out of assets or funds of the Corporation legally available therefor; provided that the board of directors of the Corporation shall declare no dividend, and no dividend shall be paid, with respect to any outstanding share of Common Stock or Nonvoting Common Stock, whether in cash or otherwise (including any dividend in shares of Common Stock on or with respect to shares of Common Stock or any dividend in shares of Nonvoting Common Stock on or with respect to shares of Nonvoting Common Stock (collectively, “Stock Dividends”)), unless, simultaneously, the same dividend is declared or paid with respect to each share of Common Stock and Nonvoting Common Stock. If a Stock Dividend is declared or paid with respect to one class, then a Stock Dividend shall likewise be declared or paid with respect to the other class and shall consist of shares of such other class in a number that bears the same relationship to the total number of shares of such other class, issued and outstanding immediately prior to the payment of such dividend, as the number of shares comprising the Stock Dividend with respect to the first referenced class

bears to the total number of shares of such first referenced class, issued and outstanding immediately prior to the payment of such dividend. Stock Dividends with respect to Common Stock may be paid only with shares of Common Stock. Stock Dividends with respect to Nonvoting Common Stock may be paid only with shares of Nonvoting Common Stock. Notwithstanding the foregoing, in the case of any dividend in the form of capital stock of a subsidiary of the Corporation, the capital stock of the subsidiary distributed to holders of Common Stock shall be identical to the capital stock of the subsidiary distributed to holders of Nonvoting Common Stock, except that the capital stock distributed to holders of Common Stock may have full or any other voting rights and the capital stock distributed to holders of Nonvoting Common Stock shall be non-voting to the same extent as the Nonvoting Common Stock is non-voting.

(iii) Subdivisions, Combinations and Mergers. If the Corporation shall in any manner split, subdivide or combine the outstanding shares of Common Stock or the outstanding shares of Nonvoting Common Stock, the outstanding shares of the other such class of the Common Shares shall likewise be split, subdivided or combined in the same manner proportionately and on the same basis per share. In the event of any merger, statutory share exchange, consolidation or similar form of corporate transaction involving the Corporation (whether or not the Corporation is the surviving entity), the holders of Common Stock and the holders of Nonvoting Common Stock shall be entitled to receive the same per share consideration, if any, except that any securities received by holders of Common Stock in consideration of such stock may have full or any other voting rights and any securities received by holders of Nonvoting Common Stock in consideration of such stock shall be non-voting to the same extent as the Nonvoting Common Stock is non-voting.

(iv) Rights on Liquidation. Subject to the rights of the holders of any series of Preferred Stock, in the event of any liquidation, dissolution or winding-up of the Corporation (whether voluntary or involuntary), the assets of the Corporation available for distribution to stockholders shall be distributed in equal amounts per share to the holders of Common Stock and the holders of Nonvoting Common Stock, as if such classes constituted a single class. For purposes of this paragraph, a merger, statutory share exchange, consolidation or similar corporate transaction involving the Corporation (whether or not the Corporation is the surviving entity), or the sale, transfer or lease by the Corporation of all or substantially all its assets, shall not constitute or be deemed a liquidation, dissolution or winding-up of the Corporation.

### **PREFERRED STOCK**

Shares of Preferred Stock may be issued in one or more series from time to time as determined by the board of directors of the Corporation, and the board of directors of the Corporation is authorized to fix by resolution or resolutions the designations and

the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including the following:

(i) the distinctive serial designation of such series which shall distinguish it from other series;

(ii) the number of shares included in such series;

(iii) whether dividends shall be payable to the holders of the shares of such series and, if so, the basis on which such holders shall be entitled to receive dividends (which may include, without limitation, a right to receive such dividends or distributions as may be declared on the shares of such series by the board of directors of the Corporation, a right to receive such dividends or distributions, or any portion or multiple thereof, as may be declared on the Common Stock or any other class of stock or, in addition to or in lieu of any other right to receive dividends, a right to receive dividends at a particular rate or at a rate determined by a particular method, in which case such rate or method of determining such rate may be set forth), the form of such dividend, any conditions on which such dividends shall be payable and the date or dates, if any, on which such dividends shall be payable;

(iv) whether dividends on the shares of such series shall be cumulative and, if so, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(v) the amount or amounts, if any, which shall be payable out of the assets of the Corporation to the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, and the relative rights of priority, if any, of payment of the shares of such series;

(vi) the price or prices (in cash, securities or other property or a combination thereof) at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(vii) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices (in cash, securities or other property or a combination thereof) at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(viii) whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or

events, into shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or any other securities or property of the Corporation or any other entity, and the price or prices (in cash, securities or other property or a combination thereof) or rate or rates of conversion or exchange and any adjustments applicable thereto; and

(ix) whether or not the holders of the shares of such series shall have voting rights, in addition to the voting rights provided by law, and if so the terms of such voting rights, which may provide, among other things and subject to the other provisions of this Restated Certificate of Incorporation, that each share of such series shall carry one vote or more or less than one vote per share, that the holders of such series shall be entitled to vote on certain matters as a separate class (which for such purpose may be comprised solely of such series or of such series and one or more other series or classes of stock of the Corporation) and that all the shares of such series entitled to vote on a particular matter shall be deemed to be voted on such matter in the manner that a specified portion of the voting power of the shares of such series or separate class are voted on such matter.

For all purposes, this Restated Certificate of Incorporation shall include each certificate of designations (if any) setting forth the terms of a series of Preferred Stock.

Subject to the rights, if any, of the holders of any series of Preferred Stock set forth in a certificate of designations, an amendment of this Restated Certificate of Incorporation to increase or decrease the number of authorized shares of any series of Preferred Stock (but not below the number of shares thereof then outstanding) may be adopted by resolution adopted by the board of directors of the Corporation and approved by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242 (b)(2) of the Delaware General Corporation Law or any similar provision hereafter enacted, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class, and no vote of the holders of any series of Preferred Stock, voting as a separate class, shall be required therefor.

Except as otherwise required by law or provided in the certificate of designations for the relevant series, holders of Common Shares, as such, shall not be entitled to vote on any amendment of this Restated Certificate of Incorporation that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other series of Preferred Stock, to vote thereon as a separate class pursuant to this Restated Certificate of Incorporation or pursuant to the Delaware General Corporation Law as then in effect.



Pursuant to the authority conferred by this Article FOURTH upon the board of directors of the Corporation and authority delegated by the board of directors to the Securities Issuance Committee of the board of directors of the Corporation (the "Securities Issuance Committee"), the Securities Issuance Committee created a series of shares of Preferred Stock designated as Floating Rate Non-Cumulative Preferred Stock, Series A, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on April 22, 2005, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series A, are set forth in Appendix A hereto and are incorporated herein by reference.

Pursuant to the authority conferred by this Article FOURTH upon the board of directors of the Corporation and authority delegated by the board of directors to the Securities Issuance Committee, the Securities Issuance Committee created a series of shares of Preferred Stock designated as 6.20% Non-Cumulative Preferred Stock, Series B, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on October 28, 2005, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's 6.20% Non-Cumulative Preferred Stock, Series B, are set forth in Appendix B hereto and are incorporated herein by reference.

Pursuant to the authority conferred by this Article FOURTH upon the board of directors of the Corporation and authority delegated by the board of directors to the Securities Issuance Committee, the Securities Issuance Committee created a series of shares of Preferred Stock designated as Floating Rate Non-Cumulative Preferred Stock, Series C, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on October 28, 2005, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the Corporation's Floating Rate Non-Cumulative Preferred Stock, Series C, are set forth in Appendix C hereto and are incorporated herein by reference.

### **OPTIONS, WARRANTS AND OTHER RIGHTS**

The board of directors of the Corporation is authorized to create and issue options, warrants and other rights from time to time entitling the holders thereof to purchase securities or other property of the Corporation or any other entity, including any class or series of stock of the Corporation or any other entity and whether or not in connection with the issuance or sale of any securities or other property of the Corporation, for such consideration (if any), at such times and upon such other terms and conditions as may be determined or authorized by the board of directors of the Corporation and set forth in one or more agreements or instruments. Among other things and without limitation, such terms and conditions may provide for the following:

(i) adjusting the number or exercise price of such options, warrants or other rights or the amount or nature of the securities or other property receivable upon exercise thereof in the event of a subdivision or combination of any securities, or a recapitalization, of the Corporation, the acquisition by any person of beneficial ownership of securities representing more than a designated percentage of the voting power of any outstanding series, class or classes of securities, a change in ownership of the Corporation's securities or a merger, statutory share exchange, consolidation, reorganization, sale of assets or other occurrence relating to the Corporation or any of its securities, and restricting the ability of the Corporation to enter into an agreement with respect to any such transaction absent an assumption by another party or parties thereto of the obligations of the Corporation under such options, warrants or other rights;

(ii) restricting, precluding or limiting the exercise, transfer or receipt of such options, warrants or other rights by any person that becomes the beneficial owner of a designated percentage of the voting power of any outstanding series, class or classes of securities of the Corporation or any direct or indirect transferee of such a person, or invalidating or voiding such options, warrants or other rights held by any such person or transferee; and

(iii) permitting the board of directors (or certain directors specified or qualified by the terms of the governing instruments of such options, warrants or other rights) to redeem, terminate or exchange such options, warrants or other rights.

This paragraph shall not be construed in any way to limit the power of the board of directors of the Corporation to create and issue options, warrants or other rights.

FIFTH. The name and mailing address of the incorporator is Gregory K. Palm, 85 Broad Street, New York, New York 10004.

SIXTH. All corporate powers shall be exercised by the board of directors of the Corporation, except as otherwise specifically required by law or as otherwise provided in this Restated Certificate of Incorporation. Any meeting of stockholders may be postponed by action of the board of directors at any time in advance of such meeting. The board of directors of the Corporation shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn any meeting of stockholders without a vote of the stockholders, which powers may be delegated by the board of directors to the chairman of such meeting either in such rules and regulations or pursuant to the by-laws of the Corporation.

Special meetings of stockholders of the Corporation may be called at any time by, but only by, the board of directors of the Corporation, to be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting.

The board of directors of the Corporation is authorized to adopt, amend or repeal by-laws of the Corporation. No adoption, amendment or repeal of a by-law by action of stockholders shall be effective unless approved by the affirmative vote of the holders of not less than 80% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class. Any vote of stockholders required by this Article SIXTH shall be in addition to any other vote of stockholders that may be required by law, this Restated Certificate of Incorporation, the by-laws of the Corporation, any agreement with a national securities exchange or otherwise.

SEVENTH. Elections of directors need not be by written ballot except and to the extent provided in the by-laws of the Corporation.

EIGHTH. The number of directors of the Corporation shall be fixed only by resolution of the board of directors of the Corporation from time to time. Each director who is serving as a director on the date of this Restated Certificate of Incorporation shall hold office until the next annual meeting of stockholders after such date and until his or her successor has been duly elected and qualified, notwithstanding that such director may have been elected for a term that extended beyond the date of such next annual meeting of stockholders. At each annual meeting of stockholders after the date of this Restated Certificate of Incorporation, directors elected at such annual meeting shall hold office until the next annual meeting of stockholders and until their successors have been duly elected and qualified.

Any director may be removed, with or without cause, with the affirmative vote of the holders of not less than 80% of the voting power of all outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, considered for this purpose as a single class.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause (other than vacancies and newly created directorships which the holders of any class or classes of stock or series thereof are expressly entitled by this Restated Certificate of Incorporation to fill) shall be filled by, and only by, a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director appointed to fill a vacancy or a newly created directorship shall hold office until the next annual meeting of stockholders, and until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Notwithstanding the foregoing, in the event that the holders of any class or series of Preferred Stock of the Corporation shall be entitled, voting separately as a class, to elect any directors of the Corporation, then the number of directors that may be elected by such holders voting separately as a class shall be in addition to the number fixed pursuant to a resolution of the board of directors of the Corporation. Except as

otherwise provided in the terms of such class or series, (i) the terms of the directors elected by such holders voting separately as a class shall expire at the annual meeting of stockholders next succeeding their election and (ii) any director or directors elected by such holders voting separately as a class may be removed, with or without cause, by the holders of a majority of the voting power of all outstanding shares of stock of the Corporation entitled to vote separately as a class in an election of such directors.

NINTH. In taking any action, including action that may involve or relate to a change or potential change in the control of the Corporation, a director of the Corporation may consider, among other things, both the long-term and short-term interests of the Corporation and its stockholders and the effects that the Corporation's actions may have in the short term or long term upon any one or more of the following matters:

(i) the prospects for potential growth, development, productivity and profitability of the Corporation;

(ii) the Corporation's current employees;

(iii) the retired former partners of The Goldman Sachs Group, L.P. ("GS Group") and the Corporation's employees and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the Corporation;

(iv) the Corporation's customers and creditors;

(v) the ability of the Corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business; and

(vi) such other additional factors as a director may consider appropriate in such circumstances.

Nothing in this Article NINTH shall create any duty owed by any director of the Corporation to any person or entity to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. No such employee, retired former partner of GS Group, former employee, beneficiary, customer, creditor or community or member thereof shall have any rights against any director of the Corporation or the Corporation under this Article NINTH.

TENTH. From and after the consummation of the initial public offering of the shares of Common Stock of the Corporation, no action of stockholders of the Corporation required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting of stockholders, without prior notice and without a vote, and the power of stockholders of the Corporation to consent in writing to the taking of any action without a meeting is specifically denied. Notwithstanding this Article TENTH, the holders of any series of Preferred Stock of

the Corporation shall be entitled to take action by written consent to such extent, if any, as may be provided in the terms of such series.

ELEVENTH. No provision of Articles SIXTH, NINTH, TENTH or TWELFTH or of this Article ELEVENTH or of the second paragraph of Article EIGHTH shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 80% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class. Any vote of stockholders required by this Article ELEVENTH shall be in addition to any other vote of the stockholders that may be required by law, this Restated Certificate of Incorporation, the by-laws of the Corporation, any agreement with a national securities exchange or otherwise.

TWELFTH. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director of the Corporation, except to the extent that such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended.

Pursuant to the Plan of Incorporation of GS Group, dated as of March 8, 1999, as currently in effect or as the same may hereafter be amended (the "Plan"), the Corporation has the right, but not the obligation, to make special arrangements with any person who was a partner of GS Group participating in the Plan to ameliorate, in whole or in part, certain significantly disproportionate tax or other burdens. The board of directors of the Corporation is authorized to cause the Corporation to make such arrangements (which may include special payments) as the board of directors of the Corporation may, in its sole discretion, deem appropriate to effectuate the intent of the relevant provision of the Plan and the Corporation and each stockholder of the Corporation shall, to the fullest extent permitted by law, be deemed to have approved and ratified any such determination and to have waived any claim or objection on behalf of the Corporation or any such stockholder arising out of the making of such arrangements.

Pursuant to the Plan, the Corporation has the right, but not the obligation, to register with the Securities and Exchange Commission the resale of certain securities of the Corporation by directors, employees and former directors and employees of the Corporation and its subsidiaries and affiliates and former partners and employees of GS Group and its subsidiaries and affiliates and to undertake various actions and to enter into agreements and arrangements in connection therewith (collectively, the "Registration Arrangements"). The board of directors of the Corporation is authorized to cause the Corporation to undertake such Registration Arrangements as the board of directors of the Corporation may, in its sole discretion, deem appropriate and the Corporation and each stockholder of the Corporation shall, to the fullest extent

permitted by law, be deemed to have approved and ratified any such determination and to have waived any claim or objection on behalf of the Corporation or any such stockholder arising out of the undertaking of such Registration Arrangements.

The Corporation and each stockholder of the Corporation shall, to the fullest extent permitted by law, be deemed to have approved and ratified any decision by the board of directors of the Corporation to make the Contribution referred to in Article THIRD, including the amount thereof (up to the limit specified in Article THIRD) and to have waived any claim or objection on behalf of the Corporation or any such stockholder arising out of any such decision to make, or the making of, the Contribution.

The authorizations, approvals and ratifications contained in the second, third and fourth paragraphs of this Article TWELFTH shall not be construed to indicate that any other arrangements or contributions not specifically referred to in such paragraphs are, by reason of such omission, not within the power and authority of the board of directors of the Corporation or that the determination of the board of directors of the Corporation with respect thereto should be judged by any legal standard other than that which would have applied but for the inclusion of the second, third and fourth paragraphs of this Article TWELFTH.

No amendment, modification or repeal of this Article TWELFTH shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment, modification or repeal.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate of Incorporation to be signed and attested by its duly authorized officer on this 12<sup>th</sup> day of December, 2005.

By: /s/ Gregory K. Palm

Name: Gregory K. Palm

Title: General Counsel

**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES A**  
**OF**  
**THE GOLDMAN SACHS GROUP, INC.**

**THE GOLDMAN SACHS GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

The Securities Issuance Committee (the “Committee”) of the board of directors of the Corporation (the “Board of Directors”), in accordance with the resolutions of the Board of Directors dated April 6, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, by unanimous written consent dated April 18, 2005, adopted the following resolution creating a series of 50,000 shares of Preferred Stock of the Corporation designated as “Floating Rate Non-Cumulative Preferred Stock, Series A”.

**RESOLVED**, that pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated April 6, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.** The distinctive serial designation of such series of Preferred Stock is “Floating Rate Non-Cumulative Preferred Stock, Series A” (“Series A”). Each share of Series A shall be identical in all respects to every other share of Series A, except as to the respective dates from which dividends thereon shall accrue, to the extent such dates may differ as permitted pursuant to Section 4(a) below.

**Section 2. Number of Shares.** The authorized number of shares of Series A shall be 50,000. Shares of Series A that are redeemed, purchased or otherwise acquired by the Corporation, or converted into another series of Preferred Stock, shall be cancelled and shall revert to authorized but unissued shares of Series A.

**Section 3. Definitions.** As used herein with respect to Series A:

- (a) “Board of Directors” means the board of directors of the Corporation.
- (b) “ByLaws” means the amended and restated bylaws of the Corporation, as they may be amended from time to time.
- (c) “Business Day” means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.
- (d) “Calculation Agent” means, at any time, the person or entity appointed by the Corporation and serving as such agent at such time. The Corporation may terminate any such appointment and may appoint a successor agent at any time and from time to time, *provided* that the Corporation shall use its best efforts to ensure that there is, at all relevant times when the Series A is outstanding, a person or entity appointed and serving as such agent. The Calculation Agent may be a person or entity affiliated with the Corporation.
- (e) “Certificate of Designations” means this Certificate of Designations relating to the Series A, as it may be amended from time to time.
- (f) “Certification of Incorporation” shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.
- (g) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.
- (h) “Junior Stock” means the Common Stock and any other class or series of stock of the Corporation (other than Series A) that ranks junior to Series A either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.
- (i) “London Business Day” means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is a day on which dealings in U.S. dollars are transacted in the London interbank market.
- (j) “Moneyline Telerate Page” means the display on Moneyline Telerate, Inc., or any successor service, on the page or pages specified in Section 4 below or any replacement page or pages on that service.
- (k) “Parity Stock” means any class or series of stock of the Corporation (other than Series A) that ranks equally with Series A both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.



(l) “Preferred Stock” means any and all series of Preferred Stock, having a par value of \$0.01 per share, of the Corporation, including the Series A.

(m) “Representative Amount” means, at any time, an amount that, in the Calculation Agent’s judgment, is representative of a single transaction in the relevant market at the relevant time.

(n) “Voting Preferred Stock” means, with regard to any election or removal of a Preferred Stock Director (as defined in Section 8 (b) below) or any other matter as to which the holders of Series A are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series A) that rank equally with Series A either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series A shall be entitled to receive, when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) out of funds legally available for the payment of dividends under Delaware law, non-cumulative cash dividends at the rate determined as set forth below in this Section (4) applied to the liquidation preference amount of \$25,000 per share of Series A. Such dividends shall be payable quarterly in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), on February 10, May 10, August 10 and November 10 (“Dividend Payment Dates”), commencing on August 10, 2005; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series A on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day, unless such immediately succeeding Business Day falls in the next calendar month, in which case such Dividend Payment Date shall instead be (and any such dividend shall instead be payable on) the immediately preceding Business Day. Dividends on Series A shall not be cumulative; holders of Series A shall not be entitled to receive any dividends not declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) and no interest, or sum of money in lieu of interest, shall be payable in respect of any dividend not so declared.

Dividends that are payable on Series A on any Dividend Payment Date will be payable to holders of record of Series A as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date or such other record date fixed by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a “Dividend Period”) shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the date of original issue of the Series A, *provided* that, for any share of Series A issued after such original issue date, the initial Dividend Period for such shares may commence on and include such other date as the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) shall determine and publicly disclose) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable on the Series A in respect of any Dividend Period shall be computed by the Calculation Agent on the basis of a 360-day year and the actual number of days elapsed in such Dividend Period. Dividends payable in respect of a Dividend Period shall be payable in arrears – i.e., on the first Dividend Payment Date after such Dividend Period.

The dividend rate on the Series A, for each Dividend Period, shall be a rate per annum equal to the greater of (1) 0.75% above LIBOR (as defined below) for such Dividend Period and (2) 3.75%. LIBOR, with respect to any Dividend Period, means the offered rate expressed as a percentage per annum for three-month deposits in U.S. dollars on the first day of such Dividend Period, as that rate appears on Moneyline Telerate Page 3750 as of 11:00 A.M., London time, on the second London Business Day immediately preceding the first day of such Dividend Period.

If the rate described in the preceding paragraph does not appear on Moneyline Telerate Page 3750, LIBOR shall be determined on the basis of the rates, at approximately 11:00 A.M., London time, on the second London Business Day immediately preceding the first day of such Dividend Period, at which deposits of the following kind are offered to prime banks in the London interbank market by four major banks in that market selected by the Calculation Agent: three-month deposits in U.S. dollars, beginning on the first day of such Dividend Period, and in a Representative Amount. The Calculation Agent shall request the principal London office of each of these banks to provide a quotation of its rate at approximately 11:00 A.M., London time. If at least two quotations are provided, LIBOR for such Dividend Period shall be the arithmetic mean of such quotations.

If fewer than two quotations are provided as described in the preceding paragraph, LIBOR for such Dividend Period shall be the arithmetic mean of the rates for loans of the following kind to leading European banks quoted, at approximately 11:00 A.M. New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period, by three major banks in New York City selected by the Calculation Agent: three-month loans of U.S. dollars, beginning on the first day of such Dividend Period, and in a Representative Amount.

If fewer than three banks selected by the Calculation Agent are quoting as described in the preceding paragraph, LIBOR for such Dividend Period shall be LIBOR in effect for the prior Dividend Period.

The Calculation Agent’s determination of any dividend rate, and its calculation of the amount of dividends for any Dividend Period, will be maintained on

file at the Corporation's principal offices and will be available to any stockholder upon request and will be final and binding in the absence of manifest error.

Holders of Series A shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series A as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

**(b) Priority of Dividends.** So long as any share of Series A remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock or other Junior Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock and other than through the use of the proceeds of a substantially contemporaneous sale of Junior Stock) during a Dividend Period, unless the full dividends for the latest completed Dividend Period on all outstanding shares of Series A have been declared and paid (or declared and a sum sufficient for the payment thereof has been set aside). The foregoing provision shall not restrict the ability of Goldman, Sachs & Co., or any other affiliate of the Corporation, to engage in any market-making transactions in Junior Stock in the ordinary course of business.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period) in full upon the Series A and any shares of Parity Stock, all dividends declared on the Series A and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of parity stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends shall bear the same ratio to each other as all accrued but unpaid dividends per share on the Series A and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series A shall not be entitled to participate in any such dividends.

## **Section 5. Liquidation Rights.**

**(a) Voluntary or Involuntary Liquidation.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series A shall be entitled to receive, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series A as to such distribution, in full an amount equal to \$25,000 per share (the "Series A Liquidation Amount"), together with an amount equal to all dividends (if any) that have been declared but not paid prior to the date of payment of such distribution (but without any amount in respect of dividends that have not been declared prior to such payment date).

**(b) Partial Payment.** If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series A and all holders of any stock of the Corporation ranking equally with the Series A as to such distribution, the amounts paid to the holders of Series A and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series A and the holders of all such other stock. In any such distribution, the "Liquidation Preference" of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends (and, in the case of any holder of stock other than Series A and on which dividends accrue on a cumulative basis, an amount equal to any unpaid, accrued, cumulative dividends, whether or not declared, as applicable).

**(c) Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series A, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series A receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Series A may not be redeemed by the Corporation prior to April 25, 2010. On or after April 25, 2010, the Corporation, at its

option, may redeem, in whole at any time or in part from time to time, the shares of Series A at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to \$25,000 per share, together (except as otherwise provided herein below) with an amount equal to any dividends that have been declared but not paid prior to the redemption date (but with no amount in respect of any dividends that have not been declared prior to such date). The redemption price for any shares of Series A shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) No Sinking Fund.** The Series A will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series A will have no right to require redemption of any shares of Series A.

**(c) Notice of Redemption.** Notice of every redemption of shares of Series A shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A. Notwithstanding the foregoing, if the Series A or any depository shares representing interests in the Series A are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series A at such time and in any manner permitted by such facility. Each such notice given to a holder shall state: (1) the redemption date; (2) the number of shares of Series A to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

**(d) Partial Redemption.** In case of any redemption of only part of the shares of Series A at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series A shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

**(e) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

**Section 7. Conversion Upon Regulatory Changes.** If both (i) and (ii) below occur:

(i) after the date of the issuance of the Series A, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy, which Regulation (x) modifies the existing requirements for treatment as Allowable Capital (as defined under the Securities and Exchange Commission rules relating to consolidated supervised entities as in effect from time to time), (y) provides for a type or level of capital characterized as “Tier 1” or its equivalent pursuant to Regulations of any governmental agency, authority or other body having regulatory jurisdiction over the Corporation (or any of its subsidiaries or consolidated affiliates) and implementing the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System or any other United States national governmental agency, authority or other body, or any other applicable regime based on capital standards published by the Basel Committee on Banking Supervision or its successor, or (z) provides for a type or level of capital that in the judgment of the Corporation (after consultation with legal counsel of recognized standing) is substantially equivalent to such “Tier 1” capital (such capital described in either (y) or (z) above is referred to below as “Tier 1 Capital Equivalent”), and

(ii) the Corporation affirmatively elects to qualify the Series A for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series A in Allowable Capital or Tier 1 Capital Equivalent (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) under such Regulations,

then, upon such affirmative election, the Series A shall be convertible at the Corporation's option into a new series of Preferred Stock having terms and provisions substantially identical to those of the Series A, except that such new series may have such additional or modified rights, preferences, privileges and voting powers, and limitations and restrictions thereof, as are necessary in the judgment of the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) (after consultation with legal counsel of recognized standing) to comply with the Required Unrestricted Capital Provisions (as defined below), *provided* that the Corporation will not cause any such conversion unless the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) determines that the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of such new series of Preferred Stock, taken as a whole, are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of the Series A, taken as a whole.

As used above, the term "Required Unrestricted Capital Provisions" means such terms and provisions as are, in the judgment of the Corporation (after consultation with counsel of recognized standing), required for preferred stock to be treated as Allowable Capital or Tier 1 Capital Equivalent, as applicable, without any sublimit or other quantitative restriction on the inclusion of such preferred stock in Allowable Capital or Tier 1 Capital Equivalent, as applicable (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) pursuant to the applicable Regulations.

The Corporation shall provide notice to the holders of Series A of any election to qualify the Series A for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series A into a new series of Preferred Stock pursuant to the terms of this Section 7, promptly upon the effectiveness of any such election or determination. A copy of such notice and of the relevant Regulations shall be maintained on file at the principal offices of the Corporation and, upon request, will be made available to any stockholder of the Corporation. Any conversion of the Series A pursuant to this Section 7 shall be effected pursuant to such procedures as the Corporation may determine and publicly disclose.

Except as specified in this Section 7, holders of Series A shares shall have no right to exchange or convert such shares into any other securities.

#### **Section 8. Voting Rights.**

**(a) General.** The holders of Series A shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

**(b) Right To Elect Two Directors Upon Nonpayment Events.** If and whenever dividends on any shares of Series A shall not have been declared and paid for at least six Dividend Periods, whether or not consecutive (a "Nonpayment Event"), the number of directors then constituting the Board of Directors shall automatically be

increased by two and the holders of Series A, together with the holders of any outstanding shares of Voting Preferred Stock, voting together as a single class, shall be entitled to elect the two additional directors (the “Preferred Stock Directors”), *provided* that it shall be a qualification for election for any such Preferred Stock Director that the election of such director shall not cause the Corporation to violate the corporate governance requirement of the New York Stock Exchange (or any other securities exchange or other trading facility on which securities of the Corporation may then be listed or traded) that listed or traded companies must have a majority of independent directors.

In the event that the holders of the Series A, and such other holders of Voting Preferred Stock, shall be entitled to vote for the election of the Preferred Stock Directors following a Nonpayment Event, such directors shall be initially elected following such Nonpayment Event only at a special meeting called at the request of the holders of record of at least 20% of the Series A or of any other series of Voting Preferred Stock then outstanding (unless such request for a special meeting is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders of the Corporation, in which event such election shall be held only at such next annual or special meeting of stockholders), and at each subsequent annual meeting of stockholders of the Corporation. Such request to call a special meeting for the initial election of the Preferred Stock Directors after a Nonpayment Event shall be made by written notice, signed by the requisite holders of Series A or Voting Preferred Stock, and delivered to the Secretary of the Corporation in such manner as provided for in Section 10 below, or as may otherwise be required by law.

When dividends have been paid (or declared and a sum sufficient for payment thereof set aside) in full on the Series A for at least four Dividend Periods (whether or not consecutive) after a Nonpayment Event, then the right of the holders of Series A to elect the Preferred Stock Directors shall cease (but subject always to revesting of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series A and Voting Preferred Stock to elect the Preferred Stock Directors shall have ceased, the terms of office of all the Preferred Stock Directors shall forthwith terminate and the number of directors constituting the Board of Directors shall automatically be reduced accordingly.

Any Preferred Stock Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series A and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). So long as a Nonpayment Event shall continue, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Nonpayment Event) may be filled by the written consent of the Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of the Series A and all Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). Any such vote of stockholders to remove, or to fill a vacancy in the office of, a Preferred Stock Director may be taken only at a special meeting of such stockholders, called as provided above for an initial election of Preferred Stock Director



after a Nonpayment Event (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders). The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Each Preferred Stock Director elected at any special meeting of stockholders or by written consent of the other Preferred Stock Director shall hold office until the next annual meeting of the stockholders if such office shall not have previously terminated as above provided.

**(c) Other Voting Rights.** So long as any shares of Series A are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the shares of Series A and any Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

**(i) Authorization of Senior Stock.** Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series A with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

**(ii) Amendment of Series A.** Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series A, taken as a whole; or

**(iii) Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series A, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series A remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series A immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 8(c), any increase in the amount of the authorized or issued Series A or authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of

Preferred Stock ranking equally with and/or junior to the Series A with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the special rights, preferences, privileges or voting powers of the Series A. In addition, any conversion of the Series A pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series A.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series A and one or more but not all other series of Preferred Stock, then only the Series A and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

**(d) Changes for Clarification.** Without the consent of the holders of the Series A, so long as such action does not adversely affect the special rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series A, the Corporation may amend, alter, supplement or repeal any terms of the Series A:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designations that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Series A that is not inconsistent with the provisions of this Certificate of Designations.

**(e) Changes after Provision for Redemption.** No vote or consent of the holders of Series A shall be required pursuant to Section 8 (b), (c) or (d) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series A shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been set aside for such redemption, in each case pursuant to Section 6 above.

**(f) Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series A (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, applicable law and any national securities exchange or other trading facility on which the Series A is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series A and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series A are

entitled to vote shall be determined by the Corporation by reference to the specified liquidation amounts of the shares voted or covered by the consent.

**Section 9. Record Holders.** To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series A may deem and treat the record holder of any share of Series A as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

**Section 10. Notices.** All notices or communications in respect of Series A shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law.

**Section 11. No Preemptive Rights.** No share of Series A shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

**Section 12. Other Rights.** The shares of Series A shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**6.20% NON-CUMULATIVE PREFERRED STOCK, SERIES B**  
**OF**  
**THE GOLDMAN SACHS GROUP, INC.**

**THE GOLDMAN SACHS GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

The Securities Issuance Committee (the "Committee") of the board of directors of the Corporation (the "Board of Directors"), in accordance with the resolutions of the Board of Directors dated September 16, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, by unanimous written consent dated October 25, 2005, adopted the following resolution creating a series of 50,000 shares of Preferred Stock of the Corporation designated as "6.20% Non-Cumulative Preferred Stock, Series B".

**RESOLVED**, that pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated September 16, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.** The distinctive serial designation of such series of Preferred Stock is "6.20% Non-Cumulative Preferred Stock, Series B" ("Series B"). Each share of Series B shall be identical in all respects to every other share of Series B, except as to the respective dates from which dividends thereon shall accrue, to the extent such dates may differ as permitted pursuant to Section 4(a) below.

**Section 2. Number of Shares.** The authorized number of shares of Series B shall be 50,000. Shares of Series B that are redeemed, purchased or otherwise acquired by the Corporation, or converted into another series of Preferred Stock, shall be cancelled and shall revert to authorized but unissued shares of Series B.

**Section 3. Definitions.** As used herein with respect to Series B:

- (o) “Board of Directors” means the board of directors of the Corporation.
- (p) “ByLaws” means the amended and restated bylaws of the Corporation, as they may be amended from time to time.
- (q) “Business Day” means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.
- (r) “Certificate of Designations” means this Certificate of Designations relating to the Series B, as it may be amended from time to time.
- (s) “Certification of Incorporation” shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.
- (t) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.
- (u) “Junior Stock” means the Common Stock and any other class or series of stock of the Corporation (other than Series B) that ranks junior to Series B either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.
- (v) “Parity Stock” means any class or series of stock of the Corporation (other than Series B) that ranks equally with Series B both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.
- (w) “Preferred Stock” means any and all series of Preferred Stock, having a par value of \$0.01 per share, of the Corporation, including the Series B.
- (x) “Voting Preferred Stock” means, with regard to any election or removal of a Preferred Stock Director (as defined in Section 8 (b) below) or any other matter as to which the holders of Series B are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series B) that rank equally with Series B either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### Section 4. Dividends.

**(a) Rate.** Holders of Series B shall be entitled to receive, when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) out of funds legally available for the payment of dividends under Delaware law, non-cumulative cash dividends at a rate per annum of 6.20% applied to the liquidation preference amount of \$25,000 per share of Series B. Such dividends shall be payable quarterly in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), on February 10, May 10, August 10 and November 10 (“Dividend Payment Dates”), commencing on February 10, 2006; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series B on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. Dividends on Series B shall not be cumulative; holders of Series B shall not be entitled to receive any dividends not declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) and no interest, or sum of money in lieu of interest, shall be payable in respect of any dividend not so declared.

Dividends that are payable on Series B on any Dividend Payment Date will be payable to holders of record of Series B as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date or such other record date fixed by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a “Dividend Period”) shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the date of original issue of the Series B, *provided* that, for any share of Series B issued after such original issue date, the initial Dividend Period for such shares may commence on and include such other date as the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) shall determine and publicly disclose) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable on the Series B in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends payable in respect of a Dividend Period shall be payable in arrears – i.e., on the first Dividend Payment Date after such Dividend Period.

Holders of Series B shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series B as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

**(b) Priority of Dividends.** So long as any share of Series B remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock or other Junior Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock and other than through the use of the proceeds of a substantially contemporaneous sale of Junior Stock) during a Dividend Period, unless the full dividends for the latest completed Dividend Period on all outstanding shares of Series B have been declared and paid (or declared and a sum sufficient for the payment thereof has been set aside). The foregoing provision shall not restrict the ability of Goldman, Sachs & Co., or any other affiliate of the Corporation, to engage in any market-making transactions in Junior Stock in the ordinary course of business.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period) in full upon the Series B and any shares of Parity Stock, all dividends declared on the Series B and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of parity stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends shall bear the same ratio to each other as all accrued but unpaid dividends per share on the Series B and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series B shall not be entitled to participate in any such dividends.

#### **Section 5. Liquidation Rights.**

**(a) Voluntary or Involuntary Liquidation.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series B shall be entitled to receive, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series B as to such distribution, in full an amount equal to \$25,000

per share (the “Series B Liquidation Amount”), together with an amount equal to all dividends (if any) that have been declared but not paid prior to the date of payment of such distribution (but without any amount in respect of dividends that have not been declared prior to such payment date).

**(b) Partial Payment.** If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series B and all holders of any stock of the Corporation ranking equally with the Series B as to such distribution, the amounts paid to the holders of Series B and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series B and the holders of all such other stock. In any such distribution, the “Liquidation Preference” of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends (and, in the case of any holder of stock other than Series B and on which dividends accrue on a cumulative basis, an amount equal to any unpaid, accrued, cumulative dividends, whether or not declared, as applicable).

**(c) Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series B, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series B receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Series B may not be redeemed by the Corporation prior to October 31, 2010. On or after October 31, 2010, the Corporation, at its option, may redeem, in whole at any time or in part from time to time, the shares of Series B at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to \$25,000 per share, together (except as otherwise provided herein below) with an amount equal to any dividends that have been declared but not paid prior to the redemption date (but with no amount in respect of any dividends that have not been declared prior to such date). The redemption price for any shares of Series B shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the



redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) No Sinking Fund.** The Series B will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series B will have no right to require redemption of any shares of Series B.

**(c) Notice of Redemption.** Notice of every redemption of shares of Series B shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B. Notwithstanding the foregoing, if the Series B or any depositary shares representing interests in the Series B are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series B at such time and in any manner permitted by such facility. Each such notice given to a holder shall state: (1) the redemption date; (2) the number of shares of Series B to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

**(d) Partial Redemption.** In case of any redemption of only part of the shares of Series B at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series B shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

**(e) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption, without interest. Any funds unclaimed

at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

**Section 7. Conversion Upon Regulatory Changes.** If both (i) and (ii) below occur:

(i) after the date of the issuance of the Series B, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, "Regulations") relating to its capital adequacy, which Regulation (x) modifies the existing requirements for treatment as Allowable Capital (as defined under the Securities and Exchange Commission rules relating to consolidated supervised entities as in effect from time to time), (y) provides for a type or level of capital characterized as "Tier 1" or its equivalent pursuant to Regulations of any governmental agency, authority or other body having regulatory jurisdiction over the Corporation (or any of its subsidiaries or consolidated affiliates) and implementing the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System or any other United States national governmental agency, authority or other body, or any other applicable regime based on capital standards published by the Basel Committee on Banking Supervision or its successor, or (z) provides for a type or level of capital that in the judgment of the Corporation (after consultation with legal counsel of recognized standing) is substantially equivalent to such "Tier 1" capital (such capital described in either (y) or (z) above is referred to below as "Tier 1 Capital Equivalent"), and

(ii) the Corporation affirmatively elects to qualify the Series B for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series B in Allowable Capital or Tier 1 Capital Equivalent (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) under such Regulations,

then, upon such affirmative election, the Series B shall be convertible at the Corporation's option into a new series of Preferred Stock having terms and provisions substantially identical to those of the Series B, except that such new series may have such additional or modified rights, preferences, privileges and voting powers, and limitations and restrictions thereof, as are necessary in the judgment of the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) (after consultation with legal counsel of recognized standing) to comply with the Required Unrestricted Capital Provisions (as defined below), *provided* that the Corporation will not cause any such conversion unless the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) determines that the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of such new series of Preferred Stock, taken as a whole, are not

materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of the Series B, taken as a whole.

As used above, the term “Required Unrestricted Capital Provisions” means such terms and provisions as are, in the judgment of the Corporation (after consultation with counsel of recognized standing), required for preferred stock to be treated as Allowable Capital or Tier 1 Capital Equivalent, as applicable, without any sublimit or other quantitative restriction on the inclusion of such preferred stock in Allowable Capital or Tier 1 Capital Equivalent, as applicable (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) pursuant to the applicable Regulations.

The Corporation shall provide notice to the holders of Series B of any election to qualify the Series B for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series B into a new series of Preferred Stock pursuant to the terms of this Section 7, promptly upon the effectiveness of any such election or determination. A copy of such notice and of the relevant Regulations shall be maintained on file at the principal offices of the Corporation and, upon request, will be made available to any stockholder of the Corporation. Any conversion of the Series B pursuant to this Section 7 shall be effected pursuant to such procedures as the Corporation may determine and publicly disclose.

Except as specified in this Section 7, holders of Series B shares shall have no right to exchange or convert such shares into any other securities.

### **Section 8. Voting Rights.**

**(a) General.** The holders of Series B shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

**(b) Right To Elect Two Directors Upon Nonpayment Events.** If and whenever dividends on any shares of Series B shall not have been declared and paid for at least six Dividend Periods, whether or not consecutive (a “Nonpayment Event”), the number of directors then constituting the Board of Directors shall automatically be increased by two and the holders of Series B, together with the holders of any outstanding shares of Voting Preferred Stock, voting together as a single class, shall be entitled to elect the two additional directors (the “Preferred Stock Directors”), *provided* that it shall be a qualification for election for any such Preferred Stock Director that the election of such director shall not cause the Corporation to violate the corporate governance requirement of the New York Stock Exchange (or any other securities exchange or other trading facility on which securities of the Corporation may then be listed or traded) that listed or traded companies must have a majority of independent directors and *provided further* that the Board of Directors shall at no time include more than two Preferred Stock Directors (including, for purposes of this limitation, all directors that the holders of any series of Voting Preferred Stock are entitled to elect pursuant to like voting rights).

In the event that the holders of the Series B, and such other holders of Voting Preferred Stock, shall be entitled to vote for the election of the Preferred Stock Directors following a Nonpayment Event, such directors shall be initially elected following such Nonpayment Event only at a special meeting called at the request of the holders of record of at least 20% of the Series B or of any other series of Voting Preferred Stock then outstanding (unless such request for a special meeting is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders of the Corporation, in which event such election shall be held only at such next annual or special meeting of stockholders), and at each subsequent annual meeting of stockholders of the Corporation. Such request to call a special meeting for the initial election of the Preferred Stock Directors after a Nonpayment Event shall be made by written notice, signed by the requisite holders of Series B or Voting Preferred Stock, and delivered to the Secretary of the Corporation in such manner as provided for in Section 10 below, or as may otherwise be required by law.

When dividends have been paid (or declared and a sum sufficient for payment thereof set aside) in full on the Series B for at least four Dividend Periods (whether or not consecutive) after a Nonpayment Event, then the right of the holders of Series B to elect the Preferred Stock Directors shall cease (but subject always to revesting of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series B and Voting Preferred Stock to elect the Preferred Stock Directors shall have ceased, the terms of office of all the Preferred Stock Directors shall forthwith terminate and the number of directors constituting the Board of Directors shall automatically be reduced accordingly.

Any Preferred Stock Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series B and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). So long as a Nonpayment Event shall continue, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Nonpayment Event) may be filled by the written consent of the Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of the Series B and all Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). Any such vote of stockholders to remove, or to fill a vacancy in the office of, a Preferred Stock Director may be taken only at a special meeting of such stockholders, called as provided above for an initial election of Preferred Stock Director after a Nonpayment Event (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders). The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Each Preferred Stock Director elected at any special meeting of stockholders or by written consent of the other Preferred Stock Director shall hold office until the next annual meeting of the stockholders if such office shall not have previously terminated as above provided.

**(c) Other Voting Rights.** So long as any shares of Series B are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the shares of Series B and any Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

**(i) Authorization of Senior Stock.** Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series B with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

**(ii) Amendment of Series B.** Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series B, taken as a whole; or

**(iii) Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series B, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series B remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series B immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 8(c), any increase in the amount of the authorized or issued Series B or authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series B with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series B. In addition, any conversion of the Series B pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series B.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series B

and one or more but not all other series of Preferred Stock, then only the Series B and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

**(d) Changes for Clarification.** Without the consent of the holders of the Series B, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series B, the Corporation may amend, alter, supplement or repeal any terms of the Series B:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designations that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Series B that is not inconsistent with the provisions of this Certificate of Designations.

**(e) Changes after Provision for Redemption.** No vote or consent of the holders of Series B shall be required pursuant to Section 8 (b), (c) or (d) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series B shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been set aside for such redemption, in each case pursuant to Section 6 above.

**(f) Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series B (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, applicable law and any national securities exchange or other trading facility on which the Series B is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series B and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series B are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amounts of the shares voted or covered by the consent.

**Section 9. Record Holders.** To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series B may deem and treat the record holder of any share of Series B as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

**Section 10. Notices.** All notices or communications in respect of Series B shall be sufficiently given if given in writing and delivered in person or by first

class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law.

**Section 11. No Preemptive Rights.** No share of Series B shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

**Section 12. Other Rights.** The shares of Series B shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES C**  
**OF**  
**THE GOLDMAN SACHS GROUP, INC.**

**THE GOLDMAN SACHS GROUP, INC.**, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 103 and 151 thereof, DOES HEREBY CERTIFY:

The Securities Issuance Committee (the "Committee") of the board of directors of the Corporation (the "Board of Directors"), in accordance with the resolutions of the Board of Directors dated September 16, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, by unanimous written consent dated October 25, 2005, adopted the following resolution creating a series of 25,000 shares of Preferred Stock of the Corporation designated as "Floating Rate Non-Cumulative Preferred Stock, Series C".

**RESOLVED**, that pursuant to the authority vested in the Committee and in accordance with the resolutions of the Board of Directors dated September 16, 2005, the provisions of the amended and restated certificate of incorporation and bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$.01 per share, of the Corporation be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

**Section 1. Designation.** The distinctive serial designation of such series of Preferred Stock is "Floating Rate Non-Cumulative Preferred Stock, Series C" ("Series C"). Each share of Series C shall be identical in all respects to every other share of Series C, except as to the respective dates from which dividends thereon shall accrue, to the extent such dates may differ as permitted pursuant to Section 4(a) below.

**Section 2. Number of Shares.** The authorized number of shares of Series C shall be 25,000. Shares of Series C that are redeemed, purchased or otherwise acquired by the Corporation, or converted into another series of Preferred Stock, shall be cancelled and shall revert to authorized but unissued shares of Series C.



**Section 3. Definitions.** As used herein with respect to Series C:

(y) “Board of Directors” means the board of directors of the Corporation.

(z) “ByLaws” means the amended and restated bylaws of the Corporation, as they may be amended from time to time.

(aa) “Business Day” means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York City generally are authorized or obligated by law, regulation or executive order to close.

(bb) “Calculation Agent” means, at any time, the person or entity appointed by the Corporation and serving as such agent at such time. The Corporation may terminate any such appointment and may appoint a successor agent at any time and from time to time, *provided* that the Corporation shall use its best efforts to ensure that there is, at all relevant times when the Series C is outstanding, a person or entity appointed and serving as such agent. The Calculation Agent may be a person or entity affiliated with the Corporation.

(cc) “Certificate of Designations” means this Certificate of Designations relating to the Series C, as it may be amended from time to time.

(dd) “Certification of Incorporation” shall mean the amended and restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.

(ee) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.

(ff) “Junior Stock” means the Common Stock and any other class or series of stock of the Corporation (other than Series C) that ranks junior to Series C either or both as to the payment of dividends and/or as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(gg) “London Business Day” means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is a day on which dealings in U.S. dollars are transacted in the London interbank market.

(hh) “Moneyline Telerate Page” means the display on Moneyline Telerate, Inc., or any successor service, on the page or pages specified in Section 4 below or any replacement page or pages on that service.

(ii) “Parity Stock” means any class or series of stock of the Corporation (other than Series C) that ranks equally with Series C both in the

payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(jj) "Preferred Stock" means any and all series of Preferred Stock, having a par value of \$0.01 per share, of the Corporation, including the Series C.

(kk) "Representative Amount" means, at any time, an amount that, in the Calculation Agent's judgment, is representative of a single transaction in the relevant market at the relevant time.

(ll) "Voting Preferred Stock" means, with regard to any election or removal of a Preferred Stock Director (as defined in Section 8 (b) below) or any other matter as to which the holders of Series C are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series C) that rank equally with Series C either as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation and upon which like voting rights have been conferred and are exercisable with respect to such matter.

#### **Section 4. Dividends.**

**(a) Rate.** Holders of Series C shall be entitled to receive, when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) out of funds legally available for the payment of dividends under Delaware law, non-cumulative cash dividends at the rate determined as set forth below in this Section (4) applied to the liquidation preference amount of \$25,000 per share of Series C. Such dividends shall be payable quarterly in arrears (as provided below in this Section 4(a)), but only when, as and if declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), on February 10, May 10, August 10 and November 10 ("Dividend Payment Dates"), commencing on February 10, 2006; *provided* that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series C on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day, unless such immediately succeeding Business Day falls in the next calendar month, in which case such Dividend Payment Date shall instead be (and any such dividend shall instead be payable on) the immediately preceding Business Day. Dividends on Series C shall not be cumulative; holders of Series C shall not be entitled to receive any dividends not declared by the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) and no interest, or sum of money in lieu of interest, shall be payable in respect of any dividend not so declared.

Dividends that are payable on Series C on any Dividend Payment Date will be payable to holders of record of Series C as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day before such Dividend Payment Date or such other record date fixed by the Board of Directors or

the Committee (or another duly authorized committee of the Board of Directors) that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Each dividend period (a “Dividend Period”) shall commence on and include a Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the date of original issue of the Series C, *provided* that, for any share of Series C issued after such original issue date, the initial Dividend Period for such shares may commence on and include such other date as the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) shall determine and publicly disclose) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable on the Series C in respect of any Dividend Period shall be computed by the Calculation Agent on the basis of a 360-day year and the actual number of days elapsed in such Dividend Period. Dividends payable in respect of a Dividend Period shall be payable in arrears – i.e., on the first Dividend Payment Date after such Dividend Period.

The dividend rate on the Series C, for each Dividend Period, shall be a rate per annum equal to the greater of (1) 0.75% above LIBOR (as defined below) for such Dividend Period and (2) 4.00%. LIBOR, with respect to any Dividend Period, means the offered rate expressed as a percentage per annum for three-month deposits in U.S. dollars on the first day of such Dividend Period, as that rate appears on Moneyline Telerate Page 3750 as of 11:00 A.M., London time, on the second London Business Day immediately preceding the first day of such Dividend Period.

If the rate described in the preceding paragraph does not appear on Moneyline Telerate Page 3750, LIBOR shall be determined on the basis of the rates, at approximately 11:00 A.M., London time, on the second London Business Day immediately preceding the first day of such Dividend Period, at which deposits of the following kind are offered to prime banks in the London interbank market by four major banks in that market selected by the Calculation Agent: three-month deposits in U.S. dollars, beginning on the first day of such Dividend Period, and in a Representative Amount. The Calculation Agent shall request the principal London office of each of these banks to provide a quotation of its rate at approximately 11:00 A.M., London time. If at least two quotations are provided, LIBOR for such Dividend Period shall be the arithmetic mean of such quotations.

If fewer than two quotations are provided as described in the preceding paragraph, LIBOR for such Dividend Period shall be the arithmetic mean of the rates for loans of the following kind to leading European banks quoted, at approximately 11:00 A.M. New York City time, on the second London Business Day immediately preceding the first day of such Dividend Period, by three major banks in New York City selected by the Calculation Agent: three-month loans of U.S. dollars, beginning on the first day of such Dividend Period, and in a Representative Amount.

If fewer than three banks selected by the Calculation Agent are quoting as described in the preceding paragraph, LIBOR for such Dividend Period shall be LIBOR in effect for the prior Dividend Period.

The Calculation Agent's determination of any dividend rate, and its calculation of the amount of dividends for any Dividend Period, will be maintained on file at the Corporation's principal offices and will be available to any stockholder upon request and will be final and binding in the absence of manifest error.

Holders of Series C shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on the Series C as specified in this Section 4 (subject to the other provisions of this Certificate of Designations).

**(b) Priority of Dividends.** So long as any share of Series C remains outstanding, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than a dividend payable solely in Junior Stock), and no Common Stock or other Junior Stock shall be purchased, redeemed or otherwise acquired for consideration by the Corporation, directly or indirectly (other than as a result of a reclassification of Junior Stock for or into other Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock and other than through the use of the proceeds of a substantially contemporaneous sale of Junior Stock) during a Dividend Period, unless the full dividends for the latest completed Dividend Period on all outstanding shares of Series C have been declared and paid (or declared and a sum sufficient for the payment thereof has been set aside). The foregoing provision shall not restrict the ability of Goldman, Sachs & Co., or any other affiliate of the Corporation, to engage in any market-making transactions in Junior Stock in the ordinary course of business.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period) in full upon the Series C and any shares of Parity Stock, all dividends declared on the Series C and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of parity stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends shall bear the same ratio to each other as all accrued but unpaid dividends per share on the Series C and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) bear to each other.

Subject to the foregoing, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or the Committee (or

another duly authorized committee of the Board of Directors) may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and the Series C shall not be entitled to participate in any such dividends.

## **Section 5. Liquidation Rights.**

**(a) Voluntary or Involuntary Liquidation.** In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of Series C shall be entitled to receive, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, and after satisfaction of all liabilities and obligations to creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to the Series C as to such distribution, in full an amount equal to \$25,000 per share (the “Series C Liquidation Amount”), together with an amount equal to all dividends (if any) that have been declared but not paid prior to the date of payment of such distribution (but without any amount in respect of dividends that have not been declared prior to such payment date).

**(b) Partial Payment.** If in any distribution described in Section 5(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay the Liquidation Preferences (as defined below) in full to all holders of Series C and all holders of any stock of the Corporation ranking equally with the Series C as to such distribution, the amounts paid to the holders of Series C and to the holders of all such other stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series C and the holders of all such other stock. In any such distribution, the “Liquidation Preference” of any holder of stock of the Corporation shall mean the amount otherwise payable to such holder in such distribution (assuming no limitation on the assets of the Corporation available for such distribution), including an amount equal to any declared but unpaid dividends (and, in the case of any holder of stock other than Series C and on which dividends accrue on a cumulative basis, an amount equal to any unpaid, accrued, cumulative dividends, whether or not declared, as applicable).

**(c) Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series C, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

**(d) Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series C receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of

the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

## **Section 6. Redemption.**

**(a) Optional Redemption.** The Series C may not be redeemed by the Corporation prior to October 31, 2010. On or after October 31, 2010, the Corporation, at its option, may redeem, in whole at any time or in part from time to time, the shares of Series C at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to \$25,000 per share, together (except as otherwise provided herein below) with an amount equal to any dividends that have been declared but not paid prior to the redemption date (but with no amount in respect of any dividends that have not been declared prior to such date). The redemption price for any shares of Series C shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 4 above.

**(b) No Sinking Fund.** The Series C will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series C will have no right to require redemption of any shares of Series C.

**(c) Notice of Redemption.** Notice of every redemption of shares of Series C shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series C designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series C. Notwithstanding the foregoing, if the Series C or any depositary shares representing interests in the Series C are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series C at such time and in any manner permitted by such facility. Each such notice given to a holder shall state: (1) the redemption date; (2) the number of shares of Series C to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

**(d) Partial Redemption.** In case of any redemption of only part of the shares of Series C at the time outstanding, the shares to be redeemed shall be selected

either *pro rata* or in such other manner as the Corporation may determine to be fair and equitable. Subject to the provisions hereof, the Corporation shall have full power and authority to prescribe the terms and conditions upon which shares of Series C shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

**(e) Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the *pro rata* benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

**Section 7. Conversion Upon Regulatory Changes.** If both (i) and (ii) below occur:

(i) after the date of the issuance of the Series C, the Corporation (by election or otherwise) becomes subject to any law, rule, regulation or guidance (together, “Regulations”) relating to its capital adequacy, which Regulation (x) modifies the existing requirements for treatment as Allowable Capital (as defined under the Securities and Exchange Commission rules relating to consolidated supervised entities as in effect from time to time), (y) provides for a type or level of capital characterized as “Tier 1” or its equivalent pursuant to Regulations of any governmental agency, authority or other body having regulatory jurisdiction over the Corporation (or any of its subsidiaries or consolidated affiliates) and implementing the capital standards published by the Basel Committee on Banking Supervision, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System or any other United States national governmental agency, authority or other body, or any other applicable regime based on capital standards published by the Basel Committee on Banking Supervision or its successor, or (z) provides for a type or level of capital that in the judgment of the Corporation (after consultation with legal counsel of recognized standing) is substantially equivalent to such “Tier 1” capital (such capital described in either (y) or (z) above is referred to below as “Tier 1 Capital Equivalent”), and

(ii) the Corporation affirmatively elects to qualify the Series C for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series C in Allowable Capital or Tier 1 Capital Equivalent (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) under such Regulations,

then, upon such affirmative election, the Series C shall be convertible at the Corporation's option into a new series of Preferred Stock having terms and provisions substantially identical to those of the Series C, except that such new series may have such additional or modified rights, preferences, privileges and voting powers, and limitations and restrictions thereof, as are necessary in the judgment of the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) (after consultation with legal counsel of recognized standing) to comply with the Required Unrestricted Capital Provisions (as defined below), *provided* that the Corporation will not cause any such conversion unless the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors) determines that the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of such new series of Preferred Stock, taken as a whole, are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and the qualifications, limitations and restrictions thereof, of the Series C, taken as a whole.

As used above, the term "Required Unrestricted Capital Provisions" means such terms and provisions as are, in the judgment of the Corporation (after consultation with counsel of recognized standing), required for preferred stock to be treated as Allowable Capital or Tier 1 Capital Equivalent, as applicable, without any sublimit or other quantitative restriction on the inclusion of such preferred stock in Allowable Capital or Tier 1 Capital Equivalent, as applicable (other than any limitation the Corporation elects to accept and any limitation requiring that common equity or a specified form of common equity constitute the dominant form of Allowable Capital or Tier 1 Capital Equivalent) pursuant to the applicable Regulations.

The Corporation shall provide notice to the holders of Series C of any election to qualify the Series C for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series C into a new series of Preferred Stock pursuant to the terms of this Section 7, promptly upon the effectiveness of any such election or determination. A copy of such notice and of the relevant Regulations shall be maintained on file at the principal offices of the Corporation and, upon request, will be made available to any stockholder of the Corporation. Any conversion of the Series C pursuant to this Section 7 shall be effected pursuant to such procedures as the Corporation may determine and publicly disclose.

Except as specified in this Section 7, holders of Series C shares shall have no right to exchange or convert such shares into any other securities.



## Section 8. Voting Rights.

(a) **General.** The holders of Series C shall not have any voting rights except as set forth below or as otherwise from to time required by law.

(b) **Right To Elect Two Directors Upon Nonpayment Events.** If and whenever dividends on any shares of Series C shall not have been declared and paid for at least six Dividend Periods, whether or not consecutive (a “Nonpayment Event”), the number of directors then constituting the Board of Directors shall automatically be increased by two and the holders of Series C, together with the holders of any outstanding shares of Voting Preferred Stock, voting together as a single class, shall be entitled to elect the two additional directors (the “Preferred Stock Directors”), *provided* that it shall be a qualification for election for any such Preferred Stock Director that the election of such director shall not cause the Corporation to violate the corporate governance requirement of the New York Stock Exchange (or any other securities exchange or other trading facility on which securities of the Corporation may then be listed or traded) that listed or traded companies must have a majority of independent directors and *provided further* that the Board of Directors shall at no time include more than two Preferred Stock Directors (including, for purposes of this limitation, all directors that the holders of any series of Voting Preferred Stock are entitled to elect pursuant to like voting rights).

In the event that the holders of the Series C, and such other holders of Voting Preferred Stock, shall be entitled to vote for the election of the Preferred Stock Directors following a Nonpayment Event, such directors shall be initially elected following such Nonpayment Event only at a special meeting called at the request of the holders of record of at least 20% of the Series C or of any other series of Voting Preferred Stock then outstanding (unless such request for a special meeting is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders of the Corporation, in which event such election shall be held only at such next annual or special meeting of stockholders), and at each subsequent annual meeting of stockholders of the Corporation. Such request to call a special meeting for the initial election of the Preferred Stock Directors after a Nonpayment Event shall be made by written notice, signed by the requisite holders of Series C or Voting Preferred Stock, and delivered to the Secretary of the Corporation in such manner as provided for in Section 10 below, or as may otherwise be required by law.

When dividends have been paid (or declared and a sum sufficient for payment thereof set aside) in full on the Series C for at least four Dividend Periods (whether or not consecutive) after a Nonpayment Event, then the right of the holders of Series C to elect the Preferred Stock Directors shall cease (but subject always to revesting of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series C and Voting Preferred Stock to elect the Preferred Stock Directors shall have ceased, the terms of office of all the Preferred Stock Directors shall forthwith terminate and the number of directors constituting the Board of Directors shall automatically be reduced accordingly.

Any Preferred Stock Director may be removed at any time without cause by the holders of record of a majority of the outstanding shares of the Series C and Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). So long as a Nonpayment Event shall continue, any vacancy in the office of a Preferred Stock Director (other than prior to the initial election of Preferred Stock Directors after a Nonpayment Event) may be filled by the written consent of the Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of the Series C and all Voting Preferred Stock, when they have the voting rights described above (voting together as a single class). Any such vote of stockholders to remove, or to fill a vacancy in the office of, a Preferred Stock Director may be taken only at a special meeting of such stockholders, called as provided above for an initial election of Preferred Stock Director after a Nonpayment Event (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders, in which event such election shall be held at such next annual or special meeting of stockholders). The Preferred Stock Directors shall each be entitled to one vote per director on any matter that shall come before the Board of Directors for a vote. Each Preferred Stock Director elected at any special meeting of stockholders or by written consent of the other Preferred Stock Director shall hold office until the next annual meeting of the stockholders if such office shall not have previously terminated as above provided.

**(c) Other Voting Rights.** So long as any shares of Series C are outstanding, in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, the vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the shares of Series C and any Voting Preferred Stock at the time outstanding and entitled to vote thereon, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

**(i) Authorization of Senior Stock.** Any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any shares of any class or series of capital stock of the Corporation ranking senior to the Series C with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

**(ii) Amendment of Series C.** Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to materially and adversely affect the special rights, preferences, privileges or voting powers of the Series C, taken as a whole; or

**(iii) Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series C, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series C remain outstanding or, in the case of any such merger or

consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series C immediately prior to such consummation, taken as a whole;

*provided, however*, that for all purposes of this Section 8(c), any increase in the amount of the authorized or issued Series C or authorized Preferred Stock, or the creation and issuance, or an increase in the authorized or issued amount, of any other series of Preferred Stock ranking equally with and/or junior to the Series C with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers of the Series C. In addition, any conversion of the Series C pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series C.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series C and one or more but not all other series of Preferred Stock, then only the Series C and such series of Preferred Stock as are adversely affected by and entitled to vote on the matter shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

**(d) Changes for Clarification.** Without the consent of the holders of the Series C, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series C, the Corporation may amend, alter, supplement or repeal any terms of the Series C:

(i) to cure any ambiguity, or to cure, correct or supplement any provision contained in this Certificate of Designations that may be defective or inconsistent; or

(ii) to make any provision with respect to matters or questions arising with respect to the Series C that is not inconsistent with the provisions of this Certificate of Designations.

**(e) Changes after Provision for Redemption.** No vote or consent of the holders of Series C shall be required pursuant to Section 8 (b), (c) or (d) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of Series C shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been set aside for such redemption, in each case pursuant to Section 6 above.

**(f) Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series C (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors or the Committee (or another duly authorized committee of the Board of Directors), in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the Bylaws, applicable law and any national securities exchange or other trading facility on which the Series C is listed or traded at the time. Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Series C and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series C are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amounts of the shares voted or covered by the consent.

**Section 9. Record Holders.** To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series C may deem and treat the record holder of any share of Series C as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

**Section 10. Notices.** All notices or communications in respect of Series C shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or Bylaws or by applicable law.

**Section 11. No Preemptive Rights.** No share of Series C shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

**Section 12. Other Rights.** The shares of Series C shall not have any voting powers, preferences or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law.

**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
DISCOUNT STOCK PROGRAM AWARD**

This Award Agreement sets forth the terms and conditions of the award of RSUs under the Discount Stock Program (“DSP RSUs”) granted to you under The Goldman Sachs Amended and Restated Stock Incentive Plan (the “Plan”).

1. The Plan. This Award is made pursuant to the Plan, the terms of which are incorporated in this Award Agreement.

Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meanings as used or defined in the Plan. References in this Award Agreement to any specific Plan provision shall not be construed as limiting the applicability of any other Plan provision.

2. Award.

(a) Form of Award. The number of DSP RSUs subject to this Award is set forth in the Award Statement delivered to you. The Award Statement shall designate your DSP RSUs as either “Base RSUs” or “Discount RSUs.” An RSU is an unfunded and unsecured promise to deliver (or cause to be delivered) to you, subject to the terms and conditions of this Award Agreement, a share of Common Stock (a “Share”) on the Delivery Date or as otherwise provided herein. Until such delivery, you have only the rights of a general unsecured creditor, and no rights as a shareholder of GS Inc.

(b) Certain Conditions Precedent. **YOUR DSP RSU AWARD IS EXPRESSLY CONDITIONED ON: (i) YOUR BEING A PARTICIPANT IN THE GOLDMAN SACHS PARTNER COMPENSATION PLAN OR THE GOLDMAN SACHS RESTRICTED PARTNER COMPENSATION PLAN ON THE DATE OF GRANT AND YOUR EXECUTING ANY AGREEMENT REQUIRED IN CONNECTION WITH SUCH PARTICIPATION; AND (ii) YOUR EXECUTING THE RELATED SIGNATURE CARD AND RETURNING IT TO THE ADDRESS DESIGNATED ON THE SIGNATURE CARD AND/OR BY THE METHOD DESIGNATED ON THE SIGNATURE CARD BY THE DATE SPECIFIED. UNLESS OTHERWISE DETERMINED BY THE COMMITTEE, YOUR FAILURE TO MEET THESE CONDITIONS WILL RESULT IN THE CANCELLATION OF YOUR DSP AWARD. YOUR DSP AWARD IS SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS OF THE PLAN AND THIS AWARD AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN PARAGRAPH 13. BY EXECUTING THE RELATED SIGNATURE CARD YOU WILL HAVE CONFIRMED YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AWARD AGREEMENT.**

(c) Status under Shareholders’ Agreement. The Shares delivered with respect to this Award will be subject to the Goldman Sachs Shareholders’ Agreement to which you are a party, as amended from time to time (the “Shareholders’ Agreement”), except those Shares will not be considered “Covered Shares” as defined in that Agreement. Shares underlying your Base RSUs will not count toward satisfying your transfer restriction requirements under Section 2.1 of the Shareholders’ Agreement until the Transfer Restrictions described in Paragraph 3(b)(i)(B) are removed.

3. Vesting, Delivery and Transfer Restrictions.

(a) Vesting.

(i) Base RSUs. Except as provided in Paragraph 2(b), you shall be fully Vested in all of your Outstanding Base RSUs on the Date of Grant, and, subject to Paragraph 10, neither such Base RSUs, nor the Shares underlying them, shall be forfeitable for any reason.

(ii) Discount RSUs. Except as provided in this Paragraph 3 and in Paragraphs 4, 7, 8, 10, 11 and 16, on each Vesting Date you shall become Vested in the number or percentage of your Outstanding Discount RSUs specified next to such Vesting Date on the Award Statement (which may be rounded to avoid fractional Shares). While continued active Employment is not required in order to receive delivery of the Shares underlying your Discount RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply, and failure to meet such terms and conditions may result in the termination of some or all of your Discount RSUs (as a result of which no Shares underlying such Discount RSUs would be delivered).

(b) Delivery and Transfer Restrictions.

(i) Base RSUs.

(A) Delivery Date. The Delivery Date with respect to your Base RSUs shall be the date specified as such on your Award Statement, if that date is during a Window Period or, if that date is not during a Window Period, the first Trading Day of the first Window Period beginning after such date. For purposes of this Agreement, a "Trading Day" is a day on which Shares trade regular way on the New York Stock Exchange. Except as provided in this Paragraph 3 and Paragraphs 2, 8, 10, 11 and 16, in accordance with Section 3.23 of the Plan, reasonably promptly (but in no case more than thirty (30) Business Days) after the date specified as the Delivery Date, Shares underlying your Base RSUs ("Base Shares") shall be delivered to a brokerage or custody account approved by the Firm.

(B) Transfer Restrictions on Base Shares. Except as provided in Paragraphs 3(c), 4(a), 8, or 10, until the date specified on your Award Statement as the "Transferability Date:" (I) your Base Shares shall not be permitted to be sold, exchanged, transferred, assigned, pledged, hypothecated, fractionalized, hedged or otherwise disposed of (including through the use of any cash-settled instrument), whether voluntarily or involuntarily by you (collectively referred to as the "Transfer Restrictions") and any purported sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge or other disposition in violation of the Transfer Restrictions shall be void; and (II) if and to the extent your Base Shares are certificated, the certificates representing your Base Shares are subject to the restrictions in this Paragraph 3(b)(i)(B) and GS Inc. shall advise its transfer agent to place a stop order against your Base Shares. Within 30 Business Days after the Transferability Date (or any other date described herein the Transfer Restrictions are removed), GS Inc. shall take, or shall cause to be taken, such steps as may be necessary to remove the Transfer Restrictions.

(C) Escrow. Pending receipt of any consents deemed necessary or appropriate by the Firm, Shares in respect of your DSP Award initially may be delivered into an escrow account meeting such terms and conditions as determined by the Firm. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (i) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (ii) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by GS Inc. in its discretion. By accepting your DSP Award, you have agreed to execute such documents and take such steps as may be deemed necessary or appropriate by the Firm to establish and maintain any such escrow account.

(ii) Discount RSUs. The Delivery Date with respect to your Outstanding Vested Discount RSUs shall be the date specified as such on your Award Statement, if that date is during a Window Period or, if that date is not during a Window Period, the first Trading Day of the first Window Period beginning after such date. Except as provided in this Paragraph 3 and in Paragraphs 2, 4(b), 5, 6, 7, 8, 10, 11 and 16, in accordance with Section 3.23 of the Plan, reasonably promptly (but in no case more than thirty (30) Business Days) after any date specified as the Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding Discount RSUs with respect to which the Delivery

Date (or other date) has occurred (which number of Shares may be rounded to avoid fractional shares) shall be delivered to a brokerage or custody account approved by the Firm.

(iii) Certain “Covered Employees.” Notwithstanding the foregoing, if you are or become considered by GS Inc. to be one of its “covered employees” within the meaning of Section 162(m) of the Code, then you shall be subject to Section 3.21.3 of the Plan, as a result of which delivery of your Shares may be delayed.

(iv) Right to Deliver Cash or Other Property. In accordance with Section 1.3.2(i) of the Plan, in the discretion of the Committee, in lieu of all or any portion of the Shares otherwise deliverable in respect of all or any portion of your DSP RSUs, the Firm may deliver cash, other securities, other Awards or other property, and all references in this Award Agreement to deliveries of Shares shall include such deliveries of cash, other securities, other Awards or other property.

(c) Death. Notwithstanding any other provision of this Award Agreement, if you die prior to the Delivery Date with respect to your DSP RSUs and/or the Transferability Restrictions with respect to your Base Shares, as soon as practicable after the date of death and after such documentation as may be requested by the Committee is provided to the Committee: (i) your Base Shares and the Shares underlying all of your then Outstanding DSP RSUs shall be delivered to the representative of your estate; and (ii) the Transfer Restrictions then applicable to your Base Shares shall be removed.

#### 4. Termination of Employment

(a) Base Shares. Unless the Committee determines otherwise, if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm (other than by reason of Extended Absence or solely as a result of “downsizing” as provided in Paragraph 7(b)), the Transfer Restrictions will be removed as soon as practicable after the date your Employment so terminates. If your Employment terminates by reason of Extended Absence or solely by reason of a “downsizing” as provided in Paragraph 7(b), the Transfer Restrictions shall continue to apply to your Base Shares until the Transferability Date in accordance with Paragraph 3(b)(i)(B) hereof.

(b) Discount RSUs. Unless the Committee determines otherwise, except as provided in Paragraphs 3(c), 7, 8 and 10(g), if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, your rights in respect of your Discount RSUs (but not your Base RSUs) that were Outstanding, but that had not yet become Vested, immediately prior to your termination of Employment immediately shall terminate, such Discount RSUs shall cease to be Outstanding, and no Shares shall be delivered in respect thereof.

5. Termination of Discount RSUs and Non-Delivery of Shares. Unless the Committee determines otherwise, and except as provided in Paragraphs 7 and 8, your rights in respect of all of your Outstanding Discount RSUs (whether or not Vested), immediately shall terminate, such Discount RSUs shall cease to be Outstanding, and no Shares shall be delivered in respect thereof if:

(a) you attempt to have any dispute under the Plan or this Award Agreement resolved in any manner that is not provided for by Paragraph 13 or Section 3.17 of the Plan;

(b) any event that constitutes Cause has occurred;

(c) you, in any manner, directly or indirectly, (A) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (B) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (C) Solicit any person who is an employee of the Firm to resign from the Firm or to apply for or accept employment with

any Competitive Enterprise or (D) on behalf of yourself or any person or Competitive Enterprise hire, or participate in the hiring of, any Selected Firm Personnel, or identify, or participate in the identification of, Selected Firm Personnel for potential hiring, whether as an employee or consultant or otherwise;

(d) you fail to certify to GS Inc., in accordance with procedures established by the Committee, that you have complied, or the Committee determines that you in fact have failed to comply, with all the terms and conditions of the Plan and this Award Agreement. By accepting the delivery of Shares under this Award Agreement, you shall be deemed to have represented and certified at such time that you have complied with all the terms and conditions of the Plan and this Award Agreement;

(e) the Committee determines that you failed to meet, in any respect, any obligation you may have under any agreement between you and the Firm, or any agreement entered into in connection with your Employment with the Firm, including, without limitation, any offer letter, employment agreement, the Shareholders' Agreement, or any other shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(f) as a result of any action brought by you, it is determined that any of the terms or conditions of this Award Agreement are invalid.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (i) any Firm employee or consultant (A) with whom you personally worked while employed by the Firm, or (B) who at any time during the year immediately preceding your termination of Employment with the Firm, worked in the same division in which you worked; and (ii) any Managing Director of the Firm.

6. Repayment. The provisions of Section 2.6.3 of the Plan (which requires Award recipients to repay to the Firm amounts delivered to them if the Committee determines that all terms and conditions of this Award Agreement in respect of such delivery were not satisfied) shall apply to your Discount RSUs, but not your Base RSUs or Base Shares.

7. Extended Absence and Downsizing.

(a) Extended Absence.

(i) Notwithstanding any other provision of this Award Agreement, but subject to Paragraph 7(a)(ii), solely with respect to any Discount RSUs that were Outstanding but that had not yet become Vested prior to your termination of Employment by reason of Extended Absence, the condition set forth in Paragraph 4(b) shall be waived with respect to any such Discount RSUs (as a result of which such Discount RSUs shall become Vested), but all other terms and conditions of this Award Agreement shall continue to apply. Any termination of Employment by reason of Extended Absence shall not affect your Base RSUs or Base Shares, and the Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(i)(B).

(ii) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding Discount RSUs that become Vested in accordance with Paragraph 7(a)(i) immediately shall terminate, such Outstanding Discount RSUs shall cease to be Outstanding, and no Shares shall be delivered in respect thereof if, prior to the original Vesting Date with respect to such Discount RSUs, you (i) form, or acquire a 5% or greater equity ownership, voting or profit participation interest in, any Competitive Enterprise, or (ii) associate in any capacity (including, but not limited to, association as an officer, employee, partner, director, consultant, agent or advisor) with any Competitive Enterprise.



(b) Downsizing.

(i) Notwithstanding any other provision of this Award Agreement and subject to your executing such general waiver and release of claims and an agreement to pay any associated tax liability, both as may be prescribed by the Firm or its designee, if your Employment is terminated solely by reason of a “downsizing,” the condition set forth in Paragraph 4(b) shall be waived with respect to a portion of your Discount RSUs that were Outstanding but that had not yet become Vested prior to your termination of Employment by reason of “downsizing,” as a result of which you shall become Vested in a portion of such Discount RSUs, determined with respect to each remaining Vesting Date by multiplying the number of Discount RSUs that would become Vested on each remaining Vesting Date by a fraction, the numerator of which is the number of months from the Date of Grant to the date your Employment terminated and the denominator of which is the number of months from the Date of Grant to the applicable Vesting Date, but all other terms and conditions of this Award Agreement shall continue to apply. Your termination of Employment by reason of “downsizing” shall not affect your Base Shares, and the Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(i)(B).

(ii) Whether or not your Employment is terminated solely by reason of a “downsizing” shall be determined by the Firm in its sole discretion. No termination of Employment initiated by you, including any termination claimed to be a “constructive termination” or the like or a termination for good reason, will be solely by reason of a “downsizing.”

8. Change in Control. Notwithstanding anything to the contrary in this Award Agreement, in the event a Change in Control shall occur and within 18 months thereafter the Firm terminates your Employment without Cause or you terminate your Employment for Good Reason, all Shares underlying your then Outstanding DSP RSUs, whether or not Vested, shall be delivered, and the Transfer Restrictions with respect to your Base Shares shall be removed.

9. Dividend Equivalent Rights. Each of your DSP RSUs shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding DSP RSUs, at or after the time of distribution of any regular cash dividend paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant, you shall be entitled to receive an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Share underlying such Outstanding DSP RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to DSP RSUs that are Outstanding on the payment date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan.

10. Certain Additional Terms, Conditions and Agreements.

(a) The delivery of Shares in respect of your DSP RSUs is conditioned on your satisfaction of any applicable withholding taxes in accordance with Section 3.2 of the Plan.

(b) Your rights in respect of your Discount RSUs are conditioned on your becoming a party to any shareholders’ agreement to which other similarly situated employees of the Firm are a party.

(c) Your rights in respect of your DSP RSUs are conditioned on the receipt to the full satisfaction of the Committee of any required consents (as described in Section 3.3 of the Plan) that the Committee may determine to be necessary or advisable.

(d) You understand and agree, in accordance with Section 3.3 of the Plan, by accepting this Award, you have expressly consented to all of the items listed in Section 3.3.3(d) of the Plan, which are incorporated herein by reference.

(e) You understand and agree, in accordance with Section 3.22 of the Plan, by accepting this Award you have agreed to be subject to the Firm's policies in effect from time to time concerning trading in Shares and hedging or pledging Shares and equity-based compensation or other awards (including, without limitation, the Firm's "Policies With Respect to Transactions Involving GS Shares, Equity Awards and GS Options by Persons Affiliated with GS Inc."), and confidential or proprietary information, and to effect sales of Shares delivered to you in respect of your DSP RSUs in accordance with such rules and procedures as may be adopted from time to time with respect to sales of such Shares (which may include, without limitation, restrictions relating to the timing of sale requests, the manner in which sales are executed, pricing method, consolidation or aggregation of orders and volume limits determined by the Firm). In addition, you understand and agree that you shall be responsible for all brokerage costs and other fees or expenses associated with your Award, including, without limitation, such brokerage costs or other fees or expenses in connection with the sale of Shares delivered to you hereunder in respect of your DSP RSUs.

(f) GS Inc. may affix to Certificates representing Shares issued pursuant to this Award Agreement any legend that the Committee determines to be necessary or advisable (including to reflect any restrictions to which you may be subject under this Award Agreement or under any separate agreement with GS Inc.). GS Inc. may advise the transfer agent to place a stop order against any legended Shares.

(g) Without limiting the application of Paragraph 5, if:

(i) your Employment with the Firm terminates solely because you resigned to accept employment at a governmental agency, self-regulatory organization, or other employer and as a result of such new employment the Firm determines that your continued holding of your Outstanding Base RSUs, Discount RSUs, or Base Shares would violate standards of ethical conduct applicable to you ("Conflicted Employment"); or

(ii) following your termination of Employment other than described in Paragraph 10(g)(i), you notify the Firm that you have accepted or intend to accept Conflicted Employment at a time when you continue to hold Outstanding Base RSUs, Discount RSUs or Base Shares that are Vested;

then, in the case of Paragraph 10(g)(i) above only, the Transfer Restrictions with respect to any then delivered Base Shares shall be removed, all Base RSUs the Base Shares for which had not yet then been delivered shall be cancelled, the condition set forth in Paragraph 4(b) shall be waived with respect to any Discount RSUs you then hold that had not yet become Vested (as a result of which such Discount RSUs shall become Vested) and you shall receive a lump sum payment in respect of such Base RSUs and in respect of all of your Discount RSUs; and in the case of Paragraph 10(g)(ii) above, the Transfer Restrictions with respect to any then delivered Base Shares shall be removed, all Base RSUs the Base Shares for which had not yet then been delivered shall be cancelled, and you shall receive a lump sum cash payment in respect of any such cancelled Base RSUs and all of your then Outstanding Vested Discount RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment. Notwithstanding anything else herein, the Discount RSUs shall become Vested and payment shall be made as a result of this Paragraph only at such time and if and to the extent as would not result in the imposition of any additional tax under Section 409A of the Code.

11. Right of Offset. The obligation to deliver Shares under this Award Agreement or to remove the Transfer Restrictions is subject to Section 3.4 of the Plan, which provides for the Firm's right to offset against such obligation any outstanding amounts you owe to the Firm and any amounts the Committee deems appropriate pursuant to any tax equalization policy or agreement.

12. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement, and the Board may amend the Plan in any respect; provided that, notwithstanding the foregoing and Sections 1.3.2(f), 1.3.2(g) and 3.1 of the Plan, no such amendment shall

materially adversely affect your rights and obligations under this Award Agreement without your consent; and provided further that the Committee expressly reserves its rights to amend this Award Agreement and the Plan as described in Sections 1.3.2(h)(1), (2) and (4) of the Plan. Any amendment of this Award Agreement shall be in writing signed by an authorized member of the Committee or a person or persons designated by the Committee.

13. Arbitration; Choice of Forum. **BY ACCEPTING THIS DSP AWARD, YOU UNDERSTAND AND AGREE THAT THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN SECTION 3.17 OF THE PLAN, WHICH ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND WHICH, AMONG OTHER THINGS, PROVIDE THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN THE FIRM AND YOU ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN OR THIS AWARD AGREEMENT SHALL BE FINALLY SETTLED BY ARBITRATION IN NEW YORK CITY, PURSUANT TO THE TERMS MORE FULLY SET FORTH IN SECTION 3.17 OF THE PLAN, SHALL APPLY.**

14. Non-transferability. Except as otherwise may be provided by the Committee, and subject to Paragraph 3 hereof, the limitations on transferability set forth in Section 3.5 of the Plan shall apply to this DSP Award. Any purported transfer or assignment in violation of the provisions of this Paragraph 14 or Section 3.5 of the Plan shall be void.

15. Governing Law. **YOUR DSP RSU AWARD SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.**

16. Delay in Payment. To the extent required in order to avoid the imposition of any interest and additional tax under Section 409A(a)(1)(B) of the Code, any payments or deliveries due as a result of your termination of Employment with the Firm will be delayed for six months if you are deemed to be a "specified employee" as defined in Section 409A(a)(2)(i)(B) of the Code.

17. Headings. The headings in this Award Agreement are for the purpose of convenience only and are not intended to define or limit the construction of the provisions hereof.

**IN WITNESS WHEREOF**, GS Inc. has caused this Award Agreement to be duly executed and delivered as of the Date of Grant.

**THE GOLDMAN SACHS GROUP, INC.**

By: \_\_\_\_\_

Name:

Title:

**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
DISCOUNT STOCK PROGRAM AWARD**

This Award Agreement sets forth the terms and conditions of the award of RSUs under the Discount Stock Program (“DSP RSUs”) under The Goldman Sachs Amended and Restated Stock Incentive Plan (the “Plan”).

1. The Plan. Your DSP Award is made pursuant to the Plan, the terms of which are incorporated in this Award Agreement. Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meanings as used or defined in the Plan. References in this Award Agreement to any specific Plan provision shall not be construed as limiting the applicability of any other Plan provision.

2. Award.

(a) Form of Award. The number of DSP RSUs subject to this Award is set forth in the Award Statement delivered to you. The Award Statement shall designate your DSP RSUs as either Base RSUs or Discount RSUs. An RSU is an unfunded and unsecured promise to deliver (or cause to be delivered) to you, subject to the terms and conditions of this Award Agreement, a share of Common Stock (a “Share”) on the Delivery Date or as otherwise provided herein. Until such delivery, you have only the rights of a general unsecured creditor, and no rights as a shareholder of GS Inc.

(b) Certain Conditions Precedent. **YOUR DSP AWARD IS EXPRESSLY CONDITIONED ON: (I) YOUR BEING A PARTICIPANT IN THE GOLDMAN SACHS PARTNER COMPENSATION PLAN OR THE GOLDMAN SACHS RESTRICTED PARTNER COMPENSATION PLAN ON THE DATE OF GRANT AND YOUR EXECUTING ANY AGREEMENT REQUIRED IN CONNECTION WITH SUCH PARTICIPATION; AND (II) YOUR EXECUTING THE RELATED SIGNATURE CARD AND RETURNING IT TO THE ADDRESS DESIGNATED ON THE SIGNATURE CARD AND/OR BY THE METHOD DESIGNATED ON THE SIGNATURE CARD BY THE DATE SPECIFIED. UNLESS OTHERWISE DETERMINED BY THE COMMITTEE, YOUR FAILURE TO MEET THESE CONDITIONS WILL RESULT IN THE CANCELLATION OF YOUR DSP AWARD. YOUR DSP AWARD IS SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS OF THE PLAN AND THIS AWARD AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN PARAGRAPH 12. BY EXECUTING THE RELATED SIGNATURE CARD YOU WILL HAVE CONFIRMED YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AWARD AGREEMENT.**

(c) Status under Shareholders’ Agreement. The Shares delivered with respect to this Award will be subject to the Goldman Sachs Shareholders’ Agreement to which you are a party, as amended from time to time (the “Shareholders’ Agreement”), except such Shares will not be considered “Covered Shares” as defined in that Agreement.

3. Vesting and Delivery.

(a) Vesting.

(i) Base RSUs. Except as provided in Paragraph 2(b), you shall be fully Vested in all of your Outstanding Base RSUs on the Date of Grant, and, subject to Paragraph 9, neither such Base RSUs, nor the Shares delivered thereunder, shall be forfeitable for any reason.

(ii) Discount RSUs. Except as provided in this Paragraph 3 and in Paragraphs 4, 6, 7, 9 and 10, on each Vesting Date you shall become Vested in the number or percentage of your Outstanding Discount RSUs specified next to such Vesting Date on the Award Statement (which may be rounded to avoid fractional Shares). While continued active Employment is not required in order to receive delivery of the Shares underlying your Outstanding Discount RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply, and failure to meet such terms and conditions may result in the termination of some or all of your Discount RSUs (as a result of which no Shares underlying such Discount RSUs would be delivered).

(b) Delivery.

(i) The Delivery Date with respect to all of your DSP RSUs shall be the date specified as such on your Award Statement, if that date is during a Window Period or, if that date is not during a Window Period, the first Trading Day of the first Window Period beginning after such date. For this purpose, a "Trading Day" is a day on which Shares trade regular way on the New York Stock Exchange.

(ii) Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 5, 6, 7, and 9, in accordance with Section 3.23 of the Plan, reasonably promptly (but in no case more than thirty (30) Business Days) after the date specified as the Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding DSP RSUs with respect to which the Delivery Date (or other date) has occurred (which number of Shares may be rounded to avoid fractional Shares) shall be delivered to a brokerage or custody account approved by the Firm. Notwithstanding the foregoing, if you are or become considered by GS Inc. to be one of its "covered employees" within the meaning of Section 162(m) of the Code, then you shall be subject to Section 3.21.3 of the Plan, as a result of which delivery of your Shares may be delayed.

(iii) In accordance with Section 1.3.2(i) of the Plan, in the discretion of the Committee, in lieu of all or any portion of the Shares otherwise deliverable in respect of all or any portion of your DSP RSUs, the Firm may deliver cash, other securities, other Awards or other property, and all references in this Award Agreement to deliveries of Shares shall include such deliveries of cash, other securities, other Awards or other property.

(c) Death. Notwithstanding any other provision of this Award Agreement, if you die prior to the Delivery Date, the Shares underlying all of your then Outstanding DSP RSUs shall be delivered to the representative of your estate as soon as practicable after the date of death and after such documentation as may be requested by the Committee is provided to the Committee.

4. Termination of Discount RSUs and Non-Delivery of Shares.

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 6 and 7, if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, your rights in respect of your Discount RSUs (but not your Base RSUs) that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment immediately shall terminate, such Discount RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof.

(b) Unless the Committee determines otherwise, and except as provided in Paragraphs 6 and 7, your rights in respect of all of your Outstanding Discount RSUs (whether or not Vested) (but not your Base RSUs), immediately shall terminate, such Discount RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof if:

(i) you attempt to have any dispute under the Plan or this Award Agreement resolved in any manner that is not provided for by Paragraph 12 or Section 3.17 of the Plan;

(ii) any event that constitutes Cause has occurred;

(iii) you, in any manner, directly or indirectly, (A) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (B) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (C) Solicit any person who is an employee of the Firm to resign from the Firm or to apply for or accept employment with any Competitive Enterprise or (D) on behalf of yourself or any person or Competitive Enterprise hire, or participate in the hiring of, any Selected Firm Personnel, or identify, or participate in the identification of Selected Firm Personnel for potential hiring, whether as an employee or consultant or otherwise;

(iv) you fail to certify to GS Inc., in accordance with procedures established by the Committee, that you have complied, or the Committee determines that you in fact have failed to comply, with all the terms and conditions of the Plan and this Award Agreement. By accepting the delivery of Shares under this Award Agreement, you shall be deemed to have represented and certified at such time that you have complied with all the terms and conditions of the Plan and this Award Agreement;

(v) the Committee determines that you failed to meet, in any respect, any obligation you may have under any agreement between you and the Firm, or any agreement entered into in connection with your Employment with the Firm, including, without limitation, any offer letter, employment agreement, the Shareholders' Agreement or any other shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(vi) as a result of any action brought by you, it is determined that any of the terms or conditions for Delivery of this Award Agreement are invalid.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (i) any Firm employee or consultant (A) with whom you personally worked while employed by the Firm, or (B) who at any time during the year immediately preceding your termination of Employment with the Firm, worked in the same division in which you worked; and (ii) any Managing Director of the Firm.

5. Repayment. The provisions of Section 2.6.3 of the Plan (which requires Award recipients to repay to the Firm amounts delivered to them if the Committee determines that all terms and conditions of this Award Agreement in respect of such delivery were not satisfied) shall apply to your Discount RSUs but, subject to Paragraph 2(b), not your Base RSUs.

6. Extended Absence and Downsizing.

(a) Notwithstanding any other provision of this Award Agreement, but subject to Paragraph 6(b), in the event of the termination of your Employment by reason of Extended Absence, the condition set forth in Paragraph 4(a) shall be waived with respect to any Discount RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Discount RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply.

(b) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding Discount RSUs that become Vested in accordance with Paragraph 6(a) immediately shall terminate, such Outstanding Discount RSUs shall cease to be Outstanding, and no Shares shall be delivered in respect thereof if, prior to the original Vesting Date with respect to such Discount RSUs, you (i) form, or

acquire a 5% or greater equity ownership, voting or profit participation interest in, any Competitive Enterprise, or (ii) associate in any capacity (including, but not limited to, association as an officer, employee, partner, director, consultant, agent or advisor) with any Competitive Enterprise. No termination of Employment initiated by you, including any termination claimed to be a “constructive termination” or the like or a termination for good reason, will constitute an “involuntary” termination of Employment or a termination of Employment by “mutual agreement.”

(c) Notwithstanding any other provision of this Award Agreement and subject to your executing such general waiver and release of claims and an agreement to pay any associated tax liability, both as may be prescribed by the Firm or its designee, if your Employment is terminated solely by reason of a “downsizing,” the condition set forth in Paragraph 4(a) shall be waived with respect to a portion of your Discount RSUs that were Outstanding but that had not yet become Vested prior to your termination of Employment by reason of “downsizing,” as a result of which you shall become Vested in a portion of such Discount RSUs, determined with respect to each Vesting Date by multiplying the number of Discount RSUs that would become Vested on the remaining Vesting Date by a fraction, the numerator of which is the number of months from the Date of Grant to the date your Employment terminated, and the denominator of which is the number of months from the Date of Grant to the applicable Vesting Date, but all other terms and conditions of this Award Agreement shall continue to apply. Whether or not your Employment is terminated solely by reason of a “downsizing” shall be determined by the Firm in its sole discretion. No termination of Employment initiated by you, including any termination claimed to be a “constructive termination” or the like or a termination for good reason, will be solely by reason of a “downsizing.”

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement, in the event a Change in Control shall occur and within 18 months thereafter the Firm terminates your Employment without Cause or you terminate your Employment for Good Reason, all Shares underlying your then Outstanding DSP RSUs, whether or not Vested, shall be delivered.

8. Dividend Equivalent Rights. Each DSP RSU shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding DSP RSUs, at or after the time of distribution of any regular cash dividend paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant, you shall be entitled to receive an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Share underlying such Outstanding DSP RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to DSP RSUs that are Outstanding on the payment date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan.

#### 9. Certain Terms, Conditions and Agreements.

(a) The delivery of Shares in respect of your DSP RSUs is conditioned on your satisfaction of any applicable withholding taxes in accordance with Section 3.2 of the Plan.

(b) Your rights in respect of your Discount RSUs are conditioned on your becoming a party to any shareholders’ agreement to which other similarly situated employees of the Firm are a party.

(c) Your rights in respect of your DSP RSUs are conditioned on the receipt to the full satisfaction of the Committee of any required consents (as described in Section 3.3 of the Plan) that the Committee may determine to be necessary or advisable.

(d) You understand and agree, in accordance with Section 3.3 of the Plan, by accepting this Award, you have expressly consented to all of the items listed in Section 3.3.3(d) of the Plan, which are incorporated herein by reference.

(e) You understand and agree, in accordance with Section 3.22 of the Plan, by accepting this Award you have agreed to be subject to the Firm's policies in effect from time to time concerning trading in Shares and hedging or pledging Shares and equity-based compensation or other awards (including, without limitation, the Firm's "Policies With Respect to Transactions Involving GS Shares, Equity Awards and GS Options by Persons Affiliated with GS Inc."), and confidential or proprietary information, and to effect sales of Shares delivered to you in respect of your DSP RSUs in accordance with such rules and procedures as may be adopted from time to time with respect to sales of such Shares (which may include, without limitation, restrictions relating to the timing of sale requests, the manner in which sales are executed, pricing method, consolidation or aggregation of orders and volume limits determined by the Firm). In addition, you understand and agree that you shall be responsible for all brokerage costs and other fees or expenses associated with this Award, including without limitation, such brokerage costs or other fees or expenses in connection with the sale of Shares delivered to you hereunder in respect of your DSP RSUs.

(f) GS Inc. may affix to Certificates representing Shares issued pursuant to this Award Agreement any legend that the Committee determines to be necessary or advisable (including to reflect any restrictions to which you may be subject under a separate agreement with GS Inc.). GS Inc. may advise the transfer agent to place a stop order against any legended Shares.

(g) Without limiting the application of Paragraph 4(b), if:

(i) your Employment with the Firm terminates solely because you resigned to accept employment at a governmental agency, self-regulatory organization, or other employer and as a result of such new employment the Firm determines that your continued holding of your Outstanding Discount RSUs or Base RSUs would violate standards of ethical conduct applicable to you ("Conflicted Employment"); or

(ii) following your termination of Employment other than described in Paragraph 9(g)(i), you notify the Firm that you have accepted or intend to accept Conflicted Employment at a time when you continue to hold Outstanding Discount RSUs that are Vested or any Base RSUs for which the delivery of Shares has not yet occurred;

then, in the case of Paragraph 9(g)(i) above only, the condition set forth in Paragraph 4(a) shall be waived with respect to any Discount RSUs you then hold that had not yet become Vested (as a result of which such Discount RSUs shall become Vested) and, in the cases of Paragraph 9(g)(i) and 9(g)(ii) above, you shall receive a lump sum cash payment in respect of all then Outstanding Vested DSP RSUs (including those that become Vested in connection with Paragraph 9(g)(i) by reason of the immediately foregoing), in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment. Notwithstanding anything else herein, the Discount RSUs shall become Vested and payment shall be made as a result of this Paragraph only at such time and if and to the extent as would not result in the imposition of any additional tax under Section 409A of the Code.

10. Right of Offset. The obligation to deliver Shares under this Award Agreement is subject to Section 3.4 of the Plan, which provides for the Firm's right to offset against such obligation any outstanding amounts you owe to the Firm and any amounts the Committee deems appropriate pursuant to any tax equalization policy or agreement.

11. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement, and the Board may amend the Plan in any respect; provided that, notwithstanding the foregoing and Sections 1.3.2(f), 1.3.2(g) and 3.1 of the Plan, no such amendment shall materially adversely affect your rights and obligations under this Award Agreement without your consent; and provided further that the Committee expressly reserves its rights to amend the Award Agreement and the Plan as described in Sections 1.3.2(h) (1), (2) and (4) of the Plan. Any amendment of this Award Agreement shall be



in writing signed by an authorized member of the Committee or a person or persons designated by the Committee.

12. Arbitration; Choice of Forum. **BY ACCEPTING THIS AWARD, YOU UNDERSTAND AND AGREE THAT THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN SECTION 3.17 OF THE PLAN, WHICH ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND WHICH, AMONG OTHER THINGS, PROVIDE THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN THE FIRM AND YOU ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN OR THIS AWARD AGREEMENT SHALL BE FINALLY SETTLED BY ARBITRATION IN NEW YORK CITY, PURSUANT TO THE TERMS MORE FULLY SET FORTH IN SECTION 3.17 OF THE PLAN, SHALL APPLY.**

13. Non-transferability. Except as otherwise may be provided by the Committee, the limitations on transferability set forth in Section 3.5 of the Plan shall apply to this Award. Any purported transfer or assignment in violation of the provisions of this Paragraph 13 or Section 3.5 of the Plan shall be void.

14. Governing Law. THIS DSP AWARD SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

15. Delay in Payment. To the extent required in order to avoid the imposition of any interest and additional tax under Section 409A (a)(1)(B) of the Code, any payments or deliveries due as a result of your termination of Employment with the Firm will be delayed for six months if you are deemed to be a "specified employee" as defined in Section 409A(a)(2)(i)(B) of the Code.

16. Headings. The headings in this Award Agreement are for the purpose of convenience only and are not intended to define or limit the construction of the provisions hereof.

**IN WITNESS WHEREOF**, GS Inc. has caused this Award Agreement to be duly executed and delivered as of the Date of Grant.

**THE GOLDMAN SACHS GROUP, INC.**

By: \_\_\_\_\_

Name:  
Title:

**THE GOLDMAN SACHS GROUP, INC.  
NON-QUALIFIED DEFERRED COMPENSATION PLAN  
FOR  
U.S. PARTICIPATING MANAGING DIRECTORS**

**ARTICLE 1  
INTRODUCTION**

**1.1 Purpose of Plan**

The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Participating Managing Directors is intended to promote the interests of GS Inc. and its shareholders by encouraging certain Eligible Employees to remain in the employ of the Firm by providing them with a means by which they may request to defer receipt of a portion of their Eligible Compensation.

**ARTICLE 2  
DEFINITIONS**

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning clearly is required by the context:

**2.1 Account** means, for each Participant, a notional account maintained on the books and records of GS Inc. (by GS Inc. or such third party record keeper or record keepers as GS Inc. may from time to time appoint) that is established for his or her benefit and as to which amounts are credited under Section 5.1.

**2.2 Administrative Committee** means the person or persons designated by the Compensation Policy Committee or the Board of Directors with the authority to perform day-to-day administrative functions for the Plan. If no such person is so serving at any time, the Compensation Policy Committee shall be the Administrative Committee.

**2.3 Board of Directors** means the Board of Directors of GS Inc.

**2.4 Compensation Policy Committee** means the GS Inc. Compensation Policy Committee, as it may be constituted from time to time.

**2.5 Code** means the Internal Revenue Code of 1986. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

**2.6 Deferral** means the portion of a Participant's Eligible Compensation that is deferred in accordance with Section 4.1 hereof.

**2.7 Deferral Date** means, with respect to each Plan Year, the earliest date GS Inc. determines that Eligible Compensation subject to a Deferral Request would have been paid to the Eligible Employee in the absence of the Plan, or such other date or dates as may be selected by the Administrative Committee in its sole discretion prior to the date Deferral Requests are required to be returned to the Administrative Committee for a Plan Year.

**2.8 Deferral Request** means any request by a Participant to make a Deferral hereunder by submitting a Deferral Request Form in accordance with Section 4.1 hereof.

**2.9 Deferral Request Form** means the form (which may be in electronic form) specified by the Administrative Committee from time to time pursuant to which an Eligible Employee can make a Deferral Request.

**2.10 Distribution Date** means, with respect to each Deferral made by a Participant, the date on which an amount shall become payable to a Participant in accordance with Article 7 hereof.

**2.11 Effective Date** means November 27, 2004, the date as of which the Plan first became effective.

**2.12 Eligible Compensation** means, for each Eligible Employee, with respect to each Plan Year the amount the Firm determines in its sole discretion otherwise would have been payable to the Eligible Employee as a gross end-of-year bonus (excluding any amounts payable to the Eligible Employee that are directly attributable to the performance of services prior to the beginning of such Plan Year), and before giving effect to any Deferral, but after giving effect to: (i) any "voluntary contribution election" under The Goldman Sachs Employees' Profit Sharing Retirement Income Plan (as that term is defined therein) or to any similar compensation reduction election made in connection with a plan subject to Section 401(k) of the Code; (ii) the cost of contribution by the Firm for any public or private employee benefit plan; (iii) any contribution to the Money Purchase Plan; (iv) any amount the Firm decides to contribute as part of compensation to the Goldman Sachs UK Retirement Plan or GSI International Pension Plan or any other plan maintained outside the United States primarily for non-U.S. citizens or residents that the Administrative Committee determines is similar thereto; (v) the value of any award recommendation in respect of any plan or arrangement the Firm determines is similar to The Goldman Sachs UK Conditional Share Reward Plan, including, without limitation, any such plan or arrangement involving the establishment and funding of an "employee benefit trust" in the United Kingdom; and (vi) any request to participate in the Firm's PMD Discount Stock Program on a pre-tax (but not after-tax) basis. Unless otherwise permitted by the Administrative Committee no year-end award granted under The Goldman Sachs Amended and Restated Stock Incentive Plan, as in effect from time to time, shall constitute Eligible Compensation. Notwithstanding the

foregoing, the Administrative Committee, in its discretion, with respect to any Eligible Employee or Eligible Employees (on a uniform or non-uniform basis) shall have the authority to (a) designate any jurisdiction or jurisdictions from which amounts earned by any Eligible Employee will be excluded from Eligible Compensation and (b) include or exclude, as the case may be, any amounts that otherwise would be excluded or included, as the case may be, in any Eligible Employee's Eligible Compensation.

**2.13 Eligible Employee** means, unless otherwise provided by the Administrative Committee, in a Plan Year, an individual (i) who is a participant in The Goldman Sachs Partner Compensation Plan ("PCP") or The Goldman Sachs Restricted Partner Compensation Plan ("RPCP"), (ii) who earned Minimum Eligible Compensation for either or both of the immediately preceding Plan Year or the second preceding Plan Year, (iii) who is designated by the Administrative Committee as eligible to participate in the Plan or is a member of a class of employees who is designated by the Administrative Committee as eligible to participate in the Plan for the Plan Year and (iv) who is not eligible to make a deferral under The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.K. Participating Managing Directors. The Administrative Committee may, in its sole discretion, add or exclude any individual or any member of a class of individuals from being considered an Eligible Employee. An individual shall first be considered an Eligible Employee on the date he or she first receives written notification from the Administrative Committee that he or she is eligible to participate in the Plan. Unless otherwise provided by the Administrative Committee (including, by reason of legal, tax or other regulatory restrictions or impediments to the individual or to the Firm arising out of a country other than the United States or United Kingdom) an individual that is an Eligible Employee for any Plan Year shall, for any subsequent Plan Year in which he or she participates in the PCP or RPCP, be eligible to participate in the Plan (or in The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.K. Participating Managing Directors, if in such year he or she is no longer a resident for tax purposes in the United States but is a U.K. Employee, as defined in The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plans for U.K. Participating Managing Directors).

**2.14 ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to any section or subsection of ERISA includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

**2.15 Firm** means GS Inc. and its subsidiaries and affiliates.

**2.16 GS Inc.** means The Goldman Sachs Group, Inc., and any successor thereto.

**2.17 Investment Committee** means a committee of two or more individuals selected by the Administrative Committee, which shall have the authority to select the Notional Investments that are made available from time to time under the Plan.

**2.18 Maximum Aggregate Deferral Amount** means, with respect to each Plan Year, \$100 million or such other amount as may be determined by GS Inc. from time to time,

which shall be the maximum total of all Deferrals for all Participants permitted under the Plan for such Plan Year. GS Inc. may, in its discretion, (i) aggregate the Plan with such other deferred compensation plan or plans as it may determine for purposes of applying the Maximum Aggregate Deferral Amount and (ii) allocate the Maximum Aggregate Deferral Amount among the Plan and any deferred compensation plans that are so aggregated with the Plan in any manner deemed appropriate by it.

**2.19 Maximum Deferral Amount** means, unless otherwise determined by GS Inc., with respect to each Participant for each Plan Year, the lesser of: (i) 50% of the Participant's Eligible Compensation and (ii) \$1 million.

**2.20 Minimum Deferral Amount** means, with respect to each Participant for each Plan Year, \$100,000 or such other amount as may be determined by the Administrative Committee prior to the date Deferral Request Forms are required to be returned to the Administrative Committee for a Plan Year, which shall be the minimum amount that a Participant may request as a Deferral for a Plan Year.

**2.21 Minimum Eligible Compensation** means total compensation of at least \$200,000 or such other amount as may be determined by the Administrative Committee.

**2.22 Money Purchase Plan** means The Goldman Sachs Money Purchase Pension Plan, as amended from time to time, or any successor thereto.

**2.23 Notional Investment** means a hypothetical investment made available under the Plan by the Investment Committee from time to time in which a Participant's Account may be deemed to be invested in whole or in part in accordance with Sections 5.2 and 5.3 hereof in order to measure the value of the Account.

**2.24 Participant** means any Eligible Employee who participates in the Plan in accordance with Article 3.

**2.25 Plan** means The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Participating Managing Directors.

**2.26 Plan Year** means the 12-month period that coincides with GS Inc.'s fiscal year.

**2.27 Total and Permanent Disability** means, with respect to any Participant, if such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for not less than 3 months under any accident or health plan covering employees of the Firm.

**ARTICLE 3  
PARTICIPATION**

**3.1 Commencement of Participation**

Any Eligible Employee who requests to defer part of his or her Eligible Compensation in accordance with Article 4 shall, if and to the extent the Firm, in its discretion, agrees to follow the request, become a Participant in the Plan as of the first Deferral Date as of which a Deferral is credited to the Eligible Employee's Account in accordance with Section 4.2.

**3.2 Continued Participation**

A Participant in the Plan shall continue to be a Participant so long as any amount remains credited to his or her Account.

**ARTICLE 4  
DEFERRALS**

**4.1 Deferral Request Form**

Subject to the provisions of Article 4 hereof, for each Plan Year for which the Plan is in effect, an Eligible Employee may, by properly completing a Deferral Request Form and filing it with the Administrative Committee not later than the date specified by the Administrative Committee and before the amount of the Eligible Compensation to which the Deferral relates has been determined (which shall not be later than the last day of the Plan Year immediately preceding the Plan Year for which the Deferral Request is made, unless the Administrative Committee determines that a later date is permitted under Section 409A of the Code), request that a Deferral be made on his or her behalf, on such terms as the Administrative Committee may permit in its sole discretion. The Firm may, in its sole discretion, determine whether or not to follow any Deferral Request with respect to any Eligible Employee.

**4.2 Mechanics of Deferral**

Subject to the provisions of this Article 4, if and to the extent the Firm determines to follow a Deferral Request, an Eligible Employee's Eligible Compensation shall be reduced in accordance with the Participant's Deferral Request, and the amount of the resulting Deferral shall be credited to the Participant's Account as of the Deferral Date.

**4.3 Minimum Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, no Deferral shall be for an amount and no Deferral Request shall be valid to the extent that it specifies an amount less than the Minimum Deferral Amount for the applicable Plan Year.

#### **4.4 Maximum Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, no Deferral shall be for an amount in excess of the Maximum Deferral Amount. If any amount specified on a Deferral Request Form as a Deferral would exceed the Maximum Deferral Amount, such Deferral Request Form shall be deemed to have specified the Maximum Deferral Amount.

#### **4.5 Maximum Aggregate Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, if and to the extent that the aggregate amounts specified on all Deferral Request Forms in a Plan Year that the Firm determines to follow exceed the Maximum Aggregate Deferral Amount, the amounts specified on each Participant's Deferral Request Form shall be reduced, and each Participants' Deferrals shall be reduced, under a formula or method determined by the Administrative Committee in its sole discretion, including, without limitation, a *pro rata* reduction to the ratio of the Maximum Aggregate Deferral Amount to the aggregate of the amounts specified by all Participants' on their Deferral Request Forms so that the aggregate Deferrals of all Participants do not exceed the Maximum Aggregate Deferral Amount; provided that no Participant's Deferral shall be reduced to an amount below the Minimum Deferral Amount.

#### **4.6 Deferral Request Irrevocable**

Except to the extent determined by the Administrative Committee (but in no event later than the date on which all Deferral Request Forms must be returned to the Administrative Committee for a Plan Year), all Deferral Requests shall be irrevocable when made, and no Participant may change or revoke his or her Deferral Request with respect to Eligible Compensation payable for a Plan Year.

### **ARTICLE 5 ACCOUNTS**

#### **5.1 Accounts**

The Administrative Committee shall maintain an Account for each Participant that reflects each Participant's Deferrals and any adjustments determined in accordance with Section 5.2, forfeitures and any payments made under Article 7 with respect to the Account. The Administrative Committee shall provide each Participant with a periodic statement of his or her Account adjusted in accordance with Section 5.2.

#### **5.2 Adjustment of Accounts**

The amount of each Participant's Deferral for a Plan Year shall be credited to the Participant's Account as of the applicable Deferral Date. The Participant's Account shall be adjusted from time to time to reflect: (i) Deferrals for subsequent Plan Years, if any; (ii) gains (or losses) determined as if the Account were invested directly in the Notional Investment or Notional Investments selected by the Participant (without taking into



account any tax consequences that may have arisen were the Account so directly invested); (iii) the amount described in Section 7.5; (iv) any payments under Article 7 in respect of a Deferral; and (v) any administrative charge determined by the Compensation Policy Committee or Administrative Committee in its sole discretion to be appropriate to cover part or all of the cost to the Firm of making the Plan available to Participants or otherwise maintaining the Plan.

### **5.3 Notional Investments**

(a) The Notional Investment or Notional Investments that shall be available under the Plan shall be determined from time to time by the Investment Committee in its sole discretion. The Investment Committee may, in its sole discretion, provide limitations or procedures on the availability of any Notional Investment or Notional Investments with respect to any Participant or class of Participants. The Investment Committee may modify, amend, eliminate or replace any or all of the Notional Investments that may be available under the Plan to Plan Participants or any of them, in any manner in its sole discretion at any time from time to time with or without notice to the Participants and effective retroactively or prospectively, subject to Section 9.3 hereof.

(b) In selecting any Notional Investment or Notional Investments to be made available under the Plan or prescribing any rules related thereto, the Investment Committee and the Administrative Committee shall be acting solely on behalf of the Firm and not as a fiduciary or adviser with respect to any Deferral, any Participant or any other person employed by the Firm or in respect of any Account. Each Participant, by requesting to participate in the Plan, agrees that none of the Investment Committee, the Administrative Committee, the Compensation Policy Committee, GS Inc., the Firm or any other person shall have any liability whatsoever to any Participant or any other person as a result of, arising out of or related to the selection or elimination or modification of Notional Investments, any monitoring of any such Notional Investment or any Participant's selection or failure to select any Notional Investment.

(c) The Administrative Committee or the Investment Committee may adopt such rules and administrative practices as they, in their sole discretion, shall deem necessary or appropriate in connection with any Participant's ability to select Notional Investments hereunder, including restrictions on the timing or frequency of such selections; all such Notional Investment selections shall be made in such form as may be required by the Administrative Committee from time to time.

## **ARTICLE 6 VESTING**

### **6.1 Accounts Generally Vested**

Without limiting Section 7.6 or Section 10.1, each Participant shall be immediately vested in, and shall have a nonforfeitable right to the balance credited to, the

Participant's Account subject to the terms of the Plan, including without limitation Section 7.5 hereof.

## **ARTICLE 7 PAYMENTS**

### **7.1 Commencement and Form of Payment**

(a) Lump Sum. Unless a Participant makes a valid installment payment request described in Paragraph (b) of this Section 7.1 with respect to a Deferral and such request is approved by the Administrative Committee, the Participant shall receive a payment of the entire portion of the Participant's Account attributable to such Deferral in a single lump sum within 30 business days after the applicable Distribution Date.

(b) Annual Installment Payments. Unless otherwise determined by the Administrative Committee in its sole discretion, Participants (other than those that the Administrative Committee determines are not eligible, including, without limitation, persons who are tax residents of, or whose employment location during any part of the relevant Plan Year is, the United Kingdom) shall be permitted to request to receive payments in respect of any Deferral in 11 substantially equal annual installments commencing within 30 business days after the applicable Distribution Date. Any request to receive installment payments in respect of a Deferral pursuant to this Section shall be subject to the limitations of Section 7.5 hereof, and in such form as may be required by the Administrative Committee in its sole discretion and shall be valid only if it is timely received by the Administrative Committee: (i) at the time the Participant makes the applicable Deferral Request; or (ii) at a later time approved by the Administrative Committee in its sole discretion that is (a) at least 5 full years prior to the Distribution Date in respect of such Deferral or (b) such other time that the Administrative Committee approves in a manner consistent with Section 409A of the Code. Any request to receive installment payments that is received by the Administrative Committee later than the dates described in the immediately preceding sentence shall be null and void and of no force or effect. The amount that shall be paid in each installment shall be the quotient of the balance of the Account attributable to the Deferral as of the last day of the month prior to the Distribution Date (or, with respect to each installment after the first installment, the applicable anniversary thereof) divided by the number of installment payments remaining.

### **7.2 Distribution Date**

In accordance with procedures established by the Administrative Committee in its sole discretion, at the time each Participant makes a Deferral Request, the Participant shall select a Distribution Date with respect to a Deferral that is, unless otherwise determined by the Administrative Committee in its sole discretion, (i) any anniversary of the Deferral Date beginning with the third anniversary and ending with the tenth anniversary or (ii) the later of the tenth anniversary of the Deferral Date and six months after the date following the Participant's separation from service with the Firm. Notwithstanding the foregoing, no person who is a United Kingdom tax resident at the time of the Deferral

Request or whose employment location during any part of the relevant Plan Year to which the Deferral Request relates is the United Kingdom shall be permitted to request the Distribution Date described in (ii).

### **7.3 Death and Total and Permanent Disability**

(a) If a Participant dies prior to the payment of the entire balance credited to his or her Account, unless otherwise determined by the Administrative Committee, and notwithstanding any Participant's request pursuant to Section 7.1(b) or Section 7.2, the amount credited to his or her Account shall be paid as soon as practicable to the representative of the Participant's estate. No payment shall be made to the representative of a Participant's estate until the Administrative Committee shall have been furnished with such evidence and other documentation as it shall deem necessary or appropriate to establish the validity of the payment.

(b) If a Participant has a Total and Permanent Disability prior to the payment of the entire balance credited to his or her Account, unless otherwise determined by the Administrative Committee and notwithstanding any Participant's request pursuant to Section 7.1(b) or Section 7.2, such balance shall be paid as soon as practicable to the Participant or if the Participant is determined by the Administrative Committee, in its sole discretion, to be incompetent by reason of physical or mental disability, to another person for the benefit of the Participant, without responsibility on the part of the Administrative Committee, the Firm or any other person to monitor the application or use of such funds. No payment shall be made to the Participant or such other person until the Administrative Committee shall have been furnished with such evidence and other documentation as it shall deem necessary or appropriate to establish the validity of the payment.

### **7.4 Taxes and Social Security**

All Federal, State, foreign, local, hypothetical or other taxes, or social security or social insurance charges, if any, that are required to be withheld in respect of any Deferrals hereunder or from any payments made pursuant to this Article 7 shall be withheld from amounts payable hereunder or from any other amounts payable to a Participant by any person.

### **7.5 Certain Account Adjustments**

Unless otherwise determined by GS Inc., the amount payable on a Distribution Date to any Participant under the Plan shall be net of, and a Participant's Account shall be adjusted to reflect on such Distribution Date, any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, or amounts repayable to the Firm pursuant to tax equalization, housing, automobile or other employee programs) the Participant owes to the Firm (including by reason of any obligations of such Participant under any Firm sponsored investment program, including under the Firm's "Special Investments Program"), any amounts owed to the Firm by reason of such Participant's misconduct with respect to such Participant's employment

with the Firm, including, without limitation, the Participant's misappropriation of funds or other property from the Firm, and any amount the Administrative Committee otherwise deems appropriate pursuant to any tax equalization policy or agreement or otherwise applicable as of such Distribution Date. Each Participant shall be required, as a condition to participation in the Plan, to sign such documents, and make such representations and consents, to the extent deemed necessary or appropriate by the Administrative Committee, to comply with this Section 7.5. For purposes of the foregoing, in the event a Participant has validly requested payments in annual installments pursuant to Section 7.1(b) hereof, any amounts required to be adjusted under this Section 7.5 shall be applied against the Participant's Account balance in respect of the Deferral prior to the first installment to be paid (or the next installment scheduled to be paid, if later) as prescribed by the Administrative Committee in a manner consistent with Section 409A of the Code.

#### **7.6 Certain Delayed Payments to Covered Employees**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, if and to the extent that GS Inc. determines, in its sole discretion, that GS Inc.'s or the Firm's U.S. Federal tax deduction in respect of a payment under the Plan may be limited as a result of Section 162(m) of the Code or any successor section of the Code, the Administrative Committee may delay such Payment until such time or times as GS Inc. or the Administrative Committee determines, in its sole discretion, that neither GS Inc.'s nor the Firm's deduction for any such payment will be limited as a result of Section 162(m) of the Code or any successor section of the Code and as are consistent with Section 409A of the Code.

#### **7.7 Payment Currency**

Unless otherwise determined by the Administrative Committee in its discretion, any payments under the Plan shall be made in the same currency in which the Participant's bonus otherwise would have been paid, in the absence of the Plan.

### **ARTICLE 8 ADMINISTRATIVE COMMITTEE; INDEMNIFICATION**

#### **8.1 Plan Administration and Interpretation**

The Plan shall be administered by the Administrative Committee. The Administrative Committee shall have complete control and authority to administer the Plan, and authority to determine the rights and benefits and all claims, demands and actions arising out of the provisions of the Plan of any Participant, representative of a deceased Participant's estate, or any other person having or claiming to have any interest under the Plan. The Administrative Committee shall have complete discretion and power to interpret the Plan and to decide all matters under the Plan. Any interpretation or decision by the Administrative Committee shall be final, conclusive and binding on all Participants and any person claiming under or through any Participant. Any individual serving on the Administrative Committee who also is a Participant shall not vote or act

on any matter relating solely to himself or herself. When making a determination or calculation, the Administrative Committee shall be entitled to rely on information furnished by a Participant or other person entitled to payment hereunder, or the Firm. The Administrative Committee shall adopt such claims procedures as it determines in its sole discretion may be necessary or appropriate for the proper determination of the rights of any Participant under this Plan.

### **8.2 Powers, Duties, Procedures, Etc.**

In exercising its powers and duties, the Administrative Committee may adopt such rules and procedures, appoint such officers or agents, delegate such powers and duties and receive such reimbursements and compensation, in each case, as it may establish or determine from time to time consistent with the provisions of the Plan.

### **8.3 Indemnification of Administrative Committee and Investment Committee**

No member of the Administrative Committee or Investment Committee or any employee, officer or director of the Firm (each such person, a "Covered Person") shall have any liability to any person (including any Participant) for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan. Each Covered Person shall be indemnified and held harmless by GS Inc. against and from: (a) any loss, cost, liability or expense (including attorneys' fees) that may be imposed upon or incurred by such Covered Person in connection with or resulting from any action, suit or proceeding to which such Covered Person may be a party or in which such Covered Person may be involved by reason of any action taken or omitted to be taken under the Plan and (b) any and all amounts paid by such Covered Person, with GS Inc.'s approval, in settlement thereof, or paid by such Covered Person in satisfaction of any judgment in any such action, suit or proceeding against such Covered Person, provided that GS Inc. shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and, once GS Inc. gives notice of its intent to assume the defense, GS Inc. shall have sole control over such defense with counsel of GS Inc.'s choice. The foregoing right of indemnification shall not be available to a Covered Person to the extent that a court of competent jurisdiction in a final judgment or other final adjudication, in either case not subject to further appeal, determines that the acts or omissions of such Covered Person giving rise to the indemnification claim resulted from such Covered Person's bad faith, fraud or willful criminal act or omission. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which Covered Persons may be entitled under GS Inc.'s Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws, as a matter of law, or otherwise, or any other power that GS Inc. may have to indemnify such persons or hold them harmless.

**ARTICLE 9  
AMENDMENT AND TERMINATION**

**9.1 Amendments**

Subject only to Section 9.3 hereof, GS Inc. shall have the right, in its sole discretion, to amend or modify the Plan in any respect from time to time, including in any manner that adversely affects the right of any Participant. Any such amendment may be effected by an action of the Board of Directors or the Compensation Policy Committee. In addition, and without limiting the foregoing, to the maximum extent permissible under Section 409A of the Code, the Administrative Committee shall have the right, in its sole discretion, to accelerate any payment to any or all Participants to any date or dates prior to the Distribution Date and to change any form of payment selected by a Participant under Section 7.1 hereof.

**9.2 Termination of Plan**

This Plan is a strictly voluntary undertaking on the part of GS Inc. and shall not be deemed to constitute a contract between GS Inc. and any Eligible Employee (or any other person). Subject only to Section 9.3 hereof, GS Inc. reserves the right to terminate the Plan at any time with respect to any or all Participants, in whole or in part, by an instrument in writing that has been executed on the Firm's behalf by its duly authorized officer. Upon termination, with respect to each Participant affected by any termination (an "Affected Participant") on a Participant-by-Participant basis the Firm shall, to the maximum extent permitted under Section 409A of the Code either: (a) elect to continue to maintain part or all of the Affected Participant's Account and pay amounts hereunder as they become due as if the Plan had not terminated; or (b) pay promptly to each Affected Participant (or such Affected Participant's estate) part or all of the balance of the Affected Participant's Account (or combine, in any manner, the alternatives described in Sections 9.2(a) and 9.2(b) hereof).

**9.3 Existing Rights**

No amendment or modification to, or termination of, the Plan shall be effective to the extent that it reduces the amount credited to a Participant's Account immediately prior to the amendment, modification or termination, without the Participant's prior written consent.

**ARTICLE 10  
MISCELLANEOUS**

**10.1 No Funding**

The Plan constitutes a mere promise by GS Inc. to make payments in accordance with the terms of the Plan, and Participants and beneficiaries shall have the status with respect to the amounts credited to their Accounts from time to time only of general unsecured creditors of GS Inc. Nothing in the Plan will be construed to give any Participant or any other person rights to any specific assets of GS Inc., the Firm or any

other person. In all events, it is the intent of GS Inc. that the Plan be treated in a manner consistent with the applicable provisions of Section 409A of the Code and be treated as unfunded for U.S. Federal tax purposes and for purposes of ERISA, and the Plan shall be interpreted accordingly.

## **10.2 Non-Assignability**

None of the benefits, payments, proceeds or claims of any Participant or any other person shall be subject to any claim of any creditor of any Participant or any other person and, in particular, such benefits, payments, proceeds or claims shall not be subject to attachment or garnishment or other legal process by any creditor of such Participant or other person, nor shall any Participant or any other person have any right to alienate, participate, hedge, commute, pledge, encumber or assign any of the benefits, payments, proceeds or claims that he or she may expect to receive, contingently or otherwise, under the Plan and any attempt to so alienate, participate, hedge, commute, pledge, encumber or assign any such benefit, payment, proceed or claim shall be null and void and of no force or effect.

## **10.3 Limitation of Participants' Rights**

Nothing contained in the Plan shall confer upon any person a right to continue to be employed by the Firm or shall affect any right the Firm may have to terminate or alter the terms and conditions of a Participant's employment.

## **10.4 Participants Bound**

Any action with respect to the Plan taken by the Administrative Committee, the Investment Committee, the Compensation Policy Committee, the Board of Directors, the Firm or any action authorized by or taken at the direction of any of them, shall be final, binding and conclusive upon all Participants (and any other persons).

## **10.5 Benefits Conditioned on Release**

Any payment to any Participant made in accordance with the provisions of the Plan shall, to the extent thereof, be in full satisfaction of all claims against the Firm, the Plan, the Administrative Committee and the Investment Committee. The Administrative Committee may require a Participant, as an express condition precedent to any payment hereunder, to execute a release to such effect. If any Participant or other person entitled to payment hereunder is determined by the Administrative Committee to be incompetent by reason of physical or mental disability to give a valid release, the Administrative Committee may cause the payment or payments becoming due to such person to be made to another person for his or her benefit without responsibility on the part of the Administrative Committee, the Firm or any other person to follow the application or use of such funds.

## 10.6 Arbitration; Choice of Forum

(a) Any dispute, controversy or claim between the Firm and a Participant arising out of or relating to or concerning the Plan shall be finally settled by arbitration in New York City before, and in accordance with the rules then obtaining of, the New York Stock Exchange, Inc. (the "NYSE") or, if the NYSE declines to arbitrate the matter (or if the matter otherwise is not arbitrable by it), the American Arbitration Association (the "AAA") in accordance with the commercial arbitration rules of the AAA. Prior to arbitration, all claims maintained by a Participant or any other person must first be submitted to the Administrative Committee in accordance with claims procedures determined by the Administrative Committee. This Paragraph is subject to the provisions of Paragraphs (b) and (c) below.

**(b) THE FIRM AND EACH PARTICIPANT SHALL IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE CITY OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN THAT IS NOT OTHERWISE ARBITRATED OR RESOLVED ACCORDING TO PARAGRAPH 10.6(a) HEREOF.** This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. The Firm and each Participant, by requesting to participate in the Plan, acknowledge that the forum designated by this Paragraph (b) has a reasonable relation to the Plan and to the Participant's relationship with the Firm. Notwithstanding the foregoing, nothing herein shall preclude the Firm from bringing any action or proceeding in any other court for the purpose of enforcing the provisions of this Section 10.6 or otherwise.

(c) This provision as to forum is independent of the law that may be applied in the suit, action or proceeding, and each Participant, by requesting to participate in the Plan, and the Firm agrees to such forum even if the forum may under applicable law choose to apply non-forum law. Each Participant, by requesting to participate in the Plan and the Firm hereby waive, to the fullest extent permitted by applicable law, any objection which the Participant or the Firm now or hereafter may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Paragraph (b) of this Section 10.6. Each Participant, by requesting to participate in the Plan, and the Firm undertake not to commence any suit, action or proceeding arising out of or relating to or concerning the Plan in any forum other than a forum described in this Section 10.6. Each Participant, by requesting to participate in the Plan, and the Firm agree that, to the fullest extent permitted by applicable law, a final and non-appealable judgment in any such suit, action or proceeding in any such court shall be conclusive and binding upon the Participant and the Firm.

(d) Each Participant, by requesting to participate in the Plan, irrevocably appoints the General Counsel of GS Inc. as the Participant's agent for service of process in connection with any action or proceeding arising out of or relating to or concerning the Plan that is not arbitrated pursuant to the provisions of this Section 10.6, who shall promptly advise the Participant of any such service of process.



(e) Each Participant, by requesting to participate in the Plan, agrees to keep confidential the existence of, and any information concerning, a dispute, controversy or claim described in this Section 10.6, except that a Participant may disclose information concerning such dispute, controversy or claim to the arbitrator or court that is considering such dispute, controversy or claim or to his or her legal counsel (provided that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute, controversy or claim).

### **10.7 Governing Law**

The Plan shall be construed, administered and governed in all respects under and by the laws of the State of New York, without reference to the principles of conflicts of law (except if and to the extent preempted by applicable Federal law). It is the intent of GS Inc. that this Plan be considered and interpreted in all respects as part of a bonus plan within the meaning of U. S. Department of Labor Regulation Section 2510.3-2(c) and not in any respect as an employee pension plan for purposes of ERISA. If and to the extent that any portion of this Plan shall be determined to be an employee pension benefit plan subject to ERISA, then such portion shall be considered a separate plan covering only those Participants as to whom this Plan is determined to be a pension plan. Such pension plan shall in all respects be considered and interpreted as a plan which is unfunded and maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees and exempt from coverage of Parts 1, 2, 3 and 4 of Subtitle B of Title I of ERISA to the maximum extent permissible under the provisions thereof. Further, it is the intent of GS Inc. that this Plan be considered and interpreted in all respects as a nonqualified deferred compensation plan satisfying the requirements of Section 409A of the Code and deferring the recognition of income by Participants in respect of Deferrals until amounts are actually paid to them pursuant to Article 7.

### **10.8 Certain Consents**

As a condition of participating in the Plan, each Eligible Employee wishing to make a Deferral Request, and each Participant, shall be required to sign such documents, make such representations and sign such consents, including, without limitation, signing any consent or taking any other action necessary for the Firm to insure the life of the Participant and name itself as beneficiary to the extent deemed necessary or appropriate of such insurance.

Without limiting the foregoing, by submitting a Deferral Request Form, a Participant will have irrevocably agreed to consent to (i) the Firm's supplying to any third party recordkeeper such personal information as the Administrative Committee deems advisable to administer the Plan, (ii) the Firm's deducting amounts from the Participant's wages to reimburse the Firm for any advances made on the Participant's behalf to satisfy any withholding and other tax obligations, (iii) the Firm's deducting or withholding from any payment or distribution to the Participant, whether or not pursuant to the Plan, the amount of any taxes (including, without limitation, FICA, National Insurance Contributions, if applicable, or social insurance taxes) the Administrative Committee

determines apply in connection with any Deferral or distribution under the Plan and (iv) withholding from any distribution under the Plan any amount the Administrative Committee determines is payable by the Participant to the Firm.

### **10.9 Currency Conversions**

The Administrative Committee, in its discretion, shall have the authority to prescribe such rules and procedures as it may deem appropriate for purposes of converting any currency into another currency for purposes of the Plan including, without limitation, for purposes of determining (i) the Minimum Deferral Amount, (ii) the Maximum Deferral Amount, (iii) the Maximum Aggregate Deferral Amount, (iv) the amount of any Eligible Employee's Deferral, (v) the amount of any investment gains or losses to be allocated to a Participant's Account, (vi) the amount of any distribution, (vii) the amount of any Participant's Eligible Compensation and (viii) the amount of any Participant's Minimum Eligible Compensation. The determination of the exchange rate by the Administrative Committee shall be conclusive.

### **10.10 Non-Uniform Determinations**

None of the Administrative Committee's determinations under the Plan need to be uniform and any such determinations may be made by it selectively among persons who make Deferral Requests under the Plan (whether or not such persons are similarly situated). Without limiting the generality of the foregoing, the Administrative Committee shall be entitled, among other things, to make non-uniform and selective determinations with regard to Deferrals, currency conversions and availability of Notional Investments, and to enter into non-uniform and selective Deferral Requests, as to (a) the persons permitted to make Deferrals, (b) the terms and provisions of any Deferral, (c) whether a Participant's employment with the Firm has been terminated for purposes of the Plan and (d) any adjustments to be made with respect to any Deferral as described herein or otherwise.

### **10.11 Severability; Entire Agreement**

If any of the provisions of this Plan is finally held to be invalid, illegal or unenforceable (whether in whole or in part), such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions shall not be affected thereby. Each Participant, by requesting to participate in the Plan, acknowledges that the Plan contains the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior agreements, promises, covenants, arrangements, communications, representations and warranties between them, whether written or oral with respect to the subject matter thereof.

### **10.12 No Third Party Beneficiaries**

The Plan shall not confer on any person other than the Firm and the Participants any rights or remedies thereunder; provided that the exculpation and indemnification provisions of Section 8.3 shall inure to the benefit of a Covered Person's estate, beneficiaries and legatees.

### **10.13 Headings and Subheadings**

Headings and subheadings in this Plan are inserted for convenience only and are not to be considered in the construction of the provisions hereof.

**THE GOLDMAN SACHS GROUP, INC.  
NON-QUALIFIED DEFERRED COMPENSATION PLAN  
FOR  
U.K. PARTICIPATING MANAGING DIRECTORS**

**ARTICLE 1  
INTRODUCTION**

**1.1 Purpose of Plan**

The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.K. Participating Managing Directors is intended to promote the interests of GS Inc. and its shareholders by encouraging certain Eligible Employees to remain in the employ of the Firm by providing them with a means by which they may request to defer receipt of a portion of their Eligible Compensation.

**ARTICLE 2  
DEFINITIONS**

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning clearly is required by the context:

**2.1 Account** means, for each Participant, a notional account maintained on the books and records of GS Inc. (by GS Inc. or such third party record keeper or record keepers as GS Inc. may from time to time appoint) that is established for his or her benefit and as to which amounts are credited under Section 5.1.

**2.2 Administrative Committee** means the person or persons designated by the Compensation Policy Committee or the Board of Directors with the authority to perform day-to-day administrative functions for the Plan. If no such person is so serving at any time, the Compensation Policy Committee shall be the Administrative Committee.

**2.3 Board of Directors** means the Board of Directors of GS Inc.

**2.4 Compensation Policy Committee** means the GS Inc. Compensation Policy Committee, as it may be constituted from time to time.

**2.5 Code** means the Internal Revenue Code of 1986. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

**2.6 Deferral** means the portion of a Participant's Eligible Compensation that is deferred in accordance with Section 4.1 hereof.

**2.7 Deferral Date** means, with respect to each Plan Year, the earliest date GS Inc. determines that Eligible Compensation subject to a Deferral Request would have been paid to the Eligible Employee in the absence of the Plan, or such other date or dates as may be selected by the Administrative Committee in its sole discretion prior to the date Deferral Requests are required to be returned to the Administrative Committee for a Plan Year.

**2.8 Deferral Request** means any request by a Participant to make a Deferral hereunder by submitting a Deferral Request Form in accordance with Section 4.1 hereof.

**2.9 Deferral Request Form** means the form (which may be in electronic form) specified by the Administrative Committee from time to time pursuant to which an Eligible Employee can make a Deferral Request.

**2.10 Distribution Date** means, with respect to each Deferral made by a Participant, the date on which an amount shall become payable to a Participant in accordance with Article 7 hereof.

**2.11 Effective Date** means November 27, 2004, the date as of which the Plan first became effective.

**2.12 Eligible Compensation** means, for each Eligible Employee, with respect to each Plan Year the amount the Firm determines in its sole discretion otherwise would have been payable to the Eligible Employee as a gross end-of-year bonus (excluding any amounts payable to the Eligible Employee that are directly attributable to the

performance of services prior to the beginning of such Plan Year), and before giving effect to any Deferral, but after giving effect to: (i) any pension or retirement contribution or the cost of contribution by the Firm for any public or private employee benefit plan (including, without limitation, in the United States, any contribution to the Money Purchase Plan or any “voluntary contribution election” under The Goldman Sachs Employees’ Profit Sharing Retirement Income Plan,” (as defined in that plan) if applicable to you); (ii) any amount the Firm decides to contribute as part of compensation to the Goldman Sachs UK Retirement Plan or GSI International Pension Plan or any other plan maintained outside the United States primarily for non-U.S. citizens or residents that the Administrative Committee determines is similar thereto; (iii) the value of any award recommendation in respect of any plan or arrangement the Firm determines is similar to The Goldman Sachs UK Conditional Share Reward Plan, including, without limitation, any such plan or arrangement involving the establishment and funding of an “employee benefit trust” in the United Kingdom; and (iv) any request to participate in the Firm’s PMD Discount Stock Program on a pre-tax (but not after-tax) basis. Unless otherwise permitted by the Administrative Committee, no year-end award granted under The Goldman Sachs Amended and Restated Stock Incentive Plan, as in effect from time to time, shall constitute Eligible Compensation. Notwithstanding the foregoing, the Administrative Committee, in its discretion, with respect to any Eligible Employee or Eligible Employees (on a uniform or non-uniform basis) shall have the authority to (a) designate any jurisdiction or jurisdictions from which amounts earned by any Eligible Employee will be excluded from Eligible Compensation and (b) include or exclude, as the case may be, any amounts that otherwise would be excluded or included, as the case may be, in any Eligible Employee’s Eligible Compensation.

**2.13 Eligible Employee** means, unless otherwise provided by the Administrative Committee, in a Plan Year, any UK Employee (i) who is a participant in The Goldman Sachs Partner Compensation Plan (“PCP”) or The Goldman Sachs Restricted Partner Compensation Plan (“RPCP”), (ii) who earned Minimum Eligible Compensation for either or both of the immediately preceding Plan Year or the second preceding Plan Year, (iii) who is designated by the Administrative Committee as eligible to participate in the Plan or is a member of a class of employees who is designated by the Administrative Committee as eligible to participate in the Plan for the Plan Year and (iv) who is not eligible to make a deferral under The Goldman Sachs Group, Inc., Non-Qualified Deferred Compensation Plan for U.S. Participating Managing Directors. The Administrative Committee may, in its sole discretion, add or exclude any individual or any member of a class of individuals from being considered an Eligible Employee. An individual shall first be considered an Eligible Employee on the date he or she first receives written notification from the Administrative Committee that he or she is eligible to participate in the Plan. Unless otherwise provided by the Administrative Committee (including, by reason of legal, tax or other regulatory restrictions or impediments to the individual or to the Firm arising out of a country other than the United States or United Kingdom), an individual that is an Eligible Employee for any Plan Year shall, for any subsequent Plan Year in which he or she participates in the PCP or RPCP, be eligible to participate in the Plan (or, an “Eligible Employee” under The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Participating Managing

Directors, if such person becomes in such year a resident for tax purposes in the United States).

**2.14 ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to any section or subsection of ERISA includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such section or subsection.

**2.15 Firm** means GS Inc. and its subsidiaries and affiliates.

**2.16 GS Inc.** means The Goldman Sachs Group, Inc., and any successor thereto.

**2.17 Investment Committee** means a committee of two or more individuals selected by the Administrative Committee, which shall have the authority to select the Notional Investments that are made available from time to time under the Plan.

**2.18 Maximum Aggregate Deferral Amount** means, with respect to each Plan Year, \$100 million or such other amount as may be determined by GS Inc. from time to time, which shall be the maximum total of all Deferrals for all Participants permitted under the Plan for such Plan Year. GS Inc. may, in its discretion, (i) aggregate the Plan with such other deferred compensation plan or plans as it may determine for purposes of applying the Maximum Aggregate Deferral Amount and (ii) allocate the Maximum Aggregate Deferral Amount among the Plan and any deferred compensation plans that are so aggregated with the Plan in any manner deemed appropriate by it.

**2.19 Maximum Deferral Amount** means, unless otherwise determined by GS Inc., with respect to each Participant for each Plan Year, the lesser of: (i) 50% of the Participant's Eligible Compensation and (ii) £700,000.

**2.20 Minimum Deferral Amount** means, with respect to each Participant for each Plan Year, £52,500 or such other amount as may be determined by the Administrative Committee prior to the date Deferral Request Forms are required to be returned to the Administrative Committee for a Plan Year, which shall be the minimum amount that a Participant may request as a Deferral for a Plan Year.

**2.21 Minimum Eligible Compensation** means total compensation of at least USD \$200,000 or such other amount as may be determined by the Administrative Committee.

**2.22 Money Purchase Plan** means The Goldman Sachs Money Purchase Pension Plan, as amended from time to time, or any successor thereto.

**2.23 Notional Investment** means a hypothetical investment made available under the Plan by the Investment Committee from time to time in which a Participant's Account may be deemed to be invested in whole or in part in accordance with Sections 5.2 and 5.3 hereof in order to measure the value of the Account.

**2.24 Participant** means any Eligible Employee who participates in the Plan in accordance with Article 3.

**2.25 Plan** means The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.K. Participating Managing Directors.

**2.26 Plan Year** means the 12-month period that coincides with GS Inc.'s fiscal year.

**2.27 Total and Permanent Disability** means, with respect to any Participant, if such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for not less than 3 months under any accident or health plan covering employees of the Firm.

**2.28 U.K. Employee** means a person:

(a) who has or is expected to perform duties in the United Kingdom for a substantially continuous period of at least three months and all or substantially all of his remuneration and other costs of his employment are paid by or charged to a business, directly or indirectly, which is subject to U.K. corporation tax; or

(b) all or substantially all of whose duties under his employment contract during a Plan Year are to be performed in the United Kingdom; or

(c) is designated by the Administrative Committee as a U.K. Employee.

A person will not be a U.K. Employee for the relevant Plan Year if he is, at any time during that Plan Year, resident for tax purposes in the United States.

### **ARTICLE 3 PARTICIPATION**

#### **3.1 Commencement of Participation**

Any Eligible Employee who requests to defer part of his or her Eligible Compensation in accordance with Article 4 shall, if and to the extent the Firm, in its discretion, agrees to follow the request, become a Participant in the Plan as of the first Deferral Date as of which a Deferral is credited to the Eligible Employee's Account in accordance with Section 4.2.



### **3.2 Continued Participation**

A Participant in the Plan shall continue to be a Participant so long as any amount remains credited to his or her Account.

## **ARTICLE 4 DEFERRALS**

### **4.1 Deferral Request Form**

Subject to the provisions of Article 4 hereof, for each Plan Year for which the Plan is in effect, an Eligible Employee may, by properly completing a Deferral Request Form and filing it with the Administrative Committee not later than the date specified by the Administrative Committee and, before the amount of the Eligible Compensation to which the Deferral relates has been determined, request that a Deferral be made on his or her behalf, on such terms as the Administrative Committee may permit in its sole discretion. The Firm may, in its sole discretion, determine whether or not to follow any Deferral Request with respect to any Eligible Employee.

### **4.2 Mechanics of Deferral**

Subject to the provisions of this Article 4, if and to the extent the Firm determines to follow a Deferral Request, an Eligible Employee's Eligible Compensation shall be reduced in accordance with the Participant's Deferral Request, and the amount of the resulting Deferral shall be credited to the Participant's Account as of the Deferral Date.

### **4.3 Minimum Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, no Deferral shall be for an amount and no Deferral Request shall be valid to the extent that it specifies an amount less than the Minimum Deferral Amount for the applicable Plan Year.

### **4.4 Maximum Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, no Deferral shall be for an amount in excess of the Maximum Deferral Amount. If any amount specified on a Deferral Request Form as a Deferral would exceed the Maximum Deferral Amount, such Deferral Request Form shall be deemed to have specified the Maximum Deferral Amount.

### **4.5 Maximum Aggregate Deferral Amount**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, if and to the extent that the aggregate amounts specified on all Deferral Request Forms in a Plan Year that the Firm determines to follow exceed the Maximum Aggregate Deferral Amount, the amounts specified on each Participant's Deferral Request Form shall be reduced, and each Participants' Deferrals shall be reduced, under a formula or method

determined by the Administrative Committee in its sole discretion, including, without limitation, a *pro rata* reduction to the ratio of the Maximum Aggregate Deferral Amount to the aggregate of the amounts specified by all Participants' on their Deferral Request Forms so that the aggregate Deferrals of all Participants do not exceed the Maximum Aggregate Deferral Amount; provided that no Participant's Deferral shall be reduced to an amount below the Minimum Deferral Amount.

#### **4.6 Deferral Request Irrevocable**

Except to the extent determined by the Administrative Committee (but in no event later than the date on which all Deferral Request Forms must be returned to the Administrative Committee for a Plan Year), all Deferral Requests shall be irrevocable when made, and no Participant may change or revoke his or her Deferral Request with respect to Eligible Compensation payable for a Plan Year.

### **ARTICLE 5 ACCOUNTS**

#### **5.1 Accounts**

The Administrative Committee shall maintain an Account for each Participant that reflects each Participant's Deferrals and any adjustments determined in accordance with Section 5.2, forfeitures and any payments made under Article 7 with respect to the Account. The Administrative Committee shall provide each Participant with a periodic statement of his or her Account adjusted in accordance with Section 5.2.

#### **5.2 Adjustment of Accounts**

The amount of each Participant's Deferral for a Plan Year shall be credited to the Participant's Account as of the applicable Deferral Date. The Participant's Account shall be adjusted from time to time to reflect: (i) Deferrals for subsequent Plan Years, if any; (ii) gains (or losses) determined as if the Account were invested directly in the Notional Investment or Notional Investments selected by the Participant (without taking into account any tax consequences that may have arisen were the Account so directly invested); (iii) the amount described in Section 7.5; (iv) any payments under Article 7 in respect of a Deferral; and (v) any administrative charge determined by the Compensation Policy Committee or Administrative Committee in its sole discretion to be appropriate to cover part or all of the cost to the Firm of making the Plan available to Participants or otherwise maintaining the Plan.

#### **5.3 Notional Investments**

(a) The Notional Investment or Notional Investments that shall be available under the Plan shall be determined from time to time by the Investment Committee in its sole discretion. The Investment Committee may, in its sole discretion, provide limitations or procedures on the availability of any Notional Investment or Notional Investments with respect to any Participant or class of Participants. The Investment Committee may modify, amend, eliminate or replace any or all of the Notional

Investments that may be available under the Plan to Plan Participants or any of them, in any manner in its sole discretion at any time from time to time with or without notice to the Participants and effective retroactively or prospectively, subject to Section 9.3 hereof.

(b) In selecting any Notional Investment or Notional Investments to be made available under the Plan or prescribing any rules related thereto, the Investment Committee and the Administrative Committee shall be acting solely on behalf of the Firm and not as a fiduciary or adviser with respect to any Deferral, any Participant or any other person employed by the Firm or in respect of any Account. Each Participant, by requesting to participate in the Plan, agrees that none of the Investment Committee, the Administrative Committee, the Compensation Policy Committee, GS Inc., the Firm or any other person shall have any liability whatsoever to any Participant or any other person as a result of, arising out of or related to the selection or elimination or modification of Notional Investments, any monitoring of any such Notional Investment or any Participant's selection or failure to select any Notional Investment.

(c) The Administrative Committee or the Investment Committee may adopt such rules and administrative practices as they, in their sole discretion, shall deem necessary or appropriate in connection with any Participant's ability to select Notional Investments hereunder, including restrictions on the timing or frequency of such selections; all such Notional Investment selections shall be made in such form as may be required by the Administrative Committee from time to time.

## **ARTICLE 6 VESTING**

### **6.1 Accounts Generally Vested**

Without limiting Section 7.6 or Section 10.1, each Participant shall be immediately vested in, and shall have a nonforfeitable right to the balance credited to, the Participant's Account subject to the terms of the Plan, including without limitation Section 7.5 hereof.

## **ARTICLE 7 PAYMENTS**

### **7.1 Commencement and Form of Payment**

The Participant shall receive a payment of the entire portion of the Participant's Account attributable to a Deferral in a single lump sum within 30 business days after the applicable Distribution Date.

### **7.2 Distribution Date**

In accordance with procedures established by the Administrative Committee in its sole discretion, at the time each Participant makes a Deferral Request, the Participant shall select a Distribution Date with respect to a Deferral. Unless otherwise determined by

the Administrative Committee in its sole discretion, a Participant shall only be permitted to request as a Distribution Date with respect to a Deferral an anniversary of the Deferral Date beginning with the third anniversary and ending with the tenth anniversary.

### **7.3 Death and Total and Permanent Disability**

(a) If a Participant dies prior to the payment of the entire balance credited to his or her Account, unless otherwise determined by the Administrative Committee, and notwithstanding any Participant's request pursuant to Section 7.2, the amount credited to his or her Account shall be paid as soon as practicable to the representative of the Participant's estate. No payment shall be made to the representative of a Participant's estate until the Administrative Committee shall have been furnished with such evidence and other documentation as it shall deem necessary or appropriate to establish the validity of the payment.

(b) If a Participant has a Total and Permanent Disability prior to the payment of the entire balance credited to his or her Account, unless otherwise determined by the Administrative Committee and notwithstanding any Participant's request pursuant to Section 7.2, such balance shall be paid as soon as practicable to the Participant or if the Participant is determined by the Administrative Committee, in its sole discretion, to be incompetent by reason of physical or mental disability, to another person for the benefit of the Participant, without responsibility on the part of the Administrative Committee, the Firm or any other person to monitor the application or use of such funds. No payment shall be made to the Participant or such other person until the Administrative Committee shall have been furnished with such evidence and other documentation as it shall deem necessary or appropriate to establish the validity of the payment.

### **7.4 Taxes and Social Security**

All Federal, State, foreign, local, hypothetical or other taxes, or social security or social insurance charges, if any, that are required to be withheld in respect of any Deferrals hereunder or from any payments made pursuant to this Article 7 shall be withheld from amounts payable hereunder or from any other amounts payable to a Participant by any person.

### **7.5 Certain Account Adjustments**

Unless otherwise determined by GS Inc., the amount payable on a Distribution Date to any Participant under the Plan shall be net of, and a Participant's Account shall be adjusted to reflect on such Distribution Date, any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, or amounts repayable to the Firm pursuant to tax equalization, housing, automobile or other employee programs) the Participant owes to the Firm (including by reason of any obligations of such Participant under any Firm sponsored investment program, including under the Firm's "Special Investments Program"), any amounts owed to the Firm by reason of such Participant's misconduct with respect to such Participant's employment

with the Firm, including, without limitation, the Participant's misappropriation of funds or other property from the Firm, and any amount the Administrative Committee otherwise deems appropriate pursuant to any tax equalization policy or agreement or otherwise applicable as of such Distribution Date. Each Participant shall be required, as a condition to participation in the Plan, to sign such documents, and make such representations and consents, to the extent deemed necessary or appropriate by the Administrative Committee, to comply with this Section 7.5.

#### **7.6 Certain Delayed Payments to Covered Employees**

Notwithstanding anything herein or in any Deferral Request Form to the contrary, if and to the extent that GS Inc. determines, in its sole discretion, that GS Inc.'s or the Firm's U.S. Federal tax deduction in respect of a payment under the Plan may be limited as a result of Section 162(m) of the Code or any successor section of the Code, the Administrative Committee may delay such Payment until such time or times as GS Inc. or the Administrative Committee determines, in its sole discretion, that neither GS Inc.'s nor the Firm's deduction for any such payment will be limited as a result of Section 162(m) of the Code or any successor section of the Code and as are consistent with Section 409A of the Code.

#### **7.7 Payment Currency**

Unless otherwise determined by the Administrative Committee in its discretion, any payments under the Plan shall be made in the same currency in which the Participant's bonus or commissions otherwise would have been paid, in the absence of the Plan.

### **ARTICLE 8 ADMINISTRATIVE COMMITTEE; INDEMNIFICATION**

#### **8.1 Plan Administration and Interpretation**

The Plan shall be administered by the Administrative Committee. The Administrative Committee shall have complete control and authority to administer the Plan, and authority to determine the rights and benefits and all claims, demands and actions arising out of the provisions of the Plan of any Participant, representative of a deceased Participant's estate, or any other person having or claiming to have any interest under the Plan. The Administrative Committee shall have complete discretion and power to interpret the Plan and to decide all matters under the Plan. Any interpretation or decision by the Administrative Committee shall be final, conclusive and binding on all Participants and any person claiming under or through any Participant. Any individual serving on the Administrative Committee who also is a Participant shall not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Administrative Committee shall be entitled to rely on information furnished by a Participant or other person entitled to payment hereunder, or the Firm. The Administrative Committee shall adopt such claims procedures as it determines in its

sole discretion may be necessary or appropriate for the proper determination of the rights of any Participant under this Plan.

## **8.2 Powers, Duties, Procedures, Etc.**

In exercising its powers and duties, the Administrative Committee may adopt such rules and procedures, appoint such officers or agents, delegate such powers and duties and receive such reimbursements and compensation, in each case, as it may establish or determine from time to time consistent with the provisions of the Plan.

## **8.3 Indemnification of Administrative Committee and Investment Committee**

No member of the Administrative Committee or Investment Committee or any employee, officer or director of the Firm (each such person, a "Covered Person") shall have any liability to any person (including any Participant) for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan. Each Covered Person shall be indemnified and held harmless by GS Inc. against and from (a) any loss, cost, liability or expense (including attorneys' fees) that may be imposed upon or incurred by such Covered Person in connection with or resulting from any action, suit or proceeding to which such Covered Person may be a party or in which such Covered Person may be involved by reason of any action taken or omitted to be taken under the Plan and (b) any and all amounts paid by such Covered Person, with GS Inc.'s approval, in settlement thereof, or paid by such Covered Person in satisfaction of any judgment in any such action, suit or proceeding against such Covered Person, provided that GS Inc. shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and, once GS Inc. gives notice of its intent to assume the defense, GS Inc. shall have sole control over such defense with counsel of GS Inc.'s choice. The foregoing right of indemnification shall not be available to a Covered Person to the extent that a court of competent jurisdiction in a final judgment or other final adjudication, in either case not subject to further appeal, determines that the acts or omissions of such Covered Person giving rise to the indemnification claim resulted from such Covered Person's bad faith, fraud or willful criminal act or omission. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which Covered Persons may be entitled under GS Inc.'s Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws, as a matter of law, or otherwise, or any other power that GS Inc. may have to indemnify such persons or hold them harmless.

## **ARTICLE 9 AMENDMENT AND TERMINATION**

### **9.1 Amendments**

Subject only to Section 9.3 hereof, GS Inc. shall have the right, in its sole discretion, to amend or modify the Plan in any respect from time to time, including in any manner that adversely affects the right of any Participant. Any such amendment may be effected by an action of the Board of Directors or the Compensation Policy Committee. In addition

to, and without limiting the foregoing, the Administrative Committee shall have the right, in its sole discretion, to accelerate any payment to any or all Participants to any date or dates prior to the Distribution Date.

## **9.2 Termination of Plan**

This Plan is a strictly voluntary undertaking on the part of GS Inc. and shall not be deemed to constitute a contract between GS Inc. and any Eligible Employee (or any other person). Subject only to Section 9.3 hereof, GS Inc. reserves the right to terminate the Plan at any time with respect to any or all Participants, in whole or in part, by an instrument in writing that has been executed on the Firm's behalf by its duly authorized officer. Upon termination, with respect to each Participant affected by any termination (an "Affected Participant") on a Participant-by-Participant basis the Firm shall either: (a) elect to continue to maintain part or all of the Affected Participant's Account and pay amounts hereunder as they become due as if the Plan had not terminated; or (b) pay promptly to each Affected Participant (or such Affected Participant's estate) part or all of the balance of the Affected Participant's Account (or combine, in any manner, the alternatives described in Sections 9.2(a) and 9.2(b) hereof).

## **9.3 Existing Rights**

No amendment or modification to, or termination of, the Plan shall be effective to the extent that it reduces the amount credited to a Participant's Account immediately prior to the amendment, modification or termination, without the Participant's prior written consent.

# **ARTICLE 10 MISCELLANEOUS**

## **10.1 No Funding**

The Plan constitutes a mere promise by GS Inc. to make payments in accordance with the terms of the Plan, and Participants and beneficiaries shall have the status with respect to the amounts credited to their Accounts from time to time only of general unsecured creditors of GS Inc. Nothing in the Plan will be construed to give any Participant or any other person rights to any specific assets of GS Inc., the Firm or any other person. In all events, it is the intent of GS Inc. that the Plan be treated in a manner consistent with the applicable provisions of Section 409A of the Code and be treated as unfunded for U.S. Federal tax purposes and for purposes of ERISA, and the Plan shall be interpreted accordingly.

## **10.2 Non-Assignability**

None of the benefits, payments, proceeds or claims of any Participant or any other person shall be subject to any claim of any creditor of any Participant or any other person and, in particular, such benefits, payments, proceeds or claims shall not be subject to attachment or garnishment or other legal process by any creditor of such

Participant or other person, nor shall any Participant or any other person have any right to alienate, participate, hedge, commute, pledge, encumber or assign any of the benefits, payments, proceeds or claims that he or she may expect to receive, contingently or otherwise, under the Plan and any attempt to so alienate, participate, hedge, commute, pledge, encumber or assign any such benefit, payment, proceed or claim shall be null and void and of no force or effect.

### **10.3 Limitation of Participants' Rights**

Nothing contained in the Plan shall confer upon any person a right to continue to be employed by the Firm or shall affect any right the Firm may have to terminate or alter the terms and conditions of a Participant's employment.

### **10.4 Participants Bound**

Any action with respect to the Plan taken by the Administrative Committee, the Investment Committee, the Compensation Policy Committee, the Board of Directors, the Firm or any action authorized by or taken at the direction of any of them, shall be final, binding and conclusive upon all Participants (and any other persons).

### **10.5 Benefits Conditioned on Release**

Any payment to any Participant made in accordance with the provisions of the Plan shall, to the extent thereof, be in full satisfaction of all claims against the Firm, the Plan, the Administrative Committee and the Investment Committee. The Administrative Committee may require a Participant, as an express condition precedent to any payment hereunder, to execute a release to such effect. If any Participant or other person entitled to payment hereunder is determined by the Administrative Committee to be incompetent by reason of physical or mental disability to give a valid release, the Administrative Committee may cause the payment or payments becoming due to such person to be made to another person for his or her benefit without responsibility on the part of the Administrative Committee, the Firm or any other person to follow the application or use of such funds.

### **10.6 Arbitration; Choice of Forum**

(a) Any dispute, controversy or claim between the Firm and a Participant arising out of or relating to or concerning the Plan shall be finally settled by arbitration in New York City before, and in accordance with the rules then obtaining of, the New York Stock Exchange, Inc. (the "NYSE") or, if the NYSE declines to arbitrate the matter (or if the matter otherwise is not arbitrable by it), the American Arbitration Association (the "AAA") in accordance with the commercial arbitration rules of the AAA. Prior to arbitration, all claims maintained by a Participant or any other person must first be submitted to the Administrative Committee in accordance with claims procedures determined by the Administrative Committee. This Paragraph is subject to the provisions of Paragraphs (b) and (c) below.



**(b) THE FIRM AND EACH PARTICIPANT SHALL IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE CITY OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN THAT IS NOT OTHERWISE ARBITRATED OR RESOLVED ACCORDING TO PARAGRAPH 10.6(a) HEREOF.** This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. The Firm and each Participant, by requesting to participate in the Plan, acknowledge that the forum designated by this Paragraph (b) has a reasonable relation to the Plan and to the Participant's relationship with the Firm. Notwithstanding the foregoing, nothing herein shall preclude the Firm from bringing any action or proceeding in any other court for the purpose of enforcing the provisions of this Section 10.6 or otherwise.

(c) This provision as to forum is independent of the law that may be applied in the suit, action or proceeding, and each Participant, by requesting to participate in the Plan, and the Firm agrees to such forum even if the forum may under applicable law choose to apply non-forum law. Each Participant, by requesting to participate in the Plan, and the Firm hereby waive, to the fullest extent permitted by applicable law, any objection which the Participant or the Firm now or hereafter may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Paragraph (b) of this Section 10.6. Each Participant, by requesting to participate in the Plan, and the Firm undertake not to commence any suit, action or proceeding arising out of or relating to or concerning the Plan in any forum other than a forum described in this Section 10.6. Each Participant, by requesting to participate in the Plan, and the Firm agree that, to the fullest extent permitted by applicable law, a final and non-appealable judgment in any such suit, action or proceeding in any such court shall be conclusive and binding upon the Participant and the Firm.

(d) Each Participant, by requesting to participate in the Plan, irrevocably appoints the General Counsel of GS Inc. as the Participant's agent for service of process in connection with any action or proceeding arising out of or relating to or concerning the Plan that is not arbitrated pursuant to the provisions of this Section 10.6, who shall promptly advise the Participant of any such service of process.

(e) Each Participant, by requesting to participate in the Plan, agrees to keep confidential the existence of, and any information concerning, a dispute, controversy or claim described in this Section 10.6, except that a Participant may disclose information concerning such dispute, controversy or claim to the arbitrator or court that is considering such dispute, controversy or claim or to his or her legal counsel (provided that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute, controversy or claim).

## **10.7 Governing Law**

The Plan shall be construed, administered and governed in all respects under and by the laws of the State of New York, without reference to the principles of conflicts of law (except if and to the extent preempted by applicable Federal law). It is the intent of GS

Inc. that this Plan be considered and interpreted as a plan maintained outside the United States primarily for the benefit of nonresident aliens of the United States. If and to the extent any portion of the Plan is not so treated it shall be treated in all respects as part of a bonus plan within the meaning of U. S. Department of Labor Regulation Section 2510.3-2(c) and not in any respect as an employee pension plan for purposes of ERISA. If and to the extent that any portion of this Plan shall be determined to be an employee pension benefit plan subject to ERISA, then such portion shall be considered a separate plan covering only those Participants as to whom this Plan is determined to be a pension plan. Such pension plan shall in all respects be considered and interpreted as a plan which is unfunded and maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees and exempt from coverage of Parts 1, 2, 3 and 4 of Subtitle B of Title I of ERISA to the maximum extent permissible under the provisions thereof. Further, it is the intent of GS Inc. that this Plan be considered and interpreted in all respects as a nonqualified deferred compensation plan satisfying the requirements of Section 409A of the Code and deferring the recognition of income by Participants in respect of Deferrals until amounts are actually paid to them pursuant to Article 7.

### **10.8 Certain Consents**

As a condition of participating in the Plan, each Eligible Employee wishing to make a Deferral Request, and each Participant, shall be required to sign such documents, make such representations and sign such consents, including, without limitation signing any consent or taking any other action necessary for the Firm to insure the life of the Participant and name itself as beneficiary to the extent deemed necessary or appropriate of such insurance.

Without limiting the foregoing, by submitting a Deferral Request Form, a Participant will have irrevocably agreed to consent to (i) the Firm's supplying to any third party recordkeeper such personal information as the Administrative Committee deems advisable to administer the Plan, (ii) the Firm's deducting amounts from the Participant's wages to reimburse the Firm for any advances made on the Participant's behalf to satisfy any withholding and other tax obligations, (iii) the Firm's deducting or withholding from any payment or distribution to the Participant, whether or not pursuant to the Plan, the amount of any taxes (including, without limitation, FICA, National Insurance Contributions or social insurance taxes) the Administrative Committee determines apply in connection with any Deferral or distribution under the Plan and (iv) withholding from any distribution under the Plan any amount the Administrative Committee determines is payable by the Participant to the Firm.

### **10.9 Currency Conversions**

The Administrative Committee, in its discretion, shall have the authority to prescribe such rules and procedures as it may deem appropriate for purposes of converting any currency into another currency for purposes of the Plan including, without limitation, for purposes of determining (i) the Minimum Deferral Amount, (ii) the Maximum Deferral Amount, (iii) the Maximum Aggregate Deferral Amount, (iv) the amount of any Eligible

Employee's Deferral, (v) the amount of any investment gains or losses to be allocated to a Participant's Account, (vi) the amount of any distribution, (vii) the amount of any Participant's Eligible Compensation and (viii) the amount of any Participant's Minimum Eligible Compensation. The determination of the exchange rate by the Administrative Committee shall be conclusive.

#### **10.10 Non-Uniform Determinations**

None of the Administrative Committee's determinations under the Plan need to be uniform and any such determinations may be made by it selectively among persons who make Deferral Requests under the Plan (whether or not such persons are similarly situated). Without limiting the generality of the foregoing, the Administrative Committee shall be entitled, among other things, to make non-uniform and selective determinations with regard to Deferrals, currency conversions and availability of Notional Investments, and to enter into non-uniform and selective Deferral Requests, as to (a) the persons permitted to make Deferrals, (b) the terms and provisions of any Deferral, (c) whether a Participant's employment with the Firm has been terminated for purposes of the Plan and (d) any adjustments to be made with respect to any Deferral as described herein or otherwise.

#### **10.11 Severability; Entire Agreement**

If any of the provisions of this Plan is finally held to be invalid, illegal or unenforceable (whether in whole or in part), such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining provisions shall not be affected thereby. Each Participant, by requesting to participate in the Plan, acknowledges that the Plan contains the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior agreements, promises, covenants, arrangements, communications, representations and warranties between them, whether written or oral with respect to the subject matter thereof.

#### **10.12 No Third Party Beneficiaries**

The Plan shall not confer on any person other than the Firm and the Participants any rights or remedies thereunder; provided that the exculpation and indemnification provisions of Section 8.3 shall inure to the benefit of a Covered Person's estate, beneficiaries and legatees.

### **10.13 Headings and Subheadings**

Headings and subheadings in this Plan are inserted for convenience only and are not to be considered in the construction of the provisions hereof.

### Description of Non-Employee Director Compensation

For fiscal 2006, the compensation for the non-employee directors of The Goldman Sachs Group, Inc. (Group Inc.) consists of:

- an annual equity grant of one of the following: (i) 3,000 fully vested restricted stock units (RSUs), (ii) 1,500 fully vested RSUs and 6,000 fully vested stock options (Options), or (iii) 12,000 fully vested Options, at the non-employee director's election (grants were made on December 13, 2005, with each of the non-employee directors receiving 3,000 fully vested RSUs other than James A. Johnson, who received 1,500 fully vested RSUs and 6,000 fully vested Options);
- a \$75,000 annual retainer, payable in December 2006, in cash or through a grant of fully vested RSUs, at the non-employee director's election; and
- a \$25,000 committee chair fee, if applicable, payable in December 2006, in cash or through a grant of fully vested RSUs, at the non-employee director's election.

RSUs awarded in connection with non-employee director compensation provide for delivery of the underlying shares of common stock, par value \$0.01 per share (Common Stock) of Group Inc. on the last business day in May in the year following the year of the non-employee director's retirement from the Group Inc. Board of Directors. Options awarded with respect to the fiscal 2006 annual equity grant generally become exercisable on the earlier of (i) the date the non-employee director ceases to be a director of Group Inc., and (ii) January 2009, although if the non-employee director remains a director of Group Inc., the underlying shares are subject to transfer restrictions until January 2010.

The Group Inc. Board of Directors, upon the recommendation of the Corporate Governance and Nominating Committee, has a policy on stock ownership retention that requires non-employee directors to beneficially own at least 5,000 shares of Common Stock or fully vested RSUs within two years of becoming a director. All of our non-employee directors are in compliance with this policy.

Our directors are permitted to participate in Group Inc.'s employee matching gift program on the same terms as employees. Under the program for 2005, Group Inc. matches gifts of up to \$2,000 in the aggregate per individual (and up to \$25,000 in the aggregate per individual in the case of gifts made under a special program implemented in connection with Hurricane Katrina).

Non-employee directors receive no compensation other than directors' fees.

**Description of Certain Benefits for Participating Managing Directors**

On December 13, 2005, certain benefits for participating managing directors (PMDs) of The Goldman Sachs Group, Inc. (Group Inc.) were approved. The benefits include the following:

- PMDs who retire on or after November 24, 2006 and who, on the date of their retirement, have been PMDs for eight or more years, will be eligible to receive retiree medical coverage, subsidized by Group Inc. or its subsidiaries. The subsidy will be for 75% of the cost of coverage.
- Effective January 1, 2006, each PMD will receive life insurance coverage during active employment as a PMD with coverage ending at age 75. The coverage will provide an aggregate U.S. \$4.5 million death benefit for each PMD.

**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
ONE-TIME RSU AWARD**

This Award Agreement sets forth the terms and conditions of this special one-time award (this “Award”) of restricted stock units (“One-time RSUs”) granted to you under The Goldman Sachs Amended and Restated Stock Incentive Plan (the “Plan”).

1. The Plan. This Award is made pursuant to the Plan, the terms of which are incorporated in this Award Agreement. Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meanings as used or defined in the Plan. References in this Award Agreement to any specific Plan provision shall not be construed as limiting the applicability of any other Plan provision.

2. Award. The number of One-time RSUs subject to this Award is set forth in the Award Statement delivered to you. An RSU is an unfunded and unsecured promise to deliver (or cause to be delivered) to you, subject to the terms and conditions of this Award Agreement, a share of Common Stock (a “Share”) on the Delivery Date or as otherwise provided herein. Until such delivery, you have only the rights of a general unsecured creditor, and no rights as a shareholder of GS Inc. **THIS AWARD IS CONDITIONED ON YOUR EXECUTING THE RELATED SIGNATURE CARD AND RETURNING IT TO THE ADDRESS DESIGNATED ON THE SIGNATURE CARD AND/OR BY THE METHOD DESIGNATED ON THE SIGNATURE CARD BY THE DATE SPECIFIED, AND IS SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS OF THE PLAN AND THIS AWARD AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN PARAGRAPH 12. BY EXECUTING THE RELATED SIGNATURE CARD (WHICH, AMONG OTHER THINGS, OPENS THE CUSTODY ACCOUNT REFERRED TO IN PARAGRAPH 3 (b) IF YOU HAVE NOT DONE SO ALREADY), YOU WILL HAVE CONFIRMED YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AWARD AGREEMENT.**

3. Vesting and Delivery.

(a) Vesting. Except as provided in this Paragraph 3 and in Paragraphs 4, 6, 7, 9, 10 and 15, on each Vesting Date you shall become Vested in the number or percentage of One-time RSUs specified next to such Vesting Date on the Award Statement (which may be rounded to avoid fractional Shares). While continued active Employment is not required in order to receive delivery of the Shares underlying your Outstanding One-time RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply to such Vested One-time RSUs, and failure to meet such terms and conditions may result in the termination of this Award (as a result of which no Shares underlying such Vested One-time RSUs would be delivered).

(b) Delivery.

(i) The Delivery Date with respect to this Award shall be each date specified as such on your Award Statement, if that date is during a Window Period or, if that date is not during a Window Period, the first Trading Day of the first Window Period beginning after such date. For this purpose, a “Trading Day” is a day on which Shares trade regular way on the New York Stock Exchange.

(ii) Except as provided in this Paragraph 3 and in Paragraphs 4, 6, 7, 9, 10 and 15, in accordance with Section 3.23 of the Plan, reasonably promptly (but in no case more than thirty (30)

Business Days) after the relevant date specified as the Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding One-time RSUs with respect to which that Delivery Date (or other date) has occurred (which number of Shares may be rounded to avoid fractional Shares) shall be delivered by book entry credit to your Custody Account or to a brokerage account approved by the Firm. Notwithstanding the foregoing, if you are or become considered by GS Inc. to be one of its "covered employees" within the meaning of Section 162(m) of the Code, then you shall be subject to Section 3.21.3 of the Plan, as a result of which delivery of your Shares may be delayed.

(iii) In accordance with Section 1.3.2(i) of the Plan, in the discretion of the Committee, in lieu of all or any portion of the Shares otherwise deliverable in respect of all or any portion of your One-time RSUs, the Firm may deliver cash, other securities, other Awards or other property, and all references in this Award Agreement to deliveries of Shares shall include such deliveries of cash, other securities, other Awards or other property.

(c) Death. Notwithstanding any other provision of this Award Agreement, if you die prior to the Delivery Date, the Shares underlying your then Outstanding One-time RSUs shall be delivered to the representative of your estate as soon as practicable after the date of death and after such documentation as may be requested by the Committee is provided to the Committee.

#### 4. Termination of One time RSUs and Non-Delivery of Shares.

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 6, 7, and 9, if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, your rights in respect of your One time RSUs that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment immediately shall terminate, such One time RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof.

(b) Unless the Committee determines otherwise, and except as provided in Paragraphs 6 and 7, your rights in respect of all of your Outstanding One time RSUs (whether or not Vested) shall immediately terminate, such One time RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof if:

(i) you attempt to have any dispute under the Plan or this Award Agreement resolved in any manner that is not provided for by Paragraph 12 or Section 3.17 of the Plan;

(ii) any event that constitutes Cause has occurred;

(iii) you, in any manner, directly or indirectly, (A) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (B) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (C) Solicit any person who is an employee of the Firm to resign from the Firm or to apply for or accept employment with any Competitive Enterprise or (D) on behalf of yourself or any person or Competitive Enterprise hire, or participate in the hiring of, any Selected Firm Personnel or identify, or participate in the identification of, Selected Firm Personnel for potential hiring, whether as an employee or consultant or otherwise;

(iv) you fail to certify to GS Inc., in accordance with procedures established by the Committee, that you have complied, or the Committee determines that you in fact have failed to comply, with all the terms and conditions of the Plan and this Award Agreement. By accepting the delivery of Shares under this Award Agreement, you shall be deemed to have represented and certified at such time that you have complied with all the terms and conditions of the Plan and this Award Agreement;



(v) the Committee determines that you failed to meet, in any respect, any obligation you may have under any agreement between you and the Firm, or any agreement entered into in connection with your Employment with the Firm, including, without limitation, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(vi) as a result of any action brought by you, it is determined that any of the terms or conditions for delivery of Shares in respect of this Award Agreement are invalid.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (i) any Firm employee or consultant (A) with whom you personally worked while employed by the Firm, or (B) who at any time during the year immediately preceding your termination of Employment with the Firm, worked in the same division in which you worked; and (ii) any Managing Director of the Firm.

5. Repayment. The provisions of Section 2.6.3 of the Plan (which requires Award recipients to repay to the Firm amounts delivered to them if the Committee determines that all terms and conditions of this Award Agreement in respect of such delivery were not satisfied) shall apply to this Award.

6. Extended Absence, Retirement and Downsizing.

(a) Notwithstanding any other provision of this Award Agreement, but subject to Paragraph 6(b), in the event of the termination of your Employment (determined as described in Section 1.2.19 of the Plan) by reason of Extended Absence or Retirement, the condition set forth in Paragraph 4(a) shall be waived with respect to any One time RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such One-time RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply.

(b) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding One time RSUs that become Vested in accordance with Paragraph 6(a) immediately shall terminate, such Outstanding One time RSUs shall cease to be Outstanding, and no Shares shall be delivered in respect thereof if, prior to the original Vesting Date with respect to such One time RSUs, you (i) form, or acquire a 5% or greater equity ownership, voting or profit participation interest in, any Competitive Enterprise, or (ii) associate in any capacity (including, but not limited to, association as an officer, employee, partner, director, consultant, agent or advisor) with any Competitive Enterprise. Notwithstanding the foregoing, unless otherwise determined by the Committee in its discretion, this Paragraph 6(b) will not apply if your termination of Employment by reason of Extended Absence or Retirement is characterized by the Firm as "involuntary" or by "mutual agreement" other than for Cause and if you execute such a general waiver and release of claims and an agreement to pay any associated tax liability, both as may be prescribed by the Firm or its designee. No termination of Employment initiated by you, including any termination claimed to be a "constructive termination" or the like or a termination for good reason, will constitute an "involuntary" termination of Employment or a termination of Employment by "mutual agreement."

(c) Notwithstanding any other provision of this Award Agreement and subject to your executing such general waiver and release of claims and an agreement to pay any associated tax liability, both as may be prescribed by the Firm or its designee, if your Employment is terminated without Cause solely by reason of a "downsizing," the condition set forth in Paragraph 4(a) shall be waived with respect to your One time RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such One time RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply. Whether or not your Employment is terminated solely by reason of a "downsizing" shall be determined by the Firm in its sole discretion. No termination of Employment initiated by you, including any termination claimed to be a "constructive termination" or the like or a termination for good reason, will be solely by reason of a "downsizing."

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement, in the event a Change in Control shall occur and within 18 months thereafter the Firm terminates your Employment without Cause or you terminate your Employment for Good Reason, all Shares underlying your then Outstanding One time RSUs, whether or not Vested, shall be delivered.

8. Dividend Equivalent Rights. Each One time RSU shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding One time RSUs, at or after the time of distribution of any regular cash dividend paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant, you shall be entitled to receive an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Share underlying such Outstanding One time RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to One time RSUs that are Outstanding on the payment date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan.

9. Certain Additional Terms, Conditions and Agreements.

(a) The delivery of Shares is conditioned on your satisfaction of any applicable withholding taxes in accordance with Section 3.2 of the Plan.

(b) If you are or become a Managing Director, your rights in respect of the One time RSUs are conditioned on your becoming a party to any shareholders' agreement to which other similarly situated employees of the Firm are a party.

(c) Your rights in respect of your One time RSUs are conditioned on the receipt to the full satisfaction of the Committee of any required consents (as described in Section 3.3 of the Plan) that the Committee may determine to be necessary or advisable.

(d) You understand and agree, in accordance with Section 3.3 of the Plan, by accepting this Award, you have expressly consented to all of the items listed in Section 3.3.3(d) of the Plan, which are incorporated herein by reference.

(e) You understand and agree, in accordance with Section 3.22 of the Plan, by accepting this Award you have agreed to be subject to the Firm's policies in effect from time to time concerning trading in Shares and hedging or pledging Shares and equity-based compensation or other awards (including, without limitation, the Firm's "Policies With Respect to Transactions Involving GS Shares, Equity Awards and GS Options by Persons Affiliated with GS Inc."), and confidential or proprietary information, and to effect sales of Shares delivered to you in respect of your One time RSUs in accordance with such rules and procedures as may be adopted from time to time with respect to sales of such Shares (which may include, without limitation, restrictions relating to the timing of sale requests, the manner in which sales are executed, pricing method, consolidation or aggregation of orders and volume limits determined by the Firm). In addition, you understand and agree that you shall be responsible for all brokerage costs and other fees or expenses associated with your One time RSU Award, including without limitation, such brokerage costs or other fees or expenses in connection with the sale of Shares delivered to you hereunder.

(f) GS Inc. may affix to Certificates representing Shares issued pursuant to this Award Agreement any legend that the Committee determines to be necessary or advisable (including to reflect any restrictions to which you may be subject under a separate agreement with GS Inc.). GS Inc. may advise the transfer agent to place a stop order against any legended Shares.

(g) Without limiting the application of Paragraph 4(b), if:

(i) your Employment with the Firm terminates solely because you resigned to accept employment at a governmental agency, self-regulatory organization, or other employer and as a result of such new employment the Firm determines that your continued holding of your Outstanding One time RSUs would violate standards of ethical conduct applicable to you (“Conflicted Employment”); or

(ii) following your termination of Employment other than described in Paragraph 9(g)(i), you notify the Firm that you have accepted or intend to accept Conflicted Employment at a time when you continue to hold Outstanding One time RSUs;

then, in the case of Paragraph 9(g)(i) above, the condition set forth in Paragraph 4(a) shall be waived with respect to any One time RSUs you then hold that had not yet become Vested (as a result of which such One time RSUs shall become Vested) and, in the cases of Paragraph 9(g)(i) and 9(g)(ii) above, at the sole discretion of the Firm, you shall receive either a lump sum cash payment or delivery of the Shares underlying your then Vested Outstanding One time RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment. Notwithstanding anything else herein, One time RSUs shall become Vested and payment or delivery as a result of this Paragraph shall be made only at such time and if and to the extent as would not result in the imposition of any additional tax under Section 409A of the Code.

10. Right of Offset. The obligation to deliver Shares under this Award Agreement is subject to Section 3.4 of the Plan, which provides for the Firm’s right to offset against such obligation any outstanding amounts you owe to the Firm and any amounts the Committee deems appropriate pursuant to any tax equalization policy or agreement.

11. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement, and the Board may amend the Plan in any respect; provided that, notwithstanding the foregoing and Sections 1.3.2(f), 1.3.2(g) and 3.1 of the Plan, no such amendment shall materially adversely affect your rights and obligations under this Award Agreement without your consent; and provided further that the Committee expressly reserves its rights to amend the Award Agreement and the Plan as described in Sections 1.3.2(h)(1), (2) and (4) of the Plan. Any amendment of this Award Agreement shall be in writing signed by an authorized member of the Committee or a person or persons designated by the Committee.

12. Arbitration; Choice of Forum. BY ACCEPTING THIS AWARD, YOU UNDERSTAND AND AGREE THAT THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN SECTION 3.17 OF THE PLAN, WHICH ARE EXPRESSLY INCORPORATED HEREIN BY REFERENCE AND WHICH, AMONG OTHER THINGS, PROVIDE THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN THE FIRM AND YOU ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN OR THIS AWARD AGREEMENT SHALL BE FINALLY SETTLED BY ARBITRATION IN NEW YORK CITY, PURSUANT TO THE TERMS MORE FULLY SET FORTH IN SECTION 3.17 OF THE PLAN, SHALL APPLY.

13. Non-transferability. Except as otherwise may be provided by the Committee, the limitations on transferability set forth in Section 3.5 of the Plan shall apply to this Award. Any purported transfer or assignment in violation of the provisions of this Paragraph 13 or Section 3.5 of the Plan shall be void.

14. Governing Law. THIS AWARD SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

15. Delay in Payment. To the extent required in order to avoid the imposition of any interest and/or additional tax under Section 409A(a)(1)(B) of the Code, any payments or deliveries due as a result a your termination of Employment with the Firm may be delayed for six months if you are deemed to be a “specified employee” as defined in Section 409A(a)(2)(i)(B) of the Code.

16. Headings. The headings in this Award Agreement are for the purpose of convenience only and are not intended to define or limit the construction of the provisions hereof.

**IN WITNESS WHEREOF**, GS Inc. has caused this Award Agreement to be duly executed and delivered as of the Date of Grant.

**THE GOLDMAN SACHS GROUP, INC.**

By: \_\_\_\_\_

Name:

Title:

## [Letterhead of The Goldman Sachs Group, Inc.]

## GENERAL GUARANTEE AGREEMENT

This General Guarantee Agreement, dated January 30, 2006 (the "Guarantee"), is made by The Goldman Sachs Group, Inc. (the "Guarantor"), a corporation duly organized under the laws of the State of Delaware, in favor of each person (each, a "Party") to whom Goldman, Sachs & Co., a New York limited partnership and a subsidiary of the Guarantor (the "Company"), may owe any Obligations (as defined below) from time to time.

1. *Guarantee.* For value received, the Guarantor hereby unconditionally and, subject to the provisions of paragraphs number six and seven, irrevocably guarantees to each Party, the complete payment when due, whether by acceleration or otherwise, of all payment obligations, whether now in existence or hereafter arising (other than non-recourse payment obligations) of the Company, including, without limitation, all payment obligations (other than non-recourse payment obligations) arising under any swap, futures, option, forward or other derivative instrument (the "Obligations"). This Guarantee is one of payment and not of collection.

2. *Waiver of Notice, etc.* Except as may be required by the contract, agreement or instrument creating the Obligations, the Guarantor hereby waives notice of acceptance of this Guarantee and notice of the Obligations, and waives proof of reliance, diligence, presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, and the taking of any other action by any Party against, and any other notice to, the Company, the Guarantor or others.

3. *Nature of Guarantee.* This Guarantee shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of any Obligation or right of offset with respect thereto at any time and from time to time held by any Party or (b) any other circumstance whatsoever (with or without notice to or knowledge of the Company or the Guarantor) which might constitute an equitable or legal discharge of the Company for the Obligations, or of the Guarantor under this Guarantee, in bankruptcy or in any other instance; *provided, however*, that under no circumstances will the Guarantor be liable to any Party hereunder for any amount in excess of the amount which the Company actually owes to such Party and that the Guarantor may assert any defense to payment available to the Company, other than those arising in a bankruptcy or insolvency proceeding.

A Party may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of the Obligations; (2) take or

fail to take any action of any kind in respect of any security for any obligation or liability of the Company to such Party, (3) exercise or refrain from exercising any rights against the Company or others in respect of the Obligations; or (4) compromise or subordinate the Obligations. Any other suretyship defenses are hereby waived by the Guarantor.

4. *Reinstatement.* The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, or any of the Obligations, or interest thereon is rescinded or must otherwise be restored or returned by such Party upon the bankruptcy, insolvency, dissolution or reorganization of the Company.

5. *Subrogation.* The Guarantor will not exercise any rights which it may acquire hereunder by way of subrogation, as a result of a payment hereunder, until all due and unpaid Obligations to such Party shall have been paid in full. Any amount paid to the Guarantor in violation of the preceding sentence shall be held by Guarantor for the benefit of such Party and shall forthwith be paid to such Party to be credited and applied to the due and unpaid Obligations. Subject to the foregoing, upon payment of all such due and unpaid Obligations, the Guarantor shall be subrogated to the rights of such Party against the Company with respect to such Obligations, and such Party agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

6. *Amendment and Termination.* This guarantee may be amended or terminated, as to one Party, all Parties or a group of specified Parties and as to one Obligation, all Obligations or specified Obligations, at any time by (i) issuance by the Guarantor of a press release reported by the Dow Jones News Service, the Associated Press or a comparable national news service, or (ii) written notice signed by the Guarantor, with such amendment or termination effective with respect to a Party on the opening of business on the fifth New York business day after earlier of the issuance of such press release or the receipt of such written notice, as applicable; *provided, however*, that no such amendment or termination may adversely affect the rights of any Party relating to any Obligations incurred prior to the effectiveness of such amendment or termination; *provided further*, that any such amendment or termination may become effective as to one Party whether or not it becomes effective with respect to another Party.

7. *Assignment.* The Guarantor may not assign its rights nor delegate its obligations under this Guarantee with respect to a Party, in whole or in part, without prior written consent of such Party, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such delegation and assumption of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

8. *Governing Law and Jurisdiction.* THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE

**JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA,  
OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTEE.**

IN WITNESS WHEREOF, the Guarantor has duly executed this Guarantee as of the day and year first above written.

THE GOLDMAN SACHS GROUP, INC.

By: /s/ Elizabeth E. Beshel

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Name: Elizabeth E. Beshel  
Title: Treasurer

## THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES

COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES AND RATIOS OF EARNINGS  
TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

(\$ in millions)

	Year Ended November				
	2005	2004	2003	2002	2001
Net earnings	\$ 5,626	\$ 4,553	\$ 3,005	\$ 2,114	\$ 2,310
Add:					
Provision for taxes	2,647	2,123	1,440	1,139	1,386
Portion of rents representative of an interest factor	119	118	120	120	111
Interest expense on all indebtedness	<u>18,153</u>	<u>8,888</u>	<u>7,600</u>	<u>8,868</u>	<u>15,327</u>
Pre-tax earnings, as adjusted	<u>\$26,545</u>	<u>\$15,682</u>	<u>\$12,165</u>	<u>\$12,241</u>	<u>\$19,134</u>
Fixed charges <sup>(1)</sup> :					
Portion of rents representative of an interest factor	\$ 119	\$ 118	\$ 120	\$ 122	\$ 111
Interest expense on all indebtedness	<u>18,161</u>	<u>8,893</u>	<u>7,613</u>	<u>8,874</u>	<u>15,327</u>
Fixed charges	<u>\$18,280</u>	<u>\$ 9,011</u>	<u>\$ 7,733</u>	<u>\$ 8,996</u>	<u>\$15,438</u>
Preferred stock dividend requirements	25	—	—	—	—
Total combined fixed charges and preferred stock dividends	<u>\$18,305</u>	<u>\$ 9,011</u>	<u>\$ 7,733</u>	<u>\$ 8,996</u>	<u>\$15,438</u>
Ratio of earnings to fixed charges	<u>1.45x</u>	<u>1.74x</u>	<u>1.57x</u>	<u>1.36x</u>	<u>1.24x</u>
Ratio of earnings to combined fixed charges and preferred stock dividends	<u>1.45x</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

(1) Fixed charges include capitalized interest of \$8 million, \$5 million, \$13 million and \$6 million as of November 2005, November 2004, November 2003 and November 2002, respectively.



### Significant Subsidiaries of the Registrant

The following are significant subsidiaries of The Goldman Sachs Group, Inc. as of November 25, 2005 and the states or jurisdictions in which they are organized. Indentation indicates the principal parent of each subsidiary. Except as otherwise specified, in each case The Goldman Sachs Group, Inc. owns, directly or indirectly, at least 99% of the voting securities of each subsidiary. The names of particular subsidiaries have been omitted because, considered in the aggregate as a single subsidiary, they would not constitute, as of the end of the year covered by this report, a "significant subsidiary" as that term is defined in Rule 1-02(w) of Regulation S-X under the Securities Exchange Act of 1934.

Name	State or Jurisdiction of Entity
The Goldman Sachs Group, Inc.	Delaware
Goldman, Sachs & Co.	New York
Goldman Sachs Paris Inc. ET CIE	France
Goldman Sachs (Asia) Finance Holdings L.L.C.	Delaware
Goldman Sachs (Asia) Finance	Mauritius
GS Global Funding Hong Kong Trust II	Hong Kong
GS Global Funding Hong Kong Partnership	Hong Kong
GS Power Holdings LLC	Delaware
Goldman Sachs (UK) L.L.C.	Delaware
Goldman Sachs Group Holdings (U.K.)	United Kingdom
Goldman Sachs International Bank	United Kingdom
Goldman Sachs Holdings (U.K.)	United Kingdom
Goldman Sachs International	United Kingdom
Goldman Sachs Asset Management International	United Kingdom
J. Aron & Company (U.K.)	United Kingdom
GS Linden Power Holdings LLC	Delaware
Goldman Sachs Mortgage Company	New York
GS Financial Services L.P. (Del)	Delaware
GS Diversified Holdings II LLC	Delaware
Chiltern Trust	Isle of Jersey
GS Global Funding, Inc.	Delaware
NJLQ (Ireland) Limited	Ireland
Goldman Sachs Capital Markets, L.P.	Delaware
William Street Equity LLC	Delaware
William Street Funding Corporation	Delaware
GS Global Investments, Co.	Delaware
GS Global Investments UK, Inc.	Delaware
GSFS Investments I Corp.	Delaware
Goldman Sachs (Japan) Ltd.	British Virgin Islands
J. Aron Holdings, L.P.	Delaware

Name	State or Jurisdiction of Entity
J. Aron & Company	New York
Goldman Sachs (Asia) Securities Limited	Hong Kong
Goldman Sachs Asset Management, L.P.	Delaware
Goldman Sachs Asset Management Co., Ltd.	Japan
Goldman Sachs Hedge Fund Strategies LLC	Delaware
GSEM (DEL) Inc.	Delaware
GSEM (DEL) LLC	Delaware
GS Equity Markets, L.P. (Bermuda)	Bermuda
Goldman Sachs (Cayman) Holding Company	Cayman Islands
Goldman Sachs (Asia) L.L.C.	Delaware
MLQ Investors, L.P.	Delaware
Jupiter Investment Co., Ltd.	Japan
Goldman Sachs Realty Japan Ltd.	Japan
GSCP (DEL) Inc.	Delaware
Goldman Sachs Credit Partners L.P.	Bermuda
Goldman Sachs Financial Markets, L.P.	Delaware
MTGLQ Investors, L.P.	Delaware
ELQ Investors, LTD	United Kingdom
GS European Opportunities Investment Fund B.V. <sup>1</sup>	Netherlands
GS European Strategic Investment Group B.V. <sup>1</sup>	Netherlands
SSIG SPF ONE LQ, LLC	Delaware
GS Mehetia LLC	Delaware
Mehetia Holdings Inc.	Delaware
Mehetia Inc.	Delaware
SLK LLC	New York
Goldman Sachs Execution & Clearing, L.P.	New York
Spear, Leeds & Kellogg Specialists LLC	New York
GS European Performance Fund Limited	Ireland

<sup>1</sup> These entities are 25% owned by The Norinchukin Trust & Banking Company Ltd.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (File Nos. 333-49958, 333-74006, 333-110371, 333-101093, 333-112367, 333-122977, 333-128461 and 333-130074) and on Form S-8 (File Nos. 333-80839, 333-42068, 333-106430 and 333-120802) of The Goldman Sachs Group, Inc. of our report dated February 3, 2006 relating to the financial statements, the financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in Part II, Item 8 of this Form 10-K. We also consent to the incorporation by reference in such Registration Statements of our report dated February 3, 2006 relating to Selected Financial Data, which appears in Exhibit 99.1 of this Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

New York, New York

February 3, 2006

**CERTIFICATIONS**

I, Henry M. Paulson, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended November 25, 2005 of The Goldman Sachs Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Henry M. Paulson, Jr.

Name: Henry M. Paulson, Jr.

Title: Chief Executive Officer

Date: February 7, 2006

## CERTIFICATIONS

I, David A. Viniar, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended November 25, 2005 of The Goldman Sachs Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David A. Viniar

Name: David A. Viniar

Title: Chief Financial Officer

Date: February 7, 2006

**Certification**

Pursuant to 18 U.S.C. § 1350, the undersigned officer of The Goldman Sachs Group, Inc. (the "Company") hereby certifies that the Company's Annual Report on Form 10-K for the year ended November 25, 2005 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 7, 2006

/s/ Henry M. Paulson, Jr.

Henry M. Paulson, Jr.

Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.



### **Certification**

Pursuant to 18 U.S.C. § 1350, the undersigned officer of The Goldman Sachs Group, Inc. (the "Company") hereby certifies that the Company's Annual Report on Form 10-K for the year ended November 25, 2005 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 7, 2006

/s/ David A. Viniar

David A. Viniar

Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON SELECTED  
FINANCIAL DATA**

To the Board of Directors and the Shareholders of  
The Goldman Sachs Group, Inc.:

We have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of The Goldman Sachs Group, Inc. and subsidiaries (the Company) at November 25, 2005 and November 26, 2004, and for each of the three fiscal years in the period ended November 25, 2005, and management's assessment of the effectiveness of the Company's internal control over financial reporting and the effectiveness of the Company's internal control over financial reporting as of November 25, 2005, and in our report dated February 3, 2006, we expressed unqualified opinions thereon. We have also previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's consolidated statements of financial condition at November 28, 2003, November 29, 2002 and November 30, 2001, and the related consolidated statements of earnings, changes in shareholders' equity, cash flows and comprehensive income for the years ended November 29, 2002 and November 30, 2001 (none of which are presented herein), and we expressed unqualified opinions on those consolidated financial statements. In our opinion, the information set forth in the selected financial data for each of the five years in the period ended November 25, 2005, appearing on page 152 in Part II, Item 8 of this Form 10-K, is fairly stated, in all material respects, in relation to the consolidated financial statements from which it has been derived.

/s/ PRICEWATERHOUSECOOPERS LLP

New York, New York  
February 3, 2006