

**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 28, 2008

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
Depository Shares, Each Representing 1/1,000th Interest in a Share of Floating Rate Non-Cumulative Preferred Stock, Series D	New York Stock Exchange
5.793% Fixed-to-Floating Rate Normal Automatic Preferred Enhanced Capital Securities of Goldman Sachs Capital II (and Registrant's guarantee with respect thereto)	New York Stock Exchange
Floating Rate Normal Automatic Preferred Enhanced Capital Securities of Goldman Sachs Capital III (and Registrant's guarantee with respect thereto)	New York Stock Exchange
Medium-Term Notes, Series B, Index-Linked Notes due February 2013; Index-Linked Notes due April 2013; Index-Linked Notes due May 2013; Index-Linked Notes due 2010; and Index-Linked Notes due 2011	NYSE Alternext US
Medium-Term Notes, Series B, 7.35% Notes due 2009; 7.80% Notes due 2010; and Floating Rate Notes due 2011	New York Stock Exchange
Medium-Term Notes, Series A, Index-Linked Notes due 2037 of GS Finance Corp. (and Registrant's guarantee with respect thereto)	NYSE Arca
Medium-Term Notes, Series B, Index-Linked Notes due 2037	NYSE Arca

**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, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer (Do not check if a smaller reporting company)  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of May 30, 2008, the aggregate market value of the common stock of the registrant held by non-affiliates of the registrant was approximately \$68.2 billion.

As of January 16, 2009, there were 461,784,433 shares of the registrant's common stock outstanding.

**Documents incorporated by reference:** Portions of The Goldman Sachs Group, Inc.'s Proxy Statement for its 2009 Annual Meeting of Shareholders to be held on May 8, 2009 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 28, 2008**

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## PART I

### Item 1. Business

#### Introduction

Goldman Sachs is a bank holding company and 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. 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. On September 21, 2008, The Goldman Sachs Group, Inc. (Group Inc.) became a bank holding company regulated by the Board of Governors of the Federal Reserve System (Federal Reserve Board) under the U.S. Bank Holding Company Act of 1956 (BHC Act). Our depository institution subsidiary, Goldman Sachs Bank USA (GS Bank USA), became a New York State-chartered bank on November 28, 2008.

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 2008, 2007 and 2006 refer to our fiscal years ended, or the dates, as the context requires, November 28, 2008, November 30, 2007 and November 24, 2006, respectively. When we use the terms “Goldman Sachs,” “the firm,” “we,” “us” and “our,” we mean The Goldman Sachs Group, Inc., a Delaware corporation, and its consolidated subsidiaries. References herein to our Annual Report on Form 10-K are to our Annual Report on Form 10-K for the fiscal year ended November 28, 2008.

On December 15, 2008, our Board of Directors approved a change in our fiscal year-end from the last Friday of November to the last Friday of December. The change is effective for our 2009 fiscal year. Our 2009 fiscal year began December 27, 2008 and will end December 25, 2009, resulting in a one-month transition period that began November 29, 2008 and ended December 26, 2008. Information on this one-month transition period will be included in our Quarterly Report on Form 10-Q for the three months ended March 27, 2009.

Financial information concerning our business segments and geographic regions for each of 2008, 2007 and 2006 is set forth in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” the consolidated financial statements and the notes thereto, and the supplemental financial information, which are in Part II, Items 7, 7A and 8 of our 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/shareholders](http://www.gs.com/shareholders). 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 U.S. Securities Exchange Act of 1934 (Exchange Act), 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. 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, 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 U.S. Private Securities Litigation Reform Act of 1995**

We have included or incorporated by reference in our 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 U.S. Private Securities Litigation Reform Act of 1995. 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 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 our Annual Report on Form 10-K, as well as statements about the objectives and effectiveness of our risk management and liquidity policies, statements about trends in or growth opportunities for our businesses, statements about our future status, activities or reporting under U.S. banking regulation, and statements about our investment banking transaction backlog, in Part II, Item 7 of our Annual Report on Form 10-K. By identifying these statements for you in this manner, we are alerting you to the possibility that our actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. Important factors that could cause our actual results and financial condition to differ from those indicated in the forward-looking statements include, among others, those discussed below and under “Risk Factors” in Part I, Item 1A of our 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, if any, that we actually 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 or continued weakness 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 inability to obtain adequate financing, an adverse development with respect to a party to the transaction or a failure to obtain a required regulatory approval. For a discussion of other important factors that could adversely affect our investment banking transactions, see “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K.

**Segment Operating Results**  
(in millions)

		Year Ended November		
		2008	2007	2006
<b>Investment Banking</b>	Net revenues . . . . .	\$ 5,185	\$ 7,555	\$ 5,629
	Operating expenses . . . . .	<u>3,143</u>	<u>4,985</u>	<u>4,062</u>
	Pre-tax earnings . . . . .	<u>\$ 2,042</u>	<u>\$ 2,570</u>	<u>\$ 1,567</u>
<b>Trading and Principal Investments</b>	Net revenues . . . . .	\$ 9,063	\$31,226	\$25,562
	Operating expenses . . . . .	<u>11,808</u>	<u>17,998</u>	<u>14,962</u>
	Pre-tax earnings/(loss) . . . . .	<u>\$ (2,745)</u>	<u>\$13,228</u>	<u>\$10,600</u>
<b>Asset Management and Securities Services</b>	Net revenues . . . . .	\$ 7,974	\$ 7,206	\$ 6,474
	Operating expenses . . . . .	<u>4,939</u>	<u>5,363</u>	<u>4,036</u>
	Pre-tax earnings . . . . .	<u>\$ 3,035</u>	<u>\$ 1,843</u>	<u>\$ 2,438</u>
<b>Total</b>	Net revenues . . . . .	\$22,222	\$45,987	\$37,665
	Operating expenses <sup>(1)</sup> . . . . .	<u>19,886</u>	<u>28,383</u>	<u>23,105</u>
	Pre-tax earnings . . . . .	<u>\$ 2,336</u>	<u>\$17,604</u>	<u>\$14,560</u>

<sup>(1)</sup> Operating expenses include net provisions for a number of litigation and regulatory proceedings of \$(4) million, \$37 million and \$45 million for the years ended November 2008, November 2007 and November 2006, respectively, that have not been allocated to our segments.

## **Where We Conduct Business**

As of November 28, 2008, we operated offices in over 30 countries and 43% of our 30,067 employees were based outside the Americas (which includes the countries in North and South America). In 2008, we derived 30% of our net revenues outside of the Americas. See geographic information in Note 18 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.

Our clients are located worldwide, and we are an active participant in financial markets around the world. We have developed and continue to build strong investment banking relationships in new and developing markets. We also continue to expand our presence throughout these markets to invest strategically when opportunities arise and to work more closely with our private wealth and asset management clients in these regions. Our global reach is illustrated by the following:

- we are a member of and an active participant in most of the world's major stock, options and futures exchanges and marketplaces;
- we are a primary dealer in many of the largest government bond markets around the world;
- we have interbank dealer status in currency markets around the world;
- we are a member of or have relationships with major commodities exchanges worldwide; and
- we have commercial banking or deposit-taking institutions organized or operating in the United States, the United Kingdom, Ireland, Brazil, Switzerland, Germany, France, Russia and South Korea.

Our businesses are supported by our Global Investment Research division, which, as of November 2008, provided research coverage of over 3,250 companies worldwide and over 45 national economies, and maintained a presence in locations around the world.

We continue to expand our geographic reach. For example, in recent years we have opened offices in Mumbai, Moscow, Sao Paulo, Dubai, Qatar, Riyadh and Tel Aviv, become licensed as a broker-dealer in Russia, India and China, opened banks in Brazil, Ireland and Russia and entered into the asset management business in South Korea and India.



## **Investment Banking**

Investment Banking represented 23% of 2008 net revenues. We provide a broad range of investment banking services to a diverse group of corporations, financial institutions, investment funds, 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 activities and our corporate risk and liability management activities. This coordination is intended to assist our investment banking clients in managing their asset and liability exposures and their capital.

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. In particular, a significant number of the loan commitments and bank and bridge loan facilities that we enter into arise in connection with our advisory assignments.

### ***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-related 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 may be issued by, among others, corporate, sovereign and agency issuers. In addition, we underwrite and originate structured securities, which include mortgage-related securities and other asset-backed securities and collateralized debt obligations.



## **Trading and Principal Investments**

Trading and Principal Investments represented 41% of 2008 net revenues. Trading and Principal Investments facilitates client transactions with a diverse group of corporations, financial institutions, investment funds, 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 these products. In addition, we engage in market-making and specialist 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 client-driven and proprietary trading and investing activities.

In our client-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.

We generate trading net revenues from our client-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.

Our FICC and Equities businesses operate in close coordination to provide clients with services and 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.

## **FICC**

We make markets in and trade interest rate and credit products, mortgage-related securities and loan products and other asset-backed instruments, currencies and commodities, structure and enter into a wide variety of derivative transactions, and engage in proprietary trading and investing. FICC has five principal businesses: commodities; credit products; currencies; interest rate products, including money market instruments; and mortgage-related securities and loan products and other asset-backed instruments.

**Commodities.** We enter into trades with our clients in, make markets in, and trade for our own account a wide variety of commodities, commodity derivatives and interests in commodity-related assets, including oil and oil products, metals, natural gas and electricity, and forest products. As part of our commodities business, we acquire and dispose of interests in, and engage in the development and operation of, electric power generation facilities and related activities.

**Credit Products.** We offer to and trade for our clients a broad array of credit and credit-linked products all over the world, including credit derivatives, investment-grade corporate securities, high-yield securities, bank and secured loans (origination and trading), municipal securities, and emerging market and distressed debt. For example, we enter, as principal, into complex structured transactions designed to meet client needs.

In addition, we provide credit through bridge and other loan facilities to a broad range of clients. Commitments that are extended for contingent acquisition financing are often intended to be short-term in nature, as borrowers often seek to replace them with other funding sources. As part of our ongoing credit origination activities, we may seek to reduce our credit risk on commitments by syndicating all or substantial portions of commitments to other investors or, upon funding, by securitizing the positions through investment vehicles sold to other investors. Underwriting fees from syndications of these commitments are recorded in debt underwriting in our Investment Banking segment. However, to the extent that we recognize losses on these commitments, such losses are recorded within our Trading and Principal Investments segment, net of any related underwriting fees. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Contractual Obligations and Commitments” in Part II, Item 7 of our Annual Report on Form 10-K for additional information on our commitments.

Our credit products business includes making significant long-term and short-term investments for our own account (sometimes investing together with our merchant banking funds) in a broad array of asset classes (including distressed debt) globally. We opportunistically invest in debt and equity securities and secured loans, and in private equity, real estate and other assets.

**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 commercial and residential mortgage-related securities and loan products (including agency prime and non-agency prime, Alt-A and subprime mortgages) and other asset-backed and derivative instruments. We acquire positions in these products for proprietary trading purposes as well as for securitization or syndication. We also originate and service commercial and residential mortgages.

## **Equities**

We make markets in and trade 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 client franchise and clearing activities.

Equities includes two principal businesses: our client franchise business and principal strategies. We also engage in specialist and insurance activities.

**Client Franchise Business.** Our client franchise business includes primarily client-driven activities in the shares, equity derivatives and convertible securities 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. Our client franchise business increasingly involves providing our clients with access to electronic “low-touch” equity trading platforms, and electronic trades account for the majority of our client trading activity in this business. However, a majority of our net revenues in this business continues to be derived from our traditional “high-touch” handling of more complex trades. We expect both types of trading activities to remain important components of our client franchise business.

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.

In the options and futures markets, we structure, distribute and execute derivatives on market indices, industry groups, financial measures 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. In options, we are a specialist and/or market maker on the International Securities Exchange, the Chicago Board Options Exchange, NYSE Arca, the Boston Options Exchange, the Philadelphia Stock Exchange, NYSE Alternext US and the Chicago Mercantile Exchange.

**Principal Strategies.** Our principal strategies business is a multi-strategy investment business that invests and trades our capital across global markets. Investment strategies include fundamental equities and relative value trading (which involves trading strategies designed to take advantage of perceived discrepancies in the relative value of financial instruments, including equity, equity-related and debt instruments), event-driven investments (which focus on event-oriented special situations such as corporate restructurings, bankruptcies, recapitalizations, mergers and acquisitions, and legal and regulatory events), convertible bond trading, various types of volatility trading and principal finance.

At the start of our first fiscal quarter of 2008, we reassigned approximately one-half of the traders and other personnel and transferred approximately one-half of the firm’s assets comprising our principal strategies business to our asset management business in an effort to strengthen and diversify our asset management offerings. These assets are invested in an alternative investment fund managed by our asset management business.

**Specialist Activities.** Our specialist activities business consists of 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 designated market makers for stocks traded on the NYSE. For ETFs, we are registered market makers on NYSE Arca.

**Insurance Activities.** Through our insurance subsidiaries, we engage in a range of insurance and reinsurance businesses, including buying, originating and/or reinsuring variable annuity and life insurance contracts, reinsuring property catastrophe and residential homeowner risks and providing power interruption coverage to power generating facilities.

### ***Principal Investments***

Principal Investments primarily represents net revenues from three primary sources: returns on corporate and real estate investments; overrides on corporate and real estate investments made by merchant banking funds that we manage; and our investment in the ordinary shares of Industrial and Commercial Bank of China Limited (ICBC).

**Returns on Corporate and Real Estate Investments.** As of November 2008, the aggregate carrying value of our principal investments held directly or through our merchant banking funds, excluding our investment in the ordinary shares of ICBC, was \$15.13 billion, comprised of corporate principal investments with an aggregate carrying value of \$12.16 billion and real estate investments with an aggregate carrying value of \$2.97 billion. In addition, as of November 2008, we had outstanding unfunded equity capital commitments of up to \$13.47 billion, comprised of corporate principal investment commitments of \$10.39 billion and real estate investment commitments of \$3.08 billion.

**Overrides.** Consists of the increased share of the income and gains derived from our merchant banking funds when the return on a fund's investments over the life of the fund exceeds certain threshold returns (typically referred to as an override). Overrides are recognized in net revenues when all material contingencies have been resolved.

**ICBC.** Our investment in the ordinary shares of ICBC was acquired on April 28, 2006. The ordinary shares acquired from ICBC are subject to transfer restrictions that, among other things, prohibit any sale, disposition or other transfer until April 28, 2009. From April 28, 2009 to October 20, 2009, we may transfer up to 50% of the aggregate ordinary shares of ICBC that we owned as of October 20, 2006. We may transfer the remaining shares after October 20, 2009. As of November 2008, the fair value of our investment in the ordinary shares of ICBC was \$5.50 billion. A portion of our interest is held by investment funds managed by Goldman Sachs. For further information regarding our investment in the ordinary shares of ICBC, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies — Fair Value — Cash Instruments" in Part II, Item 7 of our Annual Report on Form 10-K.

## **Asset Management and Securities Services**

Asset Management and Securities Services represented 36% of 2008 net revenues. Our asset management business provides investment advisory and financial planning services and offers investment products (primarily through separately managed accounts and commingled vehicles) 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 provides prime brokerage services, financing services and securities lending services to institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to high-net-worth individuals worldwide, and generates revenues primarily in the form of interest rate spreads or fees.

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

### ***Asset Management***

We offer a broad array of investment strategies, advice and planning. We provide asset management services and offer investment products (primarily through separately managed accounts and commingled vehicles, such as mutual funds and private investment funds) across all major asset classes: money markets, fixed income, equities and alternative investments (including hedge funds, private equity, real estate, currencies, commodities and asset allocation strategies). Through our subsidiary, The Ayco Company, L.P., we also provide fee-based financial counseling and financial education in the United States.

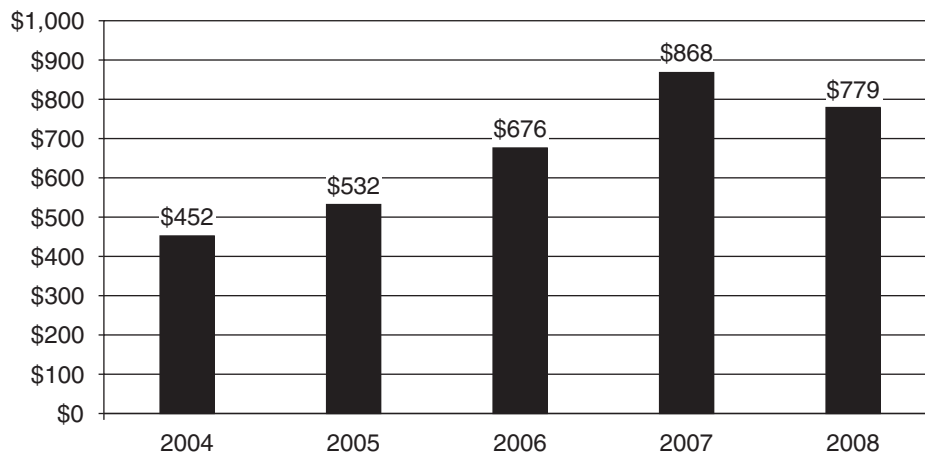
Assets under management (AUM) typically generate fees as a percentage of asset value, which is affected by investment performance and by inflows and redemptions. The fees that we charge vary by asset class, as do our related expenses. In certain circumstances, we are also entitled to receive incentive 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. For that reason, incentive fees have been seasonally weighted to our first 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 includes assets in clients' brokerage accounts to the extent that they generate fees based on the assets in the accounts rather than commissions on transactional activity in the accounts.

AUM does not include assets in brokerage accounts that generate commissions, mark-ups and spreads based on transactional activity, or our own investments in funds that we manage. Net revenues from these assets are included in our Trading and Principal Investments segment. AUM also does not include non-fee-paying assets, including interest-bearing deposits held through our bank depository institution subsidiaries.

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)

	As of November 30		
	2008	2007	2006
Alternative investments <sup>(1)</sup> . . . . .	\$146	\$151	\$145
Equity . . . . .	112	255	215
Fixed income . . . . .	248	256	198
Total non-money market assets . . . . .	506	662	558
Money markets . . . . .	273	206	118
Total assets under management . . . . .	<u>\$779</u>	<u>\$868</u>	<u>\$676</u>

<sup>(1)</sup> Primarily includes hedge funds, private equity, real estate, currencies, commodities and asset allocation strategies.

**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 primarily through third-party channels. Our institutional clients include pension funds, governmental organizations, corporations, insurance companies, banks, foundations and endowments. In third-party distribution channels, we distribute our mutual funds, alternative investment 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**  
(in billions)

	As of November 30		
	2008	2007	2006
• Directly Distributed			
— Institutional . . . . .	\$273	\$354	\$296
— High-net-worth individuals . . . . .	215	219	177
• Third-Party Distributed			
— Institutional, high-net-worth individuals and retail . . . . .	<u>291</u>	<u>295</u>	<u>203</u>
Total . . . . .	<u>\$779</u>	<u>\$868</u>	<u>\$676</u>

**Management of Merchant Banking Funds.** Goldman Sachs sponsors numerous corporate and real estate private investment funds. As of November 2008, the amount of AUM in these funds (including both funded amounts and unfunded commitments on which we earn fees) was \$93 billion.

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. In addition, our merchant banking funds include funds that invest in infrastructure and infrastructure-related assets and companies on a global basis.

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 Principal Investments within our Trading and Principal Investments segment.

## **Securities Services**

Securities Services provides prime brokerage services, financing services and securities lending services to institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to 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 53 markets globally and provides consolidated multi-currency accounting and reporting, fund administration and other ancillary services.

**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. Net revenues in securities lending services are, as a general matter, weighted toward our second and third quarters each year due to seasonally higher activity levels in Europe.

## **Global Investment Research**

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

Global Investment Research employs a team approach that as of November 2008 provided research coverage of over 3,250 companies worldwide and over 45 national economies. 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; and
- The Global ECS Department (formed in December 2008 through a consolidation of the Economic, Commodities and Strategy Research Departments) formulates macroeconomic forecasts for economic activity, foreign exchange and interest rates, provides research on the commodity markets, and provides equity market forecasts, opinions on both asset and industry sector allocation, equity trading strategies, credit 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” and “Legal Proceedings — Research Independence Matters” in Part I, Item 3 of our Annual Report on Form 10-K.



## **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 the regulatory requirements of the Financial Industry Regulatory Authority (FINRA). Because we are a bank holding company, our Business Continuity Program will be subject to review by the Federal Reserve Board. The key elements of the program are crisis management, people recovery facilities, business recovery, systems and data recovery, and process improvement. In the area of information security, we have developed and implemented a framework of principles, policies and technology 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 2008, we had 30,067 employees, excluding 4,671 employees of certain consolidated entities that are held for investment purposes only. Consolidated entities held for investment purposes are 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 entities that provide investment banking, securities and investment management services, as well as those entities that make investments in securities, commodities, derivatives, real estate, loans and other financial assets. These entities include brokers and dealers, investment banking firms, commercial banks, insurance companies, investment advisers, mutual funds, hedge funds, private equity funds 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. This trend accelerated over the course of the past year as the credit crisis caused numerous mergers and asset acquisitions among industry participants. Many commercial banks and other broad-based financial services firms have had the ability for some time 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 had 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 our investment banking and trading 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 seek such commitments (such as agreements to participate in their commercial paper backstop or other loan facilities) from financial services firms in connection with investment banking and other assignments.

We provide these commitments primarily through GS Bank USA and its subsidiaries, including our William Street entities and Goldman Sachs Credit Partners L.P. With respect to most of the William Street commitments, Sumitomo Mitsui Financial Group, Inc. (SMFG) provides us with credit loss protection that is generally limited to 95% of the first loss we realize on approved loan commitments, up 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 additional losses on such commitments, up to a maximum of \$1.13 billion, of which \$375 million of protection has been provided as of November 2008. We also use other financial instruments to mitigate credit risks related to certain William Street commitments not covered by SMFG. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Contractual Obligations and Commitments” in Part II, Item 7 of our Annual Report on Form 10-K and Note 8 to the consolidated financial statements in Part II, Item 8 of our 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. An increasing number of our commitments in connection with investment banking and other assignments do not meet the criteria established for the William Street entities and do not benefit from the SMFG loss protection. These commitments are issued through GS Bank USA and its subsidiaries 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 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 banking, securities, commodity futures and options and insurance industries, is subject to extensive regulation in the United States and the other countries in which we operate. See “Risk Factors — Our businesses and those of our clients are subject to extensive and pervasive regulation around the world” in Part I, Item 1A of our Annual Report on Form 10-K for a further discussion of the effect that regulation may have on our businesses. As a matter of public policy, regulatory bodies around 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, including depositors in U.S. depository institutions such as GS Bank USA. They are not, however, generally charged with protecting the interests of Goldman Sachs’ shareholders or creditors.

On September 21, 2008, Group Inc. became a bank holding company under the BHC Act. As of that date, the Federal Reserve Board became the primary U.S. regulator of Group Inc., as a consolidated entity. Prior to September 21, 2008, Group Inc. was subject to regulation by the SEC as a Consolidated Supervised Entity (CSE) and was subject to group-wide supervision and examination by the SEC and to minimum capital standards on a consolidated basis. On September 26, 2008, the SEC announced that it was ending the CSE program. Our principal U.S. broker-dealer, Goldman, Sachs & Co. (GS&Co.) remains subject to regulation by the SEC.

### Banking Regulation

#### *Supervision and Regulation*

As a bank holding company under the BHC Act, Group Inc. is now subject to supervision and examination by the Federal Reserve Board. Under the system of “functional regulation” established under the BHC Act, the Federal Reserve Board supervises Group Inc., including all of its nonbank subsidiaries, as an “umbrella regulator” of the consolidated organization and generally defers to the primary U.S. regulators of Group Inc.’s U.S. depository institution subsidiary, as applicable, and to the other U.S. regulators of Group Inc.’s U.S. non-depository institution subsidiaries that regulate certain activities of those subsidiaries. Such “functionally regulated” non-depository institution subsidiaries include broker-dealers registered with the SEC, insurance companies regulated by state insurance authorities, investment advisors registered with the SEC with respect to their investment advisory activities and entities regulated by the U.S. Commodity Futures Trading Commission (CFTC) with respect to certain futures-related activities.

#### *Activities*

The BHC Act generally restricts us from engaging in business activities other than the business of banking and certain closely related activities. However, the BHC Act also grants a new bank holding company, such as Group Inc., two years from the date the entity becomes a bank holding company to comply with the restrictions on its activities imposed by the BHC Act with respect to any activities that it was engaged in when it became a bank holding company. We expect that this “grandfather” right will allow us to continue to conduct our business substantially as we have in the past until at least September 22, 2010. In addition, under the BHC Act, we can apply to the Federal Reserve Board for up to three one-year extensions.

Under the U.S. Gramm-Leach-Bliley Act of 1999 (GLB Act), an eligible bank holding company may elect to become a “financial holding company.” Financial holding companies may engage in a broader range of financial and related activities than are permissible for bank holding companies as long as they continue to meet the eligibility requirements for financial holding companies. These activities include underwriting, dealing and making markets in securities, insurance underwriting and making merchant banking investments in nonfinancial companies. In addition, the GLB Act also allows a company that was not a bank holding company and becomes a financial holding company after November 12, 1999 to continue to engage in certain commodities activities that are otherwise

impermissible for bank holding companies if the company was engaged in any of these activities in the United States as of September 30, 1997 and if the assets held pursuant to these activities do not equal 5% or more of the consolidated assets of the bank holding company.

We intend to apply to elect to become a financial holding company under the GLB Act as soon as practicable. Our ability to achieve and maintain financial holding company status is dependent on a number of factors, including our U.S. depository institution subsidiaries continuing to qualify as “well capitalized” as described under “— Prompt Corrective Action” below. We do not believe that any activities that are material to our current or currently proposed business would be impermissible activities for us as a financial holding company.

As a bank holding company, Group Inc. is required to obtain prior Federal Reserve Board approval before directly or indirectly acquiring more than 5% of any class of voting shares of any unaffiliated depository institution. In addition, as a bank holding company, we may generally engage in banking and other financial activities abroad, including investing in and owning non-U.S. banks, if those activities and investments do not exceed certain limits and, in some cases, if we have obtained the prior approval of the Federal Reserve Board.

### ***Capital Requirements***

We are subject to regulatory capital requirements administered by the U.S. federal banking agencies. Our bank depository institution subsidiaries, including GS Bank USA, are subject to similar capital guidelines. Under the Federal Reserve Board’s capital adequacy guidelines and the regulatory framework for prompt corrective action (PCA) that is applicable to GS Bank USA, Goldman Sachs and its bank depository institution subsidiaries must meet specific capital guidelines that involve quantitative measures of assets, liabilities and certain off-balance-sheet items as calculated under regulatory reporting practices. Goldman Sachs and its bank depository institution subsidiaries’ capital amounts, as well as GS Bank USA’s PCA classification, are also subject to qualitative judgments by the regulators about components, risk weightings and other factors. We anticipate reporting capital ratios as follows:

- Before we became a bank holding company, we were subject to capital guidelines by the SEC as a CSE that were generally consistent with those set out in the Revised Framework for the International Convergence of Capital Measurement and Capital Standards issued by the Basel Committee on Banking Supervision (Basel II). We currently compute and report our firmwide capital ratios in accordance with the Basel II requirements as applicable to us when we were regulated as a CSE for the purpose of assessing the adequacy of our capital. We expect to continue to report to investors for a period of time our Basel II capital ratios as applicable to us when we were regulated as a CSE.
- The regulatory capital guidelines currently applicable to bank holding companies are based on the Capital Accord of the Basel Committee on Banking Supervision (Basel I), with Basel II to be phased in over time. We are currently working with the Federal Reserve Board to put in place the appropriate reporting and compliance mechanisms and methodologies to allow reporting of the Basel I capital ratios as of the end of March 2009.
- In addition, we are currently working to implement the Basel II framework as applicable to us as a bank holding company (as opposed to as a CSE). U.S. banking regulators have incorporated the Basel II framework into the existing risk-based capital requirements by requiring that internationally active banking organizations, such as Group Inc., transition to Basel II over the next several years.

Under the Basel II framework as it applied to us when we were regulated as a CSE, we evaluate our Tier 1 Capital and Total Allowable Capital as a percentage of Risk-Weighted Assets (RWAs). RWAs are calculated based on the level of market risk, credit risk and operational risk associated with our business activities, using methodologies generally consistent with those set out in Basel II. Our

Tier 1 Capital consists of common shareholders' equity, qualifying preferred stock (including the cumulative preferred stock issued by Group Inc. to the U.S. Department of the Treasury's (U.S. Treasury) TARP Capital Purchase Program and our junior subordinated debt issued to trusts, less deductions for goodwill, disallowed intangible assets and other items. Our Total Allowable Capital consists of our Tier 1 Capital and our qualifying subordinated debt, less certain deductions. Additional information on the calculation of our Tier 1 Capital, Total Allowable Capital and RWAs under the Basel II framework as it applied to us as a CSE is set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations — Equity Capital — Consolidated Capital Requirements," and in Note 17 to the consolidated financial statements, which are in Part II, Items 7 and 8 of our Annual Report on Form 10-K. As of November 2008, our Total Capital Ratio (Total Allowable Capital as a percentage of RWAs) was 18.9% and our Tier 1 Ratio (Tier 1 Capital as a percentage of RWAs) was 15.6%, in each case calculated under the Basel II framework as it applied to us when we were regulated as a CSE.

As noted above, we are currently working to implement the Basel II framework as applicable to us as a bank holding company (as opposed to as a CSE). During a parallel period, we anticipate that Group Inc.'s capital calculations computed under both the Basel I rules and the Basel II rules will be reported to the Federal Reserve Board for examination and compliance for at least four consecutive quarterly periods. Once the parallel period and subsequent three-year transition period are successfully completed, Group Inc. will utilize the Basel II framework as its means of capital adequacy assessment, measurement and reporting and will discontinue use of Basel I. Internationally, the Basel II framework was implemented in several countries during the second half of 2007 and in 2008, while others will begin implementation in 2009. The Basel II rules therefore also apply to certain of our operations in non-U.S. jurisdictions.

The Federal Reserve Board also has established minimum leverage ratio guidelines. We were not subject to these guidelines before becoming a bank holding company and, accordingly, we are currently working with the Federal Reserve Board to finalize our methodology for calculating this ratio. The Tier 1 leverage ratio is defined as Tier 1 capital (as applicable to us as a bank holding company) divided by adjusted average total assets (which includes adjustments for disallowed goodwill and certain intangible assets). The minimum Tier 1 leverage ratio is 3% for bank holding companies that have received the highest supervisory rating under Federal Reserve Board guidelines or that have implemented the Federal Reserve Board's risk-based capital measure for market risk. Other bank holding companies must have a minimum Tier 1 leverage ratio of 4%. Bank holding companies may be expected to maintain ratios well above the minimum levels, depending upon their particular condition, risk profile and growth plans. As of November 2008, our estimated Tier 1 leverage ratio was 6.1%. This ratio represents a preliminary estimate and may be revised in subsequent filings as we continue to work with the Federal Reserve Board to finalize the methodology for the calculation.

GS&Co. will continue to calculate its regulatory capital requirements in accordance with the market and credit risk standards of Appendix E of Rule 15c3-1 under the Exchange Act, which are consistent with Basel II.

### ***Payment of Dividends***

Federal and state law imposes limitations on the payment of dividends by our bank depository institution subsidiaries. The amount of dividends that may be paid by a state-chartered bank that is a member of the Federal Reserve System, such as GS Bank USA or our national bank trust company subsidiary, is limited to the lesser of the amounts calculated under a "recent earnings" test and an "undivided profits" test. Under the recent earnings test, a dividend may not be paid if the total of all dividends declared by a bank in any calendar year is in excess of the current year's net income combined with the retained net income of the two preceding years, unless the bank obtains the approval of its chartering authority. Under the undivided profits test, a dividend may not be paid in excess of a bank's "undivided profits." New York law imposes similar limitations on New York State-

chartered banks. As a result of these restrictions, GS Bank USA was not able to declare dividends to Group Inc. without regulatory approval as of November 2008.

In addition to the dividend restrictions described above, the banking regulators have authority to prohibit or to limit the payment of dividends by the banking organizations they supervise if, in the banking regulator's opinion, payment of a dividend would constitute an unsafe or unsound practice in light of the financial condition of the banking organization.

It is also the policy of the Federal Reserve Board that a bank holding company generally only pay dividends on common stock out of net income available to common shareholders over the past year and only if the prospective rate of earnings retention appears consistent with the bank holding company's capital needs, asset quality, and overall financial condition. In the current financial and economic environment, the Federal Reserve Board has indicated that bank holding companies should carefully review their dividend policy and has discouraged dividend pay-out ratios that are at the 100% level unless both asset quality and capital are very strong. A bank holding company also should not maintain a dividend level that places undue pressure on the capital of bank depository institution subsidiaries, or that may undermine the bank holding company's ability to serve as a source of strength for such bank depository institution subsidiaries. See "— U.S. Treasury's TARP Capital Purchase Program" below for a discussion of additional restrictions on Group Inc.'s ability to pay dividends. In addition, certain of Group Inc.'s nonbank subsidiaries are subject to separate regulatory limitations on dividends and distributions, including our broker-dealer and our insurance subsidiaries as described below.

### ***Source of Strength***

Under Federal Reserve Board policy, Group Inc. is expected to act as a source of strength to GS Bank USA and to commit capital and financial resources to support this subsidiary. The required support may be needed at times when, absent that Federal Reserve Board policy, we may not find ourselves able to provide it. Capital loans by a bank holding company to any of its subsidiary banks are subordinate in right of payment to deposits and to certain other indebtedness of such subsidiary banks. In the event of a bank holding company's bankruptcy, any commitment by the bank holding company to a federal bank regulator to maintain the capital of a subsidiary bank will be assumed by the bankruptcy trustee and entitled to a priority of payment.

However, because the BHC Act provides for functional regulation of bank holding company activities by various regulators, the BHC Act prohibits the Federal Reserve Board from requiring payment by a holding company or subsidiary to a depository institution if the functional regulator of the payor objects to such payment. In such a case, the Federal Reserve Board could instead require the divestiture of the depository institution and impose operating restrictions pending the divestiture.

### ***Cross-guarantee Provisions***

Each insured depository institution "controlled" (as defined in the BHC Act) by the same bank holding company can be held liable to the U.S. Federal Deposit Insurance Corporation (FDIC) for any loss incurred, or reasonably expected to be incurred, by the FDIC due to the default of any other insured depository institution controlled by that holding company and for any assistance provided by the FDIC to any of those banks that is in danger of default. Such a "cross-guarantee" claim against a depository institution is generally superior in right of payment to claims of the holding company and its affiliates against that depository institution. At this time, we control only one insured depository institution for this purpose, namely GS Bank USA. However, if, in the future, we were to control other insured depository institutions, such cross-guarantee would apply to all such insured depository institutions.

### ***U.S. Treasury's TARP Capital Purchase Program***

On October 28, 2008, Group Inc. issued preferred stock and a warrant to purchase its common stock to the U.S. Treasury as a participant in the TARP Capital Purchase Program. Prior to October 28, 2011, unless we have redeemed all of this preferred stock or the U.S. Treasury has transferred all of this preferred stock to a third party, the consent of the U.S. Treasury will be required for us to, among other things, increase our common stock dividend above the current quarterly cash dividend of \$0.35 per share or repurchase our common stock or outstanding preferred stock except in limited circumstances. In addition, until the U.S. Treasury ceases to own any Group Inc. securities sold under the TARP Capital Purchase Program, the compensation arrangements for our senior executive officers must comply in all respects with the U.S. Emergency Economic Stabilization Act of 2008 and the rules and regulations thereunder. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Equity Capital — Equity Capital Management" in Part II, Item 7 of our Annual Report on Form 10-K for a further discussion of our participation in the U.S. Treasury's TARP Capital Purchase Program.

### ***FDIC Temporary Liquidity Guarantee Program***

Group Inc. and GS Bank USA have chosen to participate in the FDIC's Temporary Liquidity Guarantee Program (TLGP), which applies to, among others, all U.S. depository institutions insured by the FDIC and all U.S. bank holding companies, unless they have opted out of the TLGP or the FDIC has terminated their participation. Under the TLGP, the FDIC guarantees certain senior unsecured debt of Group Inc. and GS Bank USA, as well as noninterest-bearing transaction account deposits at GS Bank USA, and in return for these guarantees the FDIC is paid a fee based on the amount of the deposit or the amount and maturity of the debt. Under the debt guarantee component of the TLGP, the FDIC will pay the unpaid principal and interest on an FDIC-guaranteed debt instrument upon the uncured failure of the participating entity to make a timely payment of principal or interest in accordance with the terms of the instrument. Under the transaction account guarantee component of the TLGP, all noninterest-bearing transaction accounts maintained at GS Bank USA are insured in full by the FDIC until December 31, 2009, regardless of the standard maximum deposit insurance amount. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Funding Risk — Conservative Liability Structure" in Part II, Item 7 of our Annual Report on Form 10-K for a further discussion of our participation in the TLGP.

### ***GS Bank USA***

Our U.S. depository institution subsidiary, GS Bank USA, a New York State-chartered bank and a member of the Federal Reserve System and the FDIC, is regulated by the Federal Reserve Board and the New York State Banking Department and is subject to minimum capital requirements that (subject to certain exceptions) are similar to those applicable to bank holding companies. GS Bank USA was formed in November 2008 through the merger of our existing Utah industrial bank (named GS Bank USA) into our New York limited purpose trust company, with the surviving company taking the name GS Bank USA. Concurrently with this merger, we contributed subsidiaries with an aggregate of \$117.16 billion of assets into GS Bank USA (which brought total assets in GS Bank USA to \$145.06 billion as of November 2008). As a result, a number of our businesses are now conducted partially or entirely through GS Bank USA, including: bank loan trading and origination; interest rate, credit, currency and other derivatives; leveraged finance; commercial and residential mortgage origination, trading and servicing; structured finance; and agency lending, custody and hedge fund administration services. The businesses conducted through GS Bank USA are now subject to regulation by the Federal Reserve Board, the New York State Banking Department and the FDIC.

### ***Deposit Insurance***

GS Bank USA accepts deposits, and those deposits have the benefit of FDIC insurance up to the applicable limits. The FDIC's Deposit Insurance Fund is funded by assessments on insured depository institutions, which depend on the risk category of an institution and the amount of insured deposits that it holds. The FDIC may increase or decrease the assessment rate schedule on a semi-annual basis. We are also participants in the TLGP as discussed above under "— FDIC Temporary Liquidity Guarantee Program."

### ***Prompt Corrective Action***

The U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), among other things, requires the federal banking agencies to take "prompt corrective action" in respect of depository institutions that do not meet specified capital requirements. FDICIA establishes five capital categories for FDIC-insured banks: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. A depository institution is deemed to be "well capitalized," the highest category, if it has a total capital ratio of 10% or greater, a Tier 1 capital ratio of 6% or greater and a Tier 1 leverage ratio of 5% or greater and is not subject to any order or written directive by any such regulatory authority to meet and maintain a specific capital level for any capital measure. In connection with the November 2008 asset transfer described below, GS Bank USA agreed with the Federal Reserve Board to minimum capital ratios in excess of these "well capitalized" levels. Accordingly, for a period of time, GS Bank USA is expected to maintain a Tier 1 capital ratio of at least 8%, a total capital ratio of at least 11% and a Tier 1 leverage ratio of at least 6%. We contributed subsidiaries with an aggregate of \$117.16 billion in assets into GS Bank USA in November 2008 (which brought total assets in GS Bank USA to \$145.06 billion as of November 2008). As a result, we are currently working with the Federal Reserve Board to finalize our methodology for the Basel I calculations. As of November 2008, under Basel I, GS Bank USA's estimated Tier 1 capital ratio was 8.9% and estimated total capital ratio was 11.6%. In addition, GS Bank USA's estimated Tier 1 leverage ratio was 9.1%. An institution may be downgraded to, or deemed to be in, a capital category that is lower than is indicated by its capital ratios if it is determined to be in an unsafe or unsound condition or if it receives an unsatisfactory examination rating with respect to certain matters.

FDICIA imposes progressively more restrictive constraints on operations, management and capital distributions, as the capital category of an institution declines. Failure to meet the capital guidelines could also subject a depository institution to capital raising requirements. Ultimately, critically undercapitalized institutions are subject to the appointment of a receiver or conservator.

The prompt corrective action regulations apply only to depository institutions and not to bank holding companies such as Group Inc. However, the Federal Reserve Board is authorized to take appropriate action at the holding company level, based upon the undercapitalized status of the holding company's depository institution subsidiaries. In certain instances relating to an undercapitalized depository institution subsidiary, the bank holding company would be required to guarantee the performance of the undercapitalized subsidiary's capital restoration plan and might be liable for civil money damages for failure to fulfill its commitments on that guarantee. Furthermore, in the event of the bankruptcy of the parent holding company, the guarantee would take priority over the parent's general unsecured creditors.

### ***Insolvency of an Insured Depository Institution***

If the FDIC is appointed the conservator or receiver of an insured depository institution such as GS Bank USA, upon its insolvency or in certain other events, the FDIC has the power:

- to transfer any of the depository institution's assets and liabilities to a new obligor without the approval of the depository institution's creditors;



- to enforce the terms of the depository institution's contracts pursuant to their terms; or
- to repudiate or disaffirm any contract or lease to which the depository institution is a party, the performance of which is determined by the FDIC to be burdensome and the disaffirmance or repudiation of which is determined by the FDIC to promote the orderly administration of the depository institution.

In addition, under federal law, the claims of holders of deposit liabilities and certain claims for administrative expenses against an insured depository institution would be afforded a priority over other general unsecured claims against such an institution, including claims of debt holders of the institution, in the "liquidation or other resolution" of such an institution by any receiver. As a result, whether or not the FDIC ever sought to repudiate any debt obligations of GS Bank USA, the debt holders would be treated differently from, and could receive, if anything, substantially less than, the depositors of the depository institution.

### ***Transactions with Affiliates***

Transactions between GS Bank USA and Group Inc. and its subsidiaries and affiliates are regulated by the Federal Reserve Board. These regulations limit the types and amounts of transactions (including loans to and credit extensions from GS Bank USA) that may take place and generally require those transactions to be on an arms-length basis. These regulations generally do not apply to transactions between GS Bank USA and its subsidiaries. In November 2008, Group Inc. transferred assets and operations to GS Bank USA as described above under "— GS Bank USA." In connection with this transfer, Group Inc. entered into a guarantee agreement with GS Bank USA whereby Group Inc. agreed to (i) purchase from GS Bank USA certain transferred assets (other than derivatives and mortgage servicing rights) or reimburse GS Bank USA for certain losses relating to those assets; (ii) reimburse GS Bank USA for credit-related losses from assets transferred to GS Bank USA; and (iii) protect GS Bank USA or reimburse it for certain losses arising from derivatives and mortgage servicing rights transferred to GS Bank USA. Group Inc. also agreed to pledge to GS Bank USA collateral with an aggregate value at any time not less than 5% of the face amount of committed but unfunded credit lines plus the original transfer value of the assets transferred to GS Bank USA, which amounted to a required collateral value of approximately \$7.1 billion as of November 2008.

### ***Trust Companies***

Group Inc.'s two limited purpose trust company subsidiaries operate under state or federal law. They are not permitted to and do not accept deposits (other than as incidental to their trust activities) or make loans and, as a result, are not insured by the FDIC. The Goldman Sachs Trust Company, N.A., a national banking association that is limited to fiduciary activities, 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 of Delaware, a Delaware limited purpose trust company, is regulated by the Office of the Delaware State Bank Commissioner.

### **U.S. Securities and Commodities Regulation**

Goldman Sachs' broker-dealer subsidiaries 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.

In the United States, the SEC is the federal agency responsible for the administration of the federal securities laws. 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 FINRA and the NYSE, 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, the NYSE and FINRA. 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 U.S. Commodity Exchange Act (CEA). The CFTC is the federal agency charged with the administration of the CEA. 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 CEA. The rules and regulations of various self-regulatory organizations, such as the Chicago Board of Trade and the Chicago Mercantile Exchange, 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 subject to Rule 15c3-1 of the SEC and Rule 1.17 of the CFTC, which specify uniform minimum net capital requirements and also effectively 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 Net Capital Requirement" as permitted by Rule 15c3-1. As of November 2008, GS&Co. had regulatory net capital, as defined by Rule 15c3-1, of \$10.92 billion, which exceeded the amounts required by \$8.87 billion. As of November 2008, GSEC had regulatory net capital, as defined by Rule 15c3-1, of \$1.38 billion, which exceeded the amounts required by \$1.29 billion. 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 2008, 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 17 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.

Our specialist businesses are subject to extensive regulation by a number of securities exchanges. As a Designated Market Maker on the NYSE and as a specialist on other exchanges, we are required to maintain orderly markets in the securities to which we are assigned. Under the NYSE's new Designated Market Maker rules, this may require us to supply liquidity to these markets in certain circumstances.

J. Aron & Company is authorized by the U.S. 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 U.S. Federal Power Act and FERC regulations and to the oversight of FERC. As a result of our investing activities, GS&Co. is also an "exempt holding company" under the U.S. Public Utility Holding Company Act of 2005 and applicable FERC rules.

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

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

Our U.S. insurance subsidiaries are subject to state insurance regulation and oversight in the states in which they are domiciled and in the other states in which they are licensed, and we are subject to oversight as an insurance holding company in states where our insurance subsidiaries are

domiciled. State insurance regulations limit the ability of our insurance subsidiaries to pay dividends to Group Inc. in certain circumstances, and could require regulatory approval for any change in “control” of Group Inc., which may include control of 10% or more of our voting stock. In addition, a number of our other businesses, including our lending and mortgage businesses, require us to obtain licenses, adhere to applicable regulations and be subject to the oversight of various regulators in the states in which we conduct these businesses.

The U.S. Bank Secrecy Act (BSA), as amended by the USA PATRIOT Act of 2001 (PATRIOT Act), contains anti-money laundering and financial transparency laws and mandated the implementation of various regulations applicable to all financial institutions, 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 BSA and the PATRIOT Act seek to promote the identification of parties that may be involved in terrorism, money laundering or other suspicious activities. 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 monitor 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 provides investment services in and from the United Kingdom under the regulation of the Financial Services Authority (FSA). Goldman Sachs International (GSI), our regulated U.K. broker-dealer, is subject to the capital requirements imposed by the FSA. As of November 2008, GSI was in compliance with the FSA capital requirements. Other subsidiaries, including Goldman Sachs International Bank, are also regulated by the FSA.

Goldman Sachs Bank (Europe) PLC (GS Bank Europe), our regulated Irish bank, is subject to minimum capital requirements imposed by the Irish Financial Services Regulatory Authority. As of November 2008, this bank was in compliance with all regulatory capital requirements. Group Inc. has issued a general guarantee of the obligations of this bank.

Various other Goldman Sachs entities are regulated by the banking, insurance and securities regulatory authorities of the European countries in which they operate, including, among others, the Federal Financial Supervisory Authority (BaFin) and the Bundesbank in Germany, Banque de France and the Autorité des Marchés Financiers in France, Banca d’Italia and the Commissione Nazionale per le Società e la Borsa (CONSOB) in Italy, the Federal Financial Markets Service in Russia and the Swiss Federal Banking Commission. Certain 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 regulators within the European Union (EU) are regulated in accordance with national laws, many of which implement EU directives requiring, among other things, compliance with certain capital adequacy standards, customer protection requirements and market conduct and trade reporting rules. These standards, requirements and rules are similarly implemented, under the same directives, throughout the EU.

Goldman Sachs Japan Co., Ltd. (GSJCL), our regulated Japanese broker-dealer, is subject to the capital requirements imposed by Japan’s Financial Services Agency. As of November 2008, GSJCL was in compliance with its capital adequacy requirements. GSJCL is also regulated by the Tokyo Stock Exchange, the Osaka Securities Exchange, the Tokyo Financial Exchange, the Japan Securities Dealers Association, the Tokyo Commodity Exchange and the Ministry of Economy, Trade and Industry in Japan.

Also in Asia, the Securities and Futures Commission in Hong Kong, the Monetary Authority of Singapore, the China Securities Regulatory Commission, the Korean Financial Supervisory Service, the Reserve Bank of India and the Securities and Exchange Board of India, among others, regulate various of our subsidiaries and also have capital standards and other requirements comparable to the rules of the SEC.

Various Goldman Sachs entities are regulated by the banking and regulatory authorities in other non-U.S. countries in which Goldman Sachs operates, including, among others, Brazil and Dubai. In addition, certain of our insurance subsidiaries are regulated by Lloyd's (which is, in turn, regulated by the FSA) and by the Bermuda Monetary Authority.

### **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 and other state regulators 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.

The research areas of investment banks have been and remain the subject of regulatory scrutiny. The SEC and FINRA have rules governing research analysts, including 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 may impose additional regulations. In 2003, GS&Co. agreed to a global settlement with certain federal and state securities regulators and self-regulatory organizations to resolve investigations into equity research analysts' alleged conflicts of interest. The global settlement includes certain restrictions and undertakings that have imposed additional costs and limitations on the conduct of our businesses, including restrictions on the interaction between research and investment banking areas.

In connection with the research settlement, we have 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, the FSA, FINRA and other U.S. or non-U.S. regulators may in the future adopt additional and more stringent rules with respect to offering procedures and the management of conflicts of interest, and we cannot fully predict the effect that any new requirements will have on our business.

Our investment management businesses are subject to significant regulation in numerous jurisdictions around the world relating to, among other things, the safeguarding of client assets and our management of client funds.

As discussed above, many of our subsidiaries are subject to regulatory capital requirements in jurisdictions throughout the world. Subsidiaries not subject to separate regulation may hold capital to satisfy local tax guidelines, rating agency requirements or internal policies, including policies concerning the minimum amount of capital a subsidiary should hold based upon its underlying risk.

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 the information of clients, employees or others, 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. The following are some of the more important factors that could affect our businesses.

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

Our businesses, by their nature, do not produce predictable earnings, and all of our businesses are materially affected by conditions in the global financial markets and economic conditions generally. In the past twelve months, these conditions have changed suddenly and negatively.

Since mid-2007, and particularly during the second half of 2008, the financial services industry and the securities markets generally were materially and adversely affected by significant declines in the values of nearly all asset classes and by a serious lack of liquidity. This was initially triggered by declines in the values of subprime mortgages, but spread to all mortgage and real estate asset classes, to leveraged bank loans and to nearly all asset classes, including equities. The global markets have been characterized by substantially increased volatility and short-selling and an overall loss of investor confidence, initially in financial institutions, but more recently in companies in a number of other industries and in the broader markets. The decline in asset values has caused increases in margin calls for investors, requirements that derivatives counterparties post additional collateral and redemptions by mutual and hedge fund investors, all of which have increased the downward pressure on asset values and outflows of client funds across the financial services industry. In addition, the increased redemptions and unavailability of credit have required hedge funds and others to rapidly reduce leverage, which has increased volatility and further contributed to the decline in asset values.

Market conditions have also led to the failure or merger of a number of prominent financial institutions. Financial institution failures or near-failures have resulted in further losses as a consequence of defaults on securities issued by them and defaults under bilateral derivatives and other contracts entered into with such entities as counterparties. Furthermore, declining asset values, defaults on mortgages and consumer loans, and the lack of market and investor confidence, as well as other factors, have all combined to increase credit default swap spreads, to cause rating agencies to lower credit ratings, and to otherwise increase the cost and decrease the availability of liquidity, despite very significant declines in central bank borrowing rates and other government actions. Banks and other lenders have suffered significant losses and have become reluctant to lend, even on a secured basis, due to the increased risk of default and the impact of declining asset values on the value of collateral. The markets for securitized debt offerings backed by mortgages, loans, credit card receivables and other assets have for the most part been closed.

In 2008, governments, regulators and central banks in the United States and worldwide have taken numerous steps to increase liquidity and to restore investor confidence, but asset values have continued to decline and access to liquidity continues to be very limited.

We have “long” proprietary positions in a number of our businesses. These positions are accounted for at fair value, and the declines in the values of assets have had a direct and large negative impact on our earnings in fiscal 2008. Revenues from our asset management and merchant banking businesses were also negatively impacted by declines in the values of assets managed for our clients.

The ongoing liquidity crisis and the loss of confidence in financial institutions has increased our cost of funding and limited our access to some of our traditional sources of liquidity, including both secured and unsecured borrowings. While the numerous steps taken by governments, regulators and central banks have helped reduce these funding costs somewhat and increase our access to traditional and new sources of liquidity, increases in funding costs and limitations on our access to liquidity have

negatively impacted our earnings and our ability to engage in certain activities. In particular, in the latter half of 2008, we were unable to raise significant amounts of long-term unsecured debt in the public markets, other than as a result of the issuance of securities guaranteed by the FDIC under the TLGP. We are able to have outstanding approximately \$35 billion of debt under the TLGP that is issued prior to June 30, 2009. It is unclear when we will regain access to the public long-term unsecured debt markets on customary terms or whether any similar program will be available after the TLGP's scheduled June 2009 expiration. However, we continue to have access to short-term funding and to a number of sources of secured funding, both in the private markets and through various government and central bank sponsored initiatives. In December 2008, Moody's Investors Service downgraded our long-term debt credit rating and Standard & Poor's downgraded both our long-term and short-term debt credit ratings, in each case with an outlook of "negative."

We have been able to fund our operations during fiscal 2008. Our global core excess (our cash and cash equivalent positions maintained to ensure short-term liquidity) and our capital ratios are at levels significantly higher than in the past. Nevertheless, our credit spreads have widened and the average maturity of our new funding has decreased. Recently, we have relied to a significant extent for our long-term unsecured funding on emergency funding programs implemented by governments and central banks. It is unclear whether or for how long these facilities will be extended and what impact termination of these facilities could have on our ability to access funding. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Funding Risk" in Part II, Item 7 of our Annual Report on Form 10-K.

Furthermore, the increased riskiness of assets due to increases in the volatility of asset prices, coupled with market concerns about the levels of financial institution leverage ratios, as well as fewer attractive business opportunities, have caused us to significantly decrease the size of our balance sheet and to increase the size of our global core excess. Both of these steps may have a negative effect on our profitability, until reversed.

Concerns about financial institution profitability and solvency as a result of general market conditions, particularly in the credit markets, together with the forced merger or failure of a number of major commercial and investment banks, have at times caused a number of our clients to reduce the level of business that they do with us, either because of concerns about the safety of their assets held by us or simply arising from a desire to diversify their risk or for other reasons. Some clients have withdrawn some of the funds held at our firm or transferred them from deposits with GS Bank USA to other types of assets (in many cases leaving those assets in their brokerage accounts held with us). Some counterparties have at times refused to enter into certain derivatives and other long-term transactions with us or have requested additional collateral. These instances were more prevalent during periods when the lack of confidence in financial institutions was most widespread and have become significantly less frequent in recent months in the wake of government and central bank actions, greater understanding of client account protections and higher limits of FDIC insurance. In addition, we have acquired some new clients as a result of the difficulties experienced by other financial institutions.

During the fourth quarter of 2008, we raised \$20.75 billion in equity, comprised of a \$5.75 billion public common stock offering, a \$5 billion preferred stock and warrant issuance to Berkshire Hathaway Inc. and certain affiliates and a \$10 billion preferred stock and warrant issuance under the U.S. Treasury's TARP Capital Purchase Program. While this additional capital provides further funding to our business and we believe has improved investor perceptions with regard to our financial position, it has increased our equity and the number of actual and diluted outstanding shares of our common stock as well as our preferred dividend requirements, which will reduce our earnings per share and the return on our equity unless our earnings increase sufficiently.

In addition, as of the end of 2008, the United States, Europe and Japan are all in a recession. Business activity across a wide range of industries and regions is greatly reduced and local governments and many companies are in serious difficulty due to the lack of consumer spending and

the lack of liquidity in the credit markets. Unemployment has increased significantly. While lower interest rates, increased volatility and substantial increases in trading volumes have positively impacted earnings in a number of our trading businesses, declines in asset values, the lack of liquidity, general uncertainty about economic and market activities and a lack of consumer, investor and CEO confidence have negatively impacted many of our other businesses, particularly our investment banking, merchant banking, asset management, credit products, mortgage, leveraged lending and equity principal strategies businesses. In particular, our investment banking business has been affected during the last twelve months by the decrease in equity and debt underwritings and the decline in both announced and completed mergers and acquisitions.

Our financial performance is highly dependent on the environment in which our businesses operate. A favorable business environment is generally characterized by, among other factors, high global gross domestic product growth, transparent, liquid and efficient capital markets, low inflation, high business and investor confidence, stable geopolitical conditions, and strong business earnings. Unfavorable or uncertain economic and market conditions can be caused by: declines in economic growth, business activity or investor or business confidence; limitations on the availability or increases in the cost of credit and capital; increases in inflation, interest rates, exchange rate volatility, default rates or the price of basic commodities; outbreaks of hostilities or other geopolitical instability; corporate, political or other scandals that reduce investor confidence in capital markets; natural disasters or pandemics; or a combination of these or other factors.

Overall, during fiscal 2008, the business environment has been extremely adverse for many of our businesses and there can be no assurance that these conditions will improve in the near term. Until they do, we expect our results of operations to be adversely affected.

***Our businesses have been and may continue to be adversely affected by declining asset values.***

Many of our businesses, such as our merchant banking businesses, our mortgages, leveraged loan and credit products businesses in our FICC segment, and our equity principal strategies business, have net “long” positions in debt securities, loans, derivatives, mortgages, equities (including private equity) and most other asset classes. In addition, many of our market-making and other businesses in which we act as a principal to facilitate our clients’ activities, including our specialist businesses, commit large amounts of capital to maintain trading positions in interest rate and credit products, as well as currencies, commodities and equities. Because nearly all of these investing and trading positions are marked-to-market on a daily basis, declines in asset values directly and immediately impact our earnings, unless we have effectively “hedged” our exposures to such declines. In certain circumstances (particularly in the case of leveraged loans and private equities or other securities that are not freely tradable or lack established and liquid trading markets), it may not be possible or economic to hedge such exposures and to the extent that we do so the hedge may be ineffective or may greatly reduce our ability to profit from increases in the values of the assets. Sudden declines and significant volatility in the prices of assets may substantially curtail or eliminate the trading markets for certain assets, which may make it very difficult to sell, hedge or value such assets. The inability to sell or effectively hedge assets reduces our ability to limit losses in such positions and the difficulty in valuing assets may increase our risk-weighted assets which requires us to maintain additional capital and increases our funding costs.

In our specialist businesses, we are obligated by stock exchange rules to maintain an orderly market, including by purchasing shares in a declining market. In markets where asset values are declining and in volatile markets, this results in trading losses and an increased need for liquidity.

We receive asset-based management fees based on the value of our clients’ portfolios or investment in funds managed by us and, in some cases, we also receive incentive fees based on increases in the value of such investments. Declines in asset values reduce the value of our clients’ portfolios or fund assets, which in turn reduce the fees we earn for managing such assets.

We post collateral to support our obligations and receive collateral to support the obligations of our clients and counterparties in connection with our trading businesses. When the value of the assets posted as collateral declines, the party posting the collateral may need to provide additional collateral or, if possible, reduce its trading position. A classic example of such a situation is a “margin call” in connection with a brokerage account. Therefore, declines in the value of asset classes used as collateral mean that either the cost of funding trading positions is increased or the size of trading positions is decreased. If we are the party providing collateral this can increase our costs and reduce our profitability and if we are the party receiving collateral this can also reduce our profitability by reducing the level of business done with our clients and counterparties. In addition, volatile or less liquid markets increase the difficulty of valuing assets which can lead to costly and time-consuming disputes over asset values and the level of required collateral, as well as increased credit risk to the recipient of the collateral due to delays in receiving adequate collateral.

***Our businesses have been and may continue to be adversely affected by disruptions in the credit markets, including reduced access to credit and higher costs of obtaining credit.***

Widening credit spreads, as well as significant declines in the availability of credit, have adversely affected our ability to borrow on a secured and unsecured basis and may continue to do so. We fund ourselves on an unsecured basis by issuing commercial paper, promissory notes and long-term debt, or by obtaining bank loans or lines of credit. We seek to finance many of our assets, including our less liquid assets, on a secured basis, including by entering into repurchase agreements. Disruptions in the credit markets make it harder and more expensive to obtain funding for our businesses. If our available funding is limited or we are forced to fund our operations at a higher cost, these conditions may require us to curtail our business activities and increase our cost of funding, both of which could reduce our profitability, particularly in our businesses that involve investing, lending and taking principal positions, including market making.

Our clients engaging in mergers and acquisitions often rely on access to the secured and unsecured credit markets to finance their transactions. The lack of available credit and the increased cost of credit can adversely affect the size, volume and timing of our clients’ merger and acquisition transactions — particularly large transactions — and adversely affect our financial advisory and underwriting businesses.

In addition, we may incur significant unrealized gains or losses due solely to changes in our credit spreads or those of third parties, as these changes may affect the fair value of our derivative instruments and the debt securities that we hold or issue.

***Our businesses have been and may continue to be affected by changes in the levels of market volatility.***

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. On the other hand, increased volatility, while it can increase trading volumes and spreads, also increases risk as measured by VaR and may expose us to increased risks in connection with our market-making and proprietary businesses or cause us to reduce the size of these businesses in order to avoid increasing our VaR. Limiting the size of our market-making positions and investing businesses can adversely affect our profitability, even though spreads are widening and we may earn more on each trade. In periods when volatility is increasing, but asset values are declining significantly (as has been the case recently), it may not be possible to sell assets at all or it may only be possible to do so at steep discounts. In such circumstances we may be forced to either take on additional risk or to incur losses in order to decrease our VaR. In addition, increases in volatility increase the level of our risk weighted assets and increase our capital requirements which increases our funding costs.



***Our businesses have been adversely affected and may continue to be adversely affected by market uncertainty or lack of confidence among investors and CEOs due to general declines in economic activity and other unfavorable economic, geopolitical or market conditions.***

Our investment banking business has been and may continue to be adversely affected by market conditions. Poor economic conditions and other adverse geopolitical conditions can adversely affect and have adversely affected investor and CEO confidence, resulting in significant industry-wide declines in the size and number of underwritings and of financial advisory transactions, which could continue to have an adverse effect on our revenues and our profit margins. In particular, because a significant portion of our investment banking revenues are derived from our participation in large transactions, a decline in the number of large transactions would adversely affect our investment banking business.

In certain circumstances, market uncertainty or general declines in market or economic activity may affect our trading businesses by decreasing levels of overall activity or by decreasing volatility, but at other times market uncertainty and even declining economic activity may result in higher trading volumes or higher spreads or both.

Market uncertainty, volatility and adverse economic conditions, as well as declines in asset values, may cause our clients to transfer their assets out of our funds or other products or their brokerage accounts and result in reduced net revenues, principally in our asset management business. To the extent that clients do not withdraw their funds, they may invest them in products that generate less fee income.

***Our investing businesses may be affected by the poor investment performance of our investment products.***

Poor investment returns in our asset management business, due to either general market conditions or underperformance (against the performance of benchmarks or of our competitors) by funds or accounts that we manage or investment products that we design or sell, affects our ability to retain existing assets and to attract new clients or additional assets from existing clients. This could affect the asset management and incentive fees that we earn on assets under management or the commissions that we earn for selling other investment products, such as structured notes or derivatives.

We have in the past provided financial support to certain of our investment products in difficult market circumstances and, at our discretion, we may decide to do so in the future for reputational or business reasons, including through equity investments or cash infusions.

***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 risk and control framework encompassing a variety of separate but complementary financial, credit, operational, compliance and legal reporting systems, internal controls, management review processes and other mechanisms. 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. Recent market conditions have involved unprecedented dislocations and highlight the limitations inherent in using historical data to manage risk.

The models that we use to assess and control our risk exposures reflect assumptions about the degrees of correlation or lack thereof among prices of various asset classes or other market indicators. In times of market stress or other unforeseen circumstances, such as occurred during 2008, previously uncorrelated indicators may become correlated, or conversely previously correlated indicators may move in different directions. These types of market movements have at times limited the effectiveness of our hedging strategies and have caused us to incur significant losses, and they

may do so in the future. These changes in correlation can be exacerbated where other market participants are using risk or trading models with assumptions or algorithms that are similar to ours. In these and other cases, it may be difficult to reduce our risk positions due to the activity of other market participants or widespread market dislocations, including circumstances where asset values are declining significantly or no market exists for certain assets. To the extent that we make investments directly through various of our businesses in securities, including private equity, that do not have an established liquid trading market or are otherwise subject to restrictions on sale or hedging, we may not be able to reduce our positions and therefore reduce our risk associated with such positions. In addition, we invest our own capital in our merchant banking, alternative investment and infrastructure funds, and limitations on our ability to withdraw some or all of our investments in these funds, whether for legal, reputational or other reasons, may make it more difficult for us to control the risk exposures relating to these investments.

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 our Annual Report on Form 10-K.

***Our liquidity, profitability and businesses may be adversely affected by an inability to access the debt capital markets or to sell assets or by a reduction in our credit ratings or by an increase in our credit spreads.***

Liquidity is essential to our businesses. Our liquidity may 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 redeem our investments, 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, or even by the perception among market participants that we, or other market participants, are experiencing greater liquidity risk.

The financial instruments that we hold and the contracts to which we are a party are increasingly complex, as we employ structured products to benefit our clients and ourselves, and these complex structured products often do not have readily available markets to access in times of liquidity stress. Our investing activities may lead to situations where the holdings from these activities represent a significant portion of specific markets, which could restrict liquidity for our positions. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time, as is likely to occur in a liquidity or other market crisis. In addition, financial institutions with which we interact may exercise set-off rights or the right to require additional collateral, including in difficult market conditions, which could further impair our access to liquidity.

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.

Our cost of obtaining long-term unsecured funding is directly related to our credit spreads (the amount in excess of the interest rate of U.S. Treasury securities (or other benchmark securities) of the same maturity that we need to pay to our debt investors). Increases in our credit spreads can significantly increase our cost of this funding. Changes in credit spreads are continuous, market-driven, and subject at times to unpredictable and highly volatile movements. Credit spreads are influenced by market perceptions of our creditworthiness. In addition, our credit spreads may be influenced by movements in the costs to purchasers of credit default swaps referenced to our

long-term debt. The market for credit default swaps is relatively new, although very large, and it has proven to be extremely volatile and currently lacks a high degree of structure or transparency.

***Group Inc. is a holding company and is dependent for liquidity on payments from its subsidiaries, which are subject to restrictions.***

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 our broker-dealer, bank and insurance subsidiaries, are subject to laws that restrict dividend payments or authorize regulatory bodies to block or reduce the flow of funds from those subsidiaries to Group Inc. Restrictions or regulatory action of that kind could impede access to funds that Group Inc. needs to make payments on its obligations, including debt obligations, or dividend payments. In addition, Group Inc.'s right to participate in a distribution of assets upon a subsidiary's liquidation or reorganization is subject to the prior claims of the subsidiary's creditors.

Furthermore, Group Inc. has guaranteed the payment obligations of GS&Co., GS Bank USA and GS Bank Europe, subject to certain exceptions, and has pledged significant assets to GS Bank USA to support obligations to GS Bank USA. These guarantees may require Group Inc. to provide substantial funds or assets to its subsidiaries or their creditors and counterparties at a time when Group Inc. is in need of liquidity to fund its own obligations. See "Business — Regulation" in Part I, Item 1 of our Annual Report on Form 10-K.

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

The amount and duration of our credit exposures have been increasing over the past several years, as have the breadth and size of the entities to which we have credit exposures. 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. A failure of a significant market participant, or even concerns about a default by such an institution, could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect us.

We are also subject to the risk that our rights against third parties may not be enforceable in all circumstances. In addition, 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. A significant downgrade in the credit ratings of our counterparties could also have a negative impact on our results. While in many cases we are permitted to require additional collateral from counterparties that experience financial difficulty, disputes may arise as to the amount of collateral we are entitled to receive and the value of pledged assets. The termination of contracts and the foreclosure on collateral may subject us to claims for the improper exercise of our rights. Default rates, downgrades and disputes with counterparties as to the valuation of collateral increase significantly in times of market stress and illiquidity.

As part of our clearing business, we finance our client positions, and we could be held responsible for the defaults or misconduct of our clients. 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.

***Concentration of risk increases the potential for significant losses.***

Concentration of risk increases the potential for significant losses in our market-making, proprietary trading, 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 client-driven business. The number and size of such transactions may affect our results of operations in a given period. Moreover, because of concentration of risk, we may suffer losses even when economic and market conditions are generally favorable for our competitors. Disruptions in the credit markets can make it difficult to hedge these credit exposures effectively or economically. In addition, we extend large commitments as part of our credit origination activities. Our inability to reduce our credit risk by selling, syndicating or securitizing these positions, including during periods of market stress, could negatively affect our results of operations due to a decrease in the fair value of the positions, including due to the insolvency or bankruptcy of the borrower, as well as the loss of revenues associated with selling such securities or loans.

In the ordinary course of business, we may be subject to a concentration of credit risk to a particular counterparty, borrower or issuer, and a failure or downgrade of, or default by, such entity could negatively impact our businesses, perhaps materially, and the systems by which we set limits and monitor the level of our credit exposure to individual entities, industries and countries may not function as we have anticipated. While our activities expose us to many different industries and counterparties, we routinely execute a high volume of transactions with counterparties in the financial services industry, including brokers and dealers, commercial banks, and investment funds. This has resulted in significant credit concentration with respect to this industry.

***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, creditworthiness and price. Over time, there has been substantial consolidation and convergence among companies in the financial services industry. This trend accelerated over the course of the past year as a result of numerous mergers and asset acquisitions among industry participants. 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 the extent we expand into new business areas and new geographic regions, we will face competitors with more experience and more established relationships with clients, regulators and industry participants in the relevant market, which could adversely affect our ability to expand.

Pricing and other competitive pressures in our investment banking business, as well as our other businesses, have continued to increase, particularly in situations where some of our competitors may seek to increase market share by reducing prices. For example, in connection with investment banking and other assignments, we have experienced pressure to extend and price credit at levels that may not always fully compensate us for the risks we take.

***We face enhanced risks as new business initiatives lead us to transact with a broader array of clients and counterparties and expose us to new asset classes and new markets.***

A number of our recent and planned business initiatives and expansions of existing businesses may bring us into contact, directly or indirectly, with individuals and entities that are not within our traditional client and counterparty base and expose us to new asset classes and new markets. These business activities expose us to new and enhanced risks, including risks associated with dealing with governmental entities, reputational concerns arising from dealing with less sophisticated counterparties and investors, greater regulatory scrutiny of these activities, increased credit-related, sovereign and operational risks, risks arising from accidents or acts of terrorism, and reputational concerns with the manner in which these assets are being operated or held.

***Derivative transactions may expose us to unexpected risk and potential losses.***

We are party to a large number of derivative transactions, including credit derivatives. Many of these derivative instruments are individually negotiated and non-standardized, which can make exiting, transferring or settling the position difficult. Many credit derivatives require that we deliver to the counterparty the underlying security, loan or other obligation in order to receive payment. In a number of cases, we do not hold the underlying security, loan or other obligation and may not be able to obtain, the underlying security, loan or other obligation. 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.

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. In addition, as new and more complex derivative products are created, covering a wider array of underlying credit and other instruments, disputes about the terms of the underlying contracts could arise, which could impair our ability to effectively manage our risk exposures from these products and subject us to increased costs. Any regulatory effort to create an exchange or trading platform for credit derivatives and other OTC derivative contracts, or a market shift toward standardized derivatives, could reduce the risk associated with such transactions, but under certain circumstances could also limit our ability to develop derivatives that best suit the needs of our clients and ourselves and adversely affect our profitability.

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

Our businesses are highly dependent on our ability to process and monitor, on a daily basis, a very large number of transactions, many of which are highly complex, across numerous and diverse markets in many currencies. These transactions, as well as the information technology services we provide to clients, often must adhere to client-specific guidelines, as well as legal and regulatory standards. As our client base and our geographical reach expands, developing and maintaining our operational systems and infrastructure becomes increasingly challenging. 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, such as a spike in transaction volume, adversely affecting our ability to process these transactions or provide these services. In addition, we also face the risk of operational failure, termination or capacity constraints 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 increasingly face the risk of operational failure with respect to our clients' systems. In recent years, there has been significant consolidation among clearing agents, exchanges and clearing houses, which has increased our exposure to operational failure, termination or capacity constraints of the particular financial intermediaries that we use and could affect our ability to find adequate and cost-effective alternatives in the event of any such failure, termination or constraint. Industry consolidation, whether among market participants or financial intermediaries, increases the risk of operational failure as disparate complex systems need to be integrated, often on an accelerated basis. Furthermore, the interconnectivity of multiple financial institutions with central agents, exchanges and clearing houses increases the risk that an operational failure at one institution may cause an industry-wide operational failure that could materially impact our ability to conduct business. Any such failure, termination or constraint could adversely affect our ability to effect transactions, service our clients, manage our exposure to risk or expand our businesses or result in financial loss or liability to our clients, impairment of our liquidity, disruption of our businesses, regulatory intervention or reputational damage.

Despite the resiliency 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, internet, transportation or other services used by us or third parties with which we conduct business. These disruptions may occur as a result of events that affect only our buildings or the buildings of such third parties, or as a result of events with a broader impact globally, regionally or in the cities where those buildings are located. Nearly all of our employees in our primary locations, including the New York metropolitan area, London, Frankfurt, Hong Kong, Tokyo and Bangalore, work in close proximity to one another, in one or more buildings. Notwithstanding our efforts to maintain business continuity, given that our headquarters and the largest concentration of our employees are in the New York metropolitan area, depending on the intensity and longevity of the event, a catastrophic event impacting our New York metropolitan area offices could very negatively affect our business. 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.

We routinely transmit and receive personal, confidential and proprietary information by email and other electronic means. We have discussed and worked with clients, vendors, service providers, counterparties and other third parties to develop secure transmission capabilities, but we do not have, and may be unable to put in place, secure capabilities with all of our clients, vendors, service providers, counterparties and other third parties and we may not be able to ensure that these third parties have appropriate controls in place to protect the confidentiality of the information. An interception, misuse or mishandling of personal, confidential or proprietary information being sent to or received from a client, vendor, service provider, counterparty or other third party could result in legal liability, regulatory action and reputational harm.

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

As we have expanded the scope of our businesses and our client base, we increasingly must address potential conflicts of interest, including situations where our services to a particular client or our own investments or other interests conflict, or are perceived to conflict, with the interests of another client, as well as situations where one or more of our businesses have access to material non-public information that may not be shared with other businesses within the firm and situations where we may be a creditor of an entity with which we also have an advisory or other relationship.

Our regulators have the ability to scrutinize our activities for potential conflicts of interest, including through detailed examinations of specific transactions. Our status as a bank holding company subjects us to heightened regulation and increased regulatory scrutiny by the Federal Reserve Board with respect to transactions between GS Bank USA and entities that are or could be seen as affiliates of ours.

We have extensive procedures and controls that are designed to identify and address conflicts of interest, including those designed to prevent the improper sharing of information among our businesses. However, appropriately identifying and dealing with conflicts of interest is complex and difficult, and our reputation, which is one of our most important assets, could be damaged and the willingness of clients to enter into transactions in which such a conflict might arise may be affected if we fail, or appear to fail, to identify and deal appropriately with conflicts of interest. In addition, potential or perceived conflicts could give rise to litigation or enforcement actions.

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

As a participant in the financial services industry, we are 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.

In recent years, 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, and certain regulators have been more likely in recent years to commence enforcement actions.

In addition, new laws or regulations or changes in enforcement of existing laws or regulations applicable to our businesses or those of our clients may adversely affect our businesses. Recent market disruptions have led to numerous proposals for changes in the regulation of the financial services industry, including significant additional regulation. Regulatory changes could lead to business disruptions, could impact the value of assets that we hold or the scope or profitability of our business activities, could require us to change certain of our business practices and could expose us to additional costs (including compliance costs) and liabilities as well as reputational harm, and, to the extent the regulations strictly control the activities of financial services firms, make it more difficult for us to distinguish ourselves from competitors. For a discussion of the extensive regulation to which our businesses are subject, see “Business — Regulation” in Part I, Item 1 of our Annual Report on Form 10-K.

Our status as a bank holding company and the operation of our lending and other businesses through GS Bank USA subject us to additional regulation and limitations on our activities, as described in “Business — Regulation — Banking Regulation” in Part I, Item 1 of our Annual Report on Form 10-K, as well as some regulatory uncertainty as we apply banking regulations and practices to many of our businesses. The application of these regulations and practices may present us and our regulators with new or novel issues.

Our firm is subject to regulatory capital requirements at a number of levels, as described above under “Business — Regulation” in Part I, Item 1 of our Annual Report on Form 10-K. As a bank holding company, we will be subject to capital requirements based on Basel I as opposed to the requirements based on Basel II that applied to us as a CSE. Complying with these requirements may require us to liquidate assets or raise capital in a manner that adversely increases our funding costs or otherwise adversely affects our shareholders and creditors. In addition, failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material adverse effect on our financial condition.

***Our agreements with the U.S. Treasury and Berkshire Hathaway Inc. impose restrictions and obligations on us that limit our ability to increase dividends, repurchase our common stock or preferred stock and access the equity capital markets.***

In October 2008, we issued preferred stock and a warrant to purchase our common stock to the U.S. Treasury as part of its TARP Capital Purchase Program. Prior to October 28, 2011, unless we have redeemed all of the preferred stock or the U.S. Treasury has transferred all of the preferred stock to a third party, the consent of the U.S. Treasury will be required for us to, among other things,

increase our common stock dividend or repurchase our common stock or other preferred stock (with certain exceptions, including the repurchase of our common stock to offset share dilution from equity-based employee compensation awards). We have also granted registration rights and offering facilitation rights to the U.S. Treasury and to Berkshire Hathaway Inc. pursuant to which we have agreed to lock-up periods during which we would be unable to issue equity securities.

***Substantial legal liability or significant regulatory action against us could have material adverse financial effects or cause us significant reputational harm, 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. See “Legal Proceedings” in Part I, Item 3 of our Annual Report on Form 10-K for a discussion of certain legal proceedings in which we are involved. Our experience has been that legal claims by customers and clients increase in a market downturn. In addition, employment-related claims typically increase in periods when we have reduced the total number of employees.

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.

***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. As our clients increasingly use our systems to trade directly in the markets, we may incur liabilities as a result of their use of our order routing and execution infrastructure. The NYSE’s adoption and continued refinement of its hybrid market for trading securities may increase pressure on our Equities business as clients execute more of their NYSE-related trades electronically. We have invested significant resources into the development of electronic trading systems and expect to continue to do so, but there is no assurance that the revenues generated by these systems will yield an adequate return on our investment, particularly given the relatively lower commissions arising from electronic trades.

***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; therefore, our continued ability to compete effectively in our businesses, to manage our businesses effectively and to expand into new businesses and geographic areas depends on our ability to attract new employees and to retain and motivate our existing employees. Competition from within the financial services industry and from businesses outside the financial services industry for qualified employees has often been intense. This is particularly the case in emerging markets, where we are often competing for qualified employees with entities that have a significantly greater presence or more extensive experience in the region.



In fiscal 2008, we significantly reduced compensation levels. In addition, the market price of our shares of our common stock declined very significantly during the year. A substantial portion of our annual bonus compensation paid to our senior employees has in recent years been paid in the form of equity-based awards. In addition, we reduced the number of employees across nearly all of our businesses during the latter portion of the year. The combination of these events could adversely affect our ability to hire and retain qualified employees.

***Our power generation interests and related activities subject us to extensive regulation, as well as environmental and other risks associated with power generation activities.***

The power generation facilities that we own and those that we operate, as well as our other power-related activities, are subject to extensive and evolving federal, state and local energy, environmental and other governmental laws and regulations, including environmental laws and regulations relating to, among others, air quality, water quality, waste management, natural resources, site remediation and health and safety.

We may incur substantial costs (including being required to cease or curtail operations of one or more of our power generation facilities) in complying with current or future laws and regulations relating to electric power generation and wholesale sales and trading of electricity and natural gas, including having to commit significant capital toward environmental monitoring, installation of pollution control equipment, payment of emission fees and carbon or other taxes, and application for, and holding of, permits and licenses at our power generation facilities. Our power generation facilities are also subject to the risk of unforeseen or catastrophic events, many of which are outside of our control, including breakdown or failure of power generation equipment, transmission lines or other equipment or processes or other mechanical malfunctions, performance below expected levels of output or efficiency, terrorist attacks, natural disasters or other hostile or catastrophic events. In addition, these facilities could be adversely affected by the failure of any of our third party suppliers or service providers to perform their contractual obligations, including the failure to obtain raw materials necessary for operation at reasonable prices. Market conditions or other factors could cause a failure to satisfy or obtain waivers under agreements with third parties, including lenders and utilities, which impose significant obligations on our subsidiaries that own such facilities. In addition, we may not have insurance against the risks that such facilities face or the insurance that we have may be inadequate to cover our losses.

The occurrence of any of such events may prevent the affected facilities from performing under applicable power sales agreements, may impair their operations or financial results and may result in litigation or other reputational harm.

***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 the outbreak of hostilities or acts of terrorism. In many countries, the laws and regulations applicable to the securities and financial services industries and many of the transactions in which we are involved are uncertain and evolving, and it may be difficult for us to determine the exact requirements of local laws in every market. Any determination by local regulators that we have not acted in compliance with the application of local laws in a particular market or our failure to develop effective working relationships with local regulators 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.

Our businesses and operations are increasingly expanding into new regions throughout the world, including emerging markets, and we expect this trend to continue. Various emerging market

countries have experienced severe economic and financial disruptions, including significant devaluations of their currencies, defaults or threatened defaults on sovereign debt, capital and currency exchange controls, and low or negative growth rates in their economies, as well as military activity or acts of terrorism. The possible effects of any of these conditions include an adverse impact on our businesses and increased volatility in financial markets generally.

***We may incur losses as a result of unforeseen or catastrophic events, including the emergence of a pandemic, terrorist attacks or natural disasters.***

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

**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 Exchange Act.

**Item 2. Properties**

Our principal executive offices are located at 85 Broad Street, New York, New York, and comprise approximately one million rentable square feet of leased space, pursuant to a lease agreement expiring in June 2011. We also occupy over 680,000 rentable square feet at One New York Plaza under lease agreements expiring primarily in 2010 (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 3.7 million rentable square feet in the New York metropolitan area.

In August 2005, we leased from Battery Park City Authority a parcel of land in lower Manhattan, pursuant to a ground lease. We are currently constructing a 2.1 million gross square foot office building on the site that will serve as our 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 until June 2069, the expiration date of the lease.

Under the terms of the ground lease, we made a lump-sum ground rent payment in June 2007 of \$161 million, which was paid into escrow, to be released to the Battery Park City Authority pending performance of specified state and city obligations. We are required 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 construction completion and initial occupancy of the building during 2009. The building is projected to cost between \$2.1 billion and \$2.3 billion, including acquisition, development, fitout and furnishings, financing and other related costs.

We are receiving significant benefits from the City and State of New York based on our agreement to construct our headquarters in lower Manhattan. These benefits are subject to recoupment or recapture if we do not satisfy our obligations under these agreements with the City and State of New York.

We have offices at 30 Hudson Street in Jersey City, New Jersey, which we own and which include approximately 1.6 million gross square feet of office space, and we own over 575,000 square feet of additional office space spread among four locations in New York and New Jersey. We have additional offices in the U.S. and elsewhere in the Americas, which together comprise approximately 2.9 million rentable square feet of leased space.

In Europe, the Middle East and Africa, we have offices that total approximately 2.2 million rentable square feet. 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 1.5 million 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 415,000 rentable square feet, the majority of which will expire in 2018. In Hong Kong, we currently lease approximately 295,000 rentable square feet under lease agreements, the majority of which will expire in 2011.

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. In 2008, we incurred exit costs of \$80 million related to our office space. We may incur exit costs in the future 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*

Group Inc. and GS&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.

GS&Co. has, 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 filed in the U.S. District Court for the Southern District of New York alleging, among other things, that the prospectuses for the offerings violated the federal securities laws by failing to disclose the existence of alleged arrangements tying allocations in certain offerings to higher customer brokerage commission rates as well as purchase orders in the aftermarket, and that the alleged arrangements resulted in market manipulation. The federal district court denied a motion to dismiss in all material respects relating to the underwriter defendants and generally granted plaintiffs' motion for class certification in six "focus cases." The U.S. Court of Appeals for the Second Circuit reversed the district court's order granting class certification, denied plaintiffs' applications for rehearing and rehearing en banc, and remanded. On August 14, 2007, plaintiffs amended their complaints in the six "focus cases" as well as their master allegations for all such cases to reflect new class related allegations. On September 27, 2007, plaintiffs filed a new motion for class certification in the district court, and on November 14, 2007, GS&Co. and the other defendants moved to dismiss the amended complaints. Following a mediation, a settlement in principle has been reached, subject to negotiation of definitive documentation and court approval.

GS&Co. is among numerous underwriting firms named as defendants in a number of complaints filed commencing October 3, 2007, in the U.S. District Court for the Western District of Washington alleging violations of the federal securities laws in connection with offerings of securities for 16 issuers

during 1999 and 2000. The complaints generally assert that the underwriters, together with each issuer's directors, officers and principal shareholders, entered into purported agreements to tie allocations in the offerings to increased brokerage commissions and aftermarket purchase orders. The complaints further allege that, based upon these and other purported agreements, the underwriters violated the reporting provisions of, and are subject to short-swing profit recovery under, Section 16 of the Exchange Act. On October 29, 2007, the cases were reassigned to a single district judge. On July 25, 2008, defendants moved to dismiss the various complaints.

GS&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, unspecified compensatory damages resulting from the alleged lower amount of offering proceeds. The court granted GS&Co.'s motion to dismiss as to five of the claims; plaintiff appealed from the dismissal of the five claims, and GS&Co. appealed from the denial of its motion as to the remaining claim. 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, and the New York Court of Appeals affirmed in part and reversed in part, 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, GS&Co. moved to dismiss the surviving claims or, in the alternative, for summary judgment, but the motion was denied by a decision dated March 21, 2006. Plaintiff has moved for leave to amend the complaint again, and GS&Co. has cross-moved to dismiss.

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 these investigations.

#### *Iridium Securities Litigation*

GS&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. All parties entered into settlement agreements, with the underwriter defendants contributing \$8.25 million to a settlement fund. The settlement was approved by the Court by order dated October 23, 2008 and has become final.

#### *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. GSI underwrote 20,268,846 shares and GS&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. The court held that the claims failed and dismissed the complaint and the Amsterdam Court of Appeal affirmed dismissal of the complaint.

In March 2001, a Dutch shareholders association initiated legal proceedings for an unspecified amount of damages against GSI in Amsterdam District Court in connection with the World Online

offering. The court rejected the claims against GSI, but found World Online liable in an amount to be determined. The Dutch shareholders association appealed from the dismissal of their claims against GSI. By a decision dated May 3, 2007, the Netherlands Court of Appeals affirmed in part and reversed in part the decision of the district court dismissing the complaint, holding that certain of the alleged disclosure deficiencies were actionable. On July 24, 2007, the shareholder association appealed from the Netherlands Court of Appeals decision to the extent that it affirmed the decision of the district court dismissing the complaint. On November 2, 2007, GSI joined the other defendants in appealing from the Court of Appeals decision to the extent that it reversed the district court's dismissal.

#### *Research Independence Matters*

GS&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 15, 2003, GS&Co.'s motion to dismiss the complaint was denied. The district court granted the plaintiffs' motion for class certification and the U.S. Court of Appeals for the Second Circuit, by an order dated January 26, 2007, vacated the district court's class certification and remanded for reconsideration.

GS&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, Goldman, Sachs & Co.'s motion to dismiss was granted with leave to replead, and plaintiff filed a second amended complaint. The defendants' motion to dismiss the second amended complaint was granted by order dated December 4, 2007, and plaintiff's motion for reconsideration was denied by order dated June 3, 2008. Plaintiff appealed the dismissal, and while the appeal was pending, the parties entered into a settlement agreement on a non-class basis, disposing of the case.

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

Group Inc., GS&Co. and Henry M. Paulson, Jr., the former Chairman and Chief Executive Officer of Group Inc., 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 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, and the district court granted the defendants' motion to dismiss with leave to amend. Plaintiffs filed a second amended complaint, and defendants filed a motion to dismiss. In a decision dated September 29, 2006, the federal district court granted Mr. Paulson's motion to dismiss with leave to replead but otherwise denied the motion. Plaintiffs' motion for class certification was granted by a decision dated September 15, 2008, and on September 26, 2008, the Goldman Sachs defendants filed a petition in the U.S. Court of Appeals for the Second Circuit seeking review of the certification ruling.

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 these requests. See "Business — Regulation — Regulations Applicable in and Outside the United States" in Part I, Item 1 of our Annual Report on Form 10-K for a discussion of our global research settlement.

### *Enron Litigation Matters*

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

GS&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 \$255,875,000, (including over-allotments) 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 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. GS&Co. underwrote \$127,937,500 (including over-allotments) principal amount of the notes. Group Inc. and GS&Co. moved to dismiss the class action complaint in the Texas federal court and the motion was granted as to Group Inc. but denied as to GS&Co. One of the plaintiffs has moved for class certification. GS&Co. has moved for judgment on the pleadings against all plaintiffs. On October 18, 2007, the parties reached a settlement agreement in principle pursuant to which GS&Co. has contributed \$11.5 million to a settlement fund, subject to definitive documentation and court approval. 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 GS&Co.).

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 and the company's outside accounting firm, and alleges violations of the disclosure requirements of the federal securities laws, fraud and misrepresentation. The Judicial Panel on Multidistrict Litigation has transferred that action to the Texas federal district court for purposes of coordinated or consolidated pretrial proceedings with other matters relating to Enron Corp. GS&Co. moved to dismiss the complaint and the motion was granted in part and denied in part. The district court granted the funds' motion for leave to file a second amended complaint on January 22, 2007.

GS&Co. is among numerous defendants in two substantively identical actions filed by Enron Corp.'s bankruptcy trustee 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. GS&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 approximately \$340 million additional commercial paper from various customers who have also been named as defendants. The bankruptcy court denied GS&Co.'s motion to dismiss as well as similar motions by other defendants. On August 1, 2005, various defendants including GS&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. On March 10, 2008, the district court denied GS&Co.'s motion to remove the standing reference at the present time. On April 29, 2008, GS&Co. moved for summary judgment. On January 6, 2009, GS&Co. entered into a settlement with the trustee pursuant to which it will pay \$6.95 million in exchange for a release and a bar order against any third party claims. The settlement was approved by the bankruptcy court on January 21, 2009.

### *Exodus Securities Litigation*

By an amended complaint dated July 11, 2002, GS&Co. and the other lead underwriters for the February 2001 offering of 13,000,000 shares of common stock and \$575,000,000 of 5¼% 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., alleged violations of the disclosure requirements of the federal securities laws and seeks compensatory damages. The parties entered into a settlement agreement, with the underwriter defendants contributing \$1 million toward a settlement fund. The settlement was approved by the district court on October 31, 2008 and has become final.

### *Montana Power Litigation*

GS&Co. and 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 GS&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 GS&Co. and 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 the Goldman Sachs defendants' motions to dismiss. 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 GS&Co., 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. Defendants moved to dismiss the complaint, but the motion was denied by a decision dated June 10, 2005.

### *Adelphia Communications Fraudulent Conveyance Litigation*

GS&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. Those proceedings have now been consolidated in a single amended complaint filed by the Adelphia Recovery Trust on October 31, 2007. The complaint seeks, 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 GS&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. GS&Co. moved to dismiss the claim related to such margin payments on December 21, 2007.

### *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, certain specialist firms on the NYSE, including SLKS, without admitting or denying the allegations, entered into a final global settlement with the SEC and the NYSE covering certain activities during the years 1999 through 2003. 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 (v) 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 or conduct on other exchanges.

SLKS, Spear, Leeds & Kellogg, L.P. and 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. The defendants' motion to dismiss the amended complaint was granted in part and denied in part by a decision dated December 13, 2005. On June 28, 2007, plaintiffs filed a motion seeking to certify a class.

#### *Treasury Matters*

On September 4, 2003, the SEC announced that GS&Co. had settled an administrative proceeding arising from certain trading in U.S. Treasury bonds over an approximately eight-minute period after GS&Co. received an October 31, 2001 telephone call from a Washington, D.C.-based political consultant concerning a forthcoming Treasury refunding announcement. Without admitting or denying the allegations, GS&Co. consented to the entry of an order that, among other things, (i) censured GS&Co.; (ii) directed GS&Co. to cease and desist from committing or causing any violations of Sections 15(c)(1)(A) and (C) and 15(f) of, and Rule 15c1-2 under, the Exchange Act; (iii) ordered GS&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 GS&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. GS&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.

GS&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 GS&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. The district court dismissed the antitrust and Illinois state law claims but permitted the federal commodities law claims to proceed. Plaintiff's motion for class certification was denied by a decision dated August 22, 2008. GS&Co. moved for summary judgment, and by a decision dated July 30, 2008, the district court granted the motion insofar as the remaining



claim relates to the trading of treasury bonds, but denied the motion without prejudice to the extent the claim relates to trading of treasury futures.

#### *Mutual Fund Matters*

GS&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. GS&Co. and its affiliates have cooperated with such requests.

#### *Refco Securities Litigation*

GS&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 filed in the U.S. District Court for the Southern District of New York beginning in October 2005 by investors in 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, which have been consolidated, allege violations of the disclosure requirements of the federal securities laws and seek compensatory damages. In addition to the underwriters, the consolidated complaint names 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), Grant Thornton (Refco Inc.'s outside auditor), and BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (BAWAG). Lead plaintiffs entered into a settlement with BAWAG, which was approved following certain amendments on June 29, 2007. GS&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.

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 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. The parties subsequently stipulated to the action's dismissal, and the action was dismissed by the district court by order dated January 7, 2009.

GS&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. GS&Co. is cooperating with those requests.

#### *Short-Selling Litigation*

Group Inc., GS&Co. and Goldman Sachs Execution & Clearing, L.P. are among the numerous financial services firms that have been named as defendants in a purported class action filed on April 12, 2006 in the U.S. District Court for the Southern District of New York by customers who engaged in short-selling transactions in equity securities since April 12, 2000. The amended complaint generally alleges that the customers were charged fees in connection with the short sales but that the applicable securities were not necessarily borrowed to effect delivery, resulting in failed deliveries, and that the defendants conspired to set a minimum threshold borrowing rate for securities designated as hard to borrow. The complaint asserts a claim under the federal antitrust laws, as well as claims under the New York Business Law and common law, and seeks treble damages as well as injunctive relief. Defendants' motion to dismiss the complaint was granted by a decision dated December 20, 2007. On January 18, 2008, plaintiffs appealed from this decision.

#### *Fannie Mae Litigation*

GS&Co. was added as a defendant in an amended complaint filed on August 14, 2006 in a purported class action pending in the U.S. District Court for the District of Columbia. The complaint

asserts violations of the federal securities laws generally arising from allegations concerning Fannie Mae's accounting practices in connection with certain Fannie Mae-sponsored REMIC transactions that were allegedly arranged by GS&Co. The other defendants include Fannie Mae, certain of its past and present officers and directors, and accountants. By a decision dated May 8, 2007, the district court granted GS&Co.'s motion to dismiss the claim against it. The time for an appeal will not begin to run until disposition of the claims against other defendants.

Beginning in September 2006, Group Inc. and/or GS&Co. were added named as defendants in four Fannie Mae shareholder derivative actions in the U.S. District Court for the District of Columbia. The complaints generally allege that the Goldman Sachs defendants aided and abetted a breach of fiduciary duty by Fannie Mae's directors and officers in connection with certain Fannie Mae-sponsored REMIC transactions and one of the complaints also asserts a breach of contract claim. The complaints also name as defendants certain former officers and directors of Fannie Mae as well as an outside accounting firm. The complaints seek, *inter alia*, unspecified damages. The Goldman Sachs defendants were dismissed without prejudice from the first filed of these actions, and the remaining claims in that action were dismissed for failure to make a demand on Fannie Mae's board of directors. That dismissal has been affirmed on appeal. The remaining three actions have been stayed by the district court.

#### *General American Litigation*

On February 13, 2007, the liquidators of General American Mutual Holding Corporation filed a complaint in Missouri Circuit Court against one of the company's former officers to assert claims against Group Inc. and GS&Co. The amended complaint asserted that the Goldman Sachs defendants breached certain duties and violated Missouri law in the course of acting as the company's financial advisor during 1998-1999 in connection with the exploration of a potential demutualization and initial public offering, and the ensuing sale of certain company assets. The complaint sought compensatory and punitive damages. The parties settled the action, with the Goldman Sachs defendants paying \$99.975 million. The settlement was approved by order dated November 6, 2008.

#### *Executive Compensation Litigation*

On March 16, 2007, Group Inc., its board of directors, executive officers and members of its management committee were named as defendants in a purported shareholder derivative action in the U.S. District Court for the Eastern District of New York challenging the sufficiency of the firm's February 21, 2007 Proxy Statement and the compensation of certain employees. The complaint generally alleges that the Proxy Statement undervalues stock option awards disclosed therein, that the recipients received excessive awards because the proper methodology was not followed, and that the firm's senior management received excessive compensation, constituting corporate waste. The complaint seeks, among other things, an injunction against the 2007 Annual Meeting of Shareholders, the voiding of any election of directors in the absence of an injunction and an equitable accounting for the allegedly excessive compensation. On July 20, 2007, defendants moved to dismiss the complaint, the motion was granted by an order dated December 18, 2008 and plaintiff appealed on January 13, 2009.

On January 17, 2008, Group Inc., its board of directors, executive officers and members of its management committee were named as defendants in a related purported shareholder derivative action brought by the same plaintiff in the same court predicting that the firm's 2008 Proxy Statement will violate the federal securities laws by undervaluing certain stock option awards and alleging that senior management received excessive compensation for 2007. The complaint seeks, among other things, an injunction against the distribution of the 2008 Proxy Statement, the voiding of any election

of directors in the absence of an injunction and an equitable accounting for the allegedly excessive compensation. On January 25, 2008, the plaintiff moved for a preliminary injunction to prevent the 2008 Proxy Statement from using options valuations that the plaintiff alleges are incorrect and to require the amendment of SEC Form 4s filed by certain of the executive officers named in the complaint to reflect the stock option valuations alleged by the plaintiff. Plaintiff's motion for a preliminary injunction was denied by order dated February 14, 2008, plaintiff appealed and twice moved to expedite the appeal, with the motions being denied by orders dated February 29, 2008 and April 3, 2008.

#### *Mortgage-Related Matters*

GS&Co. and certain of its affiliates, together with other financial services firms, have received requests for information from various governmental agencies and self-regulatory organizations relating to subprime mortgages, and securitizations, collateralized debt obligations and synthetic products related to subprime mortgages. GS&Co. and its affiliates are cooperating with the requests.

GS&Co., along with numerous other financial institutions, is a defendant in an action brought by the City of Cleveland alleging that the defendants' activities in connection with securitizations of subprime mortgages created a "public nuisance" in Cleveland. The action is pending in the U.S. District Court for the Northern District of Ohio, and the complaint seeks, among other things, unspecified compensatory damages. Defendants moved to dismiss on November 24, 2008.

GS&Co., Goldman Sachs Mortgage Company and GS Mortgage Securities Corp. are among the defendants in a purported class action commenced on December 11, 2008 in the U.S. District Court for the Southern District of New York brought on behalf of purchasers of various mortgage pass-through certificates and asset-backed certificates issued by various securitization trusts in 2007 and underwritten by GS&Co. The other defendants include the various issuer trusts that issued the securities as well as certain officers and directors of certain of the entity defendants. The complaint generally alleges that the registration statement and prospectus supplements for the certificates violated the federal securities laws. The complaint asserts claims against the issuer trusts and GS&Co. under Section 11 of the U.S. Securities Act of 1933 (Securities Act), and a related "controlling person" claim against the other defendants under Section 15 of the Securities Act, and seeks unspecified compensatory damages and rescission or rescissionary damages.

#### *Auction Products Matters*

On August 21, 2008, GS&Co. entered into a settlement in principle with the Office of Attorney General of the State of New York and the Illinois Securities Department (on behalf of the North American Securities Administrators Association) regarding auction rate securities. Under the agreement, Goldman Sachs agreed, among other things, (i) to offer to repurchase at par the outstanding auction rate securities that its private wealth management clients purchased through the firm prior to February 11, 2008, with the exception of those auction rate securities where auctions are clearing, (ii) to continue to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors, and (iii) to pay a \$22.5 million fine. The settlement, which is subject to definitive documentation and approval by the various states, does not resolve any potential regulatory action by the SEC.

On August 28, 2008, a putative shareholder derivative action was filed in the U.S. District Court for the Southern District of New York naming as defendants Group Inc., its board of directors, and certain senior officers. The complaint alleges generally that the board breached its fiduciary duties and committed mismanagement in connection with its oversight of auction rate securities marketing and trading operations, that certain individual defendants engaged in insider selling by selling shares of Group Inc., and that the firm's public filings were false and misleading in violation of the federal securities laws by failing to accurately disclose the alleged practices involving auction rate securities. The complaint seeks damages, injunctive and declaratory relief, restitution, and an order requiring the firm to adopt corporate reforms. Defendants moved to dismiss on January 23, 2009.

On September 4, 2008, Group Inc. was named as a defendant, together with numerous other financial services firms, in two complaints filed in the U.S. District Court for the Southern District of New York alleging that the defendants engaged in a conspiracy to manipulate the auction securities market in violation of federal antitrust laws. The actions were filed, respectively, on behalf of putative classes of issuers of and investors in auction rate securities and seek, among other things, treble damages. Defendants moved to dismiss on January 15, 2009.

#### *Private Equity-Sponsored Acquisitions Litigation*

Group Inc. and “GS Capital Partners” are among numerous private equity firms and investment banks named as defendants in a federal antitrust action filed in the U.S. District Court for the District of Massachusetts in December 2007. As amended, the complaint generally alleges that the defendants have colluded to limit competition in bidding for private equity-sponsored acquisitions of public companies, thereby resulting in lower prevailing bids and, by extension, less consideration for shareholders of those companies in violation of Section 1 of the U.S. Sherman Antitrust Act and common law. Defendants moved to dismiss on August 27, 2008. By an order dated November 19, 2008, the district court dismissed claims relating to certain transactions that were the subject of releases as part of the settlement of shareholder actions challenging such transactions, and by an order dated December 15, 2008 otherwise denied the motion to dismiss.

#### *Washington Mutual Securities Litigation*

GS&Co. is among numerous underwriters named as defendants in a putative securities class action amended complaint filed on August 5, 2008 in the U.S. District Court for the Western District of Washington. As to the underwriters, plaintiffs allege that the offering documents in connection with various securities offerings by Washington Mutual, Inc. failed to describe accurately the company’s exposure to mortgage-related activities in violation of the disclosure requirements of the federal securities laws. The defendants include past and present directors and officers of Washington Mutual, the company’s former outside auditors, and numerous underwriters. The underwriter defendants moved to dismiss on December 8, 2008. GS&Co. underwrote \$788,500,000 principal amount of securities in the offerings at issue.

On September 25, 2008, the FDIC took over the primary banking operations of Washington Mutual, Inc. and then sold them. On September 27, 2008, Washington Mutual, Inc. filed for Chapter 11 bankruptcy in the U.S. bankruptcy court in Delaware.

#### *Britannia Bulk Securities Litigation*

GS&Co. is among the underwriters named as defendants in numerous putative securities class actions filed beginning on November 6, 2008 in the U.S. District Court for the Southern District of New York arising from the June 17, 2008 \$125 million initial public offering of common stock of Britannia Bulk Holdings, Inc. The complaints name as defendants the company, certain of its directors and officers, and the underwriters for the offering. Plaintiffs allege that the offering materials violated the disclosure requirements of the federal securities laws and seek compensatory damages. Defendants have yet to respond.

GS&Co. underwrote 3.75 million shares of common stock for a total offering price of \$56.25 million. The principal operating subsidiary of Britannia Bulk Holdings, Inc. is subject to an insolvency proceeding in the U.K. courts.

#### **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 28, 2008.

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

Set forth below are the name, age, present title, principal occupation and certain biographical information as of January 26, 2009 for our executive officers. All of our executive officers have been appointed by and serve at the pleasure of our board of directors.

### **Lloyd C. Blankfein, 54**

Mr. Blankfein has been our Chairman and Chief Executive Officer since June 2006, and a director since April 2003. Previously, he had been our President and Chief Operating Officer since January 2004. Prior to that, from April 2002 until January 2004, he was a Vice Chairman of Goldman Sachs, with management responsibility for Goldman Sachs' Fixed Income, Currency and Commodities Division (FICC) and Equities Division (Equities). 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, the Advisory Board of the Tsinghua University School of Economics and Management and the Governing Board of the Indian School of Business, an overseer of the Weill Medical College of Cornell University, and a director of the Partnership for New York City and Catalyst.

### **Alan M. Cohen, 58**

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. He is affiliated with certain non-profit organizations, including as a board member of the New York Stem Cell Foundation.

### **Gary D. Cohn, 48**

Mr. Cohn has been our President and Co-Chief Operating Officer and a director since June 2006. Previously, he had been the co-head of Goldman Sachs' global securities businesses since January 2004. He also had been the co-head of Equities since 2003 and the co-head of FICC since September 2002. From March 2002 to September 2002, he served as co-chief operating officer of FICC. Prior to that, beginning in 1999, Mr. Cohn managed the FICC macro businesses. From 1996 to 1999, he was the global head of Goldman Sachs' commodities business. Mr. Cohn is not on the board of any public company other than Goldman Sachs. He is affiliated with certain non-profit organizations, including as a trustee of the Gilmour Academy, the NYU Child Study Center, the NYU Hospital, the NYU Medical School, the Harlem Children's Zone and American University.

### **J. Michael Evans, 51**

Mr. Evans has been a Vice Chairman of Goldman Sachs since February 2008 and chairman of Goldman Sachs Asia since 2004. Prior to becoming a Vice Chairman, he had served as global co-head of Goldman Sachs' securities business since 2003. Previously, he had been co-head of the Equities Division since 2001. Mr. Evans is a board member of CASPER (Center for Advancement of Standards-based Physical Education Reform). He also serves as a trustee of the Bendheim Center for Finance at Princeton University.

### **Gregory K. Palm, 60**

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.

**Michael S. Sherwood, 43**

Mr. Sherwood has been a Vice Chairman of Goldman Sachs since February 2008 and co-chief executive officer of Goldman Sachs International since 2005. Prior to becoming a Vice Chairman, he had served as global co-head of Goldman Sachs' securities business since 2003. Prior to that, he had been head of the Fixed Income, Currency and Commodities Division in Europe since 2001.

**Esta E. Stecher, 51**

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.

**David A. Viniar, 53**

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, Finance and Services 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.

**John S. Weinberg, 51**

Mr. Weinberg has been a Vice Chairman of Goldman Sachs since June 2006. He has been co-head of Goldman Sachs' Investment Banking Division since December 2002. From January 2002 to December 2002, he was co-head of the Investment Banking Division in the Americas. Prior to that, he served as co-head of the Investment Banking Services Department since 1997. He is affiliated with certain non-profit organizations, including as a board member at NewYork-Presbyterian Hospital, The Steppingstone Foundation, the Greenwich Country Day School and Community Anti-Drug Coalitions of America. Mr. Weinberg also serves on the Visiting Committee for Harvard Business School.

**Jon Winkelried, 49**

Mr. Winkelried has been our President and Co-Chief Operating Officer and a director since June 2006. Previously, he had been the co-head of Goldman Sachs' Investment Banking Division since January 2005. From 2000 to 2005, he was co-head of FICC. From 1999 to 2000, he was head of FICC in Europe. From 1995 to 1999, he was responsible for Goldman Sachs' leveraged finance business. Mr. Winkelried is not on the board of any public company other than Goldman Sachs. He is also a trustee of the University of Chicago.

## 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 2007 and 2008 is set forth under the heading "Supplemental Financial Information — Common Stock Price Range" in Part II, Item 8 of our Annual Report on Form 10-K. As of January 16, 2009, there were 9,909 holders of record of our common stock.

During fiscal 2008 and 2007, dividends of \$0.35 per share of common stock were declared on December 11, 2007, March 12, 2008, June 13, 2007, September 19, 2007, December 17, 2007, March 17, 2008, June 16, 2008 and September 15, 2008. 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 our Annual Report on Form 10-K for a discussion of potential regulatory limitations on our receipt of funds from our regulated subsidiaries and our payment of dividends to shareholders of Group Inc.

Prior to October 28, 2011, unless we have redeemed all the preferred stock issued to the U.S. Treasury on October 28, 2008 or unless the U.S. Treasury has transferred all the preferred stock to a third party, the consent of the U.S. Treasury will be required for us to declare or pay any dividend or make any distribution on common stock other than (i) regular quarterly cash dividends of not more than \$0.35 per share, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (ii) dividends payable solely in shares of common stock and (iii) dividends or distributions of rights or junior stock in connection with a stockholders' rights plan.

The table below sets forth the information with respect to purchases made by or on behalf of Group Inc. or any “affiliated purchaser” (as defined in Rule 10b-18(a)(3) under the Exchange Act), of our common stock during the fourth quarter of our fiscal year ended November 28, 2008.

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>(2)</sup></u>	<u>Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs <sup>(2)</sup></u>
Month #1 (August 30, 2008 to September 26, 2008) . . . . .	—	—	—	60,859,203
Month #2 (September 27, 2008 to October 31, 2008) . . . . .	2,025	\$121.35	2,025	60,857,178
Month #3 (November 1, 2008 to November 28, 2008) . . . . .	<u>4,700</u>	\$ 53.31	<u>4,700</u>	60,852,478
Total <sup>(1)</sup> . . . . .	<u>6,725</u>	\$ 73.80	<u>6,725</u>	

<sup>(1)</sup> Goldman Sachs generally does not repurchase shares of its common stock as part of the repurchase program during self-imposed “black-out” periods, which run from the last two weeks of a fiscal quarter through and including the date of the earnings release for such quarter.

<sup>(2)</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 280 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, September 16, 2005, September 11, 2006 and December 17, 2007. We use our share repurchase program to help maintain the appropriate level of common equity and to substantially offset increases in share count over time resulting from employee share-based compensation. Prior to October 28, 2011, unless we have redeemed all the preferred stock issued to the U.S. Treasury on October 28, 2008 or unless the U.S. Treasury has transferred all the preferred stock to a third party, the consent of the U.S. Treasury will be required for us to repurchase our common stock in an aggregate amount greater than the increase in the number of diluted shares outstanding (as reported in our Quarterly Report on Form 10-Q for the three months ended August 29, 2008) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

The repurchase program is effected primarily through regular open-market purchases, the amounts and timing of which are determined primarily by our current and projected capital positions (i.e., comparisons of our desired level of capital to our actual level of capital) but which may also be influenced by general market conditions and the prevailing price and trading volumes of our common stock, in each case subject to the limit imposed under the U.S. Treasury's TARP Capital Purchase Program. The total remaining authorization under the repurchase program was 60,852,478 shares as of January 16, 2009; the repurchase program has no set expiration or termination date.

Information relating to compensation plans under which our equity securities are authorized for issuance is set forth in Part III, Item 12 of our 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 our 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

The Goldman Sachs Group, Inc. (Group Inc.) is a bank holding company and 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, investment funds, governments and individuals.
- **Trading and Principal Investments.** We facilitate client transactions with a diverse group of corporations, financial institutions, investment funds, 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 these products. In addition, we engage in market-making and specialist 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 (primarily through separately managed accounts and commingled vehicles, such as mutual funds and private investment funds) 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 institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to high-net-worth individuals worldwide.

Unless specifically stated otherwise, all references to 2008, 2007 and 2006 refer to our fiscal years ended, or the dates, as the context requires, November 28, 2008, November 30, 2007 and November 24, 2006, respectively, and any reference to a future year refers to a fiscal year ending on the last Friday in November of that year.

On December 15, 2008, the Board of Directors of Group Inc. (Board) approved a change in our fiscal year-end from the last Friday of November to the last Friday of December. The change is effective for our 2009 fiscal year. The firm's 2009 fiscal year began December 27, 2008 and will end December 25, 2009, resulting in a one-month transition period that began November 29, 2008 and ended December 26, 2008.

When we use the terms "Goldman Sachs," "the firm," "we," "us" and "our," we mean Group Inc., a Delaware corporation, and its consolidated subsidiaries. References herein to our Annual Report on Form 10-K are to our Annual Report on Form 10-K for the fiscal year ended November 28, 2008.

In this discussion, we have included statements that may constitute "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. 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 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 statements about the objectives and effectiveness of our risk management and liquidity policies, statements about trends in or growth opportunities for our businesses, statements about our future status, activities or reporting under U.S. banking regulation, and statements about our investment banking transaction backlog. By identifying these statements for you in this manner, we are alerting you to the possibility that our actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. Important factors that could cause our actual results and financial condition to differ from those indicated in these forward-looking statements include, among others, those discussed below under "— Certain Risk Factors That May Affect Our Businesses" as well as "Risk Factors" in Part I, Item 1A of our Annual Report on Form 10-K and "Cautionary Statement Pursuant to the U.S. Private Securities Litigation Reform Act of 1995" in Part I, Item 1 of our Annual Report on Form 10-K.

## Executive Overview

Our diluted earnings per common share were \$4.47 for 2008, compared with \$24.73 for 2007. Return on average tangible common shareholders' equity <sup>(1)</sup> was 5.5% and return on average common shareholders' equity was 4.9% for 2008. As of November 2008, book value per common share was \$98.68, an increase of 9.1% compared with the end of 2007, and our Tier 1 Ratio <sup>(2)</sup> was 15.6%. During the fourth quarter of 2008, we raised \$20.75 billion in equity, comprised of a \$5.75 billion public common stock sale, a \$5 billion preferred stock and warrant issuance to Berkshire Hathaway Inc. and certain affiliates and a \$10 billion preferred stock and warrant issuance under the U.S. Department of the Treasury's (U.S. Treasury) TARP Capital Purchase Program. Total assets were \$885 billion at the end of the year, a decrease of 21% compared with the end of 2007. During the fourth quarter of 2008, the firm became a bank holding company regulated by the Board of Governors of the Federal Reserve System (Federal Reserve Board).

Our results for 2008 reflected a particularly difficult operating environment, including significant asset price declines, high levels of volatility and reduced levels of liquidity, particularly in the fourth quarter. In addition, credit markets experienced significant dislocation between prices for cash instruments and the related derivative contracts and between credit indices and underlying single names. Net revenues in Trading and Principal Investments were significantly lower compared with 2007, reflecting significant declines in Fixed Income, Currency and Commodities (FICC), Principal Investments and Equities. The decrease in FICC primarily reflected losses in credit products, which included a loss of approximately \$3.1 billion (net of hedges) related to non-investment-grade credit origination activities and losses from investments, including corporate debt and private and public equities. Results in mortgages included net losses of approximately \$1.7 billion on residential mortgage loans and securities and approximately \$1.4 billion on commercial mortgage loans and securities. Interest rate products, currencies and commodities each produced particularly strong results and net revenues were higher compared with 2007. During 2008, although client-driven activity was generally solid, FICC operated in a challenging environment characterized by broad-based declines in asset values, wider mortgage and corporate credit spreads, reduced levels of liquidity and broad-based investor deleveraging, particularly in the second half of the year. The decline in Principal Investments primarily reflected net losses of \$2.53 billion from corporate principal investments and \$949 million from real estate principal investments, as well as a \$446 million loss from our investment in the ordinary shares of Industrial and Commercial Bank of China Limited (ICBC). In Equities, the decrease compared with particularly strong net revenues in 2007 reflected losses in principal strategies, partially offset by higher net revenues in our client franchise businesses. Commissions were particularly strong and were higher than 2007. During 2008, Equities operated in an environment characterized by a significant decline in global equity prices, broad-based investor deleveraging and very high levels of volatility, particularly in the second half of the year.

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<sup>(1)</sup> Return on average tangible common shareholders' equity (ROTE) 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 ROTE.

<sup>(2)</sup> Before we became a bank holding company, we were subject to capital guidelines as a Consolidated Supervised Entity (CSE) that were generally consistent with those set out in the Revised Framework for the International Convergence of Capital Measurement and Capital Standards issued by the Basel Committee on Banking Supervision (Basel II). We currently compute and report our consolidated capital ratios in accordance with the Basel II requirements, as applicable to us when we were regulated as a CSE, for the purpose of assessing the adequacy of our capital. Under the Basel II framework as it applied to us when we were regulated as a CSE, our Tier 1 Ratio equals Tier 1 Capital divided by Total Risk-Weighted Assets (RWAs). We are currently working with the Federal Reserve Board to put in place the appropriate reporting and compliance mechanisms and methodologies to allow reporting of the Basel I capital ratios as of the end of March 2009. See "— Equity Capital" below for a further discussion of our Tier 1 Ratio.

Net revenues in Investment Banking also declined significantly compared with 2007, reflecting significantly lower net revenues in both Financial Advisory and Underwriting. In Financial Advisory, the decrease compared with particularly strong net revenues in 2007 reflected a decline in industry-wide completed mergers and acquisitions. The decrease in Underwriting primarily reflected significantly lower net revenues in debt underwriting, primarily due to a decline in leveraged finance and mortgage-related activity, reflecting difficult market conditions. Net revenues in equity underwriting were slightly lower compared with 2007, reflecting a decrease in industry-wide equity and equity-related offerings. Our investment banking transaction backlog at the end of 2008 was significantly lower than it was at the end of 2007. <sup>(3)</sup>

Net revenues in Asset Management and Securities Services increased compared with 2007. Securities Services net revenues were higher, reflecting the impact of changes in the composition of securities lending customer balances, as well as higher total average customer balances. Asset Management net revenues increased slightly compared with 2007. During the year, assets under management decreased \$89 billion to \$779 billion, due to \$123 billion of market depreciation, primarily in equity assets, partially offset by \$34 billion of net inflows.

Given the difficult market conditions, and in particular, the challenging liquidity and funding environment during 2008, we focused on reducing concentrated risk positions, including our exposure to leveraged loans and real estate-related loans. We believe that the strength of our capital position will enable us to take advantage of market opportunities as they arise in 2009.

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 the factors that may affect our future operating results, see “— Certain Risk Factors That May Affect Our Businesses” below as well as “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K.

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<sup>(3)</sup> Our investment banking transaction 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

Our financial performance is highly dependent on the environment in which our businesses operate. During the first half of 2008, global economic growth slowed as the U.S. entered a recession. Despite the weakness in the U.S. and other major economies, growth in most emerging markets remained solid, which contributed to a dramatic increase in commodity prices as well as increased inflation. However, during the second half of 2008, the downturn in global economic growth became broad-based, which coincided with significant weakness and sharply reduced liquidity across global financial markets. For a further discussion of how market conditions affect our businesses, see “— Certain Risk Factors That May Affect Our Businesses” below as well as “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K. A further discussion of the business environment in 2008 is set forth below.

**Global.** Growth in the global economy weakened substantially over the course of 2008, particularly in the major economies. Economic growth in emerging markets also generally declined in 2008, but remained high relative to the major economies. Fixed income and equity markets experienced high levels of volatility, broad-based declines in asset prices and reduced levels of liquidity, particularly during the fourth quarter of our fiscal year. In addition, mortgage and corporate credit spreads widened and credit markets experienced significant dislocation between prices for cash instruments and the related derivative contracts and between credit indices and underlying single names. The U.S. Federal Reserve lowered its federal funds target rate over the course of our fiscal year, while central banks in the Eurozone, United Kingdom, Japan and China also lowered interest rates towards the end of the year. Oil prices exhibited significant volatility during our fiscal year, rising to over \$140 per barrel in July before declining to under \$60 per barrel by the end of our fiscal year. In currency markets, the U.S. dollar initially weakened against most major currencies, particularly against the Euro, but subsequently recovered as the pace of decline in global economic growth began to accelerate in the second half of the year. Investment banking activity was generally subdued during our fiscal year, reflecting a significant decline in industry-wide announced and completed mergers and acquisitions and equity and equity-related offerings compared with 2007.

**United States.** Real gross domestic product growth in the U.S. economy slowed to an estimated 1.2% in calendar year 2008, down from 2.0% in 2007. The economy entered a recession near the beginning of our fiscal year, with the downturn intensifying in our fourth quarter. Much of the slowdown was attributable to weakness in credit markets brought on by the contraction in the housing market and the associated increase in mortgage delinquencies and defaults. Growth in industrial production slowed from 2007 levels, reflecting reduced growth in domestic demand and exports. Both business and consumer confidence declined over the course of the year. Growth in consumer expenditure was supported in the first half of the year by the federal government’s stimulus package but declined thereafter, as the housing market continued to weaken and the rate of unemployment rose significantly. The rate of inflation increased during the first half of our fiscal year, as energy and food prices increased significantly, but declined sharply towards the end of the year. Measures of core inflation, which remained elevated in the first half of the year, also declined towards the end of the year as the labor market continued to weaken and capacity utilization decreased. The U.S. Federal Reserve reduced its federal funds target rate by a total of 350 basis points to 1.00% during our fiscal year, its lowest level since 2003. U.S. regulatory agencies have also taken additional measures to address reduced levels of liquidity in credit markets and the U.S. Treasury took measures to strengthen the capital adequacy of financial institutions. The yield on the 10-year U.S. Treasury note declined by 104 basis points to 2.93% during our fiscal year. The Dow Jones Industrial Average, the S&P 500 Index and the NASDAQ Composite Index ended our fiscal year lower by 34%, 39% and 42%, respectively.

**Europe.** Real gross domestic product growth in the Eurozone economies slowed to an estimated 0.8% in calendar year 2008, down from 2.6% in 2007. Growth in industrial production, fixed investment and consumer expenditure weakened throughout the year. In addition, surveys of business and consumer confidence declined. Although the labor market remained solid in the first half of the

year, the unemployment rate began to increase in the second half of the year. The rate of inflation increased during the first three quarters of the year. In response to inflationary pressures, the European Central Bank (ECB) raised interest rates in July, increasing its main refinancing operations rate by 25 basis points to 4.25%. However, during the fourth quarter of our fiscal year, the ECB lowered its main refinancing operations rate by a total of 100 basis points to 3.25%, as financial markets and the outlook for growth weakened considerably and inflationary pressures appeared to decline. In the United Kingdom, real gross domestic product growth fell to an estimated 0.9% for calendar year 2008, down from 3.0% in 2007. The decline in growth accelerated in the second half of the year as credit market conditions deteriorated and the slowdown in the U.K. housing market intensified. The rate of inflation increased during the year, although inflationary pressures appeared to moderate in our fourth quarter. The Bank of England lowered its official bank rate over the course of our fiscal year by a total of 275 basis points to 3.00%. Long-term government bond yields in both the Eurozone and the U.K. ended our fiscal year lower. The Euro and British pound depreciated by 13% and 25%, respectively, against the U.S. dollar during our fiscal year. Major European equity markets ended our fiscal year significantly lower.

**Asia.** In Japan, real gross domestic product decreased by an estimated 0.2% in calendar year 2008 compared with an increase of 2.4% in 2007. Measures of investment activity in the housing sector and growth in consumption declined during the year. Export growth remained solid in the first half of the year but deteriorated notably towards year-end as the environment outside of Japan worsened. The rate of inflation increased from the near-zero levels seen in recent years, but remained moderate. The Bank of Japan lowered its target overnight call rate by 20 basis points in October, bringing it to 0.30%, while the yield on 10-year Japanese government bonds declined by 23 basis points during our fiscal year. The yen appreciated by 14% against the U.S. dollar. The Nikkei 225 ended our fiscal year down 46%.

In China, real gross domestic product growth declined to an estimated 9.0% in calendar year 2008 from 13.0% in 2007. Export growth and industrial production decelerated rapidly toward the end of the year, while consumer spending softened but remained solid. Rising food prices contributed to a higher rate of inflation in the first half of the year but inflation fell sharply in the second half of the year. The People's Bank of China raised its one-year benchmark lending rate by 18 basis points to 7.47% at the beginning of our fiscal year, but reduced the lending rate by 189 basis points during our fourth quarter and took additional measures to increase liquidity in the financial system. The Chinese government continued to allow the steady appreciation of its currency against the U.S. dollar in the first half of the year, after which the exchange rate remained broadly unchanged. Real gross domestic product growth in India slowed to an estimated 6.7% in calendar year 2008 from 9.0% in 2007. While export growth remained solid for most of the year, growth in consumer expenditure and fixed investment declined. The rate of wholesale inflation increased sharply in the first half of the year and then subsequently declined. The Indian rupee, along with other currencies in the region, generally depreciated against the U.S. dollar. Equity markets experienced substantial declines across the region, with the Shanghai Composite Index down 62%, and markets in Hong Kong, India and South Korea also ending the year significantly lower.

**Other Markets.** Real gross domestic product growth in Brazil declined to an estimated 5.4% in calendar year 2008 from 5.7% in 2007. For most of the year, growth was supported by strong capital inflows, high demand for commodity exports, and strong domestic demand. Towards the end of the year, however, the economic outlook deteriorated, as the Brazilian currency depreciated against the U.S. dollar and commodity prices fell. In Russia, real gross domestic product growth declined to an estimated 6.2% in calendar year 2008 from 8.1% in 2007. Growth was supported by strong household consumption and increased capital investment, particularly in the first half of the year. However, in the fourth quarter, the pace of growth declined sharply, as capital outflows intensified and the Russian currency depreciated against the U.S. dollar. Brazilian and Russian equity prices ended our fiscal year significantly lower.

## Certain Risk Factors That May Affect Our Businesses

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 businesses follows below. For a further discussion of these and other important factors that could affect our businesses, see “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K.

**Market Conditions and Market Risk.** Our financial performance is highly dependent on the environment in which our businesses operate. Overall, during fiscal 2008, the business environment has been extremely adverse for many of our businesses and there can be no assurance that these conditions will improve in the near term.

A favorable business environment is generally characterized by, among other factors, high global gross domestic product growth, transparent, liquid and efficient capital markets, low inflation, high business and investor confidence, stable geopolitical conditions and strong business earnings. Unfavorable or uncertain economic and market conditions can be caused by: declines in economic growth, business activity or investor or business confidence; limitations on the availability or increases in the cost of credit and capital; increases in inflation, interest rates, exchange rate volatility, default rates or the price of basic commodities; outbreaks of hostilities or other geopolitical instability; corporate, political or other scandals that reduce investor confidence in capital markets; natural disasters or pandemics; or a combination of these or other factors. Our businesses and profitability have been and may continue to become adversely affected by market conditions in many ways, including the following:

- Many of our businesses, such as our merchant banking businesses, our mortgages, leveraged loan and credit products businesses in our FICC segment, and our equity principal strategies business, have net “long” positions in debt securities, loans, derivatives, mortgages, equities (including private equity) and most other asset classes. In addition, many of our market-making and other businesses in which we act as a principal to facilitate our clients’ activities, including our specialist businesses, commit large amounts of capital to maintain trading positions in interest rate and credit products, as well as currencies, commodities and equities. Because nearly all of these investing and trading positions are marked-to-market on a daily basis, declines in asset values directly and immediately impact our earnings, unless we have effectively “hedged” our exposures to such declines. In certain circumstances (particularly in the case of leveraged loans and private equities or other securities that are not freely tradable or lack established and liquid trading markets), it may not be possible or economic to hedge such exposures and to the extent that we do so the hedge may be ineffective or may greatly reduce our ability to profit from increases in the values of the assets. Sudden declines and significant volatility in the prices of assets may substantially curtail or eliminate the trading markets for certain assets, which may make it very difficult to sell, hedge or value such assets. The inability to sell or effectively hedge assets reduces our ability to limit losses in such positions and the difficulty in valuing assets may increase our risk-weighted assets which requires us to maintain additional capital and increases our funding costs.
- Our cost of obtaining long-term unsecured funding is directly related to our credit spreads. Credit spreads are influenced by market perceptions of our creditworthiness. Widening credit spreads, as well as significant declines in the availability of credit, have adversely affected our ability to borrow on a secured and unsecured basis and may continue to do so. We fund ourselves on an unsecured basis by issuing commercial paper, promissory notes and long-term debt, or by obtaining bank loans or lines of credit. We seek to finance many of our assets, including our less liquid assets, on a secured basis, including by entering into repurchase agreements. Disruptions in the credit markets make it harder and more expensive to obtain funding for our businesses. If our available funding is limited or we are forced to fund

our operations at a higher cost, these conditions may require us to curtail our business activities and increase our cost of funding, both of which could reduce our profitability, particularly in our businesses that involve investing, lending and taking principal positions, including market making.

- Our investment banking business has been and may continue to be adversely affected by market conditions. Poor economic conditions and other adverse geopolitical conditions can adversely affect and have adversely affected investor and CEO confidence, resulting in significant industry-wide declines in the size and number of underwritings and of financial advisory transactions, which could continue to have an adverse effect on our revenues and our profit margins. In addition, our clients engaging in mergers and acquisitions often rely on access to the secured and unsecured credit markets to finance their transactions. The lack of available credit and the increased cost of credit can adversely affect the size, volume and timing of our clients' merger and acquisition transactions — particularly large transactions. Because a significant portion of our investment banking revenues are derived from our participation in large transactions, a decline in the number of large transactions would adversely affect our investment banking business.
- 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. On the other hand, increased volatility, while it can increase trading volumes and spreads, also increases risk as measured by VaR and may expose us to increased risks in connection with our market-making and proprietary businesses or cause us to reduce the size of these businesses in order to avoid increasing our VaR. Limiting the size of our market-making positions and investing businesses can adversely affect our profitability.
- We receive asset-based management fees based on the value of our clients' portfolios or investment in funds managed by us and, in some cases, we also receive incentive fees based on increases in the value of such investments. Declines in asset values reduce the value of our clients' portfolios or fund assets, which in turn reduce the fees we earn for managing such assets. Market uncertainty, volatility and adverse economic conditions, as well as declines in asset values, may cause our clients to transfer their assets out of our funds or other products or their brokerage accounts or affect our ability to attract new clients or additional assets from existing clients and result in reduced net revenues, principally in our asset management business. To the extent that clients do not withdraw their funds, they may invest them in products that generate less fee income.
- Concentration of risk increases the potential for significant losses in our market-making, proprietary trading, 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.
- Concerns about financial institution profitability and solvency as a result of general market conditions, particularly in the credit markets, together with the forced merger or failure of a number of major commercial and investment banks have at times caused a number of our clients to reduce the level of business that they do with us, either because of concerns about the safety of their assets held by us or simply arising from a desire to diversify their risk or for other reasons. Some clients have withdrawn some of the funds held at our firm or transferred them from deposits with GS Bank USA to other types of assets (in many cases leaving those assets in their brokerage accounts held with us). Some counterparties have at times refused to enter into certain derivatives and other long-term transactions with us or have requested additional collateral. These instances were more prevalent during periods when the lack of confidence in financial institutions was most widespread and have become significantly less frequent in recent months.



**Liquidity Risk.** Liquidity is essential to our businesses. Our liquidity may 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 redeem our investments, 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, or even by the perception among market participants that we, or other market participants, are experiencing greater liquidity risk. The ongoing liquidity crisis and the loss of confidence in financial institutions has increased our cost of funding and limited our access to some of our traditional sources of liquidity, including both secured and unsecured borrowings. In particular, in the latter half of 2008, we were unable to raise significant amounts of long-term unsecured debt in the public markets, other than as a result of the issuance of securities guaranteed by the Federal Deposit Insurance Corporation (FDIC) under the FDIC's Temporary Liquidity Guarantee Program (TLGP). It is unclear when we will regain access to the public long-term unsecured debt markets on customary terms or whether any similar program will be available after the TLGP's scheduled June 2009 expiration.

The financial instruments that we hold and the contracts to which we are a party are increasingly complex, as we employ structured products to benefit our clients and ourselves, and these complex structured products often do not have readily available markets to access in times of liquidity stress. Our investing activities may lead to situations where the holdings from these activities represent a significant portion of specific markets, which could restrict liquidity for our positions. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time, as is likely to occur in a liquidity or other market crisis. In addition, financial institutions with which we interact may exercise set-off rights or the right to require additional collateral, including in difficult market conditions, which could further impair our access to liquidity.

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 downgrades to our ratings that occurred in December 2008 and of the potential impact on Goldman Sachs of a further reduction in our credit ratings, see “— Liquidity and Funding Risk — Credit Ratings” below.

Group Inc. has guaranteed the payment obligations of Goldman, Sachs & Co. (GS&Co.), Goldman Sachs Bank USA (GS Bank USA) and Goldman Sachs Bank (Europe) PLC (GS Bank Europe), subject to certain exceptions, and has pledged significant assets to GS Bank USA to support its obligations to GS Bank USA. These guarantees may require Group Inc. to provide substantial funds or assets to its subsidiaries or their creditors or counterparties at a time when Group Inc. is in need of liquidity to fund its own obligations.

**Credit Risk.** The amount and duration of our credit exposures have been increasing over the past several years, as have the breadth and size of the entities to which we have credit exposures. 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. A failure of a significant market participant, or even concerns about a default by such an institution, could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect us. We are also subject to the risk that our rights against third parties may not be enforceable in all circumstances. In addition, 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. A significant downgrade in the credit ratings of our counterparties could also have a negative impact on our results. While in many cases we are permitted to require additional collateral for counterparties that experience financial difficulty, disputes may arise as to the amount of collateral we are entitled to receive and the value of pledged assets. Default rates, downgrades and disputes with counterparties as to the valuation of collateral increase significantly in times of market stress and illiquidity.

As part of our clearing business, we finance our client positions, and we could be held responsible for the defaults or misconduct of our clients. 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, particularly as new business initiatives lead us to transact with a broader array of clients and counterparties and expose us to new asset classes and new markets.

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.

**Operational Risk.** Our businesses are highly dependent on our ability to process and monitor, on a daily basis, a very large number of transactions, many of which are highly complex, across numerous and diverse markets in many currencies. These transactions, as well as the information technology services we provide to clients, often must adhere to client-specific guidelines, as well as legal and regulatory standards. Despite the resiliency 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, internet, transportation or other services used by us or third parties with which we conduct business.

Industry consolidation, whether among market participants or financial intermediaries, increases the risk of operational failure as disparate complex systems need to be integrated, often on an accelerated basis. Furthermore, the interconnectivity of multiple financial institutions with central agents, exchanges and clearing houses increases the risk that an operational failure at one institution may cause an industry-wide operational failure that could materially impact our ability to conduct business.

**Legal and Regulatory Risk.** We are subject to extensive and evolving regulation in jurisdictions around the world. Several of our subsidiaries are subject to regulatory capital requirements and, as a bank holding company, we are subject to minimum capital standards and a minimum Tier 1 leverage ratio on a consolidated basis. Firms in the financial services industry have been operating in a difficult regulatory environment. Recent market disruptions have led to numerous proposals for significant additional regulation of the financial services industry. These regulations could limit our business activities, increase compliance costs and, to the extent the regulations strictly control the activities of financial services firms, make it more difficult for us to distinguish ourselves from competitors. Substantial legal liability or a significant regulatory action against us could have material adverse financial effects or cause significant reputational harm to us, which in turn could seriously harm our business prospects. As a bank holding company, we will be subject to capital requirements based on Basel I as opposed to the requirements based on Basel II that applied to us as a CSE. Complying with these requirements may require us to liquidate assets or raise capital in a manner that adversely increases our funding costs or otherwise adversely affects our shareholders and creditors. In addition, failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material adverse effect on our financial condition. Our status as a bank holding company and the operation of our lending and other businesses through GS Bank USA subject us to additional regulation and limitations on our activities, as described in “Regulation — Banking Regulation” in Part I, Item 1 of our Annual Report on Form 10-K, as well as some regulatory uncertainty as we apply banking regulations and practices to many of our businesses. The application of these regulations and practices may present us and our regulators with new or novel issues. 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. Our experience has been that legal claims by customers and clients increase in a market downturn. In addition, employment-related claims typically increase in periods when we have reduced the total number of employees. 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 financial instruments, with related unrealized gains or losses generally recognized in “Trading and principal investments” in our consolidated statements of earnings, is fundamental to our financial statements and our risk management processes and is our most critical accounting policy. The fair value of a financial instrument is the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (the exit price). Financial assets are marked to bid prices and financial liabilities are marked to offer prices.

During the fourth quarter of 2008, both the Financial Accounting Standards Board (FASB) and the staff of the SEC re-emphasized the importance of sound fair value measurement in financial reporting. In October 2008, the FASB issued FASB Staff Position No. FAS 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active.” This statement clarifies that determining fair value in an inactive or dislocated market depends on facts and circumstances and requires significant management judgment. This statement specifies that it is acceptable to use inputs based on management estimates or assumptions, or for management to make adjustments to observable inputs to determine fair value when markets are not active and relevant observable inputs are not available. Our fair value measurement policies are consistent with the guidance in FSP No. FAS 157-3.

Substantially all trading assets and trading liabilities are reflected in our consolidated statements of financial condition at fair value, pursuant principally to:

- Statement of Financial Accounting Standards (SFAS) No. 115, “Accounting for Certain Investments in Debt and Equity Securities;”
- specialized industry accounting for broker-dealers and investment companies;
- SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities;” or
- the fair value option under either SFAS No. 155, “Accounting for Certain Hybrid Financial Instruments — an amendment of FASB Statements No. 133 and 140;” or SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (i.e., the fair value option).

Upon becoming a bank holding company in September 2008, we could no longer apply specialized broker-dealer industry accounting to those subsidiaries not regulated as broker-dealers. Therefore, within our non-broker-dealer subsidiaries, we designated as held for trading those instruments within the scope of SFAS No. 115 (i.e., debt securities and marketable equity securities), and elected the fair value option for other cash instruments (specifically loans, loan commitments and certain private equity and restricted public equity securities) which we historically had carried at fair value. These fair value elections were in addition to previous elections made for certain corporate loans, loan commitments and certificates of deposit issued by GS Bank USA. There was no impact on earnings from these initial elections because all of these instruments were already recorded at fair value in “Trading assets, at fair value” or “Trading liabilities, at fair value” in the consolidated statements of financial condition prior to Group Inc. becoming a bank holding company.

In determining fair value, we separate our “Trading assets, at fair value” and “Trading liabilities, at fair value” into two categories: cash instruments and derivative contracts, as set forth in the following table:

**Trading Instruments by Category**  
(in millions)

	As of November			
	2008		2007	
	Trading Assets, at Fair Value	Trading Liabilities, at Fair Value	Trading Assets, at Fair Value	Trading Liabilities, at Fair Value
Cash trading instruments . . . . .	\$186,231	\$ 57,143	\$324,181	\$112,018
ICBC . . . . .	5,496 <sup>(1)</sup>	—	6,807 <sup>(1)</sup>	—
SMFG . . . . .	1,135	1,134 <sup>(4)</sup>	4,060	3,627 <sup>(4)</sup>
Other principal investments . . . . .	15,126 <sup>(2)</sup>	—	11,933 <sup>(2)</sup>	—
Principal investments . . . . .	<u>21,757</u>	<u>1,134</u>	<u>22,800</u>	<u>3,627</u>
Cash instruments . . . . .	207,988	58,277	346,981	115,645
Exchange-traded . . . . .	6,164	8,347	13,541	12,280
Over-the-counter . . . . .	124,173	109,348	92,073	87,098
Derivative contracts . . . . .	<u>130,337</u> <sup>(3)</sup>	<u>117,695</u> <sup>(5)</sup>	<u>105,614</u> <sup>(3)</sup>	<u>99,378</u> <sup>(5)</sup>
Total . . . . .	<u>\$338,325</u>	<u>\$175,972</u>	<u>\$452,595</u>	<u>\$215,023</u>

<sup>(1)</sup> Includes interests of \$3.48 billion and \$4.30 billion as of November 2008 and November 2007, respectively, held by investment funds managed by Goldman Sachs. The fair value of our investment in the ordinary shares of ICBC, which trade on The Stock Exchange of Hong Kong, includes the effect of foreign exchange revaluation for which we maintain an economic currency hedge.

<sup>(2)</sup> The following table sets forth the principal investments (in addition to our investments in ICBC and Sumitomo Mitsui Financial Group, Inc. (SMFG)) included within the Principal Investments component of our Trading and Principal Investments segment:

	As of November					
	2008			2007		
	Corporate	Real Estate	Total	Corporate	Real Estate	Total
	(in millions)					
Private . . . . .	\$10,726	\$2,935	\$13,661	\$7,297	\$2,361	\$ 9,658
Public . . . . .	1,436	29	1,465	2,208	67	2,275
Total . . . . .	<u>\$12,162</u>	<u>\$2,964</u>	<u>\$15,126</u>	<u>\$9,505</u>	<u>\$2,428</u>	<u>\$11,933</u>

<sup>(3)</sup> Net of cash received pursuant to credit support agreements of \$137.16 billion and \$59.05 billion as of November 2008 and November 2007, respectively.

<sup>(4)</sup> Represents an economic hedge on the shares of common stock underlying our investment in the convertible preferred stock of SMFG.

<sup>(5)</sup> Net of cash paid pursuant to credit support agreements of \$34.01 billion and \$27.76 billion as of November 2008 and November 2007, respectively.

**Cash Instruments.** Cash instruments include cash trading instruments, public principal investments and private principal investments.

- **Cash Trading Instruments.** Our cash trading instruments are generally valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued based on quoted market prices in active markets include most U.S. government and sovereign obligations, active listed equities and certain money market securities.

The types of instruments that trade in markets that are not considered to be active, but are valued based on quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency include most government agency securities, investment-grade corporate bonds, certain mortgage products, certain bank loans and bridge loans, less liquid listed equities, state, municipal and provincial obligations and certain money market securities and loan commitments.

Certain cash trading instruments trade infrequently and therefore have little or no price transparency. Such instruments include private equity and real estate fund investments, certain bank loans and bridge loans (including certain mezzanine financing, leveraged loans arising from capital market transactions and other corporate bank debt), less liquid corporate debt securities and other debt obligations (including less liquid high-yield corporate bonds, distressed debt instruments and collateralized debt obligations (CDOs) backed by corporate obligations), less liquid mortgage whole loans and securities (backed by either commercial or residential real estate), and acquired portfolios of distressed loans. The transaction price is initially used as the best estimate of fair value. Accordingly, when a pricing model is used to value such an instrument, the model is adjusted so that the model value at inception equals the transaction price. This valuation is adjusted only when changes to inputs and assumptions are corroborated by evidence such as transactions in similar instruments, completed or pending third-party transactions in the underlying investment or comparable entities, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, offerings in the equity or debt capital markets, and changes in financial ratios or cash flows.

For positions that are not traded in active markets or are subject to transfer restrictions, valuations are adjusted to reflect illiquidity and/or non-transferability. Such adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used.

- **Public Principal Investments.** Our public principal investments held within the Principal Investments component of our Trading and Principal Investments segment tend to be large, concentrated holdings resulting from initial public offerings or other corporate transactions, and are valued based on quoted market prices. For positions that are not traded in active markets or are subject to transfer restrictions, valuations are adjusted to reflect illiquidity and/or non-transferability. Such adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used.

Our most significant public principal investment is our investment in the ordinary shares of ICBC. Our investment in ICBC is valued using the quoted market price adjusted for transfer restrictions. The ordinary shares acquired from ICBC are subject to transfer restrictions that, among other things, prohibit any sale, disposition or other transfer until April 28, 2009. From April 28, 2009 to October 20, 2009, we may transfer up to 50% of the aggregate ordinary shares of ICBC that we owned as of October 20, 2006. We may transfer the remaining shares after October 20, 2009. A portion of our interest is held by investment funds managed by Goldman Sachs.

We also have an investment in the convertible preferred stock of SMFG. This investment is valued using a model that is principally based on SMFG's common stock price. During our second quarter of 2008, we converted one-third of our SMFG preferred stock investment into SMFG common stock, and delivered the common stock to close out one-third of our hedge position. As of November 2008, we remained hedged on the common stock underlying our remaining investment in SMFG.

- **Private Principal Investments.** Our private principal investments held within the Principal Investments component of our Trading and Principal Investments segment include investments in private equity, debt and real estate, primarily held through investment funds. By their nature, these investments have little or no price transparency. We value such instruments initially at transaction price and adjust valuations when evidence is available to support such adjustments. Such evidence includes transactions in similar instruments, completed or pending third-party transactions in the underlying investment or comparable entities, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, offerings in the equity or debt capital markets, and changes in financial ratios or cash flows.

**Derivative Contracts.** Derivative contracts can be exchange-traded or over-the-counter (OTC). We generally value exchange-traded derivatives using models which calibrate to market-clearing levels and eliminate timing differences between the closing price of the exchange-traded derivatives and their underlying instruments.

OTC derivatives are valued using market transactions and other market evidence whenever possible, including market-based inputs to models, model calibration to market-clearing transactions, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. Where models are used, the selection of a particular 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. Valuation models require a variety of inputs, including contractual terms, market prices, yield curves, credit curves, measures of volatility, prepayment rates and correlations of such inputs. For OTC derivatives that trade in liquid markets, such as generic forwards, swaps and options, model inputs can generally be verified and model selection does not involve significant management judgment.

Certain OTC derivatives trade in less liquid markets with limited pricing information, and the determination of fair value for these derivatives is inherently more difficult. Where we do not have corroborating market evidence to support significant model inputs and cannot verify the model to market transactions, the transaction price is initially used as the best estimate of fair value. Accordingly, when a pricing model is used to value such an instrument, the model is adjusted so that the model value at inception equals the transaction price. Subsequent to initial recognition, we only update valuation inputs when corroborated by evidence such as similar market transactions, third-party pricing services and/or broker or dealer quotations, or other empirical market data. In circumstances where we cannot verify the model value to market transactions, it is possible that a different valuation model could produce a materially different estimate of fair value. See “— Derivatives” below for further information on our OTC derivatives.

When appropriate, valuations are adjusted for various factors such as liquidity, bid/offer spreads and credit considerations. Such adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used.

**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 at market-clearing levels (exit price) and that fair value measurements are reliable and consistently determined.

We employ an oversight structure that includes appropriate segregation of duties. Senior management, independent of the trading and investing 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 appropriately. 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 trading and investing functions. For financial instruments where prices or valuations that require inputs are less observable, we employ, where possible, procedures that include comparisons with similar observable positions, analysis of actual to projected cash flows, comparisons with subsequent sales, reviews of valuations used for collateral management purposes and discussions with senior business leaders. See “— Market Risk” and “— Credit Risk” below for a further discussion of how we manage the risks inherent in our trading and principal investing businesses.

**Fair Value Hierarchy — Level 3.** SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The objective of a fair value measurement is to determine the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (the exit price). The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). Assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.

Instruments that trade infrequently and therefore have little or no price transparency are classified within level 3 of the fair value hierarchy. We determine which instruments are classified within level 3 based on the results of our price verification process. This process is performed by personnel independent of our trading and investing functions who corroborate valuations to external market data (e.g., quoted market prices, broker or dealer quotations, third-party pricing vendors, recent trading activity and comparative analyses to similar instruments). When broker or dealer quotations or third-party pricing vendors are used for valuation or price verification, greater priority is given to executable quotes. As part of our price verification process, valuations based on quotes are corroborated by comparison both to other quotes and to recent trading activity in the same or similar instruments. The number of quotes obtained varies by instrument and depends on the liquidity of the particular instrument. See Notes 2 and 3 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding SFAS No. 157.

Recent market conditions, particularly in the fourth quarter of 2008 (characterized by dislocations between asset classes, elevated levels of volatility, and reduced price transparency), have increased the level of management judgment required to value cash trading instruments classified within level 3 of the fair value hierarchy. In particular, management’s judgment is required to determine the appropriate risk-adjusted discount rate for cash trading instruments with little or no price transparency as a result of decreased volumes and lower levels of trading activity. In such situations, our valuation is adjusted to approximate rates which market participants would likely consider appropriate for relevant credit and liquidity risks.

**Valuation Methodologies for Level 3 Assets.** Instruments classified within level 3 of the fair value hierarchy are initially valued at transaction price, which is considered to be the best initial estimate of fair value. As time passes, transaction price becomes less reliable as an estimate of fair value and accordingly, we use other methodologies to determine fair value, which vary based on the type of instrument, as described below. Regardless of the methodology, valuation inputs and assumptions are only changed when corroborated by substantive evidence. Senior management in control functions, independent of the trading and investing functions, reviews all significant unrealized gains/losses, including the primary drivers of the change in value. Valuations are further corroborated



by values realized upon sales of our level 3 assets. An overview of methodologies used to value our level 3 assets subsequent to the transaction date is as follows:

- **Private equity and real estate fund investments.** Investments are generally held at cost for the first year. Recent third-party investments or pending transactions are considered to be the best evidence for any change in fair value. In the absence of such evidence, valuations are based on third-party independent appraisals, transactions in similar instruments, discounted cash flow techniques, valuation multiples and public comparables. Such evidence includes pending reorganizations (e.g., merger proposals, tender offers or debt restructurings); and significant changes in financial metrics (e.g., operating results as compared to previous projections, industry multiples, credit ratings and balance sheet ratios).
- **Bank loans and bridge loans and Corporate debt securities and other debt obligations.** Valuations are generally based on discounted cash flow techniques, for which the key inputs are the amount and timing of expected future cash flows, market yields for such instruments and recovery assumptions. Inputs are generally determined based on relative value analyses, which incorporate comparisons both to credit default swaps that reference the same underlying credit risk and to other debt instruments for the same issuer for which observable prices or broker quotes are available.
- **Loans and securities backed by commercial real estate.** Loans and securities backed by commercial real estate are collateralized by specific assets and are generally tranching into varying levels of subordination. Due to the nature of these instruments, valuation techniques vary by instrument. Methodologies include relative value analyses across different tranches, comparisons to transactions in both the underlying collateral and instruments with the same or substantially the same underlying collateral, market indices (such as the CMBX <sup>(1)</sup>), and credit default swaps, as well as discounted cash flow techniques.
- **Loans and securities backed by residential real estate.** Valuations are based on both proprietary and industry recognized models (including Intex and Bloomberg), discounted cash flow techniques and hypothetical securitization analyses. In the recent market environment, the most significant inputs to the valuation of these instruments are rates of delinquency, default and loss expectations, which are driven in part by housing prices. Inputs are determined based on relative value analyses, which incorporate comparisons to instruments with similar collateral and risk profiles, including relevant indices such as the ABX <sup>(1)</sup>.
- **Loan portfolios.** Valuations are based on discounted cash flow techniques, for which the key inputs are the amount and timing of expected future cash flows and market yields for such instruments. Inputs are determined based on relative value analyses which incorporate comparisons to recent auction data for other similar loan portfolios.
- **Derivative contracts.** Valuation models are calibrated to initial transaction price. Subsequent changes in valuations are based on observable inputs to the valuation models (e.g., interest rates, credit spreads, volatilities, etc.). Inputs are changed only when corroborated by market data. Valuations of less liquid OTC derivatives are typically based on level 1 or level 2 inputs that can be observed in the market, as well as unobservable inputs, such as correlations and volatilities.

Total level 3 assets were \$66.19 billion and \$69.15 billion as of November 2008 and November 2007, respectively. The decrease in level 3 assets for the year ended November 2008 primarily reflected (i) unrealized losses on loans and securities backed by commercial real estate, bank loans and bridge loans, and private equity and real estate fund investments, and (ii) sales and paydowns on bank loans and bridge loans and loan portfolios. These decreases were partially offset by transfers to level 3 of certain loans and securities backed by commercial real estate due to reduced price transparency.

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<sup>(1)</sup> The CMBX and ABX are indices that track the performance of commercial mortgage bonds and subprime residential mortgage bonds, respectively.

The following table sets forth the fair values of financial assets classified as level 3 within the fair value hierarchy:

**Level 3 Financial Assets at Fair Value**  
(in millions)

<u>Description</u>	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
Private equity and real estate fund investments <sup>(1)</sup> . . . . .	\$16,006	\$ 18,006
Bank loans and bridge loans <sup>(2)</sup> . . . . .	11,957	13,334
Corporate debt securities and other debt obligations <sup>(3)</sup> . . . . .	7,596	6,111
Mortgage and other asset-backed loans and securities		
Loans and securities backed by commercial real estate . . . . .	9,340	7,410
Loans and securities backed by residential real estate . . . . .	2,049	2,484
Loan portfolios <sup>(4)</sup> . . . . .	<u>4,118</u>	<u>6,106</u>
Cash instruments . . . . .	51,066	53,451
Derivative contracts . . . . .	<u>15,124</u>	<u>15,700</u>
Total level 3 assets at fair value . . . . .	66,190	69,151
Level 3 assets for which we do not bear economic exposure <sup>(5)</sup> . . . . .	<u>(6,616)</u>	<u>(14,437)</u>
Level 3 assets for which we bear economic exposure . . . . .	<u>\$59,574</u>	<u>\$ 54,714</u>

<sup>(1)</sup> Includes \$1.18 billion and \$7.06 billion as of November 2008 and November 2007, respectively, of assets for which we do not bear economic exposure. Also includes \$2.62 billion and \$2.02 billion as of November 2008 and November 2007, respectively, of real estate fund investments.

<sup>(2)</sup> Includes mezzanine financing, leveraged loans arising from capital market transactions and other corporate bank debt.

<sup>(3)</sup> Includes \$804 million and \$2.49 billion as of November 2008 and November 2007, respectively, of CDOs backed by corporate obligations.

<sup>(4)</sup> Consists of acquired portfolios of distressed loans, primarily backed by commercial and residential real estate collateral.

<sup>(5)</sup> We do not bear economic exposure to these level 3 assets as they are financed by nonrecourse debt, attributable to minority investors or attributable to employee interests in certain consolidated funds.

**Loans and securities backed by residential real estate.** We securitize, underwrite and make markets in various types of residential mortgages, including prime, Alt-A and subprime. At any point in time, we may use cash instruments as well as derivatives to manage our long or short risk position in residential real estate. The following table sets forth the fair value of our long positions in prime, Alt-A and subprime mortgage cash instruments:

**Long Positions in Loans and Securities Backed by Residential Real Estate**  
(in millions)

	As of November	
	2008	2007
Prime <sup>(1)</sup> .....	\$1,494	\$ 7,135
Alt-A .....	1,845	6,358
Subprime <sup>(2)</sup> .....	1,906	2,109
<b>Total <sup>(3)</sup> .....</b>	<b><u>\$5,245</u></b>	<b><u>\$15,602</u></b>

<sup>(1)</sup> Excludes U.S. government agency-issued collateralized mortgage obligations of \$4.27 billion and \$7.24 billion as of November 2008 and November 2007, respectively. Also excludes U.S. government agency-issued mortgage-pass through certificates.

<sup>(2)</sup> Includes \$228 million and \$316 million of CDOs backed by subprime mortgages as of November 2008 and November 2007, respectively.

<sup>(3)</sup> Includes \$2.05 billion and \$2.48 billion of financial instruments (primarily loans and investment-grade securities, the majority of which were issued during 2006 and 2007) classified as level 3 under the fair value hierarchy as of November 2008 and November 2007, respectively.

**Loans and securities backed by commercial real estate.** We originate, securitize and syndicate fixed and floating rate commercial mortgages globally. At any point in time, we may use cash instruments as well as derivatives to manage our risk position in the commercial mortgage market. The following table sets forth the fair value of our long positions in loans and securities backed by commercial real estate by geographic region. The decrease in loans and securities backed by commercial real estate from November 2007 to November 2008 was primarily due to dispositions.

**Long Positions in Loans and Securities Backed by  
Commercial Real Estate by Geographic Region**  
(in millions)

	As of November	
	2008	2007
Americas <sup>(1)</sup> .....	\$ 7,433	\$12,361
EMEA <sup>(2)</sup> .....	3,304	6,607
Asia .....	157	52
<b>Total <sup>(3)</sup> .....</b>	<b><u>\$10,894</u></b> <sup>(4)</sup>	<b><u>\$19,020</u></b> <sup>(5)</sup>

<sup>(1)</sup> Substantially all relates to the U.S.

<sup>(2)</sup> EMEA (Europe, Middle East and Africa).

<sup>(3)</sup> Includes \$9.34 billion and \$7.41 billion of financial instruments classified as level 3 under the fair value hierarchy as of November 2008 and November 2007, respectively.

<sup>(4)</sup> Comprised of loans of \$9.23 billion and commercial mortgage-backed securities of \$1.66 billion as of November 2008, of which \$9.78 billion was floating rate and \$1.11 billion was fixed rate.

<sup>(5)</sup> Comprised of loans of \$16.27 billion and commercial mortgage-backed securities of \$2.75 billion as of November 2007, of which \$16.52 billion was floating rate and \$2.50 billion was fixed rate.

**Other Financial Assets and Financial Liabilities at Fair Value.** In addition to “Trading assets, at fair value” and “Trading liabilities, at fair value,” we have elected to account for certain of our other financial assets and financial liabilities at fair value under the fair value option. The primary reasons for electing the fair value option are to reflect economic events in earnings on a timely basis, to mitigate volatility in earnings from using different measurement attributes and to address simplification and cost-benefit considerations.

Such financial assets and financial liabilities accounted for at fair value include:

- certain unsecured short-term borrowings, consisting of all promissory notes and commercial paper and certain hybrid financial instruments;
- certain other secured financings, primarily transfers accounted for as financings rather than sales under SFAS No. 140, debt raised through our William Street program and certain other nonrecourse financings;
- certain unsecured long-term borrowings, including prepaid physical commodity transactions;
- resale and repurchase agreements;
- securities borrowed and loaned within Trading and Principal Investments, consisting of our matched book and certain firm financing activities;
- certain corporate loans, loan commitments and certificates of deposit issued by GS Bank USA as well as securities held by GS Bank USA;
- receivables from customers and counterparties arising from transfers accounted for as secured loans rather than purchases under SFAS No. 140;
- certain insurance and reinsurance contracts; and
- in general, investments acquired after the adoption of SFAS No. 159 where we have significant influence over the investee and would otherwise apply the equity method of accounting. In certain cases, we may apply the equity method of accounting to new investments that are strategic in nature or closely related to our principal business activities, where we have a significant degree of involvement in the cash flows or operations of the investee, or where cost-benefit considerations are less significant.

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

As a result of our acquisitions, principally SLK LLC (SLK) in 2000, The Ayco Company, L.P. (Ayco) in 2003 and our variable annuity and life insurance business in 2006, 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, which are components one level below our three business segments, for impairment at least annually in accordance with 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 based on valuation techniques we believe market participants would use for each segment (observable average price-to-earnings multiples of our competitors in these businesses and price-to-book multiples). We derive the net book value of our operating segments by estimating the amount of shareholders’ equity required to support the activities of each operating segment. Our last annual impairment test was performed during our 2008 fourth quarter and no impairment was identified. Substantially all of our goodwill is in our Equities component of our Trading and Principal Investments segment and in our Asset Management and Securities Services segment. Our Asset Management and Securities Services segment generated record net revenues in 2008 and our Equities component of our Trading and Principal Investments segment had its second best year following its record net revenues in 2007.

During 2008, particularly during the fourth quarter, the financial services industry and the securities markets generally were materially and adversely affected by significant declines in the values of nearly all asset classes and by a serious lack of liquidity. Our stock price, consistent with stock prices in the broader financial services sector, declined significantly during this period of time. During the fourth quarter of 2008, our market capitalization fell below recorded book value, principally during the last five weeks of the quarter. With respect to the testing of our goodwill for impairment, we believe that it is reasonable to consider market capitalization as an indicator of fair value over a reasonable period of time. If the current economic market conditions persist and if there is a prolonged period of weakness in the business environment and financial markets, our businesses may be adversely affected, which could result in an impairment of goodwill in the future.

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

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

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
Investment Banking		
Underwriting . . . . .	\$ 125	\$ 125
Trading and Principal Investments		
FICC . . . . .	247	123
Equities <sup>(1)</sup> . . . . .	2,389	2,381
Principal Investments . . . . .	80	11
Asset Management and Securities Services		
Asset Management <sup>(2)</sup> . . . . .	565	564
Securities Services . . . . .	<u>117</u>	<u>117</u>
Total . . . . .	<u>\$3,523</u>	<u>\$3,321</u>

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

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

**Identifiable Intangible Assets.** We amortize our identifiable intangible assets over their estimated lives in accordance with SFAS No. 142 or, in the case of insurance contracts, in accordance with SFAS No. 60, "Accounting and Reporting by Insurance Enterprises," and SFAS No. 97, "Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments." Identifiable intangible assets are tested for 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," or SFAS No. 60 and SFAS No. 97. An impairment loss, generally 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 lives of our identifiable intangible assets by major asset class:

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

	As of November		2007
	2008	2008	
	Carrying Value	Range of Estimated Remaining Lives (in years)	Carrying Value
Customer lists <sup>(1)</sup> .....	\$ 724	2 - 17	\$ 732
New York Stock Exchange (NYSE) Designated Market Maker (DMM) rights .....	462	13	502
Insurance-related assets <sup>(2)</sup> .....	303	7	372
Exchange-traded fund (ETF) lead market maker rights ..	95	19	100
Other <sup>(3)</sup> .....	93	1 - 17	65
<b>Total</b> .....	<b><u>\$1,677</u></b>		<b><u>\$1,771</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> Consists of the value of business acquired (VOBA) and deferred acquisition costs (DAC). VOBA represents the present value of estimated future gross profits of acquired variable annuity and life insurance businesses. DAC results from commissions paid by Goldman Sachs to the primary insurer (ceding company) on life and annuity reinsurance agreements as compensation to place the business with us and to cover the ceding company's acquisition expenses. VOBA and DAC are amortized over the estimated life of the underlying contracts based on estimated gross profits, and amortization is adjusted based on actual experience. The seven-year estimated life represents the weighted average remaining amortization period of the underlying contracts (certain of which extend for approximately 30 years).

<sup>(3)</sup> Primarily includes marketing-related assets and power contracts.

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 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 (see discussion below), (ii) an adverse action or assessment by a regulator, or (iii) adverse actual experience on the contracts in our variable annuity and life insurance business.

In October 2008, the SEC approved the NYSE's proposal to create a new market model and redefine the role of NYSE DMMs. This new rule set further aligns the NYSE's model with investor requirements for speed and efficiency of execution and establishes specialists as DMMs. While DMMs still have an obligation to commit capital, they are now able to trade on parity with other market participants. In addition, in November 2008 the NYSE introduced a reserve order type that allows for anonymous trade execution, which is expected to allow the NYSE to recapture liquidity and market share from other venues in which anonymous reserve orders have been available for some time. The new rule set and the launch of the reserve order type, in combination with technology improvements to increase execution speed, are expected to bolster the NYSE's competitive position.

In 2007, we tested our NYSE DMM rights for impairment in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Under SFAS No. 144, an impairment loss is recognized if the carrying amount of our NYSE DMM rights exceeds the projected undiscounted cash flows of the business over the estimated remaining life of our NYSE DMM rights. Projected undiscounted cash flows exceeded the carrying amount of our NYSE DMM rights, and accordingly we did not record an impairment loss. In projecting the undiscounted cash flows of the business, we made several important assumptions about the potential beneficial effects of the rule and market structure changes described above. Specifically, we assumed that:

- total equity trading volumes in NYSE-listed companies will continue to grow at a rate consistent with recent historical trends;
- the NYSE will be able to recapture approximately one-half of the market share that it lost in 2007; and
- we will increase our market share of the NYSE DMM business and, as a DMM, the profitability of each share traded.

We also assumed that the rule changes would be implemented in our fiscal fourth quarter of 2008 (as noted above, such rule changes were approved in October 2008) and that projected cash flow increases related to the implementation of the rule set would begin in 2009, consistent with the assumptions above. Subsequently, there have been no events or changes in circumstances indicating that NYSE DMM rights intangible asset may not be recoverable. However, there can be no assurance that the assumptions, rule or structure changes described above will result in sufficient cash flows to avoid impairment of our NYSE DMM rights in the future. We will continue to evaluate the performance of the specialist business under the new market model. As of November 2008, the carrying value of our NYSE DMM rights was \$462 million. To the extent that there were to be an impairment in the future, it could result in a significant writedown in the carrying value of these DMM rights.

### **Use of Estimates**

The use of generally accepted accounting principles requires management to make certain estimates and assumptions. 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 and assumptions 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 to the extent that such losses are probable and can be estimated, in accordance with SFAS No. 5, "Accounting for Contingencies." We estimate and provide for potential liabilities that may arise out of tax audits to the extent that uncertain tax positions fail to meet the recognition standard of FIN 48, "Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109." See Note 16 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information on FIN 48.

Significant judgment is required in making these estimates and our final liabilities may ultimately be materially different. Our total estimated 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 our 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. See “— Certain Risk Factors That May Affect Our Businesses” above and “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for a further discussion of the impact of economic and market conditions on our results of operations.

### Financial Overview

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

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

	Year Ended November		
	2008	2007	2006
Net revenues . . . . .	\$22,222	\$45,987	\$37,665
Pre-tax earnings . . . . .	2,336	17,604	14,560
Net earnings . . . . .	2,322	11,599	9,537
Net earnings applicable to common shareholders . . . . .	2,041	11,407	9,398
Diluted earnings per common share . . . . .	4.47	24.73	19.69
Return on average common shareholders' equity <sup>(1)</sup> . . . . .	4.9%	32.7%	32.8%
Return on average tangible common shareholders' equity <sup>(2)</sup> . . . . .	5.5%	38.2%	39.8%

<sup>(1)</sup> Return on average common shareholders' equity (ROE) 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, goodwill and identifiable intangible assets, excluding power contracts. Identifiable intangible assets associated with power contracts are not deducted from total shareholders' equity because, unlike other intangible assets, less than 50% of these assets are supported by common shareholders' equity.

We believe that return on average tangible common shareholders' equity (ROTE) is meaningful because it measures the performance of businesses consistently, whether they were acquired or developed internally. ROTE 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		
	2008	2007	2006
	(in millions)		
Total shareholders' equity . . . . .	\$47,167	\$37,959	\$31,048
Preferred stock . . . . .	(5,157)	(3,100)	(2,400)
Common shareholders' equity . . . . .	42,010	34,859	28,648
Goodwill and identifiable intangible assets, excluding power contracts . . . . .	(5,220)	(4,971)	(5,013)
Tangible common shareholders' equity . . . . .	<u>\$36,790</u>	<u>\$29,888</u>	<u>\$23,635</u>



## **Net Revenues**

**2008 versus 2007.** Our net revenues were \$22.22 billion in 2008, a decrease of 52% compared with 2007, reflecting a particularly difficult operating environment, including significant asset price declines, high levels of volatility and reduced levels of liquidity, particularly in the fourth quarter. In addition, credit markets experienced significant dislocation between prices for cash instruments and the related derivative contracts and between credit indices and underlying single names. Net revenues in Trading and Principal Investments were significantly lower compared with 2007, reflecting significant declines in FICC, Principal Investments and Equities. The decrease in FICC primarily reflected losses in credit products, which included a loss of approximately \$3.1 billion (net of hedges) related to non-investment-grade credit origination activities and losses from investments, including corporate debt and private and public equities. Results in mortgages included net losses of approximately \$1.7 billion on residential mortgage loans and securities and approximately \$1.4 billion on commercial mortgage loans and securities. Interest rate products, currencies and commodities each produced particularly strong results and net revenues were higher compared with 2007. During 2008, although client-driven activity was generally solid, FICC operated in a challenging environment characterized by broad-based declines in asset values, wider mortgage and corporate credit spreads, reduced levels of liquidity and broad-based investor deleveraging, particularly in the second half of the year. The decline in Principal Investments primarily reflected net losses of \$2.53 billion from corporate principal investments and \$949 million from real estate principal investments, as well as a \$446 million loss from our investment in the ordinary shares of ICBC. In Equities, the decrease compared with particularly strong net revenues in 2007 reflected losses in principal strategies, partially offset by higher net revenues in our client franchise businesses. Commissions were particularly strong and were higher than 2007. During 2008, Equities operated in an environment characterized by a significant decline in global equity prices, broad-based investor deleveraging and very high levels of volatility, particularly in the second half of the year.

Net revenues in Investment Banking also declined significantly compared with 2007, reflecting significantly lower net revenues in both Financial Advisory and Underwriting. In Financial Advisory, the decrease compared with particularly strong net revenues in 2007 reflected a decline in industry-wide completed mergers and acquisitions. The decrease in Underwriting primarily reflected significantly lower net revenues in debt underwriting, primarily due to a decline in leveraged finance and mortgage-related activity, reflecting difficult market conditions. Net revenues in equity underwriting were slightly lower compared with 2007, reflecting a decrease in industry-wide equity and equity-related offerings.

Net revenues in Asset Management and Securities Services increased compared with 2007. Securities Services net revenues were higher, reflecting the impact of changes in the composition of securities lending customer balances, as well as higher total average customer balances. Asset Management net revenues increased slightly compared with 2007. During the year, assets under management decreased \$89 billion to \$779 billion, due to \$123 billion of market depreciation, primarily in equity assets, partially offset by \$34 billion of net inflows.

**2007 versus 2006.** Our net revenues were \$45.99 billion in 2007, an increase of 22% compared with 2006, reflecting significantly higher net revenues in Trading and Principal Investments and Investment Banking, and higher net revenues in Asset Management and Securities Services. The increase in Trading and Principal Investments reflected higher net revenues in Equities, FICC and Principal Investments. Net revenues in Equities increased 33% compared with 2006, reflecting significantly higher net revenues in both our client franchise businesses and principal strategies. During 2007, Equities operated in an environment characterized by strong client-driven activity, generally higher equity prices and higher levels of volatility, particularly during the second half of the year. The increase in FICC reflected significantly higher net revenues in currencies and interest rate products. In addition, net revenues in mortgages were higher despite a significant deterioration in the mortgage market throughout the year, while net revenues in credit products were strong, but slightly lower compared with 2006. Credit products included substantial gains from equity investments, including a gain of approximately \$900 million related to the disposition of Horizon Wind Energy L.L.C., as well as a loss of approximately \$1 billion (net of hedges) related to non-investment-grade credit origination activities. During 2007, FICC operated in an environment generally characterized by strong client-driven activity and favorable market opportunities. However, during the year, the mortgage market experienced significant deterioration and, in the second half of the year, the broader credit markets were characterized by wider spreads and reduced levels of liquidity. The increase in Principal Investments reflected strong results in both corporate and real estate investing.

The increase in Investment Banking reflected a 64% increase in Financial Advisory net revenues and a strong performance in our Underwriting business. The increase in Financial Advisory primarily reflected growth in industry-wide completed mergers and acquisitions. The increase in Underwriting reflected higher net revenues in debt underwriting, as leveraged finance activity was strong during the first half of our fiscal year, while net revenues in equity underwriting were strong but essentially unchanged from 2006.

Net revenues in Asset Management and Securities Services also increased. The increase in Securities Services primarily reflected significant growth in global customer balances. The increase in Asset Management reflected significantly higher asset management fees, partially offset by significantly lower incentive fees. During the year, assets under management increased \$192 billion, or 28%, to \$868 billion, including net inflows of \$161 billion.

## 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 which are significantly impacted by, among other factors, the level of net revenues, prevailing labor markets, business mix and the structure of our share-based compensation programs. For 2008, our ratio of compensation and benefits (excluding severance costs of approximately \$275 million in the fourth quarter of 2008) to net revenues was 48.0%. Our ratio of compensation and benefits to net revenues was 43.9% for 2007.

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

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

	Year Ended November		
	2008	2007	2006
Compensation and benefits <sup>(1)</sup> . . . . .	\$10,934	\$20,190	\$16,457
Brokerage, clearing, exchange and distribution fees . . . . .	2,998	2,758	1,985
Market development . . . . .	485	601	492
Communications and technology . . . . .	759	665	544
Depreciation and amortization . . . . .	1,022	624	521
Amortization of identifiable intangible assets . . . . .	240	195	173
Occupancy . . . . .	960	975	850
Professional fees . . . . .	779	714	545
Other expenses <sup>(2)</sup> . . . . .	<u>1,709</u>	<u>1,661</u>	<u>1,538</u>
Total non-compensation expenses . . . . .	<u>8,952</u>	<u>8,193</u>	<u>6,648</u>
Total operating expenses . . . . .	<u>\$19,886</u>	<u>\$28,383</u>	<u>\$23,105</u>
Employees at year-end <sup>(3)</sup> . . . . .	30,067	30,522	26,467

<sup>(1)</sup> Compensation and benefits includes \$262 million, \$168 million and \$259 million for the years ended November 2008, November 2007 and November 2006, respectively, attributable to consolidated entities held for investment purposes. Consolidated entities held for investment purposes are 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.

<sup>(2)</sup> Beginning in the first quarter of 2008, "Cost of power generation" was reclassified into "Other expenses" in the consolidated statements of earnings. Prior periods have been reclassified to conform to the current presentation.

<sup>(3)</sup> Excludes 4,671, 4,572 and 3,868 employees as of November 2008, November 2007 and November 2006, respectively, of consolidated entities held for investment purposes (see footnote 1 above).

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		
	2008	2007	2006
Non-compensation expenses of consolidated investments <sup>(1)</sup> . . . . .	\$ 779	\$ 446	\$ 501
Non-compensation expenses excluding consolidated investments			
Brokerage, clearing, exchange and distribution fees . . . . .	2,998	2,758	1,985
Market development . . . . .	475	593	461
Communications and technology . . . . .	754	661	537
Depreciation and amortization . . . . .	631	509	444
Amortization of identifiable intangible assets . . . . .	233	189	169
Occupancy . . . . .	861	892	738
Professional fees . . . . .	770	711	534
Other expenses <sup>(2)</sup> . . . . .	<u>1,451</u>	<u>1,434</u>	<u>1,279</u>
Subtotal . . . . .	<u>8,173</u>	<u>7,747</u>	<u>6,147</u>
Total non-compensation expenses, as reported . . . . .	<u>\$8,952</u>	<u>\$8,193</u>	<u>\$6,648</u>

<sup>(1)</sup> Consolidated entities held for investment purposes are 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 hotels, 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.

<sup>(2)</sup> Beginning in the first quarter of 2008, "Cost of power generation" was reclassified into "Other expenses" in the consolidated statements of earnings. Prior periods have been reclassified to conform to the current presentation.

**2008 versus 2007.** Operating expenses were \$19.89 billion for 2008, 30% lower than 2007. Compensation and benefits expenses (including salaries, bonuses, amortization of prior year equity awards and other items such as payroll taxes and benefits) of \$10.93 billion decreased 46% compared with 2007, reflecting lower levels of discretionary compensation due to lower net revenues. For 2008, our ratio of compensation and benefits (excluding severance costs of approximately \$275 million in the fourth quarter of 2008) to net revenues was 48.0%. Our ratio of compensation and benefits to net revenues was 43.9% for 2007. Employment levels decreased 1% compared with November 2007, reflecting an 8% decrease during the fourth quarter.

Non-compensation expenses of \$8.95 billion for 2008 increased 9% compared with 2007. Excluding consolidated entities held for investment purposes, non-compensation expenses increased 5% compared with 2007. The majority of this increase was attributable to higher brokerage, clearing, exchange and distribution fees, principally reflecting higher activity levels in Equities and FICC. The increase in non-compensation expenses related to consolidated entities held for investment purposes primarily reflected the impact of impairment on certain real estate assets during 2008.

**2007 versus 2006.** Operating expenses were \$28.38 billion for 2007, 23% higher than 2006. Compensation and benefits expenses of \$20.19 billion increased 23% compared with 2006, reflecting increased discretionary compensation and growth in employment levels. The ratio of compensation and benefits to net revenues for 2007 was 43.9% compared with 43.7% for 2006. Employment levels increased 15% compared with November 2006.

Non-compensation expenses of \$8.19 billion for 2007 increased 23% compared with 2006, primarily attributable to higher levels of business activity and continued geographic expansion. One-half of this increase was attributable to brokerage, clearing, exchange and distribution fees, principally reflecting higher transaction volumes in Equities. Professional fees, other expenses and communications and technology expenses also increased, primarily due to higher levels of business activity. Occupancy and depreciation and amortization expenses in 2007 included exit costs of \$128 million related to our office space.

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

The effective income tax rate was approximately 1% for 2008, down from 34.1% for 2007. The decrease in the effective income tax rate was primarily due to an increase in permanent benefits as a percentage of lower earnings and changes in geographic earnings mix. The effective income tax rate was 34.1% for 2007, down from 34.5% for 2006, primarily due to changes in the geographic mix of earnings.

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 pre-tax 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 16 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our provision for taxes.

## 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		
		2008	2007	2006
<b>Investment Banking</b>	Net revenues . . . . .	\$ 5,185	\$ 7,555	\$ 5,629
	Operating expenses . . . . .	<u>3,143</u>	<u>4,985</u>	<u>4,062</u>
	Pre-tax earnings . . . . .	<u>\$ 2,042</u>	<u>\$ 2,570</u>	<u>\$ 1,567</u>
<b>Trading and Principal Investments</b>	Net revenues . . . . .	\$ 9,063	\$31,226	\$25,562
	Operating expenses . . . . .	<u>11,808</u>	<u>17,998</u>	<u>14,962</u>
	Pre-tax earnings/(loss) . . . . .	<u>\$ (2,745)</u>	<u>\$13,228</u>	<u>\$10,600</u>
<b>Asset Management and Securities Services</b>	Net revenues . . . . .	\$ 7,974	\$ 7,206	\$ 6,474
	Operating expenses . . . . .	<u>4,939</u>	<u>5,363</u>	<u>4,036</u>
	Pre-tax earnings . . . . .	<u>\$ 3,035</u>	<u>\$ 1,843</u>	<u>\$ 2,438</u>
<b>Total</b>	Net revenues . . . . .	\$22,222	\$45,987	\$37,665
	Operating expenses <sup>(1)</sup> . . . . .	<u>19,886</u>	<u>28,383</u>	<u>23,105</u>
	Pre-tax earnings . . . . .	<u>\$ 2,336</u>	<u>\$17,604</u>	<u>\$14,560</u>

<sup>(1)</sup> Operating expenses include net provisions for a number of litigation and regulatory proceedings of \$(4) million, \$37 million and \$45 million for the years ended November 2008, November 2007 and November 2006, respectively, that have not been allocated to our segments.

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 18 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our business 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 and benefits 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 a wide range of securities and other financial instruments.

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

### Investment Banking Operating Results (in millions)

	Year Ended November		
	2008	2007	2006
Financial Advisory . . . . .	\$2,656	\$4,222	\$2,580
Equity underwriting . . . . .	1,353	1,382	1,365
Debt underwriting . . . . .	1,176	1,951	1,684
Total Underwriting . . . . .	2,529	3,333	3,049
Total net revenues . . . . .	5,185	7,555	5,629
Operating expenses . . . . .	3,143	4,985	4,062
Pre-tax earnings . . . . .	<u>\$2,042</u>	<u>\$2,570</u>	<u>\$1,567</u>

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

### Goldman Sachs Global Investment Banking Volumes <sup>(1)</sup> (in billions)

	Year Ended November		
	2008	2007	2006
Announced mergers and acquisitions . . . . .	\$927	\$1,249	\$1,101
Completed mergers and acquisitions . . . . .	823	1,443	863
Equity and equity-related offerings <sup>(2)</sup> . . . . .	61	66	74
Debt offerings <sup>(3)</sup> . . . . .	185	345	320

<sup>(1)</sup> Source: Thomson Reuters. 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. In addition, transaction volumes for prior periods may vary from amounts previously reported due to the subsequent withdrawal or a change in the value of a previously announced transaction.

<sup>(2)</sup> Includes Rule 144A and public common stock offerings, convertible offerings and rights 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.

**2008 versus 2007.** Net revenues in Investment Banking of \$5.19 billion for 2008 decreased 31% compared with 2007.

Net revenues in Financial Advisory of \$2.66 billion decreased 37% compared with particularly strong net revenues in 2007, primarily reflecting a decline in industry-wide completed mergers and acquisitions. Net revenues in our Underwriting business of \$2.53 billion decreased 24% compared with 2007, principally due to significantly lower net revenues in debt underwriting. The decrease in debt underwriting was primarily due to a decline in leveraged finance and mortgage-related activity, reflecting difficult market conditions. Net revenues in equity underwriting were slightly lower compared with 2007, reflecting a decrease in industry-wide equity and equity-related offerings. Our investment banking transaction backlog ended the year significantly lower than at the end of 2007. <sup>(1)</sup>

Operating expenses of \$3.14 billion for 2008 decreased 37% compared with 2007, due to decreased compensation and benefits expenses, resulting from lower levels of discretionary compensation. Pre-tax earnings of \$2.04 billion in 2008 decreased 21% compared with 2007.

**2007 versus 2006.** Net revenues in Investment Banking of \$7.56 billion for 2007 increased 34% compared with 2006.

Net revenues in Financial Advisory of \$4.22 billion increased 64% compared with 2006, primarily reflecting growth in industry-wide completed mergers and acquisitions. Net revenues in our Underwriting business of \$3.33 billion increased 9% compared with 2006, due to higher net revenues in debt underwriting, primarily reflecting strength in leveraged finance during the first half of 2007. Net revenues in equity underwriting were also strong, but essentially unchanged from 2006. Our investment banking transaction backlog at the end of 2007 was higher than at the end of 2006. <sup>(1)</sup>

Operating expenses of \$4.99 billion for 2007 increased 23% compared with 2006, primarily due to increased compensation and benefits expenses, resulting from higher discretionary compensation and growth in employment levels. Pre-tax earnings of \$2.57 billion in 2007 increased 64% compared with 2006.

### ***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-related securities and loan products and other asset-backed instruments, 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 and trade 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 client franchise and clearing activities. We also engage in specialist and insurance activities.
- **Principal Investments.** We make real estate and corporate principal investments, including our investment in the ordinary shares of ICBC. We generate net revenues from returns on these investments and from the increased share of the income and gains derived from our merchant banking funds when the return on a fund's investments over the life of the fund exceeds certain threshold returns (typically referred to as an override).

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<sup>(1)</sup> Our investment banking transaction 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.



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, including those in privately held concerns and in real estate, may fluctuate significantly depending on the revaluation 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.

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		
	2008	2007	2006
FICC . . . . .	\$ 3,713	\$16,165	\$14,262
Equities trading . . . . .	4,208	6,725	4,965
Equities commissions . . . . .	4,998	4,579	3,518
Total Equities . . . . .	9,206	11,304	8,483
ICBC . . . . .	(446)	495	937
Gross gains . . . . .	1,335	3,728	2,061
Gross losses . . . . .	(4,815)	(943)	(585)
Net other corporate and real estate investments . . . . .	(3,480)	2,785	1,476
Overrides . . . . .	70	477	404
Total Principal Investments . . . . .	(3,856)	3,757	2,817
Total net revenues . . . . .	9,063	31,226	25,562
Operating expenses . . . . .	11,808	17,998	14,962
Pre-tax earnings/(loss) . . . . .	<u>\$ (2,745)</u>	<u>\$13,228</u>	<u>\$10,600</u>

**2008 versus 2007.** Net revenues in Trading and Principal Investments of \$9.06 billion for 2008 decreased 71% compared with 2007.

Net revenues in FICC of \$3.71 billion for 2008 decreased 77% compared with 2007, primarily reflecting losses in credit products, which included a loss of approximately \$3.1 billion (net of hedges) related to non-investment-grade credit origination activities and losses from investments, including corporate debt and private and public equities. Results in mortgages included net losses of approximately \$1.7 billion on residential mortgage loans and securities and approximately \$1.4 billion on commercial mortgage loans and securities. Interest rate products, currencies and commodities each produced particularly strong results and net revenues were higher compared with 2007. During 2008, although client-driven activity was generally solid, FICC operated in a challenging environment characterized by broad-based declines in asset values, wider mortgage and corporate credit spreads, reduced levels of liquidity and broad-based investor deleveraging, particularly in the second half of the year.

Net revenues in Equities of \$9.21 billion for 2008 decreased 19% compared with a particularly strong 2007, reflecting losses in principal strategies, partially offset by higher net revenues in the client franchise businesses. Commissions were particularly strong and were higher than 2007. During 2008, Equities operated in an environment characterized by a significant decline in global equity prices, broad-based investor deleveraging and very high levels of volatility, particularly in the second half of the year.

Principal Investments recorded a net loss of \$3.86 billion for 2008. These results included net losses of \$2.53 billion from corporate principal investments and \$949 million from real estate principal investments, as well as a \$446 million loss related to our investment in the ordinary shares of ICBC.

Operating expenses of \$11.81 billion for 2008 decreased 34% compared with 2007, due to decreased compensation and benefits expenses, resulting from lower levels of discretionary compensation. This decrease was partially offset by higher non-compensation expenses. Excluding consolidated entities held for investment purposes, the majority of this increase was attributable to higher brokerage, clearing, exchange and distribution fees, principally reflecting higher activity levels in Equities and FICC. The increase in non-compensation expenses related to consolidated entities held for investment purposes primarily reflected the impact of impairment on certain real estate assets during 2008. Pre-tax loss was \$2.75 billion in 2008 compared with pre-tax earnings of \$13.23 billion in 2007.

**2007 versus 2006.** Net revenues in Trading and Principal Investments of \$31.23 billion for 2007 increased 22% compared with 2006.

Net revenues in FICC of \$16.17 billion for 2007 increased 13% compared with 2006, reflecting significantly higher net revenues in currencies and interest rate products. In addition, net revenues in mortgages were higher despite a significant deterioration in the mortgage market throughout 2007, while net revenues in credit products were strong, but slightly lower compared with 2006. Credit products included substantial gains from equity investments, including a gain of approximately \$900 million related to the disposition of Horizon Wind Energy L.L.C., as well as a loss of approximately \$1 billion (net of hedges) related to non-investment-grade credit origination activities. Net revenues in commodities were also strong but lower compared with 2006. During 2007, FICC operated in an environment generally characterized by strong client-driven activity and favorable market opportunities. However, during 2007, the mortgage market experienced significant deterioration and, in the second half of the year, the broader credit markets were characterized by wider spreads and reduced levels of liquidity.

Net revenues in Equities of \$11.30 billion for 2007 increased 33% compared with 2006, reflecting significantly higher net revenues in both our client franchise businesses and principal strategies. The client franchise businesses benefited from significantly higher commission volumes. During 2007, Equities operated in an environment characterized by strong client-driven activity, generally higher equity prices and higher levels of volatility, particularly during the second half of the year.

Principal Investments recorded net revenues of \$3.76 billion for 2007, reflecting gains and overrides from corporate and real estate principal investments. Results in Principal Investments included a \$495 million gain related to our investment in the ordinary shares of ICBC and a \$129 million loss related to our investment in the convertible preferred stock of SMFG.

Operating expenses of \$18.00 billion for 2007 increased 20% compared with 2006, primarily due to increased compensation and benefits expenses, resulting from higher discretionary compensation and growth in employment levels. Non-compensation expenses increased due to the impact of higher levels of business activity and continued geographic expansion. The majority of this increase was in brokerage, clearing, exchange and distribution fees, which primarily reflected higher transaction volumes in Equities. Professional fees also increased, reflecting increased business activity. Pre-tax earnings of \$13.23 billion in 2007 increased 25% compared with 2006.

## 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 (primarily through separately managed accounts and commingled vehicles, such as mutual funds and private investment funds) 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 institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to 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, which is affected by investment performance and by inflows and redemptions. The fees that we charge vary by asset class, as do our related expenses. In certain circumstances, we are also entitled to receive 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. For that reason, incentive fees have been seasonally weighted to our first 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		
	2008	2007	2006
Management and other fees . . . . .	\$4,321	\$4,303	\$3,332
Incentive fees . . . . .	231	187	962
Total Asset Management . . . . .	4,552	4,490	4,294
Securities Services . . . . .	3,422	2,716	2,180
Total net revenues . . . . .	7,974	7,206	6,474
Operating expenses . . . . .	4,939	5,363	4,036
Pre-tax earnings . . . . .	<u>\$3,035</u>	<u>\$1,843</u>	<u>\$2,438</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. Assets under management do not include:

- assets in brokerage accounts that generate commissions, mark-ups and spreads based on transactional activity,
- our own investments in funds that we manage;
- or non-fee-paying assets, including interest-bearing deposits held through our depository institution subsidiaries.

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

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

	As of November 30		
	2008	2007	2006
Alternative investments <sup>(1)</sup> . . . . .	\$ 146	\$151	\$145
Equity . . . . .	112	255	215
Fixed income . . . . .	248	256	198
Total non-money market assets . . . . .	506	662	558
Money markets . . . . .	273	206	118
Total assets under management . . . . .	<u>\$ 779</u>	<u>\$868</u>	<u>\$676</u>

<sup>(1)</sup> Primarily includes hedge funds, private equity, real estate, currencies, commodities and asset allocation strategies.

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

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

	Year Ended November 30		
	2008	2007	2006
Balance, beginning of year . . . . .	\$ 868	\$676	\$532
Net inflows/(outflows)			
Alternative investments . . . . .	8	9	32
Equity . . . . .	(55)	26	16
Fixed income . . . . .	14	38	29
Total non-money market net inflows/(outflows) . . . . .	(33)	73 <sup>(1)</sup>	77
Money markets . . . . .	67	88	17 <sup>(2)</sup>
Total net inflows/(outflows) . . . . .	34	161	94 <sup>(3)</sup>
Net market appreciation/(depreciation) . . . . .	(123)	31	50
Balance, end of year . . . . .	<u>\$ 779</u>	<u>\$868</u>	<u>\$676</u>

<sup>(1)</sup> Includes \$7 billion in net asset inflows in connection with our acquisition of Macquarie — IMM Investment Management.

<sup>(2)</sup> Net of the transfer of \$8 billion of money market assets under management to interest-bearing deposits at GS Bank USA.

<sup>(3)</sup> Includes \$3 billion of net asset inflows in connection with the acquisition of our variable annuity and life insurance business.

**2008 versus 2007.** Net revenues in Asset Management and Securities Services of \$7.97 billion for 2008 increased 11% compared with 2007.

Asset Management net revenues of \$4.55 billion for 2008 increased 1% compared with 2007. During 2008, assets under management decreased \$89 billion to \$779 billion, due to \$123 billion of market depreciation, primarily in equity assets, partially offset by \$34 billion of net inflows. Net inflows reflected inflows in money market, fixed income and alternative investment assets, partially offset by outflows in equity assets.

Securities Services net revenues of \$3.42 billion for 2008 increased 26% compared with 2007, reflecting the impact of changes in the composition of securities lending customer balances, as well as higher total average customer balances.

Operating expenses of \$4.94 billion for 2008 decreased 8% compared with 2007, due to decreased compensation and benefits expenses, resulting from lower levels of discretionary compensation. Pre-tax earnings of \$3.04 billion in 2008 increased 65% compared with 2007.

**2007 versus 2006.** Net revenues in Asset Management and Securities Services of \$7.21 billion for 2007 increased 11% compared with 2006.

Asset Management net revenues of \$4.49 billion for 2007 increased 5% compared with 2006, reflecting a 29% increase in management and other fees, partially offset by significantly lower incentive fees. Incentive fees were \$187 million for 2007 compared with \$962 million for 2006. During 2007, assets under management increased \$192 billion, or 28%, to \$868 billion, reflecting non-money market net inflows of \$73 billion <sup>(1)</sup>, primarily in fixed income and equity assets, money market net inflows of \$88 billion, and net market appreciation of \$31 billion, reflecting appreciation in fixed income and equity assets, partially offset by depreciation in alternative investment assets.

Securities Services net revenues of \$2.72 billion for 2007 increased 25% compared with 2006, as our prime brokerage business continued to generate strong results, primarily reflecting significantly higher customer balances in securities lending and margin lending.

Operating expenses of \$5.36 billion for 2007 increased 33% compared with 2006, primarily due to increased compensation and benefits expenses, resulting from higher discretionary compensation and growth in employment levels, and higher distribution fees (included in brokerage, clearing, exchange and distribution fees). Pre-tax earnings of \$1.84 billion in 2007 decreased 24% compared with 2006.

## **Geographic Data**

See Note 18 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for a summary of our total net revenues, pre-tax earnings and net earnings by geographic region.

## **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, including total return swaps; entering into operating leases; and providing guarantees, indemnifications, loan commitments, letters of credit and representations and warranties.

We enter into these arrangements for a variety of business purposes, including 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.

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<sup>(1)</sup> Includes \$7 billion in net asset inflows in connection with our acquisition of Macquarie — IMM Investment Management.

We engage in transactions with variable interest entities (VIEs) and qualifying special-purpose entities (QSPEs). Such vehicles are critical to the functioning of several significant investor markets, including the mortgage-backed and other asset-backed securities markets, since they offer 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 apply the equity method of accounting.

We did not have off-balance-sheet commitments to purchase or finance any CDOs held by structured investment vehicles as of November 2008 or November 2007.

In December 2007, the American Securitization Forum (ASF) issued the “Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans” (ASF Framework). The ASF Framework provides guidance for servicers to streamline borrower evaluation procedures and to facilitate the use of foreclosure and loss prevention measures for securitized subprime residential mortgages that meet certain criteria. For certain eligible loans as defined in the ASF Framework, servicers may presume default is reasonably foreseeable and apply a fast-track loan modification plan, under which the loan interest rate will be kept at the introductory rate for a period of five years following the upcoming reset date. Mortgage loan modifications of these eligible loans will not affect our accounting treatment for QSPEs that hold the subprime loans.

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

<b>Type of Off-Balance-Sheet Arrangement</b>	<b>Disclosure in our Annual Report on Form 10-K</b>
Retained interests or contingent interests in assets transferred by us to nonconsolidated entities	See Note 4 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.
Leases, letters of credit, and loans and other commitments	See “— Contractual Obligations and Commitments” below and Note 8 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.
Guarantees	See Note 8 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.
Other obligations, including contingent obligations, arising out of variable interests we have in nonconsolidated entities	See Note 4 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.
Derivative contracts	See “— Critical Accounting Policies” above, and “— Risk Management” and “— Derivatives” below and Notes 3 and 7 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K.

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

## Equity Capital

The level and composition of our equity capital are principally determined by our consolidated regulatory capital requirements but may also be influenced by rating agency guidelines, subsidiary capital requirements, the business environment, conditions in the financial markets and assessments of potential future losses due to extreme and adverse changes in our business and market environments. As of November 2008, our total shareholders' equity was \$64.37 billion (consisting of common shareholders' equity of \$47.90 billion and preferred stock of \$16.47 billion) compared with total shareholders' equity of \$42.80 billion as of November 2007 (consisting of common shareholders' equity of \$39.70 billion and preferred stock of \$3.10 billion). In addition to total shareholders' equity, we consider the \$5.00 billion of junior subordinated debt issued to trusts (see discussion below) to be part of our equity capital, as it qualifies as capital for regulatory and certain rating agency purposes.

### Consolidated Capital Requirements

We are subject to regulatory capital requirements administered by the U.S. federal banking agencies. Our bank depository institution subsidiaries, including GS Bank USA, are subject to similar capital guidelines. Under the Federal Reserve Board's capital adequacy guidelines and the regulatory framework for prompt corrective action (PCA) that is applicable to GS Bank USA, Goldman Sachs and its bank depository institution subsidiaries must meet specific capital guidelines that involve quantitative measures of assets, liabilities and certain off-balance-sheet items as calculated under regulatory reporting practices. Goldman Sachs and its bank depository institution subsidiaries' capital amounts, as well as GS Bank USA's PCA classification, are also subject to qualitative judgments by the regulators about components, risk weightings and other factors. We anticipate reporting capital ratios as follows:

- Before we became a bank holding company, we were subject to capital guidelines by the SEC as a Consolidated Supervised Entity (CSE) that were generally consistent with those set out in the Revised Framework for the International Convergence of Capital Measurement and Capital Standards issued by the Basel Committee on Banking Supervision (Basel II). We currently compute and report our firmwide capital ratios in accordance with the Basel II requirements as applicable to us when we were regulated as a CSE for the purpose of assessing the adequacy of our capital. Under the Basel II framework as it applied to us when we were regulated as a CSE, we evaluate our Tier 1 Capital and Total Allowable Capital as a percentage of RWAs. As of November 2008, our Total Capital Ratio (Total Allowable Capital as a percentage of RWAs) was 18.9% and our Tier 1 Ratio (Tier 1 Capital as a percentage of RWAs) was 15.6%, in each case calculated under the Basel II framework as it applied to us when we were regulated as a CSE. See “— Consolidated Capital Ratios” below for further information. We expect to continue to report to investors for a period of time our Basel II capital ratios as applicable to us when we were regulated as a CSE.
- The regulatory capital guidelines currently applicable to bank holding companies are based on the Capital Accord of the Basel Committee on Banking Supervision (Basel I), with Basel II to be phased in over time. We are currently working with the Federal Reserve Board to put in place the appropriate reporting and compliance mechanisms and methodologies to allow reporting of the Basel I capital ratios as of the end of March 2009.
- In addition, we are currently working to implement the Basel II framework as applicable to us as a bank holding company (as opposed to as a CSE). U.S. banking regulators have incorporated the Basel II framework into the existing risk-based capital requirements by requiring that internationally active banking organizations, such as Group Inc., transition to Basel II over the next several years.

The Federal Reserve Board also has established minimum leverage ratio guidelines. We were not subject to these guidelines before becoming a bank holding company and, accordingly, we are currently working with the Federal Reserve Board to finalize our methodology for calculating this ratio.

The Tier 1 leverage ratio is defined as Tier 1 capital (as applicable to us as a bank holding company) divided by adjusted average total assets (which includes adjustments for disallowed goodwill and certain intangible assets). The minimum Tier 1 leverage ratio is 3% for bank holding companies that have received the highest supervisory rating under Federal Reserve Board guidelines or that have implemented the Federal Reserve Board's risk-based capital measure for market risk. Other bank holding companies must have a minimum leverage ratio of 4%. Bank holding companies may be expected to maintain ratios well above the minimum levels, depending upon their particular condition, risk profile and growth plans. As of November 2008, our estimated Tier 1 leverage ratio was 6.1%. This ratio represents a preliminary estimate and may be revised in subsequent filings as we continue to work with the Federal Reserve Board to finalize the methodology for the calculation.

### **Consolidated Capital Ratios**

The following table sets forth additional information on our capital ratios as of November 2008 calculated in the same manner (generally consistent with Basel II) as when the firm was regulated by the SEC as a CSE:

	<b>As of November 2008</b>
	(\$ in millions)
<b>I. Tier 1 and Total Allowable Capital</b>	
Common shareholders' equity . . . . .	\$ 47,898
Preferred stock . . . . .	16,471
Junior subordinated debt issued to trusts . . . . .	5,000
Less: Goodwill . . . . .	(3,523)
Less: Disallowable intangible assets . . . . .	(1,386)
Less: Other deductions <sup>(1)</sup> . . . . .	(1,823)
<b>Tier 1 Capital</b> . . . . .	<u>62,637</u>
Other components of Total Allowable Capital	
Qualifying subordinated debt <sup>(2)</sup> . . . . .	13,703
Less: Other deductions <sup>(1)</sup> . . . . .	(690)
<b>Total Allowable Capital</b> . . . . .	<u>\$ 75,650</u>
<b>II. Risk-Weighted Assets</b>	
Market risk . . . . .	\$176,646
Credit risk . . . . .	184,055
Operational risk . . . . .	39,675
<b>Total Risk-Weighted Assets</b> . . . . .	<u>\$400,376</u>
<b>III. Tier 1 Ratio</b> . . . . .	15.6%
<b>IV. Total Capital Ratio</b> . . . . .	18.9%

<sup>(1)</sup> Principally included investments in regulated insurance entities and certain financial service entities (50% was deducted from both Tier 1 Capital and Total Allowable Capital).

<sup>(2)</sup> Substantially all of our existing subordinated debt qualified as Total Allowable Capital for CSE purposes.

Our RWAs are driven by the amount of market risk, credit risk and operational risk associated with our business activities in a manner generally consistent with methodologies set out in Basel II. The methodologies used to compute RWAs for each of market risk, credit risk and operational risk are closely aligned with our risk management practices. See "— Market Risk" and "— Credit Risk" below for a discussion of how we manage risks in our trading and principal investing businesses. Further details on the methodologies used to calculate RWAs are set forth below.



### ***Risk-Weighted Assets for Market Risk***

For positions captured in VaR, RWAs are calculated using VaR and other model-based measures, including requirements for incremental default risk and other event risks. VaR is the potential loss in value of trading positions due to adverse market movements over a defined time horizon with a specified confidence level. Market risk RWAs are calculated consistent with the specific conditions set out in the Basel II framework (based on VaR calibrated to a 99% confidence level, over a 10-day holding period, multiplied by a factor). Additional RWAs are calculated with respect to incremental default risk and other event risks, in a manner generally consistent with our internal risk management methodologies.

For positions not included in VaR because VaR is not the most appropriate measure of risk, we calculate RWAs based on alternative methodologies, including sensitivity analyses.

### ***Risk-Weighted Assets for Credit Risk***

RWAs for credit risk are calculated for on- and off-balance-sheet exposures that are not captured in our market risk RWAs, with the exception of OTC derivatives for which both market risk and credit risk RWAs are calculated. The calculations are consistent with the Advanced Internal Ratings Based (AIRB) approach and the Internal Models Method (IMM) of Basel II, and were based on Exposure at Default (EAD), which is an estimate of the amount that would be owed to us at the time of a default, multiplied by each counterparty's risk weight.

Under the Basel II AIRB approach, a counterparty's risk weight is generally derived from a combination of the Probability of Default (PD), the Loss Given Default (LGD) and the maturity of the trade or portfolio of trades, where:

- PD is an estimate of the probability that an obligor will default over a one-year horizon. PD is derived from the use of internally determined equivalents of public rating agency ratings.
- LGD is an estimate of the economic loss rate if a default occurs during economic downturn conditions. LGD is determined based on industry data.

For OTC derivatives and funding trades (such as repurchase and reverse repurchase transactions), we use the Basel II IMM approach, which allows EAD to be calculated using model-based measures to determine potential exposure, consistent with models and methodologies that we use for internal risk management purposes. For commitments, EAD is calculated as a percentage of the outstanding notional balance. For other credit exposures, EAD is generally the carrying value of the exposure.

### ***Risk-Weighted Assets for Operational Risk***

RWAs for operational risk are calculated using a risk-based methodology consistent with the qualitative and quantitative criteria for the Advanced Measurement Approach (AMA), as defined in Basel II. The methodology incorporates internal loss events, relevant external loss events, results of scenario analyses and management's assessment of our business environment and internal controls. We estimate capital requirements for both expected and unexpected losses, seeking to capture the major drivers of operational risk over a one-year time horizon, at a 99.9% confidence level. Operational risk capital is allocated among our businesses and is regularly reported to senior management and key risk and oversight committees.

### **Rating Agency Guidelines**

The credit rating agencies assign credit ratings to the obligations of Group Inc., which directly issues or guarantees substantially all of the firm's senior unsecured obligations. The level and composition of our equity capital are among the many factors considered in determining our credit ratings. Each agency has its own definition of eligible capital and methodology for evaluating capital

adequacy, and assessments are generally based on a combination of factors rather than a single calculation. See “— Liquidity and Funding Risk — Credit Ratings” below for further information regarding our credit ratings.

### **Subsidiary Capital Requirements**

Many of our subsidiaries are subject to separate regulation and capital requirements in the U.S. and/or elsewhere. GS&Co. and Goldman Sachs Execution & Clearing, L.P. are registered U.S. broker-dealers and futures commissions merchants, and are subject to regulatory capital requirements, including those imposed by the SEC, the Commodity Futures Trading Commission, the Chicago Board of Trade, the Financial Industry Regulatory Authority, Inc. (FINRA) and the National Futures Association.

Our depository institution subsidiary, GS Bank USA, a New York State-chartered bank and a member of the Federal Reserve System and the FDIC, is regulated by the Federal Reserve Board and the New York State Banking Department and is subject to minimum capital requirements that (subject to certain exceptions) are similar to those applicable to bank holding companies. GS Bank USA was formed in November 2008 through the merger of our existing Utah industrial bank (named GS Bank USA) into our New York limited purpose trust company, with the surviving company taking the name GS Bank USA. As of November 2007, GS Bank USA's predecessor was a wholly owned industrial bank regulated by the Utah Department of Financial Institutions, was a member of the FDIC and was subject to minimum capital requirements. We compute the capital ratios for GS Bank USA in accordance with the Basel I framework for purposes of assessing the adequacy of its capital. In order to be considered a “well capitalized” depository institution under the Federal Reserve Board guidelines, GS Bank USA must maintain a Tier 1 capital ratio of at least 6%, a total capital ratio of at least 10%, and a Tier 1 leverage ratio of at least 5%. In connection with the November 2008 asset transfer described below, GS Bank USA agreed with the Federal Reserve Board to minimum capital ratios in excess of these “well capitalized” levels. Accordingly, for a period of time, GS Bank USA is expected to maintain a Tier 1 capital ratio of at least 8%, a total capital ratio of at least 11% and a Tier 1 leverage ratio of at least 6%. In November 2008, we contributed subsidiaries with an aggregate of \$117.16 billion of assets into GS Bank USA (which brought total assets in GS Bank USA to \$145.06 billion as of November 2008). As a result, we are currently working with the Federal Reserve Board to finalize our methodology for the Basel I calculations. As of November 2008, under Basel I, GS Bank USA's estimated Tier 1 capital ratio was 8.9% and estimated total capital ratio was 11.6%. In addition, GS Bank USA's estimated Tier 1 leverage ratio was 9.1%.

Group Inc. has guaranteed the payment obligations of GS&Co., GS Bank USA and GS Bank Europe, subject to certain exceptions. In November 2008, as noted above, we contributed subsidiaries, with an aggregate of \$117.16 billion of assets, into GS Bank USA and Group Inc. agreed to guarantee certain losses, including credit-related losses, relating to assets held by the contributed entities. In connection with this guarantee, Group Inc. also agreed to pledge to GS Bank USA certain collateral, including interests in subsidiaries and other illiquid assets.

GS Bank Europe, our regulated Irish bank, is subject to minimum capital requirements imposed by the Irish Financial Services Regulatory Authority. Several other subsidiaries of Goldman Sachs are regulated by securities, investment advisory, banking, insurance, and other regulators and authorities around the world. Goldman Sachs International (GSI), our regulated U.K. broker-dealer, is subject to minimum capital requirements imposed by the Financial Services Authority (FSA). Goldman Sachs Japan Co., Ltd., our regulated Japanese broker-dealer, is subject to minimum capital requirements imposed by Japan's Financial Services Agency. As of November 2008 and November 2007, these subsidiaries were in compliance with their local capital requirements.

As discussed above, many of our subsidiaries are subject to regulatory capital requirements in jurisdictions throughout the world. Subsidiaries not subject to separate regulation may hold capital to satisfy local tax guidelines, rating agency requirements (for entities with assigned credit ratings) or

internal policies, including policies concerning the minimum amount of capital a subsidiary should hold based on its underlying level of risk. See “— Liquidity and Funding Risk — Conservative Liability Structure” below for a discussion of our potential inability to access funds from our subsidiaries.

Equity investments in subsidiaries are generally funded with parent company equity capital. As of November 2008, Group Inc.’s equity investment in subsidiaries was \$51.70 billion compared with its total shareholders’ equity of \$64.37 billion.

Our capital invested in non-U.S. subsidiaries is generally exposed to foreign exchange risk, substantially all of which is managed through a combination of derivative contracts and non-U.S. denominated debt. In addition, we generally manage the non-trading exposure to foreign exchange risk that arises from transactions denominated in currencies other than the transacting entity’s functional currency.

See Note 17 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our regulated subsidiaries.

### Equity Capital Management

Our objective is to maintain a sufficient level and optimal composition of equity capital. We manage our capital through repurchases of our common stock, as permitted, and issuances of common and preferred stock, junior subordinated debt issued to trusts and other subordinated debt. We manage our capital requirements principally by setting limits on balance sheet assets and/or limits on risk, in each case at both the consolidated and business unit levels. We attribute capital usage to each of our business units based upon our regulatory capital framework and manage the levels of usage based upon the balance sheet and risk limits established.

**Share Repurchase Program.** Subject to the limitations of the U.S. Treasury’s TARP Capital Purchase Program described below under “— Equity Capital — Equity Capital Management — Preferred Stock,” we seek to use our share repurchase program to substantially offset increases in share count over time resulting from employee share-based compensation. The repurchase program is effected primarily through regular open-market purchases, the amounts and timing of which are determined primarily by our current and projected capital positions (i.e., comparisons of our desired level of capital to our actual level of capital) but which may also be influenced by general market conditions and the prevailing price and trading volumes of our common stock, in each case subject to the limit imposed under the U.S. Treasury’s TARP Capital Purchase Program. See “— Equity Capital — Equity Capital Management — Preferred Stock” below for information regarding restrictions on our ability to repurchase common stock.

The following table sets forth the level of share repurchases for the years ended November 2008 and November 2007:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions, except per share amounts)	
Number of shares repurchased . . . . .	10.54	41.22
Total cost . . . . .	\$ 2,037	\$ 8,956
Average cost per share . . . . .	\$193.18	\$217.29

As of November 2008, we were authorized to repurchase up to 60.9 million additional shares of common stock pursuant to 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 our Annual Report on Form 10-K for additional information on our repurchase program.

**Stock Offerings.** In September 2008, we completed a public offering of 46.7 million shares of common stock at \$123.00 per share for proceeds of \$5.75 billion.

In October 2008, we issued to Berkshire Hathaway Inc. and certain affiliates 50,000 shares of 10% Cumulative Perpetual Preferred Stock, Series G (Series G Preferred Stock), and a five-year warrant to purchase up to 43.5 million shares of common stock at an exercise price of \$115.00 per share, for aggregate proceeds of \$5.00 billion. The allocated carrying values of the warrant and the Series G Preferred Stock on the date of issuance (based on their relative fair values) were \$1.14 billion and \$3.86 billion, respectively. The warrant is exercisable at any time until October 1, 2013 and the number of shares of common stock underlying the warrant and the exercise price are subject to adjustment for certain dilutive events.

In October 2008, under the U.S. Treasury's TARP Capital Purchase Program, we issued to the U.S. Treasury 10.0 million shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series H (Series H Preferred Stock), and a 10-year warrant to purchase up to 12.2 million shares of common stock at an exercise price of \$122.90 per share, for aggregate proceeds of \$10.00 billion. The allocated carrying values of the warrant and the Series H Preferred Stock on the date of issuance (based on their relative fair values) were \$490 million and \$9.51 billion, respectively. Cumulative dividends on the Series H Preferred Stock are payable at 5% per annum through November 14, 2013 and at a rate of 9% per annum thereafter. The Series H Preferred Stock will be accreted to the redemption price of \$10.00 billion over five years. The warrant is exercisable at any time until October 28, 2018 and the number of shares of common stock underlying the warrant and the exercise price are subject to adjustment for certain dilutive events. If, on or prior to December 31, 2009, we receive aggregate gross cash proceeds of at least \$10 billion from sales of Tier 1 qualifying perpetual preferred stock or common stock, the number of shares of common stock issuable upon exercise of the warrant will be reduced by one-half of the original number of shares of common stock.

**Preferred Stock.** As of November 2008, Goldman Sachs had 10.2 million shares of perpetual preferred stock issued and outstanding as set forth in the following table:

<b>Preferred Stock by Series</b>						
<u>Series</u>	<u>Dividend Preference</u>	<u>Shares Issued</u>	<u>Shares Authorized</u>	<u>Dividend Rate</u>	<u>Earliest Redemption Date</u>	<u>Redemption Value (in millions)</u>
A	Non-cumulative	30,000	50,000	3 month LIBOR + 0.75%, with floor of 3.75% per annum	April 25, 2010	\$ 750
B	Non-cumulative	32,000	50,000	6.20% per annum	October 31, 2010	800
C	Non-cumulative	8,000	25,000	3 month LIBOR + 0.75%, with floor of 4.00% per annum	October 31, 2010	200
D	Non-cumulative	54,000	60,000	3 month LIBOR + 0.67%, with floor of 4.00% per annum	May 24, 2011	1,350
G	Cumulative	50,000	50,000	10.00% per annum	Date of issuance	5,500
H	Cumulative	10,000,000	10,000,000	5.00% per annum through November 14, 2013 and 9.00% per annum thereafter	Date of issuance	10,000
		<u>10,174,000</u>	<u>10,235,000</u>			<u>\$18,600</u>

Each share of non-cumulative preferred stock issued and outstanding 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, subject to the approval of the Federal Reserve Board, at a redemption price equal to \$25,000 plus declared and unpaid dividends.

Each share of Series G Preferred Stock issued and outstanding has a par value of \$0.01, has a liquidation preference of \$100,000 and is redeemable at our option, subject to the approval of the Federal Reserve Board, at a redemption price equal to \$110,000 plus accrued and unpaid dividends.

Each share of Series H Preferred Stock issued and outstanding has a par value of \$0.01, has a liquidation preference of \$1,000 and is redeemable at our option, subject to the approval of the

Federal Reserve Board, at a redemption price equal to \$1,000 plus accrued and unpaid dividends, provided that through November 14, 2011 the Series H Preferred Stock is redeemable only in an amount up to the aggregate net cash proceeds received from sales of Tier 1 qualifying perpetual preferred stock or common stock, and only once such sales have resulted in aggregate gross proceeds of at least \$2.5 billion.

All series of preferred stock are pari passu and have a preference over our common stock upon liquidation. Dividends on each series of preferred stock, if declared, are payable quarterly in arrears. 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 that we fail to pay or set aside full dividends on our preferred stock for the latest completed dividend period. In addition, pursuant to the U.S. Treasury's TARP Capital Purchase Program, until the earliest of October 28, 2011, the redemption of all of the Series H Preferred Stock or transfer by the U.S. Treasury of all of the Series H Preferred Stock to third parties, we must obtain the consent of the U.S. Treasury to raise our common stock dividend or to repurchase any shares of common stock or other preferred stock, with certain exceptions (including repurchases of our common stock under our share repurchase program to offset dilution from equity-based compensation). For as long as the Series H Preferred Stock remains outstanding, due to the limitations pursuant to the U.S. Treasury's TARP Capital Purchase Program, we will repurchase our common stock through our share repurchase program only for the purpose of offsetting dilution from equity-based compensation, to the extent permitted.

**Junior Subordinated Debt Issued to Trusts in Connection with Normal Automatic Preferred Enhanced Capital Securities.** In 2007, we issued \$1.75 billion of fixed rate junior subordinated debt to Goldman Sachs Capital II and \$500 million of floating rate junior subordinated debt to Goldman Sachs Capital III, Delaware statutory trusts that, in turn, issued \$2.25 billion of guaranteed perpetual Automatic Preferred Enhanced Capital Securities (APEX) to third parties and a de minimis amount of common securities to Goldman Sachs. The junior subordinated debt is included in "Unsecured long-term borrowings" in the consolidated statements of financial condition. In connection with the APEX issuance, we entered into stock purchase contracts with Goldman Sachs Capital II and III under which we will be obligated to sell and these entities will be obligated to purchase \$2.25 billion of perpetual non-cumulative preferred stock that we will issue in the future. Goldman Sachs Capital II and III are required to remarket the junior subordinated debt in order to fund their purchase of the preferred stock, but in the event that a remarketing is unsuccessful, they will relinquish the subordinated debt to us in exchange for the preferred stock. Because of certain characteristics of the junior subordinated debt (and the associated APEX), including its long-term nature, the future issuance of perpetual non-cumulative preferred stock under the stock purchase contracts, our ability to defer payments due on the debt and the subordinated nature of the debt in our capital structure, it qualifies as Tier 1 and Total Allowable Capital and is included as part of our equity capital.

**Junior Subordinated Debt Issued to a Trust in Connection with Trust Preferred Securities.** We issued \$2.84 billion of junior subordinated debentures in 2004 to Goldman Sachs Capital I, a Delaware statutory trust that, in turn, issued \$2.75 billion of guaranteed preferred beneficial interests to third parties and \$85 million of common beneficial interests to Goldman Sachs. The junior subordinated debentures are included in "Unsecured long-term borrowings" in the consolidated statements of financial condition. Because of certain characteristics of the junior subordinated debt (and the associated trust preferred securities), including its long-term nature, our ability to defer coupon interest for up to ten consecutive semi-annual periods and the subordinated nature of the debt in our capital structure, it qualifies as Tier 1 and Total Allowable Capital and is included as part of our equity capital.

**Subordinated Debt.** In addition to junior subordinated debt issued to trusts, we had other subordinated debt outstanding of \$14.17 billion as of November 2008. Although not part of our shareholders' equity, substantially all of our subordinated debt qualifies as Total Allowable Capital.

## Other Capital Ratios and Metrics

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>2008</b>	<b>2007</b>
	(\$ in millions, except per share amounts)	
Total assets	\$884,547	\$1,119,796
Adjusted assets <sup>(1)</sup>	528,161	745,700
Total shareholders' equity	64,369	42,800
Tangible equity capital <sup>(2)</sup>	64,186	42,728
Leverage ratio <sup>(3)</sup>	13.7x	26.2x
Adjusted leverage ratio <sup>(4)</sup>	8.2x	17.5x
Debt to equity ratio <sup>(5)</sup>	2.6x	3.8x
Common shareholders' equity	\$ 47,898	\$ 39,700
Tangible common shareholders' equity <sup>(6)</sup>	42,715	34,628
Book value per common share <sup>(7)</sup>	\$ 98.68	\$ 90.43
Tangible book value per common share <sup>(8)</sup>	88.00	78.88

<sup>(1)</sup> Adjusted assets excludes (i) low-risk collateralized assets generally associated with our matched book and securities lending businesses and federal funds sold, (ii) cash and securities we segregate for regulatory and other purposes and (iii) goodwill and identifiable intangible assets, excluding power contracts. We do not deduct identifiable intangible assets associated with power contracts from total assets in order to be consistent with the calculation of tangible equity capital and the adjusted leverage ratio (see footnote 2 below).

The following table sets forth the reconciliation of total assets to adjusted assets:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Total assets	\$ 884,547	\$ 1,119,796
Deduct: Securities borrowed	(180,795)	(277,413)
Securities purchased under agreements to resell, at fair value and federal funds sold	(122,021)	(87,317)
Add: Trading liabilities, at fair value	175,972	215,023
Less derivative liabilities	(117,695)	(99,378)
Subtotal	58,277	115,645
Deduct: Cash and securities segregated for regulatory and other purposes	(106,664)	(119,939)
Goodwill and identifiable intangible assets, excluding power contracts	(5,183)	(5,072)
Adjusted assets	<u>\$ 528,161</u>	<u>\$ 745,700</u>

<sup>(2)</sup> Tangible equity capital equals total shareholders' equity and junior subordinated debt issued to trusts less goodwill and identifiable intangible assets, excluding power contracts. We do not deduct identifiable intangible assets associated with power contracts from total shareholders' equity because, unlike other intangible assets, less than 50% of these assets are supported by common shareholders' equity. We consider junior subordinated debt issued to trusts to be a component of our tangible equity capital base due to certain characteristics of the debt, including its long-term nature, our ability to defer payments due on the debt and the subordinated nature of the debt 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>2008</b>	<b>2007</b>
	(in millions)	
Total shareholders' equity	\$64,369	\$42,800
Add: Junior subordinated debt issued to trusts	5,000	5,000
Deduct: Goodwill and identifiable intangible assets, excluding power contracts	(5,183)	(5,072)
Tangible equity capital	<u>\$64,186</u>	<u>\$42,728</u>

- (3) The leverage ratio equals total assets divided by total shareholders' equity. This ratio is different from the Tier 1 leverage ratios included in "— Equity Capital — Consolidated Capital Requirements" and "— Equity Capital — Subsidiary Capital Requirements" above.
- (4) The 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) The debt to equity ratio equals unsecured long-term borrowings divided by total shareholders' equity.
- (6) Tangible common shareholders' equity equals total shareholders' equity less preferred stock, goodwill and identifiable intangible assets, excluding power contracts. We do not deduct identifiable intangible assets associated with power contracts from total shareholders' equity because, unlike other intangible assets, less than 50% of these assets are supported by common shareholders' equity.

The following table sets forth the reconciliation of total shareholders' equity to tangible common shareholders' equity:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Total shareholders' equity . . . . .	\$ 64,369	\$42,800
Deduct: Preferred stock . . . . .	<u>(16,471)</u>	<u>(3,100)</u>
Common shareholders' equity . . . . .	47,898	39,700
Deduct: Goodwill and identifiable intangible assets, excluding power contracts . . . . .	<u>(5,183)</u>	<u>(5,072)</u>
Tangible common shareholders' equity . . . . .	<u>\$ 42,715</u>	<u>\$34,628</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 485.4 million and 439.0 million as of November 2008 and November 2007, 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.

## Contractual Obligations and Commitments

Goldman Sachs has contractual obligations to make future payments related to our unsecured long-term borrowings, secured long-term financings, long-term noncancelable lease agreements and purchase obligations and has commitments under a variety of commercial arrangements.

The following table sets forth our contractual obligations by fiscal maturity date as of November 2008:

<b>Contractual Obligations</b>					
(in millions)					
	<u>2009</u>	<u>2010- 2011</u>	<u>2012- 2013</u>	<u>2014- Thereafter</u>	<u>Total</u>
Unsecured long-term borrowings <sup>(1)(2)(3)</sup> . . . .	\$ —	\$25,122	\$38,750	\$104,348	\$168,220
Secured long-term financings <sup>(1)(2)(4)</sup> . . . . .	—	6,735	4,417	6,306	17,458
Contractual interest payments <sup>(5)</sup> . . . . .	8,145	14,681	11,947	34,399	69,172
Insurance liabilities <sup>(6)</sup> . . . . .	642	951	791	4,879	7,263
Minimum rental payments . . . . .	494	800	535	1,664	3,493
Purchase obligations . . . . .	569	132	21	21	743

<sup>(1)</sup> Obligations maturing within one year of our financial statement date or redeemable within one year of our financial statement date at the option of the holder are excluded from this table and are treated as short-term obligations. See Note 3 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our secured financings.

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

<sup>(3)</sup> Includes \$17.45 billion accounted for at fair value under SFAS No. 155 or SFAS No. 159, primarily consisting of hybrid financial instruments and prepaid physical commodity transactions.

<sup>(4)</sup> These obligations are reported within "Other secured financings" in the consolidated statements of financial condition and include \$7.85 billion accounted for at fair value under SFAS No. 159.

<sup>(5)</sup> Represents estimated future interest payments related to unsecured long-term borrowings and secured long-term financings based on applicable interest rates as of November 2008. Includes stated coupons, if any, on structured notes.

<sup>(6)</sup> Represents estimated undiscounted payments related to future benefits and unpaid claims arising from policies associated with our insurance activities, excluding separate accounts and estimated recoveries under reinsurance contracts.

As of November 2008, our unsecured long-term borrowings were \$168.22 billion, with maturities extending to 2043, and consisted principally of senior borrowings. See Note 7 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our unsecured long-term borrowings.

As of November 2008, our future minimum rental payments, net of minimum sublease rentals, under noncancelable leases were \$3.49 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. See Note 8 to the consolidated financial statements in Part II, Item 8 of our 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. In 2008, we incurred exit costs of \$80 million related to our office space (included in



“Occupancy” and “Depreciation and Amortization” in the consolidated statement of earnings). We may incur exit costs in the future 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.

As of November 2008, included in purchase obligations was \$483 million of construction-related obligations. Our construction-related obligations include commitments of \$388 million related to our new headquarters in New York City, which is expected to cost between \$2.1 billion and \$2.3 billion. We have partially financed this construction project with \$1.65 billion of tax-exempt Liberty Bonds.

Due to the uncertainty of the timing and amounts that will ultimately be paid, our liability for unrecognized tax benefits has been excluded from the above contractual obligations table. See Note 16 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information on FIN 48.

The following table sets forth our commitments as of November 2008:

		<b>Commitments</b>				
		(in millions)				
		<b>Commitment Amount by Fiscal Period of Expiration</b>				
		<u>2009</u>	<u>2010- 2011</u>	<u>2012- 2013</u>	<u>2014- Thereafter</u>	<u>Total</u>
Commitments to extend credit						
Commercial lending:						
Investment-grade . . . . .	\$	3,587	2,705	1,538	\$ 177	\$ 8,007
Non-investment-grade . . . . .		1,188	1,767	5,708	655	9,318
William Street program . . . . .		3,300	6,715	12,178	417	22,610
Warehouse financing . . . . .		604	497	—	—	1,101
Total commitments to extend credit <sup>(1)</sup> . . . . .		8,679	11,684	19,424	1,249	41,036
Forward starting resale and securities borrowing agreements . . . . .		61,455	—	—	—	61,455
Forward starting repurchase and securities lending agreements . . . . .		6,948	—	—	—	6,948
Commitments under letters of credit issued by banks to counterparties . . . . .		6,953	101	197	—	7,251
Investment commitments . . . . .		6,398	7,144	101	623	14,266
Underwriting commitments . . . . .		241	—	—	—	241
Total . . . . .		<u>\$90,674</u>	<u>\$18,929</u>	<u>\$19,722</u>	<u>\$1,872</u>	<u>\$131,197</u>

<sup>(1)</sup> Commitments to extend credit are net of amounts syndicated to third parties.

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 to extend credit of \$41.04 billion as of November 2008. Since these commitments may expire unused or be reduced or cancelled at the counterparty’s request, the total commitment amount does not necessarily reflect the actual future cash flow requirements. Our commercial lending commitments are generally extended in connection with contingent acquisition financing and other types of corporate lending as well as commercial real estate financing. We may seek to reduce our credit risk on these commitments by syndicating all or substantial portions of commitments to other investors in the future. In addition,

commitments that are extended for contingent acquisition financing are often intended to be short-term in nature, as borrowers often seek to replace them with other funding sources.

Included within non-investment-grade commitments as of November 2008 was \$2.07 billion of exposure to leveraged lending capital market transactions, \$164 million related to commercial real estate transactions and \$7.09 billion arising from other unfunded credit facilities. Including funded loans, our total exposure to leveraged lending capital market transactions was \$7.97 billion as of November 2008.

The following table sets forth our exposure to leveraged lending capital market transactions by geographic region:

**Leveraged Lending Capital Market Exposure by Geographic Region**  
(in millions)

	As of November 2008		
	Funded	Unfunded	Total
Americas <sup>(1)</sup> .....	\$3,036	\$1,735	\$4,771
EMEA <sup>(2)</sup> .....	2,294	259	2,553
Asia .....	568	73	641
<b>Total</b> .....	<u><u>\$5,898</u></u>	<u><u>\$2,067</u></u>	<u><u>\$7,965</u></u>

<sup>(1)</sup> Substantially all relates to the U.S.

<sup>(2)</sup> EMEA (Europe, Middle East and Africa).

Substantially all of the commitments provided under the William Street credit extension program are to investment-grade corporate borrowers. Commitments under the program are principally extended by William Street Commitment Corporation (Commitment Corp.), a consolidated wholly owned subsidiary of GS Bank USA, and also by William Street Credit Corporation, GS Bank USA or Goldman Sachs Credit Partners L.P. The commitments extended by Commitment Corp. are supported, in part, by funding raised by William Street Funding Corporation (Funding Corp.), another consolidated wholly owned subsidiary of GS Bank USA. The assets and liabilities of Commitment Corp. and Funding Corp. are legally separated from other assets and liabilities of the firm. With respect to most of the William Street commitments, SMFG provides us with credit loss protection that is generally limited to 95% of the first loss we realize on approved loan commitments, up 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 additional losses on such commitments, up to a maximum of \$1.13 billion, of which \$375 million of protection has been provided as of November 2008. We also use other financial instruments to mitigate credit risks related to certain William Street commitments not covered by SMFG.

Our commitments to extend credit also include financing for the warehousing of financial assets. These arrangements are secured by the warehoused assets, primarily consisting of commercial mortgages as of November 2008.

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

## 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, as described further below. These committees (including their subcommittees), 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 and trading risk parameters.

**Risk Committees.** The Firmwide Risk Committee reviews the activities of existing trading businesses, approves new businesses and products, approves firmwide 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 Securities Divisional Risk Committee sets market risk limits for our trading activities subject to overall firmwide risk limits, based on a number of measures, including VaR, stress tests and scenario analyses.

Business unit risk limits are established by the appropriate risk committee 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.

The Asset Management Divisional Risk Committee oversees various risk, valuation and credit issues related to our asset management business.

**Business Practices Committee.** The Business Practices Committee assists senior management in its oversight of compliance and operational risks and related reputational concerns, seeks to ensure the consistency of our policies, practices and procedures with our Business Principles, and makes recommendations on ways to mitigate potential risks.

**Firmwide Capital Committee.** The Firmwide Capital Committee reviews and approves transactions involving commitments of our capital. Such capital commitments include, but are not limited to, extensions of credit, alternative liquidity commitments, certain bond underwritings and certain distressed debt and principal finance activities. The Firmwide Capital Committee is also responsible for establishing business and reputational standards for capital commitments and seeking to ensure that they 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 oversees our liquidity policies, sets certain inventory position 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 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, proprietary trading, underwriting, specialist and investing activities. Substantially all of our inventory positions are marked-to-market on a daily basis and changes are recorded in net revenues.

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 economic hedges in related securities or derivatives. For example, we may seek to 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 for “Trading assets, at fair value” and “Trading liabilities, at fair value” in the consolidated statements of financial condition. These tools include:

- risk limits based on a summary measure of market risk exposure referred to as VaR;
- scenario analyses, stress tests and other analytical tools that measure the potential effects on our trading 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 emerging markets; and
- inventory position limits for selected business units.

### ***VaR***

VaR is the potential loss in value of 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 occur more frequently or accumulate over a longer time horizon such as a number of consecutive trading days.

The modeling of the risk characteristics of our trading positions involves a number of assumptions and approximations. While we believe 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.

The following tables set forth the daily VaR:

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

<b>Risk Categories</b>	<b>Year Ended November</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
Interest rates . . . . .	\$ 142	\$ 85	\$ 49
Equity prices . . . . .	72	100	72
Currency rates . . . . .	30	23	21
Commodity prices . . . . .	44	26	30
Diversification effect <sup>(2)</sup> . . . . .	(108)	(96)	(71)
<b>Total</b> . . . . .	<b>\$ 180</b>	<b>\$138</b>	<b>\$101</b>

<sup>(1)</sup> Certain portfolios and individual positions are not included in VaR, where VaR is not the most appropriate measure of risk (e.g., due to transfer restrictions and/or illiquidity). See “— Other Market Risk Measures” 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 \$180 million in 2008 from \$138 million in 2007, principally due to increases in the interest rate, commodity price and currency rate categories, partially offset by a decrease in the equity price category. The increase in interest rates was primarily due to higher levels of volatility and wider spreads, partially offset by position reductions, and the increases in commodity prices and currency rates were primarily due to higher levels of volatility. The decrease in equity prices was principally due to position reductions, partially offset by higher levels of volatility.

Our average daily VaR increased to \$138 million in 2007 from \$101 million in 2006. The increase was primarily due to higher levels of exposure and volatility in interest rates and equity prices.

VaR excludes the impact of changes in counterparty and our own credit spreads on derivatives as well as changes in our own credit spreads on unsecured borrowings for which the fair value option was elected. The estimated sensitivity of our net revenues to a one basis point increase in credit spreads (counterparty and our own) on derivatives was \$1 million as of November 2008. In addition, the estimated sensitivity of our net revenues to a one basis point increase in our own credit spreads on unsecured borrowings for which the fair value option was elected was \$1 million (including hedges) as of November 2008.

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

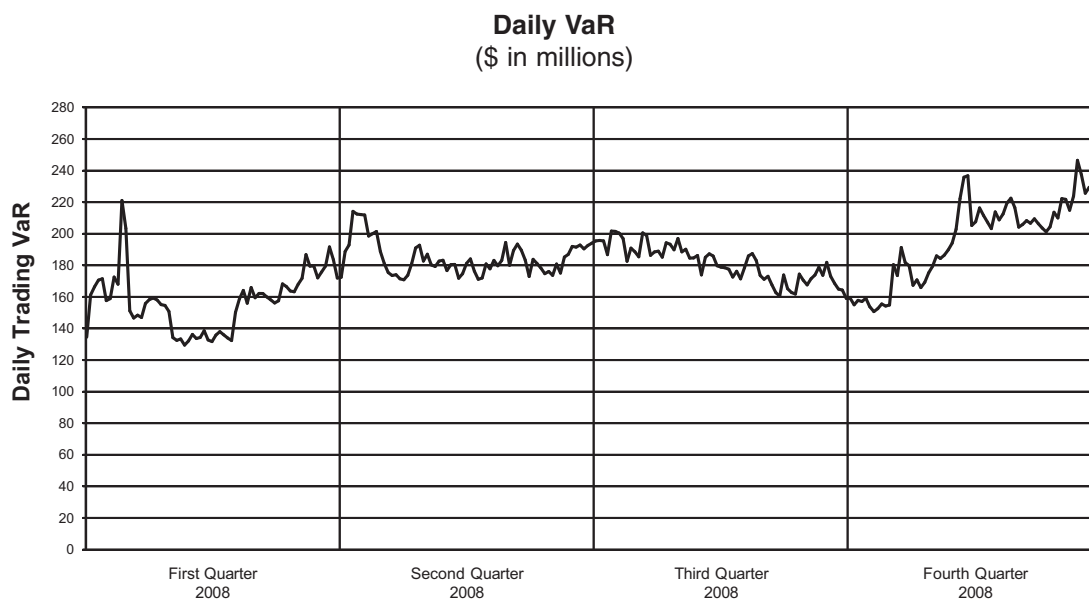
<b>Risk Categories</b>	<b>As of November</b>		<b>Year Ended November 2008</b>	
	<b>2008</b>	<b>2007</b>	<b>High</b>	<b>Low</b>
Interest rates . . . . .	\$228	\$ 105	\$228	\$ 93
Equity prices . . . . .	38	82	234	36
Currency rates . . . . .	36	35	55	17
Commodity prices . . . . .	33	33	68	25
Diversification effect <sup>(2)</sup> . . . . .	(91)	(121)		
<b>Total</b> . . . . .	<b>\$244</b>	<b>\$ 134</b>	<b>\$246</b>	<b>\$129</b>

<sup>(1)</sup> Certain portfolios and individual positions are not included in VaR, where VaR is not the most appropriate measure of risk (e.g., due to transfer restrictions and/or illiquidity). See “— Other Market Risk Measures” 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.

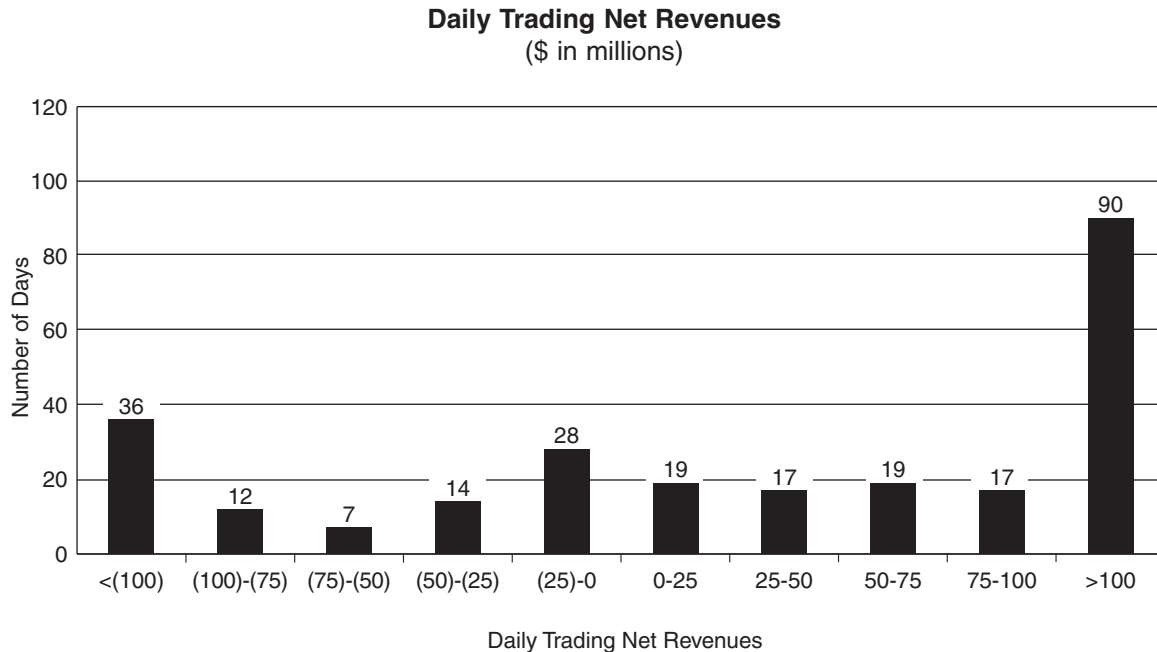
Our daily VaR increased to \$244 million as of November 2008 from \$134 million as of November 2007, primarily due to an increase in the interest rate category and a reduction in the diversification benefit across risk categories, partially offset by a decrease in the equity price category. The increase in interest rates was principally due to higher levels of volatility and wider spreads, partially offset by position reductions. The decrease in equity prices was primarily due to position reductions, partially offset by higher levels of volatility.

The following chart presents our daily VaR during 2008:



### Trading Net Revenues Distribution

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 2008:



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 exceeded our 95% one-day VaR on 13 and 10 occasions during 2008 and 2007, respectively.

### Other Market Risk Measures

Certain portfolios and individual positions are not included in VaR, where VaR is not the most appropriate measure of risk (e.g., due to transfer restrictions and/or illiquidity). The market risk related to our investment in the ordinary shares of ICBC, excluding interests held by investment funds managed by Goldman Sachs, is measured by estimating the potential reduction in net revenues associated with a 10% decline in the ICBC ordinary share price. The market risk related to the remaining positions is measured by estimating the potential reduction in net revenues associated with a 10% decline in asset values.

The sensitivity analyses for equity and debt positions in our trading portfolio and equity, debt (primarily mezzanine instruments) and real estate positions in our non-trading portfolio are measured by the impact of a decline in the asset values (including the impact of leverage in the underlying investments for real estate positions in our non-trading portfolio) of such positions. The fair value of the underlying positions may be impacted by factors such as transactions in similar instruments, completed or pending third-party transactions in the underlying investment or comparable entities, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, offerings in the equity or debt capital markets, and changes in financial ratios or cash flows.



The following table sets forth market risk for positions not included in VaR. These measures do not reflect diversification benefits across asset categories and, given the differing likelihood of the potential declines in asset categories, these measures have not been aggregated:

<u>Asset Categories</u>	<u>10% Sensitivity Measure</u>	<u>10% Sensitivity</u>	
		<u>Amount as of November</u>	
		<u>2008</u>	<u>2007</u>
		(in millions)	
<u>Trading Risk</u> <sup>(1)</sup>			
Equity <sup>(2)</sup>	Underlying asset value	\$ 790	\$1,325
Debt <sup>(3)</sup>	Underlying asset value	808	1,020
<u>Non-trading Risk</u>			
ICBC	ICBC ordinary share price	202	250
Other Equity <sup>(4)</sup>	Underlying asset value	1,155	1,054
Debt <sup>(5)</sup>	Underlying asset value	694	500
Real Estate <sup>(6)</sup>	Underlying asset value	1,330	1,108

<sup>(1)</sup> In addition to the positions in these portfolios, which are accounted for at fair value, we make investments accounted for under the equity method and we also make direct investments in real estate, both of which are included in "Other assets" in the consolidated statements of financial condition. Direct investments in real estate are accounted for at cost less accumulated depreciation. See Note 12 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for information on "Other assets."

<sup>(2)</sup> Relates to private and restricted public equity securities held within the FICC and Equities components of our Trading and Principal Investments segment.

<sup>(3)</sup> Relates to acquired portfolios of distressed loans (primarily backed by commercial and residential real estate collateral), bank loans and bridge loans, and loans backed by commercial real estate and held within the FICC component of our Trading and Principal Investments segment.

<sup>(4)</sup> Primarily relates to interests in our merchant banking funds that invest in corporate equities.

<sup>(5)</sup> Primarily relates to interests in our merchant banking funds that invest in corporate mezzanine debt instruments.

<sup>(6)</sup> Primarily relates to interests in our merchant banking funds that invest in real estate. Such funds typically employ leverage as part of the investment strategy. This sensitivity measure is based on our percentage ownership of the underlying asset values in the funds and unfunded commitments to the funds.

The decrease in our 10% sensitivity measures as of November 2008 from November 2007 for equity and debt positions in our trading portfolio was due to dispositions and a decrease in the fair value of the portfolio, partially offset by new investments. The increase in our 10% sensitivity measures as of November 2008 from November 2007 for our non-trading portfolio (excluding ICBC) was due to new investments, partially offset by a decrease in the fair value of the portfolio.

In addition to the positions included in VaR and the other risk measures described above, as of November 2008, we held approximately \$10.39 billion of financial instruments in our bank and insurance subsidiaries, primarily consisting of \$3.08 billion of U.S. government, federal agency and sovereign obligations, \$2.87 billion of corporate debt securities and other debt obligations, \$2.86 billion of money market instruments, and \$1.22 billion of mortgage and other asset-backed loans and securities. As of November 2007, we held approximately \$10.58 billion of financial instruments in our bank and insurance subsidiaries, primarily consisting of \$4.70 billion of mortgage and other asset-backed loans and securities, \$2.93 billion of corporate debt securities and other debt obligations and \$2.77 billion of U.S. government, federal agency and sovereign obligations. In addition, as of November 2008 and November 2007, we held commitments and loans under the William Street credit extension program. See "— Contractual Obligations and Commitments — Commitments" above for information on our William Street program.

## 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 other instruments, including OTC derivatives, we hold. Our exposure to credit risk principally arises through our trading, investing and financing activities. 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 on an upfront or contingent basis, (ii) seeking third-party guarantees of the counterparty's obligations, and/or (iii) transferring our credit risk to third parties using credit derivatives and/or other structures and techniques.

To measure and manage our credit exposures, we use a variety of tools, including credit limits referenced to both current exposure and potential exposure. Potential exposure is an estimate of exposure, within a specified confidence level, that could be outstanding over the life of a transaction based on market movements. In addition, as part of our market risk management process, for positions measured by changes in credit spreads, we use VaR and other sensitivity measures. To supplement our primary credit exposure measures, we also use scenario analyses, such as credit spread widening scenarios, stress tests and other quantitative tools.

Our global credit management systems monitor 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 credit risk by product, industry sector, country and region.

While our activities expose us to many different industries and counterparties, we routinely execute a high volume of transactions with counterparties in the financial services industry, including brokers and dealers, commercial banks and investment funds, resulting in significant credit concentration with respect to this industry. In the ordinary course of business, we may also be subject to a concentration of credit risk to a particular counterparty, borrower or issuer.

As of November 2008 and November 2007, we held \$53.98 billion (6% of total assets) and \$45.75 billion (4% of total assets), respectively, of U.S. government and federal agency obligations included in "Trading assets, at fair value" and "Cash and securities segregated for regulatory and other purposes" in the consolidated statements of financial condition. As of November 2008 and November 2007, we held \$21.13 billion (2% of total assets) and \$31.65 billion (3% of total assets), respectively, of other sovereign obligations, principally consisting of securities issued by the governments of Japan and the United Kingdom. In addition, as of November 2008 and November 2007, \$126.27 billion and \$144.92 billion of our securities purchased under agreements to resell and securities borrowed (including those in "Cash and securities segregated for regulatory and other purposes"), respectively, were collateralized by U.S. government and federal agency obligations. As of November 2008 and November 2007, \$65.37 billion and \$41.26 billion of our securities purchased under agreements to resell and securities borrowed, respectively, were collateralized by other sovereign obligations. As of November 2008 and November 2007, we did not have credit exposure to any other counterparty that exceeded 2% of our total assets. However, over the past several years, the amount and duration of our credit exposures with respect to OTC derivatives has been increasing, due to, among other factors, the growth of our OTC derivative activities and market evolution toward longer-dated transactions. 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 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 manage currency exposure on 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.

The fair value of our derivative contracts is reflected net of cash paid or received pursuant to credit support agreements and is reported on a net-by-counterparty basis in our consolidated statements of financial condition when we believe 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 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 2008				
<b>Assets</b>	<b>Contract Type</b>	<b>0-12 Months</b>	<b>1 - 5 Years</b>	<b>5 - 10 Years</b>	<b>10 Years or Greater</b>	<b>Total</b>
	Interest rates . . . . .	\$16,220	\$ 43,864	\$35,050	\$40,649	\$ 135,783
	Credit derivatives . . . . .	10,364	45,596	20,110	13,788	89,858
	Currencies . . . . .	28,056	12,191	5,980	4,137	50,364
	Commodities . . . . .	13,660	12,717	1,175	1,681	29,233
	Equities . . . . .	17,830	4,742	3,927	1,061	27,560
	Netting across contract types <sup>(1)</sup> . . . . .	<u>(6,238)</u>	<u>(9,160)</u>	<u>(3,515)</u>	<u>(3,802)</u>	<u>(22,715)</u>
	Subtotal . . . . .	<u>\$79,892</u> <sup>(4)</sup>	<u>\$109,950</u>	<u>\$62,727</u>	<u>\$57,514</u>	\$ 310,083
	Cross maturity netting <sup>(2)</sup> . . . . .					(48,750)
	Cash collateral netting <sup>(3)</sup> . . . . .					<u>(137,160)</u>
	Total . . . . .					<u>\$ 124,173</u>
<b>Liabilities</b>	<b>Contract Type</b>	<b>0-12 Months</b>	<b>1 - 5 Years</b>	<b>5 - 10 Years</b>	<b>10 Years or Greater</b>	<b>Total</b>
	Interest rates . . . . .	\$ 8,004	\$ 16,152	\$17,456	\$26,399	\$ 68,011
	Credit derivatives . . . . .	6,591	20,958	10,301	13,610	51,460
	Currencies . . . . .	29,130	13,755	4,109	2,051	49,045
	Commodities . . . . .	12,685	10,391	1,575	827	25,478
	Equities . . . . .	14,016	4,741	1,751	320	20,828
	Netting across contract types <sup>(1)</sup> . . . . .	<u>(6,238)</u>	<u>(9,160)</u>	<u>(3,515)</u>	<u>(3,802)</u>	<u>(22,715)</u>
	Subtotal . . . . .	<u>\$64,188</u> <sup>(4)</sup>	<u>\$ 56,837</u>	<u>\$31,677</u>	<u>\$39,405</u>	\$ 192,107
	Cross maturity netting <sup>(2)</sup> . . . . .					(48,750)
	Cash collateral netting <sup>(3)</sup> . . . . .					<u>(34,009)</u>
	Total . . . . .					<u>\$ 109,348</u>

<sup>(1)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across contract types within a maturity category, pursuant to credit support agreements.

<sup>(2)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across maturity categories, pursuant to credit support agreements.

<sup>(3)</sup> Represents the netting of cash collateral received and posted on a counterparty basis pursuant to credit support agreements.

<sup>(4)</sup> Includes fair values of OTC derivative assets and liabilities, maturing within six months, of \$56.72 billion and \$51.26 billion, respectively.

**OTC Derivatives**  
(in millions)

As of November 2007					
Assets	0-12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
<u>Contract Type</u>					
Interest rates . . . . .	\$ 8,703	\$10,965	\$17,176	\$28,388	\$ 65,232
Credit derivatives . . . . .	11,168	13,006	6,501	20,163	50,838
Currencies . . . . .	20,586	9,275	5,106	2,127	37,094
Commodities . . . . .	6,264	12,064	1,766	899	20,993
Equities . . . . .	13,845	5,312	4,273	1,603	25,033
Netting across contract types <sup>(1)</sup> . . . . .	<u>(3,355)</u>	<u>(5,665)</u>	<u>(3,132)</u>	<u>(2,066)</u>	<u>(14,218)</u>
Subtotal . . . . .	<u>\$57,211</u> <sup>(4)</sup>	<u>\$44,957</u>	<u>\$31,690</u>	<u>\$51,114</u>	\$184,972
Cross maturity netting <sup>(2)</sup> . . . . .					(33,849)
Cash collateral netting <sup>(3)</sup> . . . . .					<u>(59,050)</u>
Total . . . . .					<u>\$ 92,073</u>
<b>Liabilities</b>					
<u>Contract Type</u>	0-12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total
Interest rates . . . . .	\$10,234	\$10,802	\$ 9,816	\$10,287	\$ 41,139
Credit derivatives . . . . .	7,085	11,842	5,084	16,077	40,088
Currencies . . . . .	16,560	9,815	1,446	1,772	29,593
Commodities . . . . .	8,752	9,690	2,757	506	21,705
Equities . . . . .	17,460	7,723	3,833	1,382	30,398
Netting across contract types <sup>(1)</sup> . . . . .	<u>(3,355)</u>	<u>(5,665)</u>	<u>(3,132)</u>	<u>(2,066)</u>	<u>(14,218)</u>
Subtotal . . . . .	<u>\$56,736</u> <sup>(4)</sup>	<u>\$44,207</u>	<u>\$19,804</u>	<u>\$27,958</u>	\$148,705
Cross maturity netting <sup>(2)</sup> . . . . .					(33,849)
Cash collateral netting <sup>(3)</sup> . . . . .					<u>(27,758)</u>
Total . . . . .					<u>\$ 87,098</u>

<sup>(1)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across contract types within a maturity category, pursuant to credit support agreements.

<sup>(2)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across maturity categories, pursuant to credit support agreements.

<sup>(3)</sup> Represents the netting of cash collateral received and posted on a counterparty basis pursuant to credit support agreements.

<sup>(4)</sup> Includes fair values of OTC derivative assets and liabilities, maturing within six months, of \$41.80 billion and \$41.12 billion, respectively.

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.

The following tables set forth the distribution, by credit rating, of our exposure with respect to OTC derivatives by remaining contractual maturity, both before and after consideration of the effect of collateral and netting agreements. The categories shown reflect our internally determined public rating agency equivalents:

**OTC Derivative Credit Exposure**  
(in millions)

As of November 2008								
Credit Rating Equivalent	0-12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total	Netting <sup>(2)</sup>	Exposure	Exposure Net of Collateral
AAA/Aaa. . . . .	\$ 5,700	\$ 7,000	\$ 4,755	\$ 2,726	\$ 20,181	\$ (6,765)	\$ 13,416	\$12,328
AA/Aa2. . . . .	26,040	37,378	30,293	18,084	111,795	(78,085)	33,710	29,438
A/A2. . . . .	22,374	34,796	15,317	20,498	92,985	(58,744)	34,241	28,643
BBB/Baa2. . . . .	11,844	19,200	7,635	13,302	51,981	(29,791)	22,190	16,155
BB/Ba2 or lower . . . .	13,161	10,403	4,035	2,711	30,310	(12,515)	17,795	11,212
Unrated . . . . .	773	1,173	692	193	2,831	(10)	2,821	1,550
Total . . . . .	<u>\$79,892</u> <sup>(1)</sup>	<u>\$109,950</u>	<u>\$62,727</u>	<u>\$57,514</u>	<u>\$310,083</u>	<u>\$(185,910)</u>	<u>\$124,173</u>	<u>\$99,326</u>

As of November 2007								
Credit Rating Equivalent	0-12 Months	1 - 5 Years	5 - 10 Years	10 Years or Greater	Total	Netting <sup>(2)</sup>	Exposure	Exposure Net of Collateral
AAA/Aaa. . . . .	\$ 6,018	\$ 3,354	\$ 2,893	\$ 7,875	\$ 20,140	\$ (3,600)	\$ 16,540	\$14,453
AA/Aa2. . . . .	19,331	14,339	13,184	22,708	69,562	(40,661)	28,901	24,758
A/A2. . . . .	14,491	13,380	10,012	15,133	53,016	(32,453)	20,563	16,010
BBB/Baa2. . . . .	4,059	5,774	1,707	2,777	14,317	(4,437)	9,880	6,542
BB/Ba2 or lower . . . .	6,854	5,676	3,347	2,541	18,418	(4,834)	13,584	7,366
Unrated . . . . .	6,458	2,434	547	80	9,519	(6,914)	2,605	1,280
Total . . . . .	<u>\$57,211</u> <sup>(1)</sup>	<u>\$ 44,957</u>	<u>\$31,690</u>	<u>\$51,114</u>	<u>\$184,972</u>	<u>\$(92,899)</u>	<u>\$ 92,073</u>	<u>\$70,409</u>

<sup>(1)</sup> Includes fair values of OTC derivative assets, maturing within six months, of \$56.72 billion and \$41.80 billion as of November 2008 and November 2007, respectively.

<sup>(2)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across maturity categories and the netting of cash collateral received, pursuant to credit support agreements. Receivable and payable balances with the same counterparty in the same maturity category are netted within such maturity category, where appropriate.

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 (e.g., credit derivative contracts) 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.

## Liquidity and Funding 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 Goldman Sachs-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 revenues, even under adverse circumstances.

We have implemented a number of policies according to the following liquidity risk management framework:

- **Excess Liquidity** — We maintain substantial excess liquidity to meet a broad range of potential cash outflows in a stressed environment, including financing obligations.
- **Asset-Liability Management** — We seek to maintain secured and unsecured funding sources that are sufficiently long-term in order to withstand a prolonged or severe liquidity-stressed environment without having to rely on asset sales.
- **Conservative Liability Structure** — We seek to access funding across a diverse range of markets, products and counterparties, emphasize less credit-sensitive sources of funding and conservatively manage the distribution of funding across our entity structure.
- **Crisis Planning** — We base our liquidity and funding management on stress-scenario planning and maintain a crisis plan detailing our response to a liquidity-threatening event.

### ***Excess Liquidity***

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” 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 have 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 and our funding costs.

The size of our Global Core Excess is based on 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 and potential withdrawals of client deposits;
- adverse changes in the terms or availability of secured funding;
- derivatives and other margin and collateral outflows, including those due to market moves;
- potential cash outflows associated with our prime brokerage business;
- additional collateral that could be called in the event of a two-notch 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.

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

	<u>Year Ended November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
U.S. dollar-denominated . . . . .	\$78,048	\$52,115
Non-U.S. dollar-denominated . . . . .	<u>18,677</u>	<u>11,928</u>
Total Global Core Excess <sup>(2)</sup> . . . . .	<u>\$96,725</u>	<u>\$64,043</u>

The U.S. dollar-denominated excess is comprised of only unencumbered U.S. government securities, U.S. agency securities and highly liquid U.S. agency mortgage-backed securities, all of which are eligible as collateral in Federal Reserve open market operations, 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 overnight cash deposits in highly liquid currencies. We strictly limit our Global Core Excess to this narrowly defined list of securities and cash because we believe they are highly liquid, even in a difficult funding environment. We do not believe other potential sources of excess liquidity, such as lower-quality unencumbered securities or committed credit facilities, are as reliable in a liquidity crisis.

We maintain our Global Core Excess to enable us to meet current and potential liquidity requirements of our parent company, Group Inc., and all of its subsidiaries. The amount of our Global Core Excess is driven by our assessment of potential cash and collateral outflows, regulatory obligations and the currency and timing requirements of our global business model. In addition, we recognize that our Global Core Excess held in a regulated entity may not be available to our parent company or other subsidiaries and therefore may only be available to meet the potential liquidity requirements of that entity.

<sup>(1)</sup> The Global Core Excess excludes liquid assets of \$4.40 billion held separately by William Street Funding Corporation. See “— Contractual Obligations and Commitments” above for a further discussion of the William Street credit extension program.

<sup>(2)</sup> Beginning in 2008, our Global Core Excess as presented includes the Global Core Excess of GS Bank USA and GS Bank Europe. The 2007 amounts include \$3.48 billion of Global Core Excess at GS Bank USA.



In addition to our Global Core Excess, we have a significant amount of other unencumbered securities as a result of our business activities. These assets, which are located in the U. S., 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 our 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. We assume conservative loan values that are based on stress-scenario borrowing capacity and we regularly review these assumptions asset class by asset class. The estimated aggregate loan value of our Global Core Excess, as well as overnight cash deposits, and our other unencumbered assets averaged \$163.41 billion and \$156.74 billion for the fiscal years ended November 2008 and November 2007, respectively.

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

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. Although our balance sheet fluctuates due to client activity, market conventions and periodic market opportunities in certain of our businesses, our total assets and adjusted assets at financial statement dates are typically not materially different from those occurring within our reporting periods.

We seek to manage the maturity profile of our secured and unsecured 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 do not rely on immediate sales of assets (other than our Global Core Excess) to maintain liquidity in a distressed environment, although we recognize orderly asset sales may be prudent or necessary in a severe or persistent liquidity crisis.

In order to avoid reliance on asset sales, our goal is to ensure that we have sufficient total capital (unsecured long-term borrowings plus total shareholders' equity) to fund our balance sheet for at least one year. The target amount of our total capital is based on an internal liquidity model, which incorporates, among other things, the following long-term financing requirements:

- the portion of trading assets 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 are in excess of their long-term financing requirements. See “— Conservative Liability Structure” below for a further discussion of how we fund our subsidiaries.

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

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Mortgage and other asset-backed loans and securities . . . . .	\$22,393	\$46,436 <sup>(6)</sup>
Bank loans and bridge loans <sup>(1)</sup> . . . . .	21,839	49,154
Emerging market debt securities . . . . .	2,827	3,343
High-yield and other debt obligations . . . . .	9,998	12,807
Private equity and real estate fund investments <sup>(2)</sup> . . . . .	18,171	16,244
Emerging market equity securities . . . . .	2,665	8,014
ICBC ordinary shares <sup>(3)</sup> . . . . .	5,496	6,807
SMFG convertible preferred stock <sup>(4)</sup> . . . . .	1,135	4,060
Other restricted public equity securities . . . . .	568	3,455
Other investments in funds <sup>(5)</sup> . . . . .	2,714	3,437

- (1) Includes funded commitments and inventory held in connection with our origination and secondary trading activities.
- (2) Includes interests in our merchant banking funds. Such amounts exclude assets related to consolidated investment funds of \$1.16 billion and \$8.13 billion as of November 2008 and November 2007, respectively, for which Goldman Sachs does not bear economic exposure.
- (3) Includes interests of \$3.48 billion and \$4.30 billion as of November 2008 and November 2007, respectively, held by investment funds managed by Goldman Sachs.
- (4) During our second quarter of 2008, we converted one-third of our SMFG preferred stock investment into SMFG common stock, and delivered the common stock to close out one-third of our hedge position.
- (5) Includes interests in other investment funds that we manage.
- (6) Excludes \$7.64 billion as of November 2007 of mortgage whole loans that were transferred to securitization vehicles where such transfers were accounted for as secured financings rather than sales under SFAS No. 140. We distributed to investors the securities that were issued by the securitization vehicles and therefore did not bear economic exposure to the underlying mortgage whole loans.

A large portion of these assets are funded through secured funding markets or nonrecourse financing. We focus on funding these assets on a secured basis with long contractual maturities to reduce refinancing risk in periods of market stress.

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

**Conservative Liability Structure**

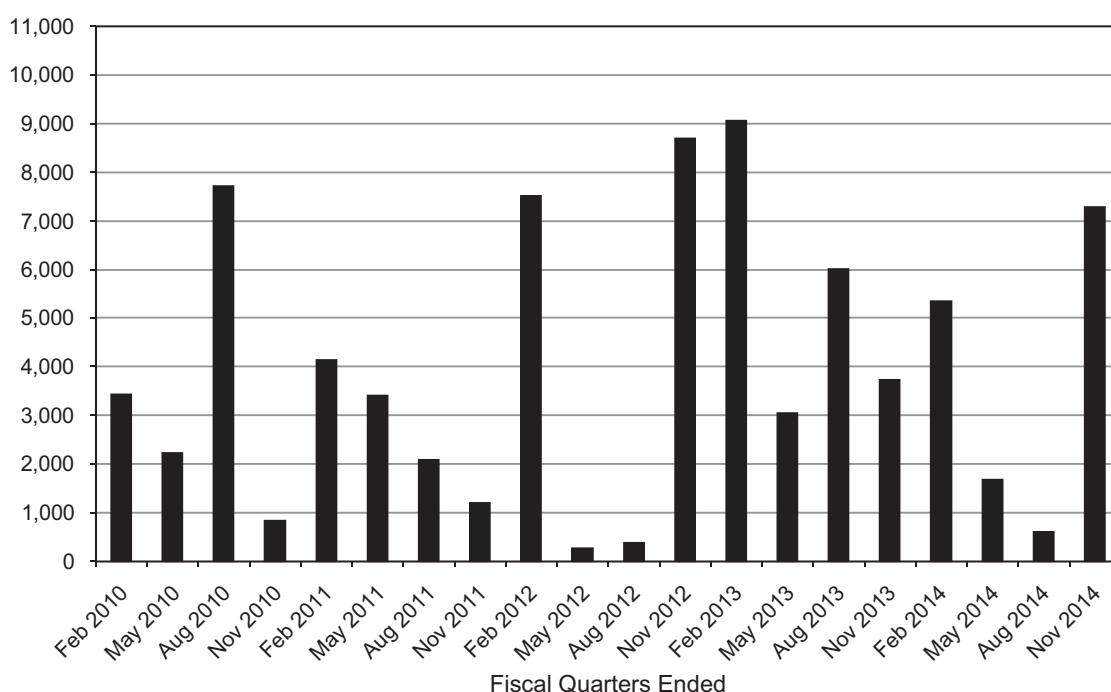
We seek to structure our liabilities conservatively to reduce refinancing risk and the risk that we may be required to redeem or repurchase certain of our borrowings prior to their contractual maturity.

We fund a substantial portion of our inventory on a secured basis, which we believe provides Goldman Sachs with a more stable source of liquidity than unsecured financing, as it is less sensitive to changes in our credit due to the underlying collateral. However, we recognize that the terms or availability of secured funding, particularly overnight funding, can deteriorate rapidly in a difficult environment. To help mitigate this risk, we raise the majority of our funding for durations longer than overnight. We seek longer terms for secured funding collateralized by lower-quality assets, as we believe these funding transactions may pose greater refinancing risk. The weighted average life of our secured funding, excluding funding collateralized by highly liquid securities, such as U.S., French, German, United Kingdom and Japanese government bonds, and U.S. agency securities, exceeded 100 days as of November 2008.

Our liquidity also depends to an important degree on the stability of our short-term unsecured financing base. Accordingly, we prefer the use of promissory notes (in which Goldman Sachs does not make a market) over commercial paper, which we may repurchase prior to maturity through the ordinary course of business as a market maker. As of November 2008 and November 2007, our unsecured short-term borrowings, including the current portion of unsecured long-term borrowings, were \$52.66 billion and \$71.56 billion, respectively. See Note 6 to the consolidated financial statements in Part II, Item 8 of our Annual Report on Form 10-K for further information regarding our unsecured short-term borrowings.

We issue long-term borrowings as a source of total capital in order to meet our long-term financing requirements. The following table sets forth our quarterly unsecured long-term borrowings maturity profile through 2014:

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



The weighted average maturity of our unsecured long-term borrowings as of November 2008 was approximately eight years. To mitigate refinancing risk, we seek to limit the principal amount of debt maturing on any one day or during any week or year. 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.

We issue substantially all of our unsecured debt without provisions that would, based solely upon an adverse change in our credit ratings, financial ratios, earnings, cash flows or 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.

As of November 2008, our bank depository institution subsidiaries had \$27.64 billion in customer deposits, including \$19.15 billion of deposits from our bank sweep programs and \$8.49 billion of brokered certificates of deposit with a weighted average maturity of three years. In addition, we are pursuing a number of strategies to raise additional deposits as a source of funding for the firm. As of

September 2008, GS Bank USA has access to funding through the Federal Reserve Bank discount window. While we do not rely on funding through the Federal Reserve Bank discount window in our liquidity modeling and stress testing, we maintain policies and procedures necessary to access this funding.

We seek to maintain broad and diversified funding sources globally for both secured and unsecured funding. We make extensive use of the repurchase agreement and securities lending markets, as well as other secured funding markets. In addition, 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 also arrange for letters of credit to be issued on our behalf.

We seek to distribute our funding products 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. Our creditors include banks, governments, securities lenders, pension funds, insurance companies, mutual funds and individuals. We access funding in a variety of markets in the Americas, Europe and Asia. We have imposed various internal guidelines on creditor concentration, including the amount of our commercial paper and promissory notes that can be owned and letters of credit that can be issued by any single creditor or group of creditors.

In the latter half of 2008, we were unable to raise significant amounts of long-term unsecured debt in the public markets, other than as a result of the issuance of securities guaranteed by the FDIC under the TLGP. It is unclear when we will regain access to the public long-term unsecured debt markets on customary terms or whether any similar program will be available after the TLGP's scheduled June 2009 expiration. However, we continue to have access to short-term funding and to a number of sources of secured funding, both in the private markets and through various government and central bank sponsored initiatives.

Over the past year, a number of U.S. regulatory agencies have taken steps to enhance the liquidity support available to financial services companies such as Group Inc., GS&Co., GSI and GS Bank USA. Some of these steps include:

- The Federal Reserve Bank of New York established the Primary Dealer Credit Facility in March 2008 to provide overnight funding to primary dealers in exchange for a specified range of collateral. In September 2008, the eligible collateral was expanded to include all collateral eligible in tri-party repurchase arrangements with the major clearing banks, and the facility was made available to GSI. This facility is scheduled to expire on April 30, 2009.
- The Federal Reserve Board introduced a new Term Securities Lending Facility (TSLF) in March 2008, which extended the term for which the Federal Reserve Board will lend Treasury securities to primary dealers from overnight to 28 days and, in September 2008, expanded the types of assets that can be used as collateral under the TSLF to include all investment-grade debt securities (rather than just Treasury, agency and certain AAA-rated asset-backed securities). This facility is scheduled to expire on April 30, 2009.
- In October 2008, the Federal Reserve Board established the Commercial Paper Funding Facility (CPFF) to serve as a funding backstop to facilitate the issuance of term commercial paper by eligible issuers. Through the CPFF, the Federal Reserve Bank of New York will finance the purchase of unsecured and asset-backed highly rated, U.S. dollar-denominated, three-month commercial paper from eligible issuers through its primary dealers. The facility is scheduled to expire on April 30, 2009. Our available funding under the CPFF is approximately \$11 billion, of which a de minimis amount was utilized as of January 22, 2009.

- The FDIC's TLGP, which was established in October 2008, provides a guarantee of certain newly issued senior unsecured debt issued by eligible entities, including Group Inc. and GS Bank USA, as well as funds over \$250,000 in non-interest-bearing transaction deposit accounts held by FDIC-insured banks (such as GS Bank USA). The debt guarantee is available, subject to limitations, for debt issued through June 30, 2009 and the deposit coverage lasts through December 31, 2009. We are able to have outstanding approximately \$35 billion of debt under the TLGP that is issued prior to June 30, 2009. As of November 2008 and January 22, 2009, we had outstanding \$4.18 billion of senior unsecured short-term borrowings and \$25.54 billion of senior unsecured debt (comprised of \$11.57 billion of short-term and \$13.97 billion of long-term), respectively, under the TLGP.

See “— Certain Risk Factors That May Affect Our Businesses” above, and “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for a discussion of factors that could impair our ability to access the capital markets.

**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. Funding is also raised at the subsidiary level through secured funding and deposits.

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 until the maturity of such financing. In addition, we recognize that the Global Core Excess held in our regulated entities may not be available to our parent company or other subsidiaries and therefore may only be available to meet the potential liquidity requirements of those entities.

We also manage our liquidity risk 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 maintain unencumbered assets to cover their unsecured intercompany borrowings (other than subordinated debt) in order to mitigate parent company liquidity risk.

Group Inc. has provided substantial amounts of equity and subordinated indebtedness, directly or indirectly, to its regulated subsidiaries; for example, as of November 2008, Group Inc. had \$26.01 billion of such equity and subordinated indebtedness invested in GS&Co., its principal U.S. registered broker-dealer; \$22.06 billion invested in GSI, a regulated U.K. broker-dealer; \$2.48 billion invested in Goldman Sachs Execution & Clearing, L.P., a U.S. registered broker-dealer; \$3.79 billion invested in Goldman Sachs Japan Co., Ltd., a regulated Japanese broker-dealer; and \$17.32 billion invested in GS Bank USA, a regulated New York State-chartered bank. Group Inc. also had \$62.81 billion of unsubordinated loans to these entities as of November 2008, as well as significant amounts of capital invested in and loans to its other regulated subsidiaries.

### **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 assumptions. Our planning incorporates several market-based and operational stress scenarios. We also periodically conduct liquidity crisis drills to test our lines of communication and backup funding procedures.

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.

### **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 Businesses" above, and "Risk Factors" in Part I, Item 1A of our Annual Report on Form 10-K for a discussion of the risks associated with a reduction in our credit ratings.

On December 16, 2008, Moody's Investors Service affirmed Group Inc.'s Short-Term Debt rating and lowered Group Inc.'s ratings on Long-Term Debt (from Aa3 to A1), Subordinated Debt (from A1 to A2) and Preferred Stock (from A2 to A3), and retained its outlook of "negative." Also on December 16, 2008, Dominion Bond Rating Service Limited affirmed Group Inc.'s credit ratings but revised its outlook from "negative" to "under review with negative implications." On December 17, 2008, Rating and Investment Information, Inc. affirmed Group Inc.'s Short-Term Debt rating at a-1+, lowered Group Inc.'s Long-Term Debt ratings from AA to AA- and retained its outlook of "negative." On December 19, 2008, Standard & Poor's Ratings Services lowered Group Inc.'s ratings on Short-Term Debt (from A-1+ to A-1), Long-Term Debt (from AA- to A), Subordinated Debt (from A+ to A-) and Preferred Stock (from A to BBB) and retained its outlook of "negative." On January 23, 2009, Dominion Bond Rating Service Limited lowered Group Inc.'s ratings on Long-Term Debt (from AA (low) to A (high)), Subordinated Debt (from A (high) to A) and Preferred Stock (from A to A (low)).

The following table sets forth our unsecured credit ratings as of January 23, 2009:

	<u>Short-Term Debt</u>	<u>Long-Term Debt</u>	<u>Subordinated Debt</u>	<u>Preferred Stock</u>
Dominion Bond Rating Service Limited . . . . .	R-1 (middle)	A (high)	A	A (low)
Fitch, Inc. . . . .	F1+	AA-	A+	A+
Moody's Investors Service . . . . .	P-1	A1	A2	A3
Standard & Poor's Ratings Services . . . . .	A-1	A	A-	BBB
Rating and Investment Information, Inc. . . . .	a-1+	AA-	Not Applicable	Not Applicable

Based on our credit ratings as of November 2008, additional collateral or termination payments pursuant to bilateral agreements with certain counterparties of approximately \$1.11 billion and \$1.51 billion would have been required in the event of a one-notch and two-notch reduction, respectively, in our long-term credit ratings. Based on our credit ratings reflected in the above table, additional collateral or termination payments pursuant to bilateral agreements with certain counterparties of approximately \$897 million and \$2.14 billion would have been required in the event of a one-notch and two-notch reduction, respectively, in our long-term credit ratings as of December 26, 2008. In evaluating our liquidity requirements, we consider additional collateral or termination payments that would be required in the event of a two-notch reduction in our long-term credit ratings, as well as collateral that has not been called by counterparties, but is available to them.

### **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 2008.** Our cash and cash equivalents increased by \$5.46 billion to \$15.74 billion at the end of 2008. We raised \$9.80 billion in net cash from operating and financing activities, primarily from common and preferred stock issuances and deposits, partially offset by repayments of short-term borrowings. We used net cash of \$4.34 billion in our investing activities.

**Year Ended November 2007.** Our cash and cash equivalents increased by \$4.34 billion to \$10.28 billion at the end of 2007. We raised \$73.79 billion in net cash from financing and investing activities, primarily through the issuance of unsecured borrowings, partially offset by common stock repurchases. We used net cash of \$69.45 billion in our operating activities, primarily to capitalize on trading and investing opportunities for our clients and ourselves.

### **Operational Risk**

Operational risk relates to the risk of loss arising from shortcomings or failures in internal processes, people or systems, or from external events. Operational risk can arise from many factors ranging from routine processing errors to potentially costly incidents related to, for example, 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 which are supported by 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 Goldman Sachs; 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 operational risk exposure.

Operational Risk Management & Analysis, a risk management function independent of our revenue-producing units, is responsible for developing and implementing a formalized framework to identify, measure, monitor, and report operational risks to support active risk management across Goldman Sachs. This framework, which evolves with the changing needs of our businesses and regulatory guidance, incorporates analysis of internal and external operational risk events, business environment and internal control factors, and scenario analysis. The framework also provides regular reporting of our operational risk exposures to our Board, risk committees and senior management. For a further discussion of operational risk see “— Certain Risk Factors That May Affect Our Businesses” above, and “— Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K.

## Recent Accounting Developments

**EITF Issue No. 06-11.** In June 2007, the Emerging Issues Task Force (EITF) reached consensus on Issue No. 06-11, "Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards." EITF Issue No. 06-11 requires that the tax benefit related to dividend equivalents paid on restricted stock units, which are expected to vest, be recorded as an increase to additional paid-in capital. We currently account for this tax benefit as a reduction to income tax expense. EITF Issue No. 06-11 is to be applied prospectively for tax benefits on dividends declared in fiscal years beginning after December 15, 2007. We do not expect the adoption of EITF Issue No. 06-11 to have a material effect on our financial condition, results of operations or cash flows.

**FASB Staff Position No. FAS 140-3.** In February 2008, the FASB issued FASB Staff Position (FSP) No. FAS 140-3, "Accounting for Transfers of Financial Assets and Repurchase Financing Transactions." FSP No. FAS 140-3 requires an initial transfer of a financial asset and a repurchase financing that was entered into contemporaneously or in contemplation of the initial transfer to be evaluated as a linked transaction under SFAS No. 140 unless certain criteria are met, including that the transferred asset must be readily obtainable in the marketplace. FSP No. FAS 140-3 is effective for fiscal years beginning after November 15, 2008, and is applicable to new transactions entered into after the date of adoption. Early adoption is prohibited. We do not expect adoption of FSP No. FAS 140-3 to have a material effect on our financial condition and cash flows. Adoption of FSP No. FAS 140-3 will have no effect on our results of operations.

**SFAS No. 161.** In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133." SFAS No. 161 requires enhanced disclosures about an entity's derivative and hedging activities, and is effective for financial statements issued for reporting periods beginning after November 15, 2008, with early application encouraged. Since SFAS No. 161 requires only additional disclosures concerning derivatives and hedging activities, adoption of SFAS No. 161 will not affect our financial condition, results of operations or cash flows.

**FASB Staff Position No. EITF 03-6-1.** In June 2008, the FASB issued FSP No. EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities." The FSP addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and therefore need to be included in the earnings allocation in calculating earnings per share under the two-class method described in SFAS No. 128, "Earnings per Share." The FSP requires companies to treat unvested share-based payment awards that have non-forfeitable rights to dividend or dividend equivalents as a separate class of securities in calculating earnings per share. The FSP is effective for fiscal years beginning after December 15, 2008; earlier application is not permitted. We do not expect adoption of FSP No. EITF 03-6-1 to have a material effect on our results of operations or earnings per share.

**FASB Staff Position No. FAS 133-1 and FIN 45-4.** In September 2008, the FASB issued FSP No. FAS 133-1 and FIN 45-4, "Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161." FSP No. FAS 133-1 and FIN 45-4 requires enhanced disclosures about credit derivatives and guarantees and amends FIN 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" to exclude credit derivative instruments accounted for at fair value under SFAS No. 133. The FSP is effective for financial statements issued for reporting periods ending after November 15, 2008. Since FSP No. FAS 133-1 and FIN 45-4 only requires additional disclosures concerning credit derivatives and guarantees, adoption of FSP No. FAS 133-1 and FIN 45-4 did not have an effect on our financial condition, results of operations or cash flows.



**FASB Staff Position No. FAS 157-3.** In October 2008, the FASB issued FSP No. FAS 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active.” FSP No. FAS 157-3 clarifies the application of SFAS No. 157 in an inactive market, without changing its existing principles. The FSP was effective immediately upon issuance. The adoption of FSP No. FAS 157-3 did not have an effect on our financial condition, results of operations or cash flows.

**SFAS No. 141(R).** In December 2007, the FASB issued a revision to SFAS No. 141, “Business Combinations.” SFAS No. 141(R) requires changes to the accounting for transaction costs, certain contingent assets and liabilities, and other balances in a business combination. In addition, in partial acquisitions, when control is obtained, the acquiring company must measure and record all of the target’s assets and liabilities, including goodwill, at fair value as if the entire target company had been acquired. We will apply the provisions of SFAS No. 141(R) to business combinations occurring after December 26, 2008. Adoption of SFAS No. 141(R) will not affect our financial condition, results of operations or cash flows, but may have an effect on accounting for future business combinations.

**SFAS No. 160.** In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51.” SFAS No. 160 requires that ownership interests in consolidated subsidiaries held by parties other than the parent (noncontrolling interests) be accounted for and presented as equity, rather than as a liability or mezzanine equity. SFAS No. 160 is effective for fiscal years beginning on or after December 15, 2008, but the presentation and disclosure requirements are to be applied retrospectively. We do not expect adoption of the statement to have a material effect on our financial condition, results of operations or cash flows.

**FASB Staff Position No. FAS 140-4 and FIN 46(R)-8.** In December 2008, the FASB issued FSP No. FAS 140-4 and FIN 46(R)-8, “Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities.” FSP No. FAS 140-4 and FIN 46(R)-8 requires enhanced disclosures about transfers of financial assets and interests in variable interest entities. The FSP is effective for interim and annual periods ending after December 15, 2008. Since the FSP requires only additional disclosures concerning transfers of financial assets and interests in variable interest entities, adoption of the FSP will not affect our financial condition, results of operations or cash flows.

**EITF Issue No. 07-5.** In June 2008, the EITF reached consensus on Issue No. 07-5, “Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock.” EITF Issue No. 07-5 provides guidance about whether an instrument (such as our outstanding common stock warrants) should be classified as equity and not marked to market for accounting purposes. EITF Issue No. 07-5 is effective for fiscal years beginning after December 15, 2008. Adoption of EITF Issue No. 07-5 will not affect 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 our 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 2008 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 28, 2008 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.

The firm's internal control over financial reporting as of November 28, 2008 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report appearing on page 130, which expresses an unqualified opinion on the effectiveness of the firm's internal control over financial reporting as of November 28, 2008.

## Report of Independent Registered Public Accounting Firm

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

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 28, 2008 and November 30, 2007, and the results of its operations and its cash flows for each of the three fiscal years in the period ended November 28, 2008 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of November 28, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing on page 129. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included 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. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 2 to the consolidated financial statements, as of the beginning of 2007 the Company adopted SFAS No. 157, "Fair Value Measurements" and SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities."

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  
January 22, 2009

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

	<u>Year Ended November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions, except per share amounts)		
<b>Revenues</b>			
Investment banking . . . . .	\$ 5,179	\$ 7,555	\$ 5,613
Trading and principal investments . . . . .	8,095	29,714	24,027
Asset management and securities services . . . . .	4,672	4,731	4,527
Interest income . . . . .	<u>35,633</u>	<u>45,968</u>	<u>35,186</u>
Total revenues . . . . .	53,579	87,968	69,353
Interest expense . . . . .	<u>31,357</u>	<u>41,981</u>	<u>31,688</u>
Revenues, net of interest expense . . . . .	22,222	45,987	37,665
<b>Operating expenses</b>			
Compensation and benefits . . . . .	10,934	20,190	16,457
Brokerage, clearing, exchange and distribution fees . . . . .	2,998	2,758	1,985
Market development . . . . .	485	601	492
Communications and technology . . . . .	759	665	544
Depreciation and amortization . . . . .	1,022	624	521
Amortization of identifiable intangible assets . . . . .	240	195	173
Occupancy . . . . .	960	975	850
Professional fees . . . . .	779	714	545
Other expenses . . . . .	<u>1,709</u>	<u>1,661</u>	<u>1,538</u>
Total non-compensation expenses . . . . .	8,952	8,193	6,648
Total operating expenses . . . . .	<u>19,886</u>	<u>28,383</u>	<u>23,105</u>
Pre-tax earnings . . . . .	2,336	17,604	14,560
Provision for taxes . . . . .	<u>14</u>	<u>6,005</u>	<u>5,023</u>
Net earnings . . . . .	2,322	11,599	9,537
Preferred stock dividends . . . . .	<u>281</u>	<u>192</u>	<u>139</u>
Net earnings applicable to common shareholders . . . . .	<u>\$ 2,041</u>	<u>\$11,407</u>	<u>\$ 9,398</u>
<b>Earnings per common share</b>			
Basic . . . . .	\$ 4.67	\$ 26.34	\$ 20.93
Diluted . . . . .	4.47	24.73	19.69
<b>Average common shares outstanding</b>			
Basic . . . . .	437.0	433.0	449.0
Diluted . . . . .	456.2	461.2	477.4

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>2008</b>	<b>2007</b>
	(in millions, except share and per share amounts)	
<b>Assets</b>		
Cash and cash equivalents . . . . .	\$ 15,740	\$ 10,282
Cash and securities segregated for regulatory and other purposes (includes \$78,830 and \$94,018 at fair value as of November 2008 and November 2007, respectively) . . . . .	106,664	119,939
Collateralized agreements:		
Securities purchased under agreements to resell, at fair value, and federal funds sold (includes \$116,671 and \$85,717 at fair value as of November 2008 and November 2007, respectively) . . . . .	122,021	87,317
Securities borrowed (includes \$59,810 and \$83,277 at fair value as of November 2008 and November 2007, respectively) . . . . .	180,795	277,413
Receivables from brokers, dealers and clearing organizations . . . . .	25,899	19,078
Receivables from customers and counterparties (includes \$1,598 and \$1,950 at fair value as of November 2008 and November 2007, respectively) . . . . .	64,665	129,105
Trading assets, at fair value (includes \$26,313 and \$46,138 pledged as collateral as of November 2008 and November 2007, respectively) . . . . .	338,325	452,595
Other assets . . . . .	30,438	24,067
Total assets . . . . .	<u>\$884,547</u>	<u>\$1,119,796</u>
<b>Liabilities and shareholders' equity</b>		
Deposits (includes \$4,224 and \$463 at fair value as of November 2008 and November 2007, respectively) . . . . .	\$ 27,643	\$ 15,370
Collateralized financings:		
Securities sold under agreements to repurchase, at fair value . . . . .	62,883	159,178
Securities loaned (includes \$7,872 and \$5,449 at fair value as of November 2008 and November 2007, respectively) . . . . .	17,060	28,624
Other secured financings (includes \$20,249 and \$33,581 at fair value as of November 2008 and November 2007, respectively) . . . . .	38,683	65,710
Payables to brokers, dealers and clearing organizations . . . . .	8,585	8,335
Payables to customers and counterparties . . . . .	245,258	310,118
Trading liabilities, at fair value . . . . .	175,972	215,023
Unsecured short-term borrowings, including the current portion of unsecured long-term borrowings (includes \$23,075 and \$48,331 at fair value as of November 2008 and November 2007, respectively) . . . . .	52,658	71,557
Unsecured long-term borrowings (includes \$17,446 and \$15,928 at fair value as of November 2008 and November 2007, respectively) . . . . .	168,220	164,174
Other liabilities and accrued expenses (includes \$978 at fair value as of November 2008) . . . . .	23,216	38,907
Total liabilities . . . . .	<u>820,178</u>	<u>1,076,996</u>
<b>Commitments, contingencies and guarantees</b>		
<b>Shareholders' equity</b>		
Preferred stock, par value \$0.01 per share; aggregate liquidation preference of \$18,100 and \$3,100 as of November 2008 and November 2007, respectively . . . . .	16,471	3,100
Common stock, par value \$0.01 per share; 4,000,000,000 shares authorized, 680,953,836 and 618,707,032 shares issued as of November 2008 and November 2007, respectively, and 442,537,317 and 390,682,013 shares outstanding as of November 2008 and November 2007, respectively . . . . .	7	6
Restricted stock units and employee stock options . . . . .	9,284	9,302
Nonvoting common stock, par value \$0.01 per share; 200,000,000 shares authorized, no shares issued and outstanding . . . . .	—	—
Additional paid-in capital . . . . .	31,071	22,027
Retained earnings . . . . .	39,913	38,642
Accumulated other comprehensive income/(loss) . . . . .	(202)	(118)
Common stock held in treasury, at cost, par value \$0.01 per share; 238,416,519 and 228,025,019 shares as of November 2008 and November 2007, respectively . . . . .	(32,175)	(30,159)
Total shareholders' equity . . . . .	<u>64,369</u>	<u>42,800</u>
Total liabilities and shareholders' equity . . . . .	<u>\$884,547</u>	<u>\$1,119,796</u>

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**

	Year Ended November		
	2008	2007	2006
	(in millions, except per share amounts)		
<b>Preferred stock</b>			
Balance, beginning of year	\$ 3,100	\$ 3,100	\$ 1,750
Issued	13,367	—	1,350
Preferred stock accretion	4	—	—
Balance, end of year	<u>16,471</u>	<u>3,100</u>	<u>3,100</u>
<b>Common stock, par value \$0.01 per share</b>			
Balance, beginning of year	6	6	6
Issued	1	—	—
Balance, end of year	<u>7</u>	<u>6</u>	<u>6</u>
<b>Restricted stock units and employee stock options</b>			
Balance, beginning of year	9,302	6,290	3,415
Issuance and amortization of restricted stock units and employee stock options	2,254	4,684	3,787
Delivery of common stock underlying restricted stock units	(1,995)	(1,548)	(781)
Forfeiture of restricted stock units and employee stock options	(274)	(113)	(129)
Exercise of employee stock options	(3)	(11)	(2)
Balance, end of year	<u>9,284</u>	<u>9,302</u>	<u>6,290</u>
<b>Additional paid-in capital</b>			
Balance, beginning of year	22,027	19,731	17,159
Issuance of common stock warrants	1,633	—	—
Issuance of common stock, including the delivery of common stock underlying restricted stock units and proceeds from the exercise of employee stock options	8,081	2,338	2,432
Cancellation of restricted stock units in satisfaction of withholding tax requirements	(1,314)	(929)	(375)
Stock purchase contract fee related to automatic preferred enhanced capital securities	—	(20)	—
Preferred and common stock issuance costs	(1)	—	(1)
Excess net tax benefit related to share-based compensation	645	908	653
Cash settlement of share-based compensation	—	(1)	(137)
Balance, end of year	<u>31,071</u>	<u>22,027</u>	<u>19,731</u>
<b>Retained earnings</b>			
Balance, beginning of year, as previously reported	38,642	27,868	19,085
Cumulative effect of adjustment from adoption of FIN 48	(201)	—	—
Cumulative effect of adjustment from adoption of SFAS No. 157, net of tax	—	51	—
Cumulative effect of adjustment from adoption of SFAS No. 159, net of tax	—	(45)	—
Balance, beginning of year, after cumulative effect of adjustments	<u>38,441</u>	<u>27,874</u>	<u>19,085</u>
Net earnings	2,322	11,599	9,537
Dividends and dividend equivalents declared on common stock and restricted stock units	(642)	(639)	(615)
Dividends declared on preferred stock	(204)	(192)	(139)
Preferred stock accretion	(4)	—	—
Balance, end of year	<u>39,913</u>	<u>38,642</u>	<u>27,868</u>
<b>Accumulated other comprehensive income/(loss)</b>			
Balance, beginning of year	(118)	21	—
Adjustment from adoption of SFAS No. 158, net of tax	—	(194)	—
Currency translation adjustment, net of tax	(98)	39	45
Pension and postretirement liability adjustment, net of tax	69	38	(27)
Net gains/(losses) on cash flow hedges, net of tax	—	(2)	(7)
Net unrealized gains/(losses) on available-for-sale securities, net of tax	(55)	(12)	10
Reclassification to retained earnings from adoption of SFAS No. 159, net of tax	—	(8)	—
Balance, end of year	<u>(202)</u>	<u>(118)</u>	<u>21</u>
<b>Common stock held in treasury, at cost</b>			
Balance, beginning of year	(30,159)	(21,230)	(13,413)
Repurchased	(2,037)	(8,956)	(7,817)
Reissued	21	27	—
Balance, end of year	<u>(32,175)</u>	<u>(30,159)</u>	<u>(21,230)</u>
<b>Total shareholders' equity</b>	<u>\$ 64,369</u>	<u>\$ 42,800</u>	<u>\$ 35,786</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		
	2008	2007	2006
	(in millions)		
<b>Cash flows from operating activities</b>			
Net earnings	\$ 2,322	\$ 11,599	\$ 9,537
Non-cash items included in net earnings			
Depreciation and amortization	1,385	916	749
Amortization of identifiable intangible assets	240	251	246
Deferred income taxes	(1,763)	129	(1,505)
Share-based compensation	1,611	4,465	3,654
Changes in operating assets and liabilities			
Cash and securities segregated for regulatory and other purposes	12,995	(39,079)	(21,044)
Net receivables from brokers, dealers and clearing organizations	(6,587)	(3,811)	(1,794)
Net payables to customers and counterparties	(50)	53,857	9,823
Securities borrowed, net of securities loaned	85,054	(51,655)	(28,666)
Securities sold under agreements to repurchase, net of securities purchased under agreements to resell and federal funds sold	(130,999)	6,845	5,825
Trading assets, at fair value	97,723	(118,864)	(48,479)
Trading liabilities, at fair value	(39,051)	57,938	6,384
Other, net	(20,986)	7,962	12,823
Net cash provided by/(used for) operating activities	1,894	(69,447)	(52,447)
<b>Cash flows from investing activities</b>			
Purchase of property, leasehold improvements and equipment	(2,027)	(2,130)	(1,744)
Proceeds from sales of property, leasehold improvements and equipment	121	93	69
Business acquisitions, net of cash acquired	(2,613)	(1,900)	(1,661)
Proceeds from sales of investments	624	4,294	2,114
Purchase of available-for-sale securities	(3,851)	(872)	(12,922)
Proceeds from sales of available-for-sale securities	3,409	911	4,396
Net cash provided by/(used for) investing activities	(4,337)	396	(9,748)
<b>Cash flows from financing activities</b>			
Unsecured short-term borrowings, net	(19,295)	12,262	(4,031)
Other secured financings (short-term), net	(8,727)	2,780	16,856
Proceeds from issuance of other secured financings (long-term)	12,509	21,703	14,451
Repayment of other secured financings (long-term), including the current portion	(20,653)	(7,355)	(7,420)
Proceeds from issuance of unsecured long-term borrowings	37,758	57,516	48,839
Repayment of unsecured long-term borrowings, including the current portion	(25,579)	(14,823)	(13,510)
Derivative contracts with a financing element, net	781	4,814	3,494
Deposits, net	12,273	4,673	10,697
Common stock repurchased	(2,034)	(8,956)	(7,817)
Dividends and dividend equivalents paid on common stock, preferred stock and restricted stock units	(850)	(831)	(754)
Proceeds from issuance of common stock	6,105	791	1,613
Proceeds from issuance of preferred stock, net of issuance costs	13,366	—	1,349
Proceeds from issuance of common stock warrants	1,633	—	—
Excess tax benefit related to share-based compensation	614	817	464
Cash settlement of share-based compensation	—	(1)	(137)
Net cash provided by financing activities	7,901	73,390	64,094
Net increase in cash and cash equivalents	5,458	4,339	1,899
Cash and cash equivalents, beginning of year	10,282	5,943	4,044
Cash and cash equivalents, end of year	\$ 15,740	\$ 10,282	\$ 5,943

**SUPPLEMENTAL DISCLOSURES:**

Cash payments for interest, net of capitalized interest, were \$32.37 billion, \$40.74 billion and \$30.98 billion for the years ended November 2008, November 2007 and November 2006, respectively.

Cash payments for income taxes, net of refunds, were \$3.47 billion, \$5.78 billion and \$4.56 billion for the years ended November 2008, November 2007 and November 2006, respectively.

*Non-cash activities:*

The firm assumed \$790 million, \$409 million and \$498 million of debt in connection with business acquisitions for the years ended November 2008, November 2007 and November 2006, respectively.

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>2008</u>	<u>2007</u>	<u>2006</u>
		(in millions)	
Net earnings . . . . .	\$2,322	\$11,599	\$9,537
Currency translation adjustment, net of tax . . . . .	(98)	39	45
Pension and postretirement liability adjustment, net of tax . . . . .	69	38	(27)
Net gains/(losses) on cash flow hedges, net of tax . . . . .	—	(2)	(7)
Net unrealized gains/(losses) on available-for-sale securities, net of tax . . . . .	<u>(55)</u>	<u>(12)</u>	<u>10</u>
Comprehensive income . . . . .	<u>\$2,238</u>	<u>\$11,662</u>	<u>\$9,558</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, is a bank holding company and, together with its consolidated subsidiaries (collectively, the firm), 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, investment funds, governments and individuals.
- **Trading and Principal Investments.** The firm facilitates client transactions with a diverse group of corporations, financial institutions, investment funds, 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 these products. In addition, the firm engages in market-making and specialist activities on equities and options exchanges, and the firm 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 (primarily through separately managed accounts and commingled vehicles, such as mutual funds and private investment funds) 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 institutional clients, including hedge funds, mutual funds, pension funds and foundations, and to high-net-worth individuals worldwide.

**Note 2. Significant Accounting Policies**

***Basis of Presentation***

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 No. 51, "Consolidated Financial Statements," as amended. The usual 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

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

enterprise with a controlling financial interest, known as the primary beneficiary, consolidates the VIE. In accordance with Financial Accounting Standards Board (FASB) Interpretation (FIN) 46-R, "Consolidation of Variable Interest Entities," the firm consolidates VIEs for 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's expected losses and expected residual returns. This analysis includes a review of, among other factors, the VIE's 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. The firm reassesses its initial evaluation of an entity as a VIE and its initial determination of whether the firm is the primary beneficiary of a VIE upon the occurrence of certain reconsideration events as defined in FIN 46-R.

- **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, such as whether a derivative is considered passive and the level of discretion a servicer may exercise, including, for example, determining when default is reasonably foreseeable. In accordance with SFAS No. 140 and FIN 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 either in accordance with Accounting Principles Board Opinion (APB) No. 18, "The Equity Method of Accounting for Investments in Common Stock" or at fair value in accordance with SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities." In general, the firm accounts for investments acquired subsequent to the adoption of SFAS No. 159 at fair value. In certain cases, the firm may apply the equity method of accounting to new investments that are strategic in nature or closely related to the firm's principal business activities, where the firm has a significant degree of involvement in the cash flows or operations of the investee, or where cost-benefit considerations are less significant. See "— Revenue Recognition — Other Financial Assets and Financial Liabilities at Fair Value" below for a discussion of the firm's application of SFAS No. 159.
- **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 generally does not hold a majority of the economic interests in these funds. The firm has generally provided the third-party investors with rights to terminate the funds or to remove the firm as the general partner. As a result, the firm does not consolidate these funds. These fund investments are included in "Trading assets, at fair value" in the consolidated statements of financial condition.

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

Unless otherwise stated herein, all references to 2008, 2007 and 2006 refer to the firm's fiscal years ended, or the dates, as the context requires, November 28, 2008, November 30, 2007 and November 24, 2006, respectively. Certain reclassifications have been made to previously reported amounts to conform to the current presentation.

***Use of Estimates***

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.

***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.

**Trading Assets and Trading Liabilities.** Substantially all trading assets and trading liabilities are reflected in the consolidated statements of financial condition at fair value, pursuant principally to:

- SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities;"
- specialized industry accounting for broker-dealers and investment companies;
- SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities;" or
- the fair value option under either SFAS No. 155, "Accounting for Certain Hybrid Financial Instruments — an amendment of FASB Statements No. 133 and 140," or SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," (i.e., the fair value option).

Related unrealized gains or losses are generally recognized in "Trading and principal investments" in the consolidated statements of earnings.

Upon becoming a bank holding company in September 2008, the firm could no longer apply specialized broker-dealer industry accounting to those subsidiaries not regulated as broker-dealers. Therefore, within the firm's non-broker-dealer subsidiaries, the firm designated as held for trading those instruments within the scope of SFAS No. 115 (i.e., debt securities and marketable equity securities), and elected the fair value option for other cash instruments (specifically loans, loan commitments and certain private equity and restricted public equity securities) which the firm historically had carried at fair value. These fair value elections were in addition to previous elections made for certain corporate loans, loan commitments and certificates of deposit issued by Goldman Sachs Bank USA (GS Bank USA). There was no impact on earnings from these initial elections because all of these instruments were already recorded at fair value in "Trading assets, at fair value" or "Trading liabilities, at fair value" in the consolidated statements of financial condition prior to Group Inc. becoming a bank holding company.

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

**Other Financial Assets and Financial Liabilities at Fair Value.** In addition to “Trading assets, at fair value” and “Trading liabilities, at fair value,” the firm has elected to account for certain of its other financial assets and financial liabilities at fair value under the fair value option. The primary reasons for electing the fair value option are to reflect economic events in earnings on a timely basis, to mitigate volatility in earnings from using different measurement attributes and to address simplification and cost-benefit considerations.

Such financial assets and financial liabilities accounted for at fair value include:

- certain unsecured short-term borrowings, consisting of all promissory notes and commercial paper and certain hybrid financial instruments;
- certain other secured financings, primarily transfers accounted for as financings rather than sales under SFAS No. 140, debt raised through the firm’s William Street program and certain other nonrecourse financings;
- certain unsecured long-term borrowings, including prepaid physical commodity transactions;
- resale and repurchase agreements;
- securities borrowed and loaned within Trading and Principal Investments, consisting of the firm’s matched book and certain firm financing activities;
- certain corporate loans, loan commitments and certificates of deposit issued by GS Bank USA as well as securities held by GS Bank USA;
- receivables from customers and counterparties arising from transfers accounted for as secured loans rather than purchases under SFAS No. 140;
- certain insurance and reinsurance contracts; and
- in general, investments acquired after the adoption of SFAS No. 159 where the firm has significant influence over the investee and would otherwise apply the equity method of accounting.

**Fair Value Measurements.** The fair value of a financial instrument is the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (the exit price). Financial assets are marked to bid prices and financial liabilities are marked to offer prices. Fair value measurements do not include transaction costs.

The firm adopted SFAS No. 157, “Fair Value Measurements,” as of the beginning of 2007. SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under SFAS No. 157 are described below:

**Basis of Fair Value Measurement**

- |         |  |
|---------|--|
| Level 1 | Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;                              |
| Level 2 | Quoted prices in markets that are not considered to be active or financial instruments for which all significant inputs are observable, either directly or indirectly; |
| Level 3 | Prices or valuations that require inputs that are both significant to the fair value measurement and unobservable.   |

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

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The firm defines active markets for equity instruments based on the average daily trading volume both in absolute terms and relative to the market capitalization for the instrument. The firm defines active markets for debt instruments based on both the average daily trading volume and the number of days with trading activity.

During the fourth quarter of 2008, both the FASB and the staff of the SEC re-emphasized the importance of sound fair value measurement in financial reporting. In October 2008, the FASB issued FASB Staff Position No. FAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset is Not Active." This statement clarifies that determining fair value in an inactive or dislocated market depends on facts and circumstances and requires significant management judgment. This statement specifies that it is acceptable to use inputs based on management estimates or assumptions, or for management to make adjustments to observable inputs to determine fair value when markets are not active and relevant observable inputs are not available. The firm's fair value measurement policies are consistent with the guidance in FSP No. FAS 157-3.

Credit risk is an essential component of fair value. Cash products (e.g., bonds and loans) and derivative instruments (particularly those with significant future projected cash flows) trade in the market at levels which reflect credit considerations. The firm calculates the fair value of derivative assets by discounting future cash flows at a rate which incorporates counterparty credit spreads and the fair value of derivative liabilities by discounting future cash flows at a rate which incorporates the firm's own credit spreads. In doing so, credit exposures are adjusted to reflect mitigants, namely collateral agreements which reduce exposures based on triggers and contractual posting requirements. The firm manages its exposure to credit risk as it does other market risks and will price, economically hedge, facilitate and intermediate trades which involve credit risk. The firm records liquidity valuation adjustments to reflect the cost of exiting concentrated risk positions, including exposure to the firm's own credit spreads.

In determining fair value, the firm separates its "Trading assets, at fair value" and its "Trading liabilities, at fair value" into two categories: cash instruments and derivative contracts.

- **Cash Instruments.** The firm's cash instruments are generally classified within level 1 or level 2 of the fair value hierarchy because they are valued using quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. The types of instruments valued based on quoted market prices in active markets include most U.S. government and sovereign obligations, active listed equities and certain money market securities. Such instruments are generally classified within level 1 of the fair value hierarchy. In accordance with SFAS No. 157, the firm does not adjust the quoted price for such instruments, even in situations where the firm holds a large position and a sale could reasonably impact the quoted price.

The types of instruments that trade in markets that are not considered to be active, but are valued based on quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency include most government agency securities, investment-grade corporate bonds, certain mortgage products, certain bank loans and bridge loans, less liquid listed equities, state, municipal and provincial obligations and certain money market securities and loan commitments. Such instruments are generally classified within level 2 of the fair value hierarchy.

Certain cash instruments are classified within level 3 of the fair value hierarchy because they trade infrequently and therefore have little or no price transparency. Such instruments include private equity and real estate fund investments, certain bank loans and bridge loans (including

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

certain mezzanine financing, leveraged loans arising from capital market transactions and other corporate bank debt), less liquid corporate debt securities and other debt obligations (including less liquid high-yield corporate bonds, distressed debt instruments and collateralized debt obligations (CDOs) backed by corporate obligations), less liquid mortgage whole loans and securities (backed by either commercial or residential real estate), and acquired portfolios of distressed loans. The transaction price is initially used as the best estimate of fair value. Accordingly, when a pricing model is used to value such an instrument, the model is adjusted so that the model value at inception equals the transaction price. This valuation is adjusted only when changes to inputs and assumptions are corroborated by evidence such as transactions in similar instruments, completed or pending third-party transactions in the underlying investment or comparable entities, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, offerings in the equity or debt capital markets, and changes in financial ratios or cash flows.

For positions that are not traded in active markets or are subject to transfer restrictions, valuations are adjusted to reflect illiquidity and/or non-transferability. Such adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used.

Recent market conditions, particularly in the fourth quarter of 2008 (characterized by dislocations between asset classes, elevated levels of volatility, and reduced price transparency), have increased the level of management judgment required to value cash trading instruments classified within level 3 of the fair value hierarchy. In particular, management's judgment is required to determine the appropriate risk-adjusted discount rate for cash trading instruments with little or no price transparency as a result of decreased volumes and lower levels of trading activity. In such situations, the firm's valuation is adjusted to approximate rates which market participants would likely consider appropriate for relevant credit and liquidity risks.

- **Derivative Contracts.** Derivative contracts can be exchange-traded or over-the-counter (OTC). Exchange-traded derivatives typically fall within level 1 or level 2 of the fair value hierarchy depending on whether they are deemed to be actively traded or not. The firm generally values exchange-traded derivatives using models which calibrate to market-clearing levels and eliminate timing differences between the closing price of the exchange-traded derivatives and their underlying instruments. In such cases, exchange-traded derivatives are classified within level 2 of the fair value hierarchy.

OTC derivatives are valued using market transactions and other market evidence whenever possible, including market-based inputs to models, model calibration to market-clearing transactions, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. Where models are used, the selection of a particular 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. Valuation models require a variety of inputs, including contractual terms, market prices, yield curves, credit curves, measures of volatility, prepayment rates and correlations of such inputs. For OTC derivatives that trade in liquid markets, such as generic forwards, swaps and options, model inputs can generally be verified and model selection does not involve significant management judgment. OTC derivatives are classified within level 2 of the fair value hierarchy when all of the significant inputs can be corroborated to market evidence.

Certain OTC derivatives trade in less liquid markets with limited pricing information, and the determination of fair value for these derivatives is inherently more difficult. Such instruments

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

are classified within level 3 of the fair value hierarchy. Where the firm does not have corroborating market evidence to support significant model inputs and cannot verify the model to market transactions, the transaction price is initially used as the best estimate of fair value. Accordingly, when a pricing model is used to value such an instrument, the model is adjusted so that the model value at inception equals the transaction price. The valuations of these less liquid OTC derivatives are typically based on level 1 and/or level 2 inputs that can be observed in the market, as well as unobservable level 3 inputs. Subsequent to initial recognition, the firm updates the level 1 and level 2 inputs to reflect observable market changes, with resulting gains and losses reflected within level 3. Level 3 inputs are only changed when corroborated by evidence such as similar market transactions, third-party pricing services and/or broker or dealer quotations, or other empirical market data. In circumstances where the firm cannot verify the model value to market transactions, it is possible that a different valuation model could produce a materially different estimate of fair value.

When appropriate, valuations are adjusted for various factors such as liquidity, bid/offer spreads and credit considerations. Such adjustments are generally based on available market evidence. In the absence of such evidence, management's best estimate is used.

**Collateralized Agreements and Financings.** Collateralized agreements consist of resale agreements and securities borrowed. Collateralized financings consist of repurchase agreements, securities loaned and other secured financings. Interest on collateralized agreements and collateralized financings is recognized in "Interest income" and "Interest expense," respectively, 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 sovereign obligations, represent collateralized financing transactions. 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. As noted above, resale and repurchase agreements are carried in the consolidated statements of financial condition at fair value under SFAS No. 159. Resale and repurchase agreements are generally valued based on inputs with reasonable levels of price transparency and are classified within level 2 of the fair value hierarchy. Resale and repurchase agreements are presented on a net-by-counterparty basis when the requirements of FIN 41, "Offsetting of Amounts Related to Certain Repurchase and Reverse Repurchase Agreements," or FIN 39, "Offsetting of Amounts Related to Certain Contracts," are satisfied.
- **Securities Borrowed and Loaned.** Securities borrowed and loaned are generally collateralized by cash, securities or letters of credit. The firm receives securities borrowed, makes delivery of securities loaned, monitors the market value of securities borrowed and loaned, and delivers or obtains additional collateral as appropriate. Securities borrowed and loaned within Securities Services, relating to both customer activities and, to a lesser extent, certain firm financing activities, are recorded based on the amount of cash collateral advanced or received plus accrued interest. As these arrangements generally can be terminated on demand, they exhibit little, if any, sensitivity to changes in interest rates. As noted above, securities borrowed and loaned within Trading and Principal Investments, which are related to the firm's matched book and certain firm financing activities, are recorded at fair value under SFAS No. 159. These securities borrowed and loaned transactions are generally valued based on inputs with reasonable levels of price transparency and are classified within level 2 of the fair value hierarchy.



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

- **Other Secured Financings.** In addition to repurchase agreements and securities loaned, the firm funds assets through the use of other secured financing arrangements and pledges financial instruments and other assets as collateral in these transactions. As noted above, the firm has elected to apply SFAS No. 159 to transfers accounted for as financings rather than sales under SFAS No. 140, debt raised through the firm's William Street program and certain other nonrecourse financings, for which the use of fair value eliminates non-economic volatility in earnings that would arise from using different measurement attributes. These other secured financing transactions are generally valued based on inputs with reasonable levels of price transparency and are generally classified within level 2 of the fair value hierarchy. Other secured financings that are not recorded at fair value are recorded based on the amount of cash received plus accrued interest. See Note 3 for further information regarding other secured financings.

**Hybrid Financial Instruments.** Hybrid financial instruments are instruments that contain bifurcated embedded derivatives under SFAS No. 133 and do not require settlement by physical delivery of non-financial assets (e.g., physical commodities). If the firm elects to bifurcate the embedded derivative, it is accounted for at fair value and the host contract is accounted for at amortized cost, adjusted for the effective portion of any fair value hedge accounting relationships. If the firm does not elect to bifurcate, the entire hybrid financial instrument is accounted for at fair value under SFAS No. 155. See Notes 3 and 6 for further information regarding hybrid financial instruments.

**Transfers of Financial Assets.** 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 financings, with the related interest expense recognized in net revenues over the life of the transaction.

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

**Insurance Activities.** Certain of the firm's insurance and reinsurance contracts are accounted for at fair value under SFAS No. 159, with changes in fair value included in "Trading and principal investments" in the consolidated statements of earnings.

Revenues from variable annuity and life insurance and reinsurance contracts not accounted for at fair value under SFAS No. 159 generally consist of fees assessed on contract holder account balances for mortality charges, policy administration fees and surrender charges, and are recognized within "Trading and principal investments" in the consolidated statements of earnings in the period that services are provided.

Interest credited to variable annuity and life insurance and reinsurance contracts account balances and changes in reserves are recognized in "Other expenses" in the consolidated statements of earnings.

Premiums earned for underwriting property catastrophe reinsurance are recognized within "Trading and principal investments" in the consolidated statements of earnings over the coverage period, net of premiums ceded for the cost of reinsurance. Expenses for liabilities related to property catastrophe reinsurance claims, including estimates of losses that have been incurred but not reported, are recognized within "Other expenses" in the consolidated statements of earnings.

**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

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

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 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.

***Share-Based Compensation***

The firm accounts for share-based compensation in accordance with SFAS No. 123-R, "Share-Based Payment." The cost of employee services received in exchange for a share-based award is generally measured based on the grant-date fair value of the award. Share-based awards that do not require future service (i.e., vested awards, including awards granted to retirement-eligible employees) are expensed immediately. Share-based employee awards that require future service are amortized over the relevant service period. Expected forfeitures are included in determining share-based employee compensation expense. In the first quarter of 2006, the firm adopted SFAS No. 123-R under the modified prospective adoption method. Under that method of adoption, the provisions of SFAS No. 123-R are generally applied only to share-based awards granted subsequent to adoption. Share-based awards held by employees that were retirement-eligible on the date of adoption of SFAS No. 123-R must continue to be amortized over the stated service period of the award (and accelerated if the employee actually retires).

The firm pays cash dividend equivalents on outstanding restricted stock units. Dividend equivalents paid on restricted stock units are generally charged to retained earnings. Dividend equivalents paid on restricted stock units expected to be forfeited are included in compensation expense. The tax benefit related to dividend equivalents paid on restricted stock units is accounted for as a reduction of income tax expense. See "— Recent Accounting Developments" for a discussion of Emerging Issues Task Force (EITF) Issue No. 06-11, "Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards."

In certain cases, primarily related to the death of an employee or conflicted employment (as outlined in the applicable award agreements), the firm may cash settle share-based compensation awards. For awards accounted for as equity instruments, "Additional paid-in capital" is adjusted to the extent of the difference between the current value of the award and the grant-date value of the award.

***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 recognized if the estimated fair value of an operating segment, which is a component one level below the firm's three business segments, is

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

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, Designated Market Maker (DMM) rights and the value of business acquired (VOBA) and deferred acquisition costs (DAC) in the firm's insurance subsidiaries, are amortized over their estimated lives in accordance with SFAS No. 142 or, in the case of insurance contracts, in accordance with SFAS No. 60, "Accounting and Reporting by Insurance Enterprises," and SFAS No. 97, "Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments." Identifiable intangible assets are tested for 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," or SFAS No. 60 and SFAS No. 97. An impairment loss, generally 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 recorded at cost and included in "Other assets" in the consolidated statements of financial condition.

Substantially all property and equipment are depreciated on a straight-line basis over the useful life of the asset. 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 capitalized and amortized on a straight-line basis over the useful life of the software.

Property, leasehold improvements and equipment are tested for 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 office space held in excess of current requirements. 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 fair value of 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 period. 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, in the consolidated statements of comprehensive

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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."

The firm adopted the provisions of FIN 48, "Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109," as of December 1, 2007, and recorded a transition adjustment resulting in a reduction of \$201 million to beginning retained earnings. See Note 16 for further information regarding the firm's adoption of FIN 48. A tax position can be recognized in the financial statements only when it is more likely than not that the position will be sustained upon examination by the relevant taxing authority based on the technical merits of the position. A position that meets this standard is measured at the largest amount of benefit that will more likely than not be realized upon settlement. A liability is established for differences between positions taken in a tax return and amounts recognized in the financial statements. FIN 48 also provides guidance on derecognition, classification, interim period accounting and accounting for interest and penalties. Prior to the adoption of FIN 48, contingent liabilities related to income taxes were recorded when the criteria for loss recognition under SFAS No. 5, "Accounting for Contingencies," as amended, had been met.

***Earnings Per Common Share (EPS)***

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 warrants and 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. As of November 2008, "Cash and cash equivalents" on the consolidated statements of financial condition included \$5.60 billion of cash and due from banks and \$10.14 billion of interest-bearing deposits with banks. As of November 2007, "Cash and cash equivalents" on the consolidated statements of financial condition included \$4.29 billion of cash and due from banks and \$5.99 billion of interest-bearing deposits with banks.

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

***Recent Accounting Developments***

**EITF Issue No. 06-11.** In June 2007, the EITF reached consensus on Issue No. 06-11, “Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards.” EITF Issue No. 06-11 requires that the tax benefit related to dividend equivalents paid on restricted stock units, which are expected to vest, be recorded as an increase to additional paid-in capital. The firm currently accounts for this tax benefit as a reduction to income tax expense. EITF Issue No. 06-11 is to be applied prospectively for tax benefits on dividends declared in fiscal years beginning after December 15, 2007. The firm does not expect the adoption of EITF Issue No. 06-11 to have a material effect on its financial condition, results of operations or cash flows.

**FASB Staff Position No. FAS 140-3.** In February 2008, the FASB issued FASB Staff Position (FSP) No. FAS 140-3, “Accounting for Transfers of Financial Assets and Repurchase Financing Transactions.” FSP No. FAS 140-3 requires an initial transfer of a financial asset and a repurchase financing that was entered into contemporaneously or in contemplation of the initial transfer to be evaluated as a linked transaction under SFAS No. 140 unless certain criteria are met, including that the transferred asset must be readily obtainable in the marketplace. FSP No. FAS 140-3 is effective for fiscal years beginning after November 15, 2008, and is applicable to new transactions entered into after the date of adoption. Early adoption is prohibited. The firm does not expect adoption of FSP No. FAS 140-3 to have a material effect on its financial condition and cash flows. Adoption of FSP No. FAS 140-3 will have no effect on the firm’s results of operations.

**SFAS No. 161.** In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133.” SFAS No. 161 requires enhanced disclosures about an entity’s derivative and hedging activities, and is effective for financial statements issued for reporting periods beginning after November 15, 2008, with early application encouraged. Since SFAS No. 161 requires only additional disclosures concerning derivatives and hedging activities, adoption of SFAS No. 161 will not affect the firm’s financial condition, results of operations or cash flows.

**FASB Staff Position No. EITF 03-6-1.** In June 2008, the FASB issued FSP No. EITF 03-6-1, “Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities.” The FSP addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and therefore need to be included in the earnings allocation in calculating earnings per share under the two-class method described in SFAS No. 128, “Earnings per Share.” The FSP requires companies to treat unvested share-based payment awards that have non-forfeitable rights to dividend or dividend equivalents as a separate class of securities in calculating earnings per share. The FSP is effective for fiscal years beginning after December 15, 2008; earlier application is not permitted. The firm does not expect adoption of FSP No. EITF 03-6-1 to have a material effect on its results of operations or earnings per share.

**FASB Staff Position No. FAS 133-1 and FIN 45-4.** In September 2008, the FASB issued FSP No. FAS 133-1 and FIN 45-4, “Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161.” FSP No. FAS 133-1 and FIN 45-4 requires enhanced disclosures about credit derivatives and guarantees and amends FIN 45, “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others” to exclude credit derivative instruments accounted for at fair value under SFAS No. 133. The FSP is effective for financial statements issued for reporting periods ending after November 15, 2008. Since FSP No. FAS 133-1 and FIN 45-4 only requires additional disclosures concerning credit derivatives and guarantees, adoption of FSP No. FAS 133-1 and FIN 45-4 did not have an effect on the firm’s financial condition, results of operations or cash flows.

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**FASB Staff Position No. FAS 157-3.** In October 2008, the FASB issued FSP No. FAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active." FSP No. FAS 157-3 clarifies the application of SFAS No. 157 in an inactive market, without changing its existing principles. The FSP was effective immediately upon issuance. The adoption of FSP No. FAS 157-3 did not have an effect on the firm's financial condition, results of operations or cash flows.

**SFAS No. 141(R).** In December 2007, the FASB issued a revision to SFAS No. 141, "Business Combinations." SFAS No. 141(R) requires changes to the accounting for transaction costs, certain contingent assets and liabilities, and other balances in a business combination. In addition, in partial acquisitions, when control is obtained, the acquiring company must measure and record all of the target's assets and liabilities, including goodwill, at fair value as if the entire target company had been acquired. The firm will apply the provisions of SFAS No. 141(R) to business combinations occurring after December 26, 2008. Adoption of SFAS No. 141(R) will not affect the firm's financial condition, results of operations or cash flows, but may have an effect on accounting for future business combinations.

**SFAS No. 160.** In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51." SFAS No. 160 requires that ownership interests in consolidated subsidiaries held by parties other than the parent (noncontrolling interests) be accounted for and presented as equity, rather than as a liability or mezzanine equity. SFAS No. 160 is effective for fiscal years beginning on or after December 15, 2008, but the presentation and disclosure requirements are to be applied retrospectively. The firm does not expect adoption of the statement to have a material effect on its financial condition, results of operations or cash flows.

**FASB Staff Position No. FAS 140-4 and FIN 46(R)-8.** In December 2008, the FASB issued FSP No. FAS 140-4 and FIN 46(R)-8, "Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities." FSP No. FAS 140-4 and FIN 46(R)-8 requires enhanced disclosures about transfers of financial assets and interests in variable interest entities. The FSP is effective for interim and annual periods ending after December 15, 2008. Since the FSP requires only additional disclosures concerning transfers of financial assets and interests in variable interest entities, adoption of the FSP will not affect the firm's financial condition, results of operations or cash flows.

**EITF Issue No. 07-5.** In June 2008, the EITF reached consensus on Issue No. 07-5, "Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock." EITF Issue No. 07-5 provides guidance about whether an instrument (such as the firm's outstanding common stock warrants) should be classified as equity and not marked to market for accounting purposes. EITF Issue No. 07-5 is effective for fiscal years beginning after December 15, 2008. Adoption of EITF Issue No. 07-5 will not affect the firm's financial condition, results of operations or cash flows.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
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**Note 3. Financial Instruments**

***Fair Value of Financial Instruments***

The following table sets forth the firm's trading assets, at fair value, including those pledged as collateral, and trading liabilities, at fair value. At any point in time, the firm may use cash instruments as well as derivatives to manage a long or short risk position.

	As of November			
	2008		2007	
	<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 . . . . .	\$ 8,662 <sup>(1)</sup>	\$ —	\$ 8,985 <sup>(1)</sup>	\$ —
U.S. government, federal agency and sovereign obligations . . . . .	69,653	37,000	70,774	58,637
Mortgage and other asset-backed loans and securities . . . . .	22,393	340	54,073 <sup>(6)</sup>	—
Bank loans and bridge loans . . . . .	21,839	3,108 <sup>(4)</sup>	49,154	3,563 <sup>(4)</sup>
Corporate debt securities and other debt obligations . . . . .	27,879	5,711	39,219	8,280
Equities and convertible debentures . . . . .	57,049	12,116	122,205	45,130
Physical commodities . . . . .	513	2	2,571	35
Derivative contracts . . . . .	<u>130,337</u> <sup>(2)</sup>	<u>117,695</u> <sup>(5)</sup>	<u>105,614</u> <sup>(2)</sup>	<u>99,378</u> <sup>(5)</sup>
<b>Total . . . . .</b>	<b><u>\$338,325</u></b> <sup>(3)</sup>	<b><u>\$175,972</u></b>	<b><u>\$452,595</u></b> <sup>(3)</sup>	<b><u>\$215,023</u></b>

<sup>(1)</sup> Includes \$4.40 billion and \$6.17 billion as of November 2008 and November 2007, respectively, of money market instruments held by William Street Funding Corporation (Funding Corp.) to support the William Street credit extension program. See Note 8 for further information regarding the William Street program.

<sup>(2)</sup> Net of cash received pursuant to credit support agreements of \$137.16 billion and \$59.05 billion as of November 2008 and November 2007, respectively.

<sup>(3)</sup> Includes \$1.68 billion and \$1.17 billion as of November 2008 and November 2007, respectively, of securities held within the firm's insurance subsidiaries which are accounted for as available-for-sale under SFAS No. 115.

<sup>(4)</sup> Includes the fair value of commitments to extend credit.

<sup>(5)</sup> Net of cash paid pursuant to credit support agreements of \$34.01 billion and \$27.76 billion as of November 2008 and November 2007, respectively.

<sup>(6)</sup> Includes \$7.64 billion as of November 2007 of mortgage whole loans that were transferred to securitization vehicles where such transfers were accounted for as secured financings rather than sales under SFAS No. 140. The firm distributed to investors the securities that were issued by the securitization vehicles and therefore did not bear economic exposure to the underlying mortgage whole loans.

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

***Fair Value Hierarchy***

The firm's financial assets at fair value classified within level 3 of the fair value hierarchy are summarized below:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(\$ in millions)	
Total level 3 assets . . . . .	\$ 66,190	\$ 69,151
Level 3 assets for which the firm bears economic exposure <sup>(1)</sup> . . . . .	59,574	54,714
Total assets . . . . .	884,547	1,119,796
Total financial assets at fair value . . . . .	595,234	717,557
Total level 3 assets as a percentage of Total assets . . . . .	7.5%	6.2%
Level 3 assets for which the firm bears economic exposure as a percentage of Total assets . . . . .	6.7	4.9
Total level 3 assets as a percentage of Total financial assets at fair value . . . . .	11.1	9.6
Level 3 assets for which the firm bears economic exposure as a percentage of Total financial assets at fair value . . . . .	10.0	7.6

<sup>(1)</sup> Excludes assets which are financed by nonrecourse debt, attributable to minority investors or attributable to employee interests in certain consolidated funds.

The following tables set forth by level within the fair value hierarchy "Trading assets, at fair value," "Trading liabilities, at fair value" and other financial assets and financial liabilities accounted for at fair value under SFAS No. 155 and SFAS No. 159 as of November 2008 and November 2007. See Note 2 for further information on the fair value hierarchy. As required by SFAS No. 157, assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement.



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

	Financial Assets at Fair Value as of November 2008				
	Level 1	Level 2	Level 3 (in millions)	Netting and Collateral	Total
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$ 5,205	\$ 3,457	\$ —	\$ —	\$ 8,662
U.S. government, federal agency and sovereign obligations . . . . .	35,069	34,584	—	—	69,653
Mortgage and other asset-backed loans and securities . . . . .	—	6,886	15,507	—	22,393
Bank loans and bridge loans . . . . .	—	9,882	11,957	—	21,839
Corporate debt securities and other debt obligations . . . . .	14	20,269	7,596	—	27,879
Equities and convertible debentures . . . . .	25,068	15,975	16,006 <sup>(6)</sup>	—	57,049
Physical commodities . . . . .	—	513	—	—	513
Cash instruments . . . . .	65,356	91,566	51,066	—	207,988
Derivative contracts . . . . .	24	256,412	15,124	(141,223) <sup>(7)</sup>	130,337
Trading assets, at fair value . . . . .	65,380	347,978	66,190	(141,223)	338,325
Securities segregated for regulatory and other purposes . . . . .	20,030 <sup>(4)</sup>	58,800 <sup>(5)</sup>	—	—	78,830
Receivables from customers and counterparties <sup>(1)</sup> . . . . .	—	1,598	—	—	1,598
Securities borrowed <sup>(2)</sup> . . . . .	—	59,810	—	—	59,810
Securities purchased under agreements to resell, at fair value . . . . .	—	116,671	—	—	116,671
Total financial assets at fair value . . . . .	<u>\$85,410</u>	<u>\$584,857</u>	<u>\$66,190</u>	<u>\$(141,223)</u>	<u>\$595,234</u>
Level 3 assets for which the firm does not bear economic exposure <sup>(3)</sup> . . . . .			<u>(6,616)</u>		
Level 3 assets for which the firm bears economic exposure . . . . .			<u>\$59,574</u>		

<sup>(1)</sup> Principally consists of transfers accounted for as secured loans rather than purchases under SFAS No. 140 and prepaid variable share forwards.

<sup>(2)</sup> Consists of securities borrowed within Trading and Principal Investments. Excludes securities borrowed within Securities Services, which are accounted for based on the amount of cash collateral advanced plus accrued interest.

<sup>(3)</sup> Consists of level 3 assets which are financed by nonrecourse debt, attributable to minority investors or attributable to employee interests in certain consolidated funds.

<sup>(4)</sup> Consists of U.S. Treasury securities and money market instruments as well as insurance separate account assets measured at fair value under AICPA SOP 03-1, "Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts."

<sup>(5)</sup> Principally consists of securities borrowed and resale agreements. The underlying securities have been segregated to satisfy certain regulatory requirements.

<sup>(6)</sup> Consists of private equity and real estate fund investments.

<sup>(7)</sup> Represents cash collateral and the impact of netting across the levels of the fair value hierarchy. Netting among positions classified within the same level is included in that level.

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

Financial Liabilities at Fair Value as of November 2008					
	Level 1	Level 2	Level 3 (in millions)	Netting and Collateral	Total
U.S. government, federal agency and sovereign obligations . . . . .	\$36,385	\$ 615	\$ —	\$ —	\$ 37,000
Mortgage and other asset-backed loans and securities . . . . .	—	320	20	—	340
Bank loans and bridge loans . . . . .	—	2,278	830	—	3,108
Corporate debt securities and other debt obligations . . . . .	11	5,185	515	—	5,711
Equities and convertible debentures . . . . .	11,928	174	14	—	12,116
Physical commodities . . . . .	<u>2</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>2</u>
Cash instruments . . . . .	48,326	8,572	1,379	—	58,277
Derivative contracts . . . . .	<u>21</u>	<u>145,777</u>	<u>9,968</u>	<u>(38,071)</u> <sup>(8)</sup>	<u>117,695</u>
Trading liabilities, at fair value . . . . .	48,347	154,349	11,347	(38,071)	175,972
Unsecured short-term borrowings <sup>(1)</sup> . . . . .	—	17,916	5,159	—	23,075
Deposits <sup>(2)</sup> . . . . .	—	4,224	—	—	4,224
Securities loaned <sup>(3)</sup> . . . . .	—	7,872	—	—	7,872
Securities sold under agreements to repurchase, at fair value . . . . .	—	62,883	—	—	62,883
Other secured financings <sup>(4)</sup> . . . . .	—	16,429	3,820	—	20,249
Other liabilities <sup>(5)</sup> . . . . .	—	978	—	—	978
Unsecured long-term borrowings <sup>(6)</sup> . . . . .	—	15,886	1,560	—	17,446
Total financial liabilities at fair value . . . . .	<u>\$48,347</u>	<u>\$280,537</u>	<u>\$21,886</u> <sup>(7)</sup>	<u>\$(38,071)</u>	<u>\$312,699</u>

<sup>(1)</sup> Consists of promissory notes, commercial paper and hybrid financial instruments.

<sup>(2)</sup> Consists of certain certificates of deposit issued by GS Bank USA.

<sup>(3)</sup> Consists of securities loaned within Trading and Principal Investments. Excludes securities loaned within Securities Services, which are accounted for based on the amount of cash collateral received plus accrued interest.

<sup>(4)</sup> Primarily includes transfers accounted for as financings rather than sales under SFAS No. 140, debt raised through the firm's William Street program and certain other nonrecourse financings.

<sup>(5)</sup> Consists of liabilities related to insurance contracts.

<sup>(6)</sup> Primarily includes hybrid financial instruments and prepaid physical commodity transactions.

<sup>(7)</sup> Level 3 liabilities were 7.0% of Total liabilities at fair value.

<sup>(8)</sup> Represents cash collateral and the impact of netting across the levels of the fair value hierarchy. Netting among positions classified within the same level is included in that level.

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	Financial Assets at Fair Value as of November 2007				
	Level 1	Level 2	Level 3 (in millions)	Netting and Collateral	Total
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$ 6,237	\$ 2,748	\$ —	\$ —	\$ 8,985
U.S. government, federal agency and sovereign obligations . . . . .	37,966	32,808	—	—	70,774
Mortgage and other asset-backed loans and securities . . . . .	—	38,073	16,000	—	54,073
Bank loans and bridge loans . . . . .	—	35,820	13,334	—	49,154
Corporate debt securities and other debt obligations . . . . .	915	32,193	6,111	—	39,219
Equities and convertible debentures . . . . .	68,727	35,472	18,006 <sup>(6)</sup>	—	122,205
Physical commodities . . . . .	—	2,571	—	—	2,571
Cash instruments . . . . .	113,845	179,685	53,451	—	346,981
Derivative contracts . . . . .	286	153,065	15,700	(63,437) <sup>(7)</sup>	105,614
Trading assets, at fair value . . . . .	114,131	332,750	69,151	(63,437)	452,595
Securities segregated for regulatory and other purposes . . . . .	24,078 <sup>(4)</sup>	69,940 <sup>(5)</sup>	—	—	94,018
Receivables from customers and counterparties <sup>(1)</sup> . . . . .	—	1,950	—	—	1,950
Securities borrowed <sup>(2)</sup> . . . . .	—	83,277	—	—	83,277
Securities purchased under agreements to resell, at fair value . . . . .	—	85,717	—	—	85,717
Total financial assets at fair value . . . . .	<u>\$138,209</u>	<u>\$573,634</u>	<u>\$ 69,151</u>	<u>\$(63,437)</u>	<u>\$717,557</u>
Level 3 assets for which the firm does not bear economic exposure <sup>(3)</sup> . . . . .			<u>(14,437)</u>		
Level 3 assets for which the firm bears economic exposure . . . . .			<u>\$ 54,714</u>		

<sup>(1)</sup> Consists of transfers accounted for as secured loans rather than purchases under SFAS No. 140 and prepaid variable share forwards.

<sup>(2)</sup> Consists of securities borrowed within Trading and Principal Investments. Excludes securities borrowed within Securities Services, which are accounted for based on the amount of cash collateral advanced plus accrued interest.

<sup>(3)</sup> Consists of level 3 assets which are financed by nonrecourse debt, attributable to minority investors or attributable to employee interests in certain consolidated funds.

<sup>(4)</sup> Consists of U.S. Treasury securities and money market instruments as well as insurance separate account assets measured at fair value under AICPA SOP 03-1, "Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts."

<sup>(5)</sup> Principally consists of securities borrowed and resale agreements. The underlying securities have been segregated to satisfy certain regulatory requirements.

<sup>(6)</sup> Consists of private equity and real estate fund investments.

<sup>(7)</sup> Represents cash collateral and the impact of netting across the levels of the fair value hierarchy. Netting among positions classified within the same level is included in that level.

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

<b>Financial Liabilities at Fair Value as of November 2007</b>					
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u> (in millions)	<u>Netting and Collateral</u>	<u>Total</u>
U.S. government, federal agency and sovereign obligations . . . . .	\$ 57,714	\$ 923	\$ —	\$ —	\$ 58,637
Bank loans and bridge loans . . . . .	—	3,525	38	—	3,563
Corporate debt securities and other debt obligations . . . . .	—	7,764	516	—	8,280
Equities and convertible debentures . . . . .	44,076	1,054	—	—	45,130
Physical commodities . . . . .	—	35	—	—	35
Cash instruments . . . . .	101,790	13,301	554	—	115,645
Derivative contracts . . . . .	212	117,794	13,644	(32,272) <sup>(7)</sup>	99,378
Trading liabilities, at fair value. . . . .	102,002	131,095	14,198	(32,272)	215,023
Unsecured short-term borrowings <sup>(1)</sup> . . .	—	44,060	4,271	—	48,331
Deposits <sup>(2)</sup> . . . . .	—	463	—	—	463
Securities loaned <sup>(3)</sup> . . . . .	—	5,449	—	—	5,449
Securities sold under agreements to repurchase, at fair value . . . . .	—	159,178	—	—	159,178
Other secured financings <sup>(4)</sup> . . . . .	—	33,581	—	—	33,581
Unsecured long-term borrowings <sup>(5)</sup> . . . .	—	15,161	767	—	15,928
<b>Total financial liabilities at fair value . . . .</b>	<b><u>\$102,002</u></b>	<b><u>\$388,987</u></b>	<b><u>\$19,236</u></b> <sup>(6)</sup>	<b><u>\$(32,272)</u></b> <sup>(7)</sup>	<b><u>\$477,953</u></b>

<sup>(1)</sup> Consists of promissory notes, commercial paper and hybrid financial instruments.

<sup>(2)</sup> Consists of certain certificates of deposit issued by GS Bank USA.

<sup>(3)</sup> Consists of securities loaned within Trading and Principal Investments. Excludes securities loaned within Securities Services, which are accounted for based on the amount of cash collateral received plus accrued interest.

<sup>(4)</sup> Primarily includes transfers accounted for as financings rather than sales under SFAS No. 140, debt raised through the firm's William Street program and certain other nonrecourse financings.

<sup>(5)</sup> Primarily includes hybrid financial instruments and prepaid physical commodity transactions.

<sup>(6)</sup> Level 3 liabilities were 4.0% of Total liabilities at fair value.

<sup>(7)</sup> Represents cash collateral and the impact of netting across the levels of the fair value hierarchy. Netting among positions classified within the same level is included in that level.

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

***Level 3 Unrealized Gains/(Losses)***

The table below sets forth a summary of unrealized gains/(losses) on the firm's level 3 financial assets and financial liabilities still held at the reporting date for the years ended November 2008 and November 2007.

	<b>Level 3 Unrealized Gains/(Losses)</b>	
	<b>Year Ended November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Cash Instruments — Assets . . . . .	\$(11,485)	\$(2,292)
Cash Instruments — Liabilities . . . . .	(871)	(294)
Net unrealized gains/(losses) on level 3 cash instruments . . . . .	(12,356)	(2,586)
Derivative Contracts — Net . . . . .	5,577	4,543
Unsecured Short-Term Borrowings . . . . .	737	(666)
Other Secured Financings . . . . .	838	—
Unsecured Long-Term Borrowings . . . . .	657	22
Total level 3 unrealized gains/(losses) . . . . .	<u>\$ (4,547)</u>	<u>\$ 1,313</u>

***Cash Instruments***

The net unrealized loss on level 3 cash instruments of \$12.36 billion for the year ended November 2008 primarily consisted of unrealized losses on loans and securities backed by commercial real estate, certain bank loans and bridge loans, private equity and real estate fund investments. Losses during the year reflected the significant weakness in the global credit and equity markets.

Level 3 cash instruments are frequently economically hedged with instruments classified within level 1 and level 2, and accordingly, gains or losses that have been reported in level 3 can be offset by gains or losses attributable to instruments classified within level 1 or level 2 or by gains or losses on derivative contracts classified in level 3 of the fair value hierarchy.

***Derivative Contracts***

The net unrealized gain on level 3 derivative contracts of \$5.58 billion for the year ended November 2008 was primarily attributable to changes in observable credit spreads (which are level 2 inputs) on the underlying instruments. Level 3 gains and losses on derivative contracts should be considered in the context of the following:

- A derivative contract with level 1 and/or level 2 inputs is classified as a level 3 financial instrument in its entirety if it has at least one significant level 3 input.
- If there is one significant level 3 input, the entire gain or loss from adjusting only observable inputs (i.e., level 1 and level 2) is still classified as level 3.
- Gains or losses that have been reported in level 3 resulting from changes in level 1 or level 2 inputs are frequently offset by gains or losses attributable to instruments classified within level 1 or level 2 or by cash instruments reported in level 3 of the fair value hierarchy.

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

The tables below set forth a summary of changes in the fair value of the firm's level 3 financial assets and financial liabilities for the years ended November 2008 and November 2007. The tables reflect gains and losses, including gains and losses on financial assets and financial liabilities that were transferred to level 3 during the year, for all financial assets and financial liabilities categorized as level 3 as of November 2008 and November 2007, respectively. The tables do not include gains or losses that were reported in level 3 in prior periods for instruments that were sold or transferred out of level 3 prior to the end of the period presented.

<b>Level 3 Financial Assets and Financial Liabilities</b>						
<b>Year Ended November 2008</b>						
	<b>Cash Instruments - Assets</b>	<b>Cash Instruments - Liabilities</b>	<b>Derivative Contracts - Net</b>	<b>Unsecured Short-Term Borrowings</b>	<b>Other Secured Financings</b>	<b>Unsecured Long-Term Borrowings</b>
	(in millions)					
Balance, beginning of year . . . . .	\$ 53,451	\$ (554)	\$ 2,056	\$(4,271)	\$ —	\$ (767)
Realized gains/(losses). . . . .	1,930 <sup>(1)</sup>	28 <sup>(3)</sup>	267 <sup>(3)</sup>	354 <sup>(3)</sup>	87 <sup>(3)</sup>	(20) <sup>(3)</sup>
Unrealized gains/(losses) relating to instruments still held at the reporting date . . . . .	(11,485) <sup>(1)</sup>	(871) <sup>(3)</sup>	5,577 <sup>(3)(4)</sup>	737 <sup>(3)</sup>	838 <sup>(3)</sup>	657 <sup>(3)</sup>
Purchases, issuances and settlements . . . . .	3,955	55	(1,813)	(1,353)	416	(1,314)
Transfers in and/or out of level 3 . .	3,215 <sup>(2)</sup>	(37)	(931) <sup>(5)</sup>	(626)	(5,161) <sup>(6)</sup>	(116)
Balance, end of year . . . . .	<u>\$ 51,066</u>	<u>\$ (1,379)</u>	<u>\$ 5,156</u>	<u>\$ (5,159)</u>	<u>\$ (3,820)</u>	<u>\$ (1,560)</u>

<b>Level 3 Financial Assets and Financial Liabilities</b>						
<b>Year Ended November 2007</b>						
	<b>Cash Instruments - Assets</b>	<b>Cash Instruments - Liabilities</b>	<b>Derivative Contracts - Net</b>	<b>Unsecured Short-Term Borrowings</b>	<b>Other Secured Financings</b>	<b>Unsecured Long-Term Borrowings</b>
	(in millions)					
Balance, beginning of year . . . . .	\$ 29,905	\$ (223)	\$ 580	\$(3,253)	\$ —	\$ (135)
Realized gains/(losses). . . . .	2,232 <sup>(1)</sup>	(9) <sup>(3)</sup>	1,713 <sup>(3)</sup>	167 <sup>(3)</sup>	—	(7) <sup>(3)</sup>
Unrealized gains/(losses) relating to instruments still held at the reporting date . . . . .	(2,292) <sup>(1)</sup>	(294) <sup>(3)</sup>	4,543 <sup>(3)(4)</sup>	(666) <sup>(3)</sup>	—	22 <sup>(3)</sup>
Purchases, issuances and settlements . . . . .	22,561	(30)	(1,365)	(1,559)	—	(567)
Transfers in and/or out of level 3 . .	1,045 <sup>(7)</sup>	2	(3,415) <sup>(8)</sup>	1,040	—	(80)
Balance, end of year . . . . .	<u>\$ 53,451</u>	<u>\$ (554)</u>	<u>\$ 2,056</u>	<u>\$ (4,271)</u>	<u>\$ —</u>	<u>\$ (767)</u>

<sup>(1)</sup> The aggregate amounts include approximately \$(11.54) billion and \$1.98 billion reported in "Trading and principal investments" and "Interest income," respectively, in the consolidated statements of earnings for the year ended November 2008. The aggregate amounts include approximately \$(1.77) billion and \$1.71 billion reported in "Trading and principal investments" and "Interest income," respectively, in the consolidated statements of earnings for the year ended November 2007.

<sup>(2)</sup> Principally reflects transfers from level 2 within the fair value hierarchy of loans and securities backed by commercial real estate, reflecting reduced price transparency for these financial instruments.

<sup>(3)</sup> Substantially all is reported in "Trading and principal investments" in the consolidated statements of earnings.

<sup>(4)</sup> Principally resulted from changes in level 2 inputs.

<sup>(5)</sup> Principally reflects transfers to level 2 within the fair value hierarchy of mortgage-related derivative assets, as recent trading activity provided improved transparency of correlation inputs. This decrease was partially offset by transfers from level 2 within the fair value hierarchy of credit and equity-linked derivatives due to reduced price transparency.

<sup>(6)</sup> Consists of transfers from level 2 within the fair value hierarchy.

<sup>(7)</sup> Principally reflects transfers from level 2 within the fair value hierarchy of loans and securities backed by commercial and residential real estate and certain bank loans and bridge loans, reflecting reduced price transparency for these financial instruments.

<sup>(8)</sup> Principally reflects transfers from level 2 within the fair value hierarchy of structured credit derivative liabilities, due to reduced transparency of correlation inputs.

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

***Impact of Credit Spreads***

On an ongoing basis, the firm realizes gains or losses relating to changes in credit risk on derivative contracts through changes in credit mitigants or the sale or unwind of the contracts. The net gain/(loss) attributable to the impact of changes in credit exposure and credit spreads on derivative contracts was \$(137) million and \$86 million for the years ended November 2008 and November 2007, respectively.

The following table sets forth the net gains attributable to the impact of changes in the firm's own credit spreads on unsecured borrowings for which the fair value option was elected. The firm calculates the fair value of unsecured borrowings by discounting future cash flows at a rate which incorporates the firm's observable credit spreads.

	Year Ended November	
	2008	2007
	(in millions)	
Net gains including hedges . . . . .	\$1,127	\$203
Net gains excluding hedges . . . . .	1,196	216

The impact of changes in instrument-specific credit spreads on loans and loan commitments for which the fair value option was elected was a loss of \$4.61 billion for the year ended November 2008 and not material for the year ended November 2007. The firm attributes changes in the fair value of floating rate loans and loan commitments to changes in instrument-specific credit spreads. For fixed rate loans and loan commitments, the firm allocates changes in fair value between interest rate-related changes and credit spread-related changes based on changes in interest rates. See below for additional details regarding the fair value option.

***The Fair Value Option***

***Gains/Losses***

The following table sets forth the gains/(losses) included in earnings for the years ended November 2008 and November 2007 as a result of the firm electing to apply the fair value option to certain financial assets and financial liabilities, as described in Note 2. The table excludes gains and losses related to trading assets and trading liabilities, as well as gains and losses that would have been recognized under other generally accepted accounting principles if the firm had not elected the fair value option or that are economically hedged with instruments accounted for at fair value under other generally accepted accounting principles.

	Year Ended November	
	2008	2007
	(in millions)	
Unsecured long-term borrowings <sup>(1)</sup> . . . . .	\$ 915	\$ 202
Other secured financings <sup>(2)</sup> . . . . .	894	(293)
Unsecured short-term borrowings <sup>(3)</sup> . . . . .	266	6
Other <sup>(4)</sup> . . . . .	(20)	18
Total <sup>(5)</sup> . . . . .	<u>\$2,055</u>	<u>\$ (67)</u>

<sup>(1)</sup> Excludes gains of \$2.42 billion and losses of \$2.18 billion for the years ended November 2008 and November 2007, respectively, related to the derivative component of hybrid financial instruments. Such gains and losses would have been recognized pursuant to SFAS No. 133 if the firm had not elected to account for the entire hybrid instrument at fair value under the fair value option.

**THE GOLDMAN SACHS GROUP, INC. and SUBSIDIARIES**  
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- (2) Excludes gains of \$1.29 billion and \$2.19 billion for the years ended November 2008 and November 2007, respectively, related to financings recorded as a result of securitization-related transactions that were accounted for as secured financings rather than sales under SFAS No. 140. Changes in the fair value of these secured financings are offset by changes in the fair value of the related financial instruments included within the firm's "Trading assets, at fair value" in the consolidated statements of financial condition.
- (3) Excludes gains of \$6.37 billion and losses of \$1.07 billion for the years ended November 2008 and November 2007, respectively, related to the derivative component of hybrid financial instruments. Such gains and losses would have been recognized pursuant to SFAS No. 133 if the firm had not elected to account for the entire hybrid instrument at fair value under the fair value option.
- (4) Primarily consists of certain insurance and reinsurance contracts, resale and repurchase agreements and securities borrowed and loaned within Trading and Principal Investments.
- (5) Reported within "Trading and principal investments" within the consolidated statements of earnings. The amounts exclude contractual interest, which is included in "Interest income" and "Interest expense," for all instruments other than hybrid financial instruments.

All trading assets and trading liabilities are accounted for at fair value either under the fair value option or as required by other accounting pronouncements. Excluding equities commissions of \$5.00 billion and \$4.58 billion for the years ended November 2008 and November 2007, respectively, and the gains and losses on the instruments accounted for under the fair value option described above, the firm's "Trading and principal investments" revenues in the consolidated statements of earnings primarily represent gains and losses on "Trading assets, at fair value" and "Trading liabilities, at fair value" in the consolidated statements of financial condition.

***Loans and Loan Commitments***

As of November 2008, the aggregate contractual principal amount of loans and long-term receivables for which the fair value option was elected exceeded the related fair value by \$50.21 billion, including a difference of \$37.46 billion related to loans with an aggregate fair value of \$3.77 billion that were on nonaccrual status (including loans more than 90 days past due). The aggregate contractual principal exceeds the related fair value primarily because the firm regularly purchases loans, such as distressed loans, at values significantly below contractual principal amounts.

As of November 2008, the fair value of unfunded lending commitments for which the fair value option was elected was a liability of \$3.52 billion and the related total contractual amount of these lending commitments was \$39.49 billion.

As of November 2007, substantially all of the firm's loans and unfunded lending commitments were recorded at fair value in accordance with specialized industry accounting for broker-dealers, and not pursuant to the fair value option. As a result, the difference between the aggregate fair value and related contractual principal amounts of loans and long-term receivables accounted for under the fair value option was not material as of November 2007. See Note 2 for further information related to fair value option elections made by the firm upon becoming a bank holding company in September 2008.

***Long-term Debt Instruments***

The aggregate contractual principal amount of long-term debt instruments (principal and non-principal protected) for which the fair value option was elected exceeded the related fair value by \$2.42 billion as of November 2008, while the difference between the fair value and the aggregate contractual principal amount was not material to the carrying value as of November 2007.



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***Credit Concentrations***

Credit concentrations may arise from trading, investing, underwriting and securities borrowing activities and may be impacted by changes in economic, industry or political factors. The firm seeks to mitigate credit risk by actively monitoring exposures and obtaining collateral as deemed appropriate. While the firm's activities expose it to many different industries and counterparties, the firm routinely executes a high volume of transactions with counterparties in the financial services industry, including brokers and dealers, commercial banks, investment funds and other institutional clients, resulting in significant credit concentration with respect to this industry. In the ordinary course of business, the firm may also be subject to a concentration of credit risk to a particular counterparty, borrower or issuer.

As of November 2008 and November 2007, the firm held \$53.98 billion (6% of total assets) and \$45.75 billion (4% of total assets), respectively, of U.S. government and federal agency obligations included in "Trading assets, at fair value" and "Cash and securities segregated for regulatory and other purposes" in the consolidated statements of financial condition. As of November 2008 and November 2007, the firm held \$21.13 billion (2% of total assets) and \$31.65 billion (3% of total assets), respectively, of other sovereign obligations, principally consisting of securities issued by the governments of Japan and the United Kingdom. In addition, as of November 2008 and November 2007, \$126.27 billion and \$144.92 billion of the firm's securities purchased under agreements to resell and securities borrowed (including those in "Cash and securities segregated for regulatory and other purposes"), respectively, were collateralized by U.S. government and federal agency obligations. As of November 2008 and November 2007, \$65.37 billion and \$41.26 billion of the firm's securities purchased under agreements to resell and securities borrowed, respectively, were collateralized by other sovereign obligations. As of November 2008 and November 2007, the firm did not have credit exposure to any other counterparty that exceeded 2% 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 the assets to be delivered under the contract are readily convertible into cash.

The firm enters into derivative transactions to facilitate client transactions, to take proprietary positions and as a means of risk management. Risk exposures are managed through diversification, by controlling position sizes and by entering into offsetting positions. For example, the firm may manage the risk related to a portfolio of common stock by entering into an offsetting position in a related equity-index futures contract.

The firm applies hedge accounting under SFAS No. 133 to certain derivative contracts. The firm uses these derivatives to manage certain interest rate and currency exposures, including the firm's net investment in non-U.S. operations. The firm designates certain interest rate swap contracts as fair value hedges. These interest rate swap contracts hedge changes in the relevant benchmark interest

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rate (e.g., London Interbank Offered Rate (LIBOR)), effectively converting a substantial portion of the firm's unsecured long-term and certain unsecured short-term borrowings into floating rate obligations. See Note 2 for information regarding the firm's accounting policy for foreign currency forward contracts used to hedge its net investment in non-U.S. operations.

The firm applies a long-haul method to all of its hedge accounting relationships to perform an ongoing assessment of the effectiveness of these relationships in achieving offsetting changes in fair value or offsetting cash flows attributable to the risk being hedged. The firm utilizes a dollar-offset method, which compares the change in the fair value of the hedging instrument to the change in the fair value of the hedged item, excluding the effect of the passage of time, to prospectively and retrospectively assess hedge effectiveness. The firm's prospective dollar-offset assessment utilizes scenario analyses to test hedge effectiveness via simulations of numerous parallel and slope shifts of the relevant yield curve. Parallel shifts change the interest rate of all maturities by identical amounts. Slope shifts change the curvature of the yield curve. For both the prospective assessment, in response to each of the simulated yield curve shifts, and the retrospective assessment, a hedging relationship is deemed to be effective if the fair value of the hedging instrument and the hedged item change inversely within a range of 80% to 125%.

For fair value hedges, gains or losses on derivative transactions are recognized in "Interest expense" in the consolidated statements of earnings. The change in fair value of the hedged item attributable to the risk being hedged is reported as an adjustment to its carrying value and is subsequently amortized into interest expense over its remaining life. Gains or losses related to hedge ineffectiveness for all hedges are generally included in "Interest expense." These gains or losses and the component of gains or losses on derivative transactions excluded from the assessment of hedge effectiveness (e.g., the effect of the passage of time on fair value hedges of the firm's borrowings) were not material to the firm's results of operations for the years ended November 2008, November 2007 and November 2006. Gains and losses on derivatives used for trading purposes are included in "Trading and principal investments" in the consolidated statements of earnings.

The fair value of the firm's derivative contracts is reflected net of cash paid or received pursuant to credit support agreements and is 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, presented in accordance with the firm's netting policy, is set forth below:

	As of November			
	2008		2007	
	<u>Assets</u>	<u>Liabilities</u>	<u>Assets</u>	<u>Liabilities</u>
	(in millions)			
<b>Contract Type</b>				
Forward settlement contracts . . . . .	\$ 35,997	\$ 35,778	\$ 22,561	\$ 27,138
Swap agreements . . . . .	175,153	82,189	104,793	62,697
Option contracts . . . . .	<u>81,077</u>	<u>58,467</u>	<u>53,056</u>	<u>53,047</u>
Subtotal . . . . .	292,227	176,434	180,410	142,882
Netting across contract types <sup>(1)</sup> . . . . .	(24,730)	(24,730)	(15,746)	(15,746)
Cash collateral netting <sup>(2)</sup> . . . . .	<u>(137,160)</u>	<u>(34,009)</u>	<u>(59,050)</u>	<u>(27,758)</u>
Total . . . . .	<u>\$ 130,337</u>	<u>\$ 117,695</u>	<u>\$ 105,614</u>	<u>\$ 99,378</u>

<sup>(1)</sup> Represents the netting of receivable balances with payable balances for the same counterparty across contract types pursuant to legally enforceable netting agreements.

<sup>(2)</sup> Represents the netting of cash collateral received and posted on a counterparty basis pursuant to credit support agreements.

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The fair value of derivatives accounted for as qualifying hedges under SFAS No. 133 consisted of \$20.40 billion and \$5.15 billion in assets as of November 2008 and November 2007, respectively, and \$128 million and \$355 million in liabilities as of November 2008 and November 2007, respectively.

The firm also has embedded derivatives that have been bifurcated from related borrowings under SFAS No. 133. Such derivatives, which are classified in unsecured short-term and unsecured long-term borrowings, had a carrying value of \$(774) million and \$463 million (excluding the debt host contract) as of November 2008 and November 2007, respectively. See Notes 6 and 7 for further information regarding the firm's unsecured borrowings.

The firm enters into various derivative transactions that are considered credit derivatives under FSP No. FAS 133-1 and FIN 45-4. The firm's written and purchased credit derivatives include credit default swaps, credit spread options, credit index products and total return swaps. As of November 2008, the firm's written and purchased credit derivatives had total gross notional amounts of \$3.78 trillion and \$4.03 trillion, respectively, for total net purchased protection of \$255.24 billion in notional value.

The following table sets forth certain information related to the firm's credit derivatives. Fair values in the table below exclude the effects of both netting under enforceable netting agreements and netting of cash paid pursuant to credit support agreements, and therefore are not representative of the firm's net exposure.

	As of November 2008						
	Maximum Payout/Notional Amount by Period of Expiration			Maximum Payout/Notional Amount			Written Credit Derivatives at Fair Value
	0 - 5 Years	5 - 10 Years	10 Years or Greater	Written Credit Derivatives	Offsetting Purchased Credit Derivatives <sup>(1)</sup>	Other Purchased Credit Derivatives <sup>(2)</sup>	
	(\$ in millions)						
<b>Credit spread on underlying (basis points) <sup>(3)</sup></b>							
0-250 . . . . .	\$1,194,228	\$ 609,056	\$ 22,866	\$1,826,150	\$1,632,681	\$347,573	\$ 77,836
251-500 . . . . .	591,813	184,763	12,494	789,070	784,149	26,316	94,278
501-1,000 . . . . .	430,801	140,782	15,886	587,469	538,251	67,958	75,079
Greater than 1,000 . .	383,626	120,866	71,690	576,182	533,816	103,362	222,346
Total . . . . .	<u>\$2,600,468</u> <sup>(4)</sup>	<u>\$1,055,467</u>	<u>\$122,936</u>	<u>\$3,778,871</u>	<u>\$3,488,897</u> <sup>(4)</sup>	<u>\$545,209</u>	<u>\$469,539</u> <sup>(5)</sup>

<sup>(1)</sup> Offsetting purchased credit derivatives represent the notional amount of purchased credit derivatives to the extent they hedge written credit derivatives with identical underlyings.

<sup>(2)</sup> Comprised of purchased protection in excess of the amount of written protection on identical underlyings and purchased protection on other underlyings on which the firm has not written protection.

<sup>(3)</sup> Credit spread on the underlying, together with the period of expiration, are indicators of payment/performance risk. For example, the firm is least likely to pay or otherwise be required to perform where the credit spread on the underlying is "0-250" basis points and the period of expiration is "0-5 Years." The likelihood of payment or performance is generally greater as the credit spread on the underlying and period of expiration increase.

<sup>(4)</sup> Includes a maximum payout/notional amount for written credit derivatives of \$208.44 billion expiring within one year as of November 2008.

<sup>(5)</sup> This liability excludes the effects of both netting under enforceable netting agreements and netting of cash collateral paid pursuant to credit support agreements. Including the effects of netting receivable balances with payable balances for the same counterparty pursuant to enforceable netting agreements, the firm's net liability related to credit derivatives in the firm's statement of financial condition as of November 2008 was \$33.76 billion. This net amount excludes the netting of cash collateral paid pursuant to credit support agreements.

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

***Collateralized Transactions***

The firm receives financial instruments as collateral, primarily in connection with resale agreements, securities borrowed, derivative transactions and customer margin loans. Such financial instruments may include obligations of the U.S. government, federal agencies, sovereigns and corporations, as well as equities and convertibles.

In many cases, the firm is permitted to deliver or repledge these financial instruments in connection with entering into repurchase agreements, securities lending agreements and other secured financings, collateralizing derivative transactions and meeting firm or customer settlement requirements. As of November 2008 and November 2007, the fair value of financial instruments received as collateral by the firm that it was permitted to deliver or repledge was \$578.72 billion and \$891.05 billion, respectively, of which the firm delivered or repledged \$445.11 billion and \$785.62 billion, respectively.

The firm also pledges assets that it owns to counterparties who may or may not have the right to deliver or repledge them. Trading assets pledged to counterparties that have the right to deliver or repledge are included in "Trading assets, at fair value" in the consolidated statements of financial condition and were \$26.31 billion and \$46.14 billion as of November 2008 and November 2007, respectively. Trading assets, pledged in connection with repurchase agreements, securities lending agreements and other secured financings to counterparties that did not have the right to sell or repledge are included in "Trading assets, at fair value" in the consolidated statements of financial condition and were \$80.85 billion and \$156.92 billion as of November 2008 and November 2007, respectively. Other assets (primarily real estate and cash) owned and pledged in connection with other secured financings to counterparties that did not have the right to sell or repledge were \$9.24 billion and \$5.86 billion as of November 2008 and November 2007, respectively.

In addition to repurchase agreements and securities lending agreements, the firm obtains secured funding through the use of other arrangements. Other secured financings include arrangements that are nonrecourse, that is, only the subsidiary that executed the arrangement or a subsidiary guaranteeing the arrangement is obligated to repay the financing. Other secured financings consist of liabilities related to the firm's William Street program, consolidated VIEs, collateralized central bank financings, transfers of financial assets that are accounted for as financings rather than sales under SFAS No. 140 (primarily pledged bank loans and mortgage whole loans) and other structured financing arrangements.

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

Other secured financings by maturity are set forth in the table below:

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Other secured financings (short-term) <sup>(1)(2)</sup> . . . . .	\$21,225	\$32,410
Other secured financings (long-term):		
2009 . . . . .	—	2,903
2010 . . . . .	2,157	2,301
2011 . . . . .	4,578	2,427
2012 . . . . .	3,040	4,973
2013 . . . . .	1,377	702
2014-thereafter . . . . .	<u>6,306</u>	<u>19,994</u>
Total other secured financings (long-term) <sup>(3)(4)</sup> . . . . .	<u>17,458</u>	<u>33,300</u>
Total other secured financings <sup>(5)</sup> . . . . .	<u>\$38,683</u>	<u>\$65,710</u>

- <sup>(1)</sup> As of November 2008, consists of U.S. dollar-denominated financings of \$12.53 billion with a weighted average interest rate of 2.98% and non-U.S. dollar-denominated financings of \$8.70 billion with a weighted average interest rate of 0.95%, after giving effect to hedging activities. As of November 2007, consists of U.S. dollar-denominated financings of \$18.47 billion with a weighted average interest rate of 5.32% and non-U.S. dollar-denominated financings of \$13.94 billion with a weighted average interest rate of 0.91%, after giving effect to hedging activities. The weighted average interest rates as of November 2008 and November 2007 excluded financial instruments accounted for at fair value under SFAS No. 159.
- <sup>(2)</sup> Includes other secured financings maturing within one year of the financial statement date and other secured financings that are redeemable within one year of the financial statement date at the option of the holder.
- <sup>(3)</sup> As of November 2008, consists of U.S. dollar-denominated financings of \$9.55 billion with a weighted average interest rate of 4.62% and non-U.S. dollar-denominated financings of \$7.91 billion with a weighted average interest rate of 4.39%, after giving effect to hedging activities. As of November 2007, consists of U.S. dollar-denominated financings of \$22.13 billion with a weighted average interest rate of 5.73% and non-U.S. dollar-denominated financings of \$11.17 billion with a weighted average interest rate of 4.28%, after giving effect to hedging activities. The weighted average interest rates as of November 2008 and November 2007 excluded financial instruments accounted for at fair value under SFAS No. 159.
- <sup>(4)</sup> Secured long-term financings that are repayable prior to maturity at the option of the firm are reflected at their contractual maturity dates. Secured long-term financings that are redeemable prior to maturity at the option of the holder are reflected at the dates such options become exercisable.
- <sup>(5)</sup> As of November 2008, \$31.54 billion of these financings were collateralized by financial instruments and \$7.14 billion by other assets (primarily real estate and cash). As of November 2007, \$61.34 billion of these financings were collateralized by financial instruments and \$4.37 billion by other assets (primarily real estate and cash). Other secured financings include \$13.74 billion and \$25.37 billion of nonrecourse obligations as of November 2008 and November 2007, respectively.

**Note 4. Securitization Activities and Variable Interest Entities**

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

The firm may retain interests in securitized financial assets, primarily in the form of senior or subordinated securities, including residual interests. Retained interests are accounted for at fair value and are included in "Trading assets, at fair value" in the consolidated statements of financial condition.

The following table sets forth the amount of financial assets the firm securitized, as well as cash flows received on retained interests:

	<b>Year Ended November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Residential mortgages . . . . .	\$ 6,671	\$24,954
Commercial mortgages . . . . .	773	19,498
Other financial assets . . . . .	7,014 <sup>(1)</sup>	36,948 <sup>(2)</sup>
<b>Total . . . . .</b>	<b>\$14,458</b>	<b>\$81,400</b>
Cash flows received on retained interests . . . . .	<b>\$ 505</b>	<b>\$ 705</b>

<sup>(1)</sup> Primarily in connection with collateralized loan obligations (CLOs).

<sup>(2)</sup> Primarily in connection with CDOs and CLOs.

As of November 2008 and November 2007, the firm held \$1.78 billion and \$4.57 billion of retained interests, respectively, from securitization activities, including \$1.53 billion and \$2.72 billion, respectively, held in QSPEs.

The following table sets forth the weighted average key economic assumptions used in measuring the fair value of the firm's retained interests and the sensitivity of this fair value to immediate adverse changes of 10% and 20% in those assumptions:

	<b>As of November 2008</b>		<b>As of November 2007</b>	
	<b>Type of Retained Interests</b>		<b>Type of Retained Interests</b>	
	<b>Mortgage-Backed</b>	<b>CDOs and CLOs <sup>(4)</sup></b>	<b>Mortgage-Backed</b>	<b>CDOs and CLOs <sup>(4)</sup></b>
	(\$ in millions)			
Fair value of retained interests . . . . .	\$1,415	\$ 367	\$3,378	\$1,188
Weighted average life (years) . . . . .	6.0	5.1	6.6	2.7
Constant prepayment rate <sup>(1)</sup> . . . . .	15.5%	4.5%	15.1%	11.9%
Impact of 10% adverse change <sup>(1)</sup> . . . . .	\$ (14)	\$ (6)	\$ (50)	\$ (43)
Impact of 20% adverse change <sup>(1)</sup> . . . . .	(27)	(12)	(91)	(98)
Anticipated credit losses <sup>(2)</sup> . . . . .	2.0%	N/A	4.3%	N/A
Impact of 10% adverse change <sup>(3)</sup> . . . . .	\$ (1)	\$ —	\$ (45)	\$ —
Impact of 20% adverse change <sup>(3)</sup> . . . . .	(2)	—	(72)	—
Discount rate . . . . .	21.1%	29.2%	8.4%	23.1%
Impact of 10% adverse change . . . . .	\$ (46)	\$ (25)	\$ (89)	\$ (46)
Impact of 20% adverse change . . . . .	(89)	(45)	(170)	(92)

<sup>(1)</sup> Constant prepayment rate is included only for positions for which constant prepayment rate is a key assumption in the determination of fair value.

<sup>(2)</sup> Anticipated credit losses are computed only on positions for which expected credit loss is a key assumption in the determination of fair value or positions for which expected credit loss is not reflected within the discount rate.

<sup>(3)</sup> The impacts of adverse change take into account credit mitigants incorporated in the retained interests, including over-collateralization and subordination provisions.

<sup>(4)</sup> Includes \$192 million and \$905 million as of November 2008 and November 2007, respectively, of retained interests related to transfers of securitized assets that were accounted for as secured financings rather than sales under SFAS No. 140.

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

The preceding table does not give effect to the offsetting benefit of other financial instruments that are held to mitigate risks inherent in these retained interests. Changes in fair value based on an 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 were approximately \$4 billion and \$6 billion as of November 2008 and November 2007, respectively.

As of November 2008 and November 2007, the firm held mortgage servicing rights with a fair value of \$147 million and \$93 million, respectively. These servicing assets represent the firm's right to receive a future stream of cash flows, such as servicing fees, in excess of the firm's obligation to service residential mortgages. The fair value of mortgage servicing rights will fluctuate in response to changes in certain economic variables, such as discount rates and loan prepayment rates. The firm estimates the fair value of mortgage servicing rights by using valuation models that incorporate these variables in quantifying anticipated cash flows related to servicing activities. Mortgage servicing rights are included in "Trading assets, at fair value" in the consolidated statements of financial condition and are classified within level 3 of the fair value hierarchy. The following table sets forth changes in the firm's mortgage servicing rights, as well as servicing fees earned:

	<b>Year Ended November 2008</b> (in millions)
Balance, beginning of year . . . . .	\$ 93
Purchases <sup>(1)</sup> . . . . .	272
Servicing assets that resulted from transfers of financial assets . . . . .	3
Changes in fair value due to changes in valuation inputs and assumptions . . . . .	<u>(221)</u>
Balance, end of year <sup>(2)</sup> . . . . .	<u>\$ 147</u>
 Contractually specified servicing fees . . . . .	 <u>\$ 315</u>

<sup>(1)</sup> Primarily related to the acquisition of Litton Loan Servicing LP.

<sup>(2)</sup> As of November 2008, the fair value was estimated using a weighted average discount rate of approximately 16% and a weighted average prepayment rate of approximately 27%.

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

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

The firm, in the ordinary course of 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, CDOs and CLOs, 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 principal-protected notes, credit-linked notes 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; loan commitments; 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, CDOs and CLOs. The firm's exposure to the obligations of VIEs is generally limited to its interests in these entities.



**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 excluding the benefit of offsetting financial instruments that are held to mitigate the risks associated with these variable interests. The firm has aggregated nonconsolidated VIEs based on principal business activity, as reflected in the first column. The nature of the firm's variable interests can take different forms, as described in the columns under maximum exposure to loss.

As of November 2008						
VIE Assets	Maximum Exposure to Loss in Nonconsolidated VIEs <sup>(1)</sup>					
	Purchased and Retained Interests	Commitments and Guarantees	Derivatives	Loans and Investments	Total	
	(in millions)					
Mortgage CDOs . . . . .	\$13,061	\$ 242	\$ —	\$ 5,616 <sup>(4)</sup>	\$ —	\$ 5,858
Corporate CDOs and CLOs . . .	8,584	161	—	918 <sup>(5)</sup>	—	1,079
Real estate, credit-related and other investing <sup>(2)</sup> . . . . .	26,898	—	143	—	3,223	3,366
Municipal bond securitizations . .	111	—	111	—	—	111
Other asset-backed . . . . .	4,355	—	—	1,084	—	1,084
Power-related . . . . .	844	—	37	—	213	250
Principal-protected notes <sup>(3)</sup> . . .	4,516	—	—	4,353	—	4,353
<b>Total . . . . .</b>	<b><u>\$58,369</u></b>	<b><u>\$ 403</u></b>	<b><u>\$ 291</u></b>	<b><u>\$11,971</u></b>	<b><u>\$3,436</u></b>	<b><u>\$16,101</u></b>

As of November 2007						
VIE Assets	Maximum Exposure to Loss in Nonconsolidated VIEs <sup>(1)</sup>					
	Purchased and Retained Interests	Commitments and Guarantees	Derivatives	Loans and Investments	Total	
	(in millions)					
Mortgage CDOs . . . . .	\$18,914	\$1,011	\$ —	\$10,089 <sup>(4)</sup>	\$ —	\$11,100
Corporate CDOs and CLOs . . .	10,750	411	—	2,218 <sup>(5)</sup>	—	2,629
Real estate, credit-related and other investing <sup>(2)</sup> . . . . .	17,272	—	107	12	3,141	3,260
Municipal bond securitizations . .	1,413	—	1,413	—	—	1,413
Other mortgage-backed . . . . .	3,881	719	—	—	—	719
Other asset-backed . . . . .	3,771	—	—	1,579	—	1,579
Power-related . . . . .	438	2	37	—	16	55
Principal-protected notes <sup>(3)</sup> . . .	5,698	—	—	5,186	—	5,186
<b>Total . . . . .</b>	<b><u>\$62,137</u></b>	<b><u>\$2,143</u></b>	<b><u>\$1,557</u></b>	<b><u>\$19,084</u></b>	<b><u>\$3,157</u></b>	<b><u>\$25,941</u></b>

- <sup>(1)</sup> Such amounts do not represent the anticipated losses in connection with these transactions as they exclude the effect of offsetting financial instruments that are held to mitigate these risks.
- <sup>(2)</sup> The firm obtains interests in these VIEs in connection with making investments in real estate, distressed loans and other types of debt, mezzanine instruments and equities.
- <sup>(3)</sup> Consists of out-of-the-money written put options that provide principal protection to clients invested in various fund products, with risk to the firm mitigated through portfolio rebalancing.
- <sup>(4)</sup> Primarily consists of written protection on investment-grade, short-term collateral held by VIEs that have issued CDOs.
- <sup>(5)</sup> Primarily consists of total return swaps on CDOs and CLOs. The firm has generally transferred the risks related to the underlying securities through derivatives with non-VIEs.

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

The following table sets forth the firm's total assets and maximum exposure to loss excluding the benefit of offsetting financial instruments that are held to mitigate the risks associated with its significant variable interests in consolidated VIEs where the firm does not hold a majority voting interest. The firm has aggregated consolidated VIEs based on principal business activity, as reflected in the first column.

	As of November 2008		As of November 2007	
	VIE Assets <sup>(1)</sup>	Maximum Exposure to Loss <sup>(2)</sup>	VIE Assets <sup>(1)</sup>	Maximum Exposure to Loss <sup>(2)</sup>
	(in millions)			
Real estate, credit-related and other investing . . . . .	\$1,560	\$ 469	\$2,118	\$ 525
Municipal bond securitizations . . . . .	985	985	1,959	1,959
CDOs, mortgage-backed and other asset-backed . . . . .	32	—	604	109
Foreign exchange and commodities . . . . .	652	740	300	329
Principal-protected notes . . . . .	<u>215</u>	<u>233</u>	<u>1,119</u>	<u>1,118</u>
Total . . . . .	<u>\$3,444</u>	<u>\$2,427</u>	<u>\$6,100</u>	<u>\$4,040</u>

<sup>(1)</sup> Consolidated VIE assets include assets financed on a nonrecourse basis.

<sup>(2)</sup> Such amounts do not represent the anticipated losses in connection with these transactions as they exclude the effect of offsetting financial instruments that are held to mitigate these risks.

The firm did not have off-balance-sheet commitments to purchase or finance any CDOs held by structured investment vehicles as of November 2008 or November 2007.

**Note 5. Deposits**

The following table sets forth deposits as of November 2008 and November 2007:

	As of November	
	2008	2007
	(in millions)	
U.S. offices <sup>(1)</sup> . . . . .	\$23,018	\$15,272
Non-U.S. offices <sup>(2)</sup> . . . . .	<u>4,625</u>	<u>98</u>
Total (includes \$4,224 and \$463 at fair value as of November 2008 and November 2007, respectively) . . . . .	<u>\$27,643</u>	<u>\$15,370</u>

<sup>(1)</sup> Substantially all U.S. deposits were interest-bearing and were held at GS Bank USA.

<sup>(2)</sup> All non-U.S. deposits were interest-bearing and were primarily held at Goldman Sachs Bank (Europe) PLC (GS Bank Europe).

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

Included in the above table are time deposits of \$8.49 billion and \$463 million, as of November 2008 and November 2007, respectively. The following table sets forth the maturities of time deposits as of November 2008:

	<u>As of November 2008</u>		
	<u>U.S.</u>	<u>Non-U.S.</u> (in millions)	<u>Total</u>
2009 .....	\$3,583	\$—	\$3,583
2010 .....	937	30	967
2011 .....	661	—	661
2012 .....	286	—	286
2013 .....	1,431	25	1,456
2014-thereafter .....	<u>1,532</u>	<u>—</u>	<u>1,532</u>
Total .....	<u>\$8,430</u>	<u>\$55</u>	<u>\$8,485</u>

**Note 6. Short-Term Borrowings**

As of November 2008, short-term borrowings were \$73.89 billion, comprised of \$21.23 billion included in “Other secured financings” in the consolidated statement of financial condition and \$52.66 billion of unsecured short-term borrowings. As of November 2007, short-term borrowings were \$103.97 billion, comprised of \$32.41 billion included in “Other secured financings” in the consolidated statement of financial condition and \$71.56 billion of unsecured short-term borrowings. See Note 3 for information on other secured financings.

Unsecured short-term borrowings include the portion of unsecured long-term borrowings maturing within one year of the financial statement date and unsecured long-term borrowings that are redeemable within one year of the financial statement date at the option of the holder. The firm accounts for promissory notes, commercial paper and certain hybrid financial instruments at fair value under SFAS No. 155 or SFAS No. 159. Short-term borrowings that are not recorded at fair value are recorded based on the amount of cash received plus accrued interest, and such amounts approximate fair value due to the short-term nature of the obligations.

Unsecured short-term borrowings are set forth below:

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Current portion of unsecured long-term borrowings <sup>(1)</sup> .....	\$26,281	\$22,740
Hybrid financial instruments .....	12,086	22,318
Promissory notes <sup>(2)</sup> .....	6,944	13,251
Commercial paper <sup>(3)</sup> .....	1,125	4,343
Other short-term borrowings .....	<u>6,222</u>	<u>8,905</u>
Total <sup>(4)</sup> .....	<u>\$52,658</u>	<u>\$71,557</u>

<sup>(1)</sup> Includes \$25.12 billion and \$21.24 billion as of November 2008 and November 2007, respectively, issued by Group Inc.

<sup>(2)</sup> Includes \$3.42 billion as of November 2008 guaranteed by the Federal Deposit Insurance Corporation (FDIC) under the Temporary Liquidity Guarantee Program (TLGP).

<sup>(3)</sup> Includes \$751 million as of November 2008 guaranteed by the FDIC under the TLGP.

<sup>(4)</sup> The weighted average interest rates for these borrowings, after giving effect to hedging activities, were 3.37% and 4.77% as of November 2008 and November 2007, respectively. The weighted average interest rates as of November 2008 and November 2007 excluded financial instruments accounted for at fair value under SFAS No. 155 or SFAS No. 159.

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

**Note 7. Long-Term Borrowings**

As of November 2008, long-term borrowings were \$185.68 billion, comprised of \$17.46 billion included in “Other secured financings” in the consolidated statements of financial condition and \$168.22 billion of unsecured long-term borrowings. As of November 2007, long-term borrowings were \$197.47 billion, comprised of \$33.30 billion included in “Other secured financings” in the consolidated statements of financial condition and \$164.17 billion of unsecured long-term borrowings. See Note 3 for information on other secured financings.

The firm’s unsecured long-term borrowings extend through 2043 and consist principally of senior borrowings.

Unsecured long-term borrowings issued by Group Inc. and its subsidiaries are set forth below:

	As of November	
	2008	2007
	(in millions)	
Fixed rate obligations <sup>(1)</sup>		
Group Inc. . . . .	\$101,454	\$ 82,276
Subsidiaries . . . . .	2,371	2,144
Floating rate obligations <sup>(2)</sup>		
Group Inc. . . . .	57,018	73,075
Subsidiaries . . . . .	7,377	6,679
Total <sup>(3)</sup> . . . . .	\$168,220	\$164,174

<sup>(1)</sup> As of November 2008 and November 2007, \$70.08 billion and \$55.28 billion, respectively, of the firm’s fixed rate debt obligations were denominated in U.S. dollars and interest rates ranged from 3.87% to 10.04% and from 3.88% to 10.04%, respectively. As of November 2008 and November 2007, \$33.75 billion and \$29.14 billion, respectively, of the firm’s fixed rate debt obligations were denominated in non-U.S. dollars and interest rates ranged from 0.67% to 8.88% for both periods.

<sup>(2)</sup> As of November 2008 and November 2007, \$32.41 billion and \$47.31 billion, respectively, of the firm’s floating rate debt obligations were denominated in U.S. dollars. As of November 2008 and November 2007, \$31.99 billion and \$32.44 billion, respectively, of the firm’s floating rate debt obligations were denominated in non-U.S. dollars. Floating interest rates generally are based on LIBOR or the federal funds target rate. Equity-linked and indexed instruments are included in floating rate obligations.

<sup>(3)</sup> Includes \$3.36 billion and \$3.05 billion as of November 2008 and November 2007, respectively, of foreign currency-denominated debt designated as hedges of net investments in non-U.S. subsidiaries under SFAS No. 133.

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

Unsecured long-term borrowings by maturity date are set forth below:

	As of November					
	2008 <sup>(1)(2)</sup>			2007 <sup>(1)(2)</sup>		
	Group Inc.	Subsidiaries	Total	Group Inc.	Subsidiaries	Total
	(in millions)					
2009 .....	\$ —	\$ —	\$ —	\$ 22,695	\$ 487	\$ 23,182
2010 .....	13,967	276	14,243	13,433	270	13,703
2011 .....	10,377	502	10,879	10,572	115	10,687
2012 .....	16,806	66	16,872	18,487	121	18,608
2013 .....	21,627	251	21,878	15,501	315	15,816
2014-thereafter .....	<u>95,695</u>	<u>8,653</u>	<u>104,348</u>	<u>74,663</u>	<u>7,515</u>	<u>82,178</u>
Total .....	<u>\$158,472</u>	<u>\$9,748</u>	<u>\$168,220</u>	<u>\$155,351</u>	<u>\$8,823</u>	<u>\$164,174</u>

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

<sup>(2)</sup> Unsecured long-term borrowings that are repayable prior to maturity at the option of the firm are reflected at their contractual maturity dates. Unsecured 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 to effectively convert a substantial portion of its unsecured long-term borrowings which are not accounted for at fair value into U.S. dollar-based floating rate obligations. Accordingly, excluding the cumulative impact of changes in the firm's credit spreads, the carrying value of unsecured long-term borrowings approximated fair value as of November 2008 and November 2007. For unsecured long-term borrowings for which the firm did not elect the fair value option, the cumulative impact due to the widening of the firm's own credit spreads was a reduction in the fair value of total unsecured long-term borrowings of approximately 9% and 1% as of November 2008 and November 2007, respectively.

The effective weighted average interest rates for unsecured long-term borrowings are set forth below:

	As of November			
	2008		2007	
	Amount	Rate	Amount	Rate
	(\$ in millions)			
Fixed rate obligations .....				
Group Inc. ....	\$ 1,863	5.71%	\$ 1,858	5.69%
Subsidiaries .....	2,152	4.32	1,929	4.88
Floating rate obligations <sup>(1)(2)</sup> .....				
Group Inc. ....	156,609	2.66	153,493	5.20
Subsidiaries .....	<u>7,596</u>	4.23	<u>6,894</u>	4.43
Total <sup>(2)</sup> .....	<u>\$168,220</u>	2.73%	<u>\$164,174</u>	5.19%

<sup>(1)</sup> Includes fixed rate obligations that have been converted into floating rate obligations through derivative contracts.

<sup>(2)</sup> The weighted average interest rates as of November 2008 and November 2007 excluded financial instruments accounted for at fair value under SFAS No. 155 or SFAS No. 159.

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

***Subordinated Borrowings***

As of November 2008, unsecured long-term borrowings were comprised of subordinated borrowings with outstanding principal amounts of \$19.26 billion as set forth below, of which \$18.79 billion has been issued by Group Inc. As of November 2007, unsecured long-term borrowings were comprised of subordinated borrowings with outstanding principal amounts of \$16.32 billion as set forth below, of which \$16.00 billion has been issued by Group Inc.

**Junior Subordinated Debt Issued to Trusts in Connection with Fixed-to-Floating and Floating Rate Normal Automatic Preferred Enhanced Capital Securities.** In 2007, Group Inc. issued a total of \$2.25 billion of remarketable junior subordinated debt to Goldman Sachs Capital II and Goldman Sachs Capital III (APEX Trusts), Delaware statutory trusts that, in turn, issued \$2.25 billion of guaranteed perpetual Automatic Preferred Enhanced Capital Securities (APEX) to third parties and a de minimis amount of common securities to Group Inc. Group Inc. also entered into contracts with the APEX Trusts to sell \$2.25 billion of perpetual non-cumulative preferred stock to be issued by Group Inc. (the stock purchase contracts). The APEX Trusts are wholly owned finance subsidiaries of the firm for regulatory and legal purposes but are not consolidated for accounting purposes.

The firm pays interest semi-annually on \$1.75 billion of junior subordinated debt issued to Goldman Sachs Capital II at a fixed annual rate of 5.59% and the debt matures on June 1, 2043. The firm pays interest quarterly on \$500 million of junior subordinated debt issued to Goldman Sachs Capital III at a rate per annum equal to three-month LIBOR plus 0.57% and the debt matures on September 1, 2043. In addition, the firm makes contract payments at a rate of 0.20% per annum on the stock purchase contracts held by the APEX Trusts. The firm has the right to defer payments on the junior subordinated debt and the stock purchase contracts, subject to limitations, and therefore cause payment on the APEX to be deferred. During any such extension period, the firm will not be permitted to, among other things, pay dividends on or make certain repurchases of its common or preferred stock. The junior subordinated debt is junior in right of payment to all of Group Inc.'s senior indebtedness and all of Group Inc.'s other subordinated borrowings.

In connection with the APEX issuance, the firm covenanted in favor of certain of its debtholders, who are initially the holders of Group Inc.'s 6.345% Junior Subordinated Debentures due February 15, 2034, that, subject to certain exceptions, the firm would not redeem or purchase (i) Group Inc.'s junior subordinated debt issued to the APEX Trusts prior to the applicable stock purchase date or (ii) APEX or shares of Group Inc.'s Series E or Series F Preferred Stock prior to the date that is ten years after the applicable stock purchase date, unless the applicable redemption or purchase price does not exceed a maximum amount determined by reference to the aggregate amount of net cash proceeds that the firm has received from the sale of qualifying equity securities during the 180-day period preceding the redemption or purchase.

The firm has accounted for the stock purchase contracts as equity instruments under EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock," and, accordingly, recorded the cost of the stock purchase contracts as a reduction to additional paid-in capital. See Note 9 for information on the preferred stock that Group Inc. will issue in connection with the stock purchase contracts.

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

**Junior Subordinated Debt Issued to a Trust in Connection with Trust Preferred Securities.**

Group Inc. issued \$2.84 billion of junior subordinated debentures in 2004 to Goldman Sachs Capital I (Trust), a Delaware statutory trust that, in turn, issued \$2.75 billion of guaranteed preferred beneficial interests to third parties and \$85 million of common beneficial interests to Group Inc. and invested the proceeds from the sale in junior subordinated debentures issued by Group Inc. The Trust is a wholly owned finance subsidiary of the firm for regulatory and legal purposes but is not consolidated for accounting purposes.

The firm pays interest semi-annually on these debentures at an annual rate of 6.345% and the debentures mature on February 15, 2034. The coupon rate and the payment dates applicable to the beneficial interests are the same as the interest rate and payment dates applicable to the debentures. The firm has the right, from time to time, to defer payment of interest on the debentures, and, therefore, cause payment on the Trust's preferred beneficial interests to be deferred, in each case up to ten consecutive semi-annual periods. During any such extension period, the firm 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 Group Inc. unless all dividends payable on the preferred beneficial interests have been paid in full. These debentures are junior in right of payment to all of Group Inc.'s senior indebtedness and all of Group Inc.'s subordinated borrowings, other than the junior subordinated debt issued in connection with the Normal Automatic Preferred Enhanced Capital Securities.

**Subordinated Debt.** As of November 2008, the firm had \$14.17 billion of other subordinated debt outstanding, of which \$13.70 billion has been issued by Group Inc., with maturities ranging from fiscal 2009 to 2038. The effective weighted average interest rate on this debt was 1.99%, after giving effect to derivative contracts used to convert fixed rate obligations into floating rate obligations. As of November 2007, the firm had \$11.23 billion of other subordinated debt outstanding, of which \$10.91 billion has been issued by Group Inc., with maturities ranging from fiscal 2009 to 2037. The effective weighted average interest rate on this debt was 5.75%, after giving effect to derivative contracts used to convert fixed rate obligations into floating rate obligations. This debt is junior in right of payment to all of the firm's senior indebtedness.

**Note 8. Commitments, Contingencies and Guarantees**

***Commitments***

**Forward Starting Collateralized Agreements and Financings.** The firm had forward starting resale agreements and securities borrowing agreements of \$61.46 billion and \$28.14 billion as of November 2008 and November 2007, respectively. The firm had forward starting repurchase agreements and securities lending agreements of \$6.95 billion and \$15.39 billion as of November 2008 and November 2007, respectively.

**Commitments to Extend Credit.** In connection with its lending activities, the firm had outstanding commitments to extend credit of \$41.04 billion and \$82.75 billion as of November 2008 and November 2007, 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 or be reduced or cancelled at the counterparty's request, the total commitment amount does not necessarily reflect the actual future cash flow requirements. The firm accounts for these commitments at fair value. To the extent that the firm recognizes losses on these commitments, such losses are recorded within the firm's Trading and Principal Investments segment net of any related underwriting fees.

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The following table summarizes the firm's commitments to extend credit, net of amounts syndicated to third parties, as of November 2008 and November 2007:

	Year Ended November	
	2008	2007
	(in millions)	
Commercial lending commitments		
Investment-grade . . . . .	\$ 8,007	\$11,719
Non-investment-grade . . . . .	9,318	41,930
William Street program . . . . .	22,610	24,488
Warehouse financing . . . . .	<u>1,101</u>	<u>4,610</u>
Total commitments to extend credit . . . . .	<u>\$41,036</u>	<u>\$82,747</u>

- **Commercial lending commitments.** The firm's commercial lending commitments are generally extended in connection with contingent acquisition financing and other types of corporate lending as well as commercial real estate financing. The total commitment amount does not necessarily reflect the actual future cash flow requirements, as the firm may syndicate all or substantial portions of these commitments in the future, the commitments may expire unused, or the commitments may be cancelled or reduced at the request of the counterparty. In addition, commitments that are extended for contingent acquisition financing are often intended to be short-term in nature, as borrowers often seek to replace them with other funding sources.

Included within non-investment-grade commitments as of November 2008 was \$2.07 billion of exposure to leveraged lending capital market transactions, \$164 million related to commercial real estate transactions and \$7.09 billion arising from other unfunded credit facilities. Included within the non-investment-grade amount as of November 2007 was \$26.09 billion of exposure to leveraged lending capital market transactions, \$3.50 billion related to commercial real estate transactions and \$12.34 billion arising from other unfunded credit facilities. Including funded loans, the firm's total exposure to leveraged lending capital market transactions was \$7.97 billion and \$43.06 billion as of November 2008 and November 2007, respectively.

- **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 program are principally extended by William Street Commitment Corporation (Commitment Corp.), a consolidated wholly owned subsidiary of GS Bank USA, and also by William Street Credit Corporation, GS Bank USA or Goldman Sachs Credit Partners L.P. The commitments extended by Commitment Corp. are supported, in part, by funding raised by William Street Funding Corporation (Funding Corp.), another consolidated wholly owned subsidiary of GS Bank USA. The assets and liabilities of Commitment Corp. and Funding Corp. are legally separated from other assets and liabilities of the firm. 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 most of the William Street commitments, Sumitomo Mitsui Financial Group, Inc. (SMFG) provides the firm with credit loss protection that is generally limited to 95% of the first loss the firm realizes on approved loan commitments, up 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 additional losses on such commitments, up to a maximum of \$1.13 billion, of which \$375 million of protection has been provided as of November 2008. The firm also uses other financial instruments to mitigate credit risks related to certain William Street commitments not covered by SMFG.



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

- **Warehouse financing.** The firm provides financing for the warehousing of financial assets. These arrangements are secured by the warehoused assets, primarily consisting of commercial mortgages as of November 2008 and corporate bank loans and commercial mortgages as of November 2007.

**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 \$7.25 billion and \$8.75 billion as of November 2008 and November 2007, respectively.

**Investment Commitments.** In connection with its merchant banking and other investing activities, the firm invests in private equity, real estate and other assets directly and through funds that it raises and manages. In connection with these activities, the firm had commitments to invest up to \$14.27 billion and \$17.76 billion as of November 2008 and November 2007, respectively, including \$12.25 billion and \$12.32 billion, respectively, of commitments to invest in funds managed by the firm.

**Construction-Related Commitments.** As of November 2008 and November 2007, the firm had construction-related commitments of \$483 million and \$769 million, respectively, including commitments of \$388 million and \$642 million as of November 2008 and November 2007, respectively, related to the firm's new headquarters in New York City, which is expected to cost between \$2.1 billion and \$2.3 billion. The firm has partially financed this construction project with \$1.65 billion of tax-exempt Liberty Bonds.

**Underwriting Commitments.** As of November 2008 and November 2007, the firm had commitments to purchase \$241 million and \$88 million, respectively, of securities in connection with its underwriting activities.

**Other.** The firm had other purchase commitments of \$260 million as of November 2008 and \$1.76 billion (including a \$1.34 billion commitment for the acquisition of Litton Loan Servicing LP) as of November 2007.

**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 are set forth below (in millions):

Minimum rental payments	
2009	\$ 494
2010	458
2011	342
2012	276
2013	259
2014-thereafter	<u>1,664</u>
Total	<u>\$3,493</u>

Rent charged to operating expense is set forth below (in millions):

Net rent expense	
2006	\$404
2007	412
2008	438

**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.

In connection with its insurance business, the firm is contingently liable to provide guaranteed minimum death and income benefits to certain contract holders and has established a reserve related to \$6.13 billion and \$10.84 billion of contract holder account balances as of November 2008 and November 2007, respectively, for such benefits. The weighted average attained age of these contract holders was 68 years and 67 years as of November 2008 and November 2007, respectively. The net amount at risk, representing guaranteed minimum death and income benefits in excess of contract holder account balances, was \$2.96 billion and \$1.04 billion as of November 2008 and November 2007, respectively. See Note 12 for more information on the firm's insurance liabilities.

***Guarantees***

The firm enters into various derivative contracts that meet the definition of a guarantee under FIN 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," as amended by FSP No. FAS 133-1 and FIN 45-4.

FIN 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 counterparties and certain other counterparties. 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 the ordinary course of business, the firm provides other financial guarantees of the obligations of third parties (e.g., performance bonds, standby letters of credit and other guarantees to enable clients to complete transactions and merchant banking fund-related guarantees). These guarantees represent obligations to make payments to beneficiaries if the guaranteed party fails to fulfill its obligation under a contractual arrangement with that beneficiary.

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As of November 2008 and November 2007, derivative contracts that meet the definition of a guarantee include written equity and commodity put options, written currency contracts and interest rate caps, floors and swaptions. As of November 2007, prior to the adoption of FSP No. FAS 133-1 and FIN 45-4, derivative contracts that met the definition of a guarantee also included credit derivatives, such as credit default swaps, credit spread options, credit index products and total return swaps. See “— Recent Accounting Developments” for further information on FSP No. FAS 133-1 and FIN 45-4 and Note 3 for additional information on the firm’s credit derivatives as of November 2008. 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 2008 and November 2007:

<b>As of November 2008</b>						
<b>Carrying Value</b>	<b>Maximum Payout/Notional Amount by Period of Expiration <sup>(1)</sup></b>					<b>Total</b>
	<b>2009</b>	<b>2010-2011</b>	<b>2012-2013</b>	<b>2014-Thereafter</b>		
	(in millions)					
Derivatives <sup>(2)</sup> . . . . .	\$17,462	\$114,863	\$73,224	\$30,312	\$90,643	\$309,042
Securities lending indemnifications <sup>(3)</sup> . . . . .	—	19,306	—	—	—	19,306
Other financial guarantees . . . . .	235	203	477	458	238	1,376

<b>As of November 2007</b>						
<b>Carrying Value</b>	<b>Maximum Payout/Notional Amount by Period of Expiration <sup>(1)</sup></b>					<b>Total</b>
	<b>2008</b>	<b>2009-2010</b>	<b>2011-2012</b>	<b>2013-Thereafter</b>		
	(in millions)					
Derivatives <sup>(2)(4)</sup> . . . . .	\$33,098	\$580,769	\$492,563	\$457,511	\$514,498	\$2,045,341
Securities lending indemnifications <sup>(3)</sup> . . . . .	—	26,673	—	—	—	26,673
Performance bond <sup>(5)</sup> . . . . .	—	2,046	—	—	—	2,046
Other financial guarantees . . . . .	43	381	121	258	46	806

- <sup>(1)</sup> Such amounts do not represent the anticipated losses in connection with these contracts.
- <sup>(2)</sup> Because derivative contracts are accounted for at fair value, carrying value is considered the best indication of payment/performance risk for individual contracts. However, the carrying value excludes the effect of a legal right of setoff that may exist under an enforceable netting agreement and the effect of netting of cash paid pursuant to credit support agreements. These derivative contracts are risk managed together with derivative contracts that are not considered guarantees under FIN 45 and, therefore, these amounts do not reflect the firm’s overall risk related to its derivative activities.
- <sup>(3)</sup> Collateral held by the lenders in connection with securities lending indemnifications was \$19.95 billion and \$27.49 billion as of November 2008 and November 2007, respectively. Because the contractual nature of these arrangements requires the firm to obtain collateral with a market value that exceeds the value of the securities on loan from the borrower, there is minimal performance risk associated with these guarantees.
- <sup>(4)</sup> Includes credit derivatives that meet the definition of a guarantee as of November 2007.
- <sup>(5)</sup> Excludes cash collateral of \$2.05 billion related to this obligation.

The firm has established trusts, including Goldman Sachs Capital I, II and III, and other entities for the limited purpose of issuing securities to third parties, lending the proceeds to the firm and entering into contractual arrangements with the firm and third parties related to this purpose. See Note 7 for information regarding the transactions involving Goldman Sachs Capital I, II and III. The firm effectively provides for the full and unconditional guarantee of the securities issued by these entities, which are not consolidated for accounting purposes. Timely payment by the firm of amounts due to these entities under the borrowing, preferred stock and related contractual arrangements will be sufficient to cover payments due on the securities issued by these entities. Management believes that it is unlikely that any circumstances will occur, such as nonperformance on the part of paying agents or other service providers, that would make it necessary for the firm to make payments related

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to these entities other than those required under the terms of the borrowing, preferred stock and related contractual arrangements and in connection with certain expenses incurred by these entities.

In the ordinary course of 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 2008 and November 2007.

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 ordinary 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 2008 and November 2007.

Group Inc. has guaranteed the payment obligations of Goldman, Sachs & Co. (GS&Co.), GS Bank USA and GS Bank Europe, subject to certain exceptions. In November 2008, the firm contributed subsidiaries with an aggregate of \$117.16 billion of assets into GS Bank USA (which brought total assets in GS Bank USA to \$145.06 billion as of November 2008) and Group Inc. agreed to guarantee certain losses, including credit-related losses, relating to assets held by the contributed entities. In connection with this guarantee, Group Inc. also agreed to pledge to GS Bank USA certain collateral, including interests in subsidiaries and other illiquid assets. In addition, Group Inc. guarantees many of the obligations of its other consolidated subsidiaries on a transaction-by-transaction basis, as negotiated with counterparties. Group Inc. 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 included in the tables above, Group Inc.'s liabilities as guarantor are not separately disclosed.

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**Note 9. Shareholders' Equity**

***Common and Preferred Equity***

In September 2008, Group Inc. completed a public offering of 46.7 million shares of common stock at \$123.00 per share for proceeds of \$5.75 billion.

In October 2008, Group Inc. issued to Berkshire Hathaway Inc. and certain affiliates 50,000 shares of 10% Cumulative Perpetual Preferred Stock, Series G (Series G Preferred Stock), and a five-year warrant to purchase up to 43.5 million shares of common stock at an exercise price of \$115.00 per share, for aggregate proceeds of \$5.00 billion. The allocated carrying values of the warrant and the Series G Preferred Stock on the date of issuance (based on their relative fair values) were \$1.14 billion and \$3.86 billion, respectively. The warrant is exercisable at any time until October 1, 2013 and the number of shares of common stock underlying the warrant and the exercise price are subject to adjustment for certain dilutive events.

In October 2008, under the U.S. Department of the Treasury's (U.S. Treasury) TARP Capital Purchase Program, Group Inc. issued to the U.S. Treasury 10.0 million shares of Fixed Rate Cumulative Perpetual Preferred Stock, Series H (Series H Preferred Stock), and a 10-year warrant to purchase up to 12.2 million shares of common stock at an exercise price of \$122.90 per share, for aggregate proceeds of \$10.00 billion. The allocated carrying values of the warrant and the Series H Preferred Stock on the date of issuance (based on their relative fair values) were \$490 million and \$9.51 billion, respectively. Cumulative dividends on the Series H Preferred Stock are payable at 5% per annum through November 14, 2013 and at a rate of 9% per annum thereafter. The Series H Preferred Stock will be accreted to the redemption price of \$10.00 billion over five years. The warrant is exercisable at any time until October 28, 2018 and the number of shares of common stock underlying the warrant and the exercise price are subject to adjustment for certain dilutive events. If, on or prior to December 31, 2009, the firm receives aggregate gross cash proceeds of at least \$10 billion from sales of Tier 1 qualifying perpetual preferred stock or common stock, the number of shares of common stock issuable upon exercise of the warrant will be reduced by one-half of the original number of shares of common stock.

Dividends declared per common share were \$1.40 in 2008, \$1.40 in 2007, and \$1.30 in 2006. On December 15, 2008, the Board of Directors of Group Inc. (Board) declared a dividend of \$0.4666666 per common share to be paid on March 26, 2009 to common shareholders of record on February 24, 2009. The dividend of \$0.4666666 per common share is reflective of a four-month period (December 2008 through March 2009), due to the change in the firm's fiscal year-end. See Note 21 for further information regarding the change in the firm's fiscal year-end. See below for information regarding restrictions on the firm's ability to raise its common stock dividend.

During 2008 and 2007, the firm repurchased 10.5 million and 41.2 million shares of its common stock at an average cost per share of \$193.18 and \$217.29, for a total cost of \$2.04 billion and \$8.96 billion, respectively. In addition, to satisfy minimum statutory employee tax withholding requirements related to the delivery of common stock underlying restricted stock units, the firm cancelled 6.7 million and 4.7 million of restricted stock units with a total value of \$1.31 billion and \$929 million in 2008 and 2007, respectively.

The firm's share repurchase program is intended to help maintain the appropriate level of common equity and to substantially offset increases in share count over time resulting from employee share-based compensation. The repurchase program is effected primarily through regular open-market purchases, the amounts and timing of which are determined primarily by the firm's current and projected capital positions (i.e., comparisons of the firm's desired level of capital to its actual level of capital) but which may also be influenced by general market conditions and the

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prevailing price and trading volumes of the firm's common stock, in each case subject to the limit imposed under the U.S. Treasury's TARP Capital Purchase Program. See below for information regarding current restrictions on the firm's ability to repurchase common stock.

As of November 2008, the firm had 10.2 million shares of perpetual preferred stock issued and outstanding as set forth in the following table:

<u>Series</u>	<u>Dividend Preference</u>	<u>Shares Issued</u>	<u>Shares Authorized</u>	<u>Dividend Rate</u>	<u>Earliest Redemption Date</u>	<u>Redemption Value (in millions)</u>
A	Non-cumulative	30,000	50,000	3 month LIBOR + 0.75%, with floor of 3.75% per annum	April 25, 2010	\$ 750
B	Non-cumulative	32,000	50,000	6.20% per annum	October 31, 2010	800
C	Non-cumulative	8,000	25,000	3 month LIBOR + 0.75%, with floor of 4.00% per annum	October 31, 2010	200
D	Non-cumulative	54,000	60,000	3 month LIBOR + 0.67%, with floor of 4.00% per annum	May 24, 2011	1,350
G	Cumulative	50,000	50,000	10.00% per annum	Date of issuance	5,500
H	Cumulative	10,000,000	10,000,000	5.00% per annum through November 14, 2013 and 9.00% per annum thereafter	Date of issuance	10,000
		<u>10,174,000</u>	<u>10,235,000</u>			<u>\$18,600</u>

Each share of non-cumulative preferred stock issued and outstanding 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 the firm's option, subject to the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), at a redemption price equal to \$25,000 plus declared and unpaid dividends.

Each share of Series G Preferred Stock issued and outstanding has a par value of \$0.01, has a liquidation preference of \$100,000 and is redeemable at the firm's option, subject to the approval of the Federal Reserve Board, at a redemption price equal to \$110,000 plus accrued and unpaid dividends.

Each share of Series H Preferred Stock issued and outstanding has a par value of \$0.01, has a liquidation preference of \$1,000 and is redeemable at the firm's option, subject to the approval of the Federal Reserve Board, at a redemption price equal to \$1,000 plus accrued and unpaid dividends, provided that through November 14, 2011 the Series H Preferred Stock is redeemable only in an amount up to the aggregate net cash proceeds received from sales of Tier 1 qualifying perpetual preferred stock or common stock, and only once such sales have resulted in aggregate gross proceeds of at least \$2.5 billion.

All series of preferred stock are pari passu and have a preference over the firm's common stock upon liquidation. Dividends on each series of preferred stock, if declared, are payable quarterly in arrears. 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. In addition, pursuant to the U.S. Treasury's TARP Capital Purchase Program, until the earliest of October 28, 2011, the redemption of all of the Series H Preferred Stock or transfer by the U.S. Treasury of all of the Series H Preferred Stock to third parties, the firm must obtain the consent of the U.S. Treasury to raise the firm's common stock dividend or to repurchase any shares of common stock or other preferred stock, with certain exceptions (including repurchases of shares of common stock under the firm's share repurchase program to offset dilution from equity-based compensation). For as long as the Series H Preferred Stock remains outstanding, due to the limitations pursuant to the U.S. Treasury's TARP Capital Purchase Program, the firm will repurchase shares of common stock through its share

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repurchase program only for the purpose of offsetting dilution from equity-based compensation, to the extent permitted.

In 2007, the Board authorized 17,500.1 shares of perpetual Non-Cumulative Preferred Stock, Series E, and 5,000.1 shares of perpetual Non-Cumulative Preferred Stock, Series F, in connection with the APEX issuance. See Note 7 for further information on the APEX issuance. Under the stock purchase contracts, Group Inc. will issue on the relevant stock purchase dates (on or before June 1, 2013 and September 1, 2013 for Series E and Series F preferred stock, respectively) one share of Series E and Series F preferred stock to Goldman Sachs Capital II and III, respectively, for each \$100,000 principal amount of subordinated debt held by these trusts. When issued, each share of Series E and Series F preferred stock will have a par value of \$0.01 and a liquidation preference of \$100,000 per share. Dividends on Series E preferred stock, if declared, will be payable semi-annually at a fixed annual rate of 5.79% if the stock is issued prior to June 1, 2012 and quarterly thereafter, at a rate per annum equal to the greater of (i) three-month LIBOR plus 0.77% and (ii) 4.00%. Dividends on Series F preferred stock, if declared, will be payable quarterly at a rate per annum equal to three-month LIBOR plus 0.77% if the stock is issued prior to September 1, 2012 and quarterly thereafter, at a rate per annum equal to the greater of (i) three-month LIBOR plus 0.77% and (ii) 4.00%. The preferred stock may be redeemed at the option of the firm on the stock purchase dates or any day thereafter, subject to regulatory approval and certain covenant restrictions governing the firm's ability to redeem or purchase the preferred stock without issuing common stock or other instruments with equity-like characteristics.

Preferred dividends declared are set forth below:

	Year Ended November			
	2008		2007	
	(per share)	(in millions)	(per share)	(in millions)
Series A . . . . .	\$1,068.86	\$ 32	\$1,563.51	\$ 47
Series B . . . . .	1,550.00	50	1,550.00	50
Series C . . . . .	1,110.18	9	1,563.51	12
Series D . . . . .	1,105.18	59	1,543.06	83
Series G . . . . .	1,083.33	54	—	—
Total . . . . .		<u>\$204</u>		<u>\$192</u>

On December 15, 2008, the Board declared a dividend per preferred share of \$239.58, \$387.50, \$255.56, \$255.56 and \$2,500 for Series A, Series B, Series C, Series D and Series G preferred stock, respectively, to be paid on February 10, 2009 to preferred shareholders of record on January 26, 2009. Also on December 15, 2008, the Board declared a dividend of \$14.8611111 per share of Series H preferred stock to be paid on February 17, 2009 to preferred shareholders of record on January 31, 2009. The total amount of preferred stock dividends declared on December 15, 2008 was \$309 million.

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

**Other Comprehensive Income**

The following table sets forth the firm's accumulated other comprehensive income/(loss) by type:

	<u>As of</u> <u>November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Adjustment from adoption of SFAS No. 158, net of tax . . . . .	\$(194)	\$(194)
Currency translation adjustment, net of tax . . . . .	(30)	68
Pension and postretirement liability adjustment, net of tax . . . . .	69	—
Net unrealized gains/(losses) on available-for-sale securities, net of tax <sup>(1)</sup> . . . . .	<u>(47)</u>	<u>8</u>
Total accumulated other comprehensive income/(loss), net of tax . . . . .	<u><u>\$(202)</u></u>	<u><u>\$(118)</u></u>

<sup>(1)</sup> Consists of net unrealized losses of \$55 million on available-for-sale securities held by the firm's insurance subsidiaries and net unrealized gains of \$8 million on available-for-sale securities held by investees accounted for under the equity method as of November 2008. Consists of net unrealized gains of \$9 million on available-for-sale securities held by investees accounted for under the equity method and net unrealized losses of \$1 million on available-for-sale securities held by the firm's insurance subsidiaries as of November 2007.

**Note 10. Earnings Per Common Share**

The computations of basic and diluted earnings per common share are set forth below:

	<u>Year Ended November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions, except per share amounts)		
Numerator for basic and diluted EPS — net earnings applicable to common shareholders . . . . .	<u>\$2,041</u>	<u>\$11,407</u>	<u>\$9,398</u>
Denominator for basic EPS — weighted average number of common shares . . . . .	437.0	433.0	449.0
Effect of dilutive securities <sup>(1)</sup>			
Restricted stock units . . . . .	10.2	13.6	13.6
Stock options . . . . .	<u>9.0</u>	<u>14.6</u>	<u>14.8</u>
Dilutive potential common shares . . . . .	<u>19.2</u>	<u>28.2</u>	<u>28.4</u>
Denominator for diluted EPS — weighted average number of common shares and dilutive potential common shares . . . . .	<u>456.2</u>	<u>461.2</u>	<u>477.4</u>
Basic EPS . . . . .	\$ 4.67	\$ 26.34	\$20.93
Diluted EPS . . . . .	4.47	24.73	19.69

<sup>(1)</sup> The diluted EPS computations do not include the antidilutive effect of restricted stock units (RSUs), stock options and warrants as follows:

	<u>As of November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Number of antidilutive RSUs and common shares underlying antidilutive stock options and warrants . . . . .	<u>60.5</u>	=	=



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

**Note 11. Goodwill and Identifiable Intangible Assets**

***Goodwill***

The following table sets forth the carrying value of the firm's goodwill by operating segment, which is included in "Other assets" in the consolidated statements of financial condition:

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Investment Banking		
Underwriting . . . . .	\$ 125	\$ 125
Trading and Principal Investments		
FICC . . . . .	247	123
Equities <sup>(1)</sup> . . . . .	2,389	2,381
Principal Investments . . . . .	80	11
Asset Management and Securities Services		
Asset Management <sup>(2)</sup> . . . . .	565	564
Securities Services . . . . .	117	117
<b>Total . . . . .</b>	<b><u>\$3,523</u></b>	<b><u>\$3,321</u></b>

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

<sup>(2)</sup> Primarily related to The Ayco Company, L.P. (Ayco).

**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 the firm's identifiable intangible assets:

		<u>As of November</u>	
		<u>2008</u>	<u>2007</u>
		(in millions)	
<b>Customer lists</b> <sup>(1)</sup>	Gross carrying amount . . . . .	\$1,160	\$1,086
	Accumulated amortization . . . . .	<u>(436)</u>	<u>(354)</u>
	Net carrying amount . . . . .	<u>\$ 724</u>	<u>\$ 732</u>
<b>New York Stock Exchange (NYSE) DMM rights</b>	Gross carrying amount . . . . .	\$ 714	\$ 714
	Accumulated amortization . . . . .	<u>(252)</u>	<u>(212)</u>
	Net carrying amount . . . . .	<u>\$ 462</u>	<u>\$ 502</u>
<b>Insurance-related assets</b> <sup>(2)</sup>	Gross carrying amount . . . . .	\$ 448	\$ 461
	Accumulated amortization . . . . .	<u>(145)</u>	<u>(89)</u>
	Net carrying amount . . . . .	<u>\$ 303</u>	<u>\$ 372</u>
<b>Exchange-traded fund (ETF) lead market maker rights</b>	Gross carrying amount . . . . .	\$ 138	\$ 138
	Accumulated amortization . . . . .	<u>(43)</u>	<u>(38)</u>
	Net carrying amount . . . . .	<u>\$ 95</u>	<u>\$ 100</u>
<b>Other</b> <sup>(3)</sup>	Gross carrying amount . . . . .	\$ 178	\$ 360
	Accumulated amortization . . . . .	<u>(85)</u>	<u>(295)</u>
	Net carrying amount . . . . .	<u>\$ 93</u>	<u>\$ 65</u>
<b>Total</b>	Gross carrying amount . . . . .	\$2,638	\$2,759
	Accumulated amortization . . . . .	<u>(961)</u>	<u>(988)</u>
	Net carrying amount . . . . .	<u>\$1,677</u>	<u>\$1,771</u>

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

<sup>(2)</sup> Consists of VOBA and DAC. VOBA represents the present value of estimated future gross profits of acquired variable annuity and life insurance businesses. DAC results from commissions paid by the firm to the primary insurer (ceding company) on life and annuity reinsurance agreements as compensation to place the business with the firm and to cover the ceding company's acquisition expenses. VOBA and DAC are amortized over the estimated life of the underlying contracts based on estimated gross profits, and amortization is adjusted based on actual experience. The weighted average remaining amortization period for VOBA and DAC is seven years as of November 2008.

<sup>(3)</sup> Primarily includes marketing-related assets and power contracts.

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

Substantially all of the firm's identifiable intangible assets are considered to have finite lives and are amortized over their estimated lives. The weighted average remaining life of the firm's identifiable intangibles is approximately 11 years.

The estimated future amortization for existing identifiable intangible assets through 2013 is set forth below (in millions):

2009 .....	\$172
2010 .....	155
2011 .....	150
2012 .....	142
2013 .....	129

**Note 12. 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:

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Property, leasehold improvements and equipment <sup>(1)</sup> .....	\$10,793	\$ 8,975
Goodwill and identifiable intangible assets <sup>(2)</sup> .....	5,200	5,092
Income tax-related assets .....	8,359	4,177
Equity-method investments <sup>(3)</sup> .....	1,454	2,014
Miscellaneous receivables and other .....	<u>4,632</u>	<u>3,809</u>
Total .....	<u>\$30,438</u>	<u>\$24,067</u>

<sup>(1)</sup> Net of accumulated depreciation and amortization of \$6.55 billion and \$5.88 billion as of November 2008 and November 2007, respectively.

<sup>(2)</sup> See Note 11 for further information regarding the firm's goodwill and identifiable intangible assets.

<sup>(3)</sup> Excludes investments of \$3.45 billion and \$2.25 billion accounted for at fair value under SFAS No. 159 as of November 2008 and November 2007, respectively, which are included in "Trading assets, at fair value" in the consolidated statements of financial condition.

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

**Other Liabilities**

The following table sets forth the firm's other liabilities and accrued expenses by type:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Compensation and benefits . . . . .	\$ 4,646	\$11,816
Insurance-related liabilities <sup>(1)</sup> . . . . .	9,673	10,344
Minority interest <sup>(2)</sup> . . . . .	1,643	7,265
Income tax-related liabilities . . . . .	2,865	2,546
Employee interests in consolidated funds . . . . .	517	2,187
Accrued expenses and other payables . . . . .	<u>3,872</u>	<u>4,749</u>
<b>Total . . . . .</b>	<b><u>\$23,216</u></b>	<b><u>\$38,907</u></b>

<sup>(1)</sup> Insurance-related liabilities are set forth in the table below:

	<b>As of November</b>	
	<b>2008</b>	<b>2007</b>
	(in millions)	
Separate account liabilities . . . . .	\$3,628	\$ 7,039
Liabilities for future benefits and unpaid claims . . . . .	4,778	2,142
Contract holder account balances . . . . .	899	937
Reserves for guaranteed minimum death and income benefits . . . . .	<u>368</u>	<u>226</u>
<b>Total insurance-related liabilities . . . . .</b>	<b><u>\$9,673</u></b>	<b><u>\$10,344</u></b>

Separate account liabilities are supported by separate account assets, representing segregated contract holder funds under variable annuity and life insurance contracts. Separate account assets are included in "Cash and securities segregated for regulatory and other purposes" in the consolidated statements of financial condition.

Liabilities for future benefits and unpaid claims include liabilities arising from reinsurance provided by the firm to other insurers. The firm had a receivable for \$1.30 billion as of both November 2008 and November 2007, related to such reinsurance contracts, which is reported in "Receivables from customers and counterparties" in the consolidated statements of financial condition. In addition, the firm has ceded risks to reinsurers related to certain of its liabilities for future benefits and unpaid claims and had a receivable of \$1.20 billion and \$785 million as of November 2008 and November 2007, respectively, related to such reinsurance contracts, which is reported in "Receivables from customers and counterparties" in the consolidated statements of financial condition. Contracts to cede risks to reinsurers do not relieve the firm from its obligations to contract holders. Liabilities for future benefits and unpaid claims include \$978 million carried at fair value under SFAS No. 159.

Reserves for guaranteed minimum death and income benefits represent a liability for the expected value of guaranteed benefits in excess of projected annuity account balances. These reserves are computed in accordance with AICPA SOP 03-1 and are based on total payments expected to be made less total fees expected to be assessed over the life of the contract.

<sup>(2)</sup> Includes \$784 million and \$5.95 billion related to consolidated investment funds as of November 2008 and November 2007, respectively.

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

**Note 13. 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.

***Defined Benefit Pension Plans and Postretirement Plans***

Employees of certain non-U.S. subsidiaries participate in various defined benefit pension plans. These plans generally provide benefits based on years of credited service and a percentage of the employee's eligible compensation. The firm maintains a defined benefit pension plan for most U.K. employees. As of April 2008, the U.K. defined benefit plan was closed to new participants, but will continue to accrue benefits for existing participants.

The firm also maintains a defined benefit pension plan for substantially all U.S. employees hired prior to November 1, 2003. As of November 2004, this plan was closed to new participants and frozen such that existing participants would not accrue any additional benefits. In addition, the firm maintains unfunded postretirement benefit plans that provide medical and life insurance for eligible retirees and their dependents covered under these programs.

On November 30, 2007, the firm adopted SFAS No. 158 which requires an entity to recognize in its statement of financial condition the funded status of its defined benefit pension and postretirement plans, measured as the difference between the fair value of the plan assets and the benefit obligation. Upon adoption, SFAS No. 158 requires an entity to recognize previously unrecognized actuarial gains and losses, prior service costs, and transition obligations and assets within "Accumulated other comprehensive income/(loss)" in the consolidated statements of changes in shareholders' equity. Additional minimum pension liabilities are derecognized upon adoption of the new standard.

As a result of adopting SFAS No. 158, the firm recorded increases of \$59 million and \$253 million to "Other assets" and "Other liabilities and accrued expenses," respectively, and a \$194 million loss, net of taxes, within "Accumulated other comprehensive income/(loss)."

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

The following table provides a summary of the changes in the plans' benefit obligations and the fair value of assets for November 2008 and November 2007 and a statement of the funded status of the plans as of November 2008 and November 2007:

	As of or for the Year Ended November					
	2008			2007		
	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 . . . . .	\$ 399	\$ 748	\$ 445	\$395	\$ 673	\$ 372
Service cost . . . . .	—	84	26	—	78	21
Interest cost . . . . .	24	41	31	22	34	23
Plan amendments . . . . .	—	—	(61)	—	(1)	—
Actuarial loss/(gain) . . . . .	(50)	(261)	10	(11)	(79)	36
Benefits paid . . . . .	(8)	(2)	(10)	(7)	(1)	(7)
Effect of foreign exchange rates . .	—	(154)	—	—	44	—
Balance, end of year . . . . .	<u>\$ 365</u>	<u>\$ 456</u>	<u>\$ 441</u>	<u>\$399</u>	<u>\$ 748</u>	<u>\$ 445</u>
Fair value of plan assets						
Balance, beginning of year . . . . .	\$ 450	\$ 614	\$ —	\$423	\$ 506	\$ —
Actual return on plan assets . . . . .	(151)	(77)	—	34	36	—
Firm contributions . . . . .	—	184	9	—	38	7
Employee contributions . . . . .	—	1	—	—	1	—
Benefits paid . . . . .	(8)	(1)	(9)	(7)	(1)	(7)
Effect of foreign exchange rates . .	—	(170)	—	—	34	—
Balance, end of year . . . . .	<u>\$ 291</u>	<u>\$ 551</u>	<u>\$ —</u>	<u>\$450</u>	<u>\$ 614</u>	<u>\$ —</u>
Funded status of plans . . . . .	<u>\$ (74)</u>	<u>\$ 95</u>	<u>\$(441)</u>	<u>\$ 51</u>	<u>\$(134)</u>	<u>\$(445)</u>
Amounts recognized in the Consolidated Statements of Financial Condition consist of:						
Other assets . . . . .	\$ —	\$ 129	\$ —	\$ 51	\$ —	\$ —
Other liabilities and accrued expenses . . . . .	(74)	(34)	(441)	—	(134)	(445)
Net amount recognized . . . . .	<u>\$ (74)</u>	<u>\$ 95</u>	<u>\$(441)</u>	<u>\$ 51</u>	<u>\$(134)</u>	<u>\$(445)</u>
Amounts recognized in Accumulated other comprehensive income/(loss) consist of:						
Actuarial loss/(gain) . . . . .	\$ 195	\$ (59)	\$ 129	\$ 60	\$ 79	\$ 130
Prior service cost/(credit) . . . . .	—	3	(39)	—	3	34
Transition obligation/(asset) . . . .	(11)	3	—	(14)	4	1
Total amount recognized — Pre-tax . . . . .	<u>\$ 184</u>	<u>\$ (53)</u>	<u>\$ 90</u>	<u>\$ 46</u>	<u>\$ 86</u>	<u>\$ 165</u>

The accumulated benefit obligation for all defined benefit pension plans was \$769 million and \$1.05 billion as of November 2008 and November 2007, respectively.

For plans in which the accumulated benefit obligation exceeded plan assets, the aggregate projected benefit obligation and accumulated benefit obligation was \$426 million and \$413 million, respectively, as of November 2008, and \$722 million and \$636 million, respectively, as of

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

November 2007. The fair value of plan assets for each of these plans was \$317 million and \$590 million as of November 2008 and November 2007, respectively.

The components of pension expense/(income) and postretirement expense are set forth below:

	<u>Year Ended November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
U.S. pension			
Interest cost . . . . .	\$ 24	\$ 22	\$ 21
Expected return on plan assets . . . . .	(33)	(32)	(26)
Net amortization . . . . .	<u>(1)</u>	<u>1</u>	<u>7</u>
Total . . . . .	<u>\$(10)</u>	<u>\$ (9)</u>	<u>\$ 2</u>
Non-U.S. pension			
Service cost . . . . .	\$ 84	\$ 78	\$ 58
Interest cost . . . . .	41	34	25
Expected return on plan assets . . . . .	(41)	(36)	(29)
Net amortization . . . . .	<u>2</u>	<u>10</u>	<u>11</u>
Total . . . . .	<u>\$ 86</u>	<u>\$ 86</u>	<u>\$ 65</u>
Postretirement			
Service cost . . . . .	\$ 26	\$ 21	\$ 19
Interest cost . . . . .	31	23	19
Net amortization . . . . .	<u>23</u>	<u>19</u>	<u>18</u>
Total . . . . .	<u>\$ 80</u>	<u>\$ 63</u>	<u>\$ 56</u>
Estimated 2009 amortization from Accumulated other comprehensive income:			
Actuarial loss/(gain) . . . . .	\$ 26		
Prior service cost/(credit) . . . . .	8		
Transition obligation/(asset) . . . . .	<u>(2)</u>		
Total . . . . .	<u>\$ 32</u>		

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

The weighted average assumptions used to develop the actuarial present value of the projected benefit obligation and net periodic pension cost 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>2008</u>	<u>2007</u>	<u>2006</u>
Defined benefit pension plans			
U.S. pension — projected benefit obligation			
Discount rate . . . . .	6.75%	6.00%	5.50%
Rate of increase in future compensation levels . . . . .	N/A	N/A	N/A
U.S. pension — net periodic benefit cost			
Discount rate . . . . .	6.00	5.50	5.25
Rate of increase in future compensation levels . . . . .	N/A	N/A	N/A
Expected long-term rate of return on plan assets . . . . .	7.50	7.50	7.50
Non-U.S. pension — projected benefit obligation			
Discount rate . . . . .	6.79	5.91	4.85
Rate of increase in future compensation levels . . . . .	3.85	5.38	4.98
Non-U.S. pension — net periodic benefit cost			
Discount rate . . . . .	5.91	4.85	4.81
Rate of increase in future compensation levels . . . . .	5.38	4.98	4.75
Expected long-term rate of return on plan assets . . . . .	5.89	6.84	6.93
Postretirement plans — benefit obligation			
Discount rate . . . . .	6.75%	6.00%	5.50%
Rate of increase in future compensation levels . . . . .	5.00	5.00	5.00
Postretirement plans — net periodic benefit cost			
Discount rate . . . . .	6.00	5.50	5.25
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 9.30% was assumed for the year ending November 2009. The rate was assumed to decrease ratably to 5.00% for the 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>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
	(in millions)			
Service plus interest costs . . . . .	\$11	\$12	\$ (9)	\$ (9)
Obligation . . . . .	90	94	(70)	(72)



**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			
	2008		2007	
	U.S. Pension	Non-U.S. Pension	U.S. Pension	Non-U.S. Pension
Equity securities .....	69%	28%	63%	45%
Debt securities .....	29	7	23	8
Other .....	2	65	14	47
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 2008, 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 expects to contribute a minimum of \$73 million to its pension plans and \$13 million to its postretirement plans in 2009.

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 costs, where appropriate:

	U.S. Pension	Non-U.S. Pension <small>(in millions)</small>	Post- retirement
2009 .....	\$ 9	\$ 7	\$ 13
2010 .....	10	8	15
2011 .....	10	8	17
2012 .....	11	8	18
2013 .....	13	8	19
2014-2018 .....	81	47	108

***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 \$208 million, \$258 million and \$230 million for the years ended November 2008, November 2007 and November 2006, respectively.

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

**Note 14. Employee Incentive Plans**

***Stock Incentive Plan***

The firm sponsors a stock incentive plan, The Goldman Sachs Amended and Restated Stock Incentive Plan (Amended SIP), which provides for grants of incentive stock options, nonqualified stock options, stock appreciation rights, dividend equivalent rights, restricted stock, restricted stock units, awards with performance conditions and other share-based awards. In the second quarter of 2003, the Amended SIP was approved by the firm's shareholders, effective for grants after April 1, 2003.

The total number of shares of common stock that may be issued under the Amended SIP through 2008 may not exceed 250 million shares and, in each 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 year, increased by the number of shares available for awards in previous years but not covered by awards granted in such years. As of November 2008 and November 2007, 162.4 million and 160.6 million shares, respectively, were available for grant under the Amended SIP.

***Other Compensation Arrangements***

The firm has maintained deferred compensation plans for eligible employees. In general, under the plans, participants were able to defer payment of a portion of their cash year-end compensation. During the deferral period, participants were able to notionally 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. Beginning with the 2008 year, these deferred compensation plans were frozen with respect to new contributions and the plans were terminated. Participants generally will receive distributions of their benefits in 2009 except that no payments will be accelerated for certain senior executives. The firm has recognized compensation expense for the amounts deferred under these plans. As of November 2008 and November 2007, \$220 million and \$281 million, respectively, related to these plans was included in "Other liabilities and accrued expenses" in the consolidated statements of financial condition.

The firm has a discount stock program through which Participating Managing Directors may be permitted to acquire restricted stock units at an effective 25% discount (for 2008 year-end compensation, the program was suspended, and no individual was permitted to acquire discounted restricted stock units thereunder). In prior years, the 25% discount was 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 were 100% vested when granted, but the shares underlying them generally were subject to certain transfer restrictions (which were waived in December 2008 except for certain senior executives). The shares underlying the restricted stock units that were granted to effect the 25% discount generally vest in equal installments on the second and third anniversaries following the grant date and were not transferable before the third anniversary of the grant date (transfer restrictions on vested awards were waived in December 2008 except for certain senior executives). Compensation expense related to these restricted stock units is recognized over the vesting period. The total value of restricted stock units granted for 2007 in order to effect the 25% discount was \$66 million.

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

***Restricted Stock Units***

The firm issues restricted stock units to employees under the Amended SIP, primarily in connection with year-end compensation and acquisitions. Restricted stock units are valued based on the closing price of the underlying shares at the date of grant. Year-end restricted stock units generally vest and deliver as outlined in the applicable restricted stock unit agreements. All employee restricted stock unit agreements provide that vesting is accelerated in certain circumstances, such as upon retirement, death and extended absence. Of the total restricted stock units outstanding as of November 2008 and November 2007, (i) 12.0 million units and 22.0 million units, respectively, required future service as a condition to the delivery of the underlying shares of common stock and (ii) 43.9 million units and 51.6 million units, respectively, did not require future service. In all cases, delivery of the underlying shares of common stock is conditioned on the grantees satisfying certain vesting and other requirements outlined in the award agreements. When delivering the underlying shares to employees, the firm generally issues new shares of common stock. The activity related to these restricted stock units is set forth below:

	<u>Restricted Stock Units Outstanding</u>		<u>Weighted Average Grant-Date Fair Value of Restricted Stock Units Outstanding</u>	
	<u>Future Service Required</u>	<u>No Future Service Required</u>	<u>Future Service Required</u>	<u>No Future Service Required</u>
Outstanding, November 2007 <sup>(1)</sup> . . .	22,025,347	51,565,557	\$180.98	\$164.94
Granted <sup>(2)(3)</sup> . . . . .	1,787,746	103,474	154.32	154.13
Forfeited . . . . .	(898,950)	(649,694)	184.67	171.40
Delivered <sup>(4)</sup> . . . . .	—	(18,086,395)	—	112.27
Vested <sup>(3)</sup> . . . . .	<u>(10,950,279)</u>	<u>10,950,279</u>	152.06	152.06
Outstanding, November 2008 . . . . .	<u>11,963,864</u>	<u>43,883,221</u>	\$203.19	\$183.31

<sup>(1)</sup> Includes restricted stock units granted to employees in December 2007 as part of compensation for fiscal 2007.

<sup>(2)</sup> The weighted average grant-date fair value of restricted stock units granted during the years ended November 2008, November 2007 and November 2006 was \$154.31, \$224.13 and \$196.99, respectively.

<sup>(3)</sup> The aggregate fair value of awards vested during the years ended November 2008, November 2007 and November 2006 was \$1.03 billion, \$5.63 billion and \$4.40 billion, respectively.

<sup>(4)</sup> Includes restricted stock units that were cash settled.

***Stock Options***

Stock options granted to employees generally vest as outlined in the applicable stock option agreement and generally first become exercisable on or after the third anniversary of the grant date. Other than the options granted in December 2007 related to 2007 compensation, no options were granted during fiscal 2008. Year-end stock options for 2007 become exercisable in January 2011 and expire on November 24, 2017. Shares received on exercise prior to January 2013 for year-end 2007 options cannot be sold, transferred or otherwise disposed of until January 2013. 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 under 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" on 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>Aggregate Intrinsic Value (in millions)</u>	<u>Weighted Average Remaining Life (years)</u>
Outstanding, November 2007 <sup>(1)</sup> . . . . .	39,229,629	\$106.63		
Granted . . . . .	—	—		
Exercised . . . . .	(4,743,181)	74.55		
Forfeited . . . . .	<u>(847,316)</u>	173.21		
Outstanding, November 2008 . . . . .	<u>33,639,132</u>	\$109.47	\$34	4.23
Exercisable, November 2008 . . . . .	<u>24,866,508</u>	\$ 84.67	\$34	2.87

<sup>(1)</sup> Includes stock options granted to employees in December 2007 as part of compensation for fiscal 2007, for which no future service was required.

The total intrinsic value of options exercised during the years ended November 2008, November 2007 and November 2006 was \$433 million, \$1.32 billion and \$1.52 billion, respectively.

The options outstanding as of November 2008 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 . . . . .	1,285,788	\$ 52.97	0.50
60.00 – 74.99 . . . . .	—	—	—
75.00 – 89.99 . . . . .	11,898,382	81.03	2.93
90.00 – 104.99 . . . . .	11,682,338	91.86	3.07
105.00 – 119.99 . . . . .	—	—	—
120.00 – 134.99 . . . . .	2,791,500	131.64	7.00
135.00 – 194.99 . . . . .	—	—	—
195.00 – 209.99 . . . . .	<u>5,981,124</u>	202.27	8.56
Outstanding, November 2008 . . . . .	<u>33,639,132</u>		

The weighted average fair value of options granted for 2007 and 2006 was \$51.04 and \$49.96 per option, respectively. Fair value was estimated as of the grant date based on a Black-Scholes option-pricing model principally using the following weighted average assumptions:

	<u>Year Ended November</u>		
	<u>2008 <sup>(1)</sup></u>	<u>2007</u>	<u>2006</u>
Risk-free interest rate . . . . .	N/A	4.0%	4.6%
Expected volatility . . . . .	N/A	35.0	27.5
Dividend yield . . . . .	N/A	0.7	0.7
Expected life . . . . .	N/A	7.5 years	7.5 years

<sup>(1)</sup> There were no options granted during fiscal 2008 other than those related to 2007 compensation and included in the 2007 disclosures above.

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

The common stock underlying the options granted for 2007 and 2006 is subject to transfer restrictions for a period of 2 years and 1 year, respectively, from the date the options become exercisable. The value of the common stock underlying the options granted for 2007 and 2006 reflects a liquidity discount of 24.0% and 17.5%, respectively, as a result of these transfer restrictions. The liquidity discount was based on the firm's pre-determined written liquidity discount policies. The 7.5 years expected life of the options reflects the estimated impact of these sales restrictions on the life of the awards.

The following table sets forth share-based compensation and the related tax benefit:

	Year Ended November		
	2008	2007	2006
		(in millions)	
Share-based compensation . . . . .	\$1,587	\$4,549	\$3,669
Excess tax benefit related to options exercised . . . . .	144	469	542
Excess tax benefit related to share-based compensation <sup>(1)</sup> . . . . .	645	908	653

<sup>(1)</sup> Represents the tax benefit, recognized in additional paid-in capital, on stock options exercised and the delivery of common stock underlying restricted stock units.

As of November 2008, there was \$1.25 billion of total unrecognized compensation cost related to nonvested share-based compensation arrangements. This cost is expected to be recognized over a weighted average period of 1.84 years.

On December 17, 2008 the firm granted 20.6 million restricted stock units and 36.0 million stock options to its employees. The restricted stock units and options require future service and are subject to additional vesting conditions as outlined in the award agreements. Generally shares underlying RSUs are delivered and stock options become exercisable shortly after vesting, but are subject to certain transfer restrictions. These grants are not included in the above tables.

**Note 15. Transactions with 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 \$3.14 billion, \$3.62 billion and \$3.37 billion for the years ended November 2008, November 2007 and November 2006, respectively. As of November 2008 and November 2007, the fees receivable from these funds were \$861 million and \$596 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 \$14.45 billion and \$12.90 billion as of November 2008 and November 2007, respectively. In the ordinary course of business, the firm may also engage in other activities with these funds, including, among others, securities lending, trade execution, trading, custody, and acquisition and bridge financing. See Note 8 for the firm's commitments related to these funds.

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

**Note 16. 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>2008</u>	<u>2007</u>	<u>2006</u>
	(in millions)		
Current taxes			
U.S. federal . . . . .	\$ (278)	\$2,934	\$ 3,736
State and local . . . . .	91	388	627
Non-U.S. . . . .	<u>1,964</u>	<u>2,554</u>	<u>2,165</u>
Total current tax expense . . . . .	<u>1,777</u>	<u>5,876</u>	<u>6,528</u>
Deferred taxes			
U.S. federal . . . . .	(880)	118	(635)
State and local . . . . .	(92)	100	(262)
Non-U.S. . . . .	<u>(791)</u>	<u>(89)</u>	<u>(608)</u>
Total deferred tax (benefit)/expense . . . . .	<u>(1,763)</u>	<u>129</u>	<u>(1,505)</u>
Net tax expense . . . . .	<u>\$ 14</u>	<u>\$6,005</u>	<u>\$ 5,023</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.

Significant components of the firm's deferred tax assets and liabilities are set forth below:

	<u>As of November</u>	
	<u>2008</u>	<u>2007</u>
	(in millions)	
Deferred tax assets		
Compensation and benefits . . . . .	\$3,732	\$3,869
FIN 48 asset . . . . .	625	—
Foreign tax credits . . . . .	334	—
Unrealized losses . . . . .	94	—
Other, net . . . . .	<u>1,481</u>	<u>997</u>
	6,266	4,866
Valuation allowance <sup>(1)</sup> . . . . .	<u>(93)</u>	<u>(112)</u>
Total deferred tax assets <sup>(2)</sup> . . . . .	<u>\$6,173</u>	<u>\$4,754</u>
Deferred tax liabilities		
Depreciation and amortization . . . . .	1,558	1,208
Unrealized gains . . . . .	—	1,279
Total deferred tax liabilities <sup>(2)</sup> . . . . .	<u>\$1,558</u>	<u>\$2,487</u>

<sup>(1)</sup> Relates primarily to the ability to utilize losses in various tax jurisdictions.

<sup>(2)</sup> Before netting within tax jurisdictions.

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 2008, this policy resulted in an unrecognized net deferred tax liability of \$1.1 billion attributable to reinvested earnings of \$11.6 billion.

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

During 2008, the valuation allowance was decreased by \$19 million, primarily due to the utilization of net operating losses previously considered more likely than not to expire unused. Net operating loss carryforwards were \$2.77 billion and \$2.12 billion as of November 2008 and November 2007, respectively.

The firm had federal net operating loss carryforwards, primarily resulting from acquisitions, of \$172 million and \$139 million as of November 2008 and November 2007, respectively. The firm recorded a related net deferred income tax asset of \$56 million and \$44 million as of November 2008 and November 2007, respectively. These carryforwards are subject to annual limitations on utilization and will begin to expire in 2016.

The firm had state and local net operating loss carryforwards, primarily resulting from acquisitions, of \$2.59 billion and \$1.62 billion as of November 2008 and November 2007, respectively. The firm recorded a related net deferred income tax asset of \$97 million and \$21 million as of November 2008 and November 2007, respectively. These carryforwards are subject to annual limitations on utilization and will begin to expire in 2012.

The firm had foreign net operating loss carryforwards of \$5 million and \$306 million as of November 2008 and November 2007, respectively. The firm recorded a related net deferred income tax asset of \$84 million as of November 2007. These carryforwards are subject to limitation on utilization and can be carried forward indefinitely.

The firm had foreign tax credit carryforwards of \$334 million as of November 2008. These carryforwards are subject to limitation on utilization and will begin to expire in 2018.

The firm adopted the provisions of FIN 48 as of December 1, 2007 and recorded a transition adjustment resulting in a reduction of \$201 million to beginning retained earnings.

The following table sets forth the changes in the firm's unrecognized tax benefits from December 1, 2007 to November 28, 2008 (in millions):

Balance at December 1, 2007 . . . . .	\$1,042
Increases based on tax positions related to the current year . . . . .	172
Increases based on tax positions related to prior years . . . . .	264
Decreases related to tax positions of prior years . . . . .	(67)
Decreases related to settlements . . . . .	<u>(38)</u>
Balance at November 2008 . . . . .	<u>\$1,373</u>

As of November 2008, the firm's liability for unrecognized tax benefits reported in "Other liabilities and accrued expenses" in the consolidated statement of financial condition was \$1.4 billion. The firm reported a related deferred tax asset of \$625 million in "Other assets" in the consolidated statement of financial condition. If recognized, the net tax benefit of \$748 million would reduce the firm's effective income tax rate. As of November 2008, the firm's accrued liability for interest expense related to income tax matters and income tax penalties was \$110.9 million. The firm reports interest expense related to income tax matters in "Provision for taxes" in the consolidated statements of earnings and income tax penalties in "Other expenses" in the consolidated statements of earnings. The firm recognized \$36.7 million of interest and income tax penalties for the year ended November 2008. The firm does not expect unrecognized tax benefits to change significantly during the twelve months subsequent to November 28, 2008.

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

The firm is subject to examination by the U.S. Internal Revenue Service (IRS) and other taxing authorities in jurisdictions where the firm has significant business operations, such as the United Kingdom, Japan, Hong Kong, Korea and various states, such as New York. The tax years under examination vary by jurisdiction. The firm does not expect that potential additional assessments from these examinations will be material to its results of operations.

Below is a table of the earliest tax years that remain subject to examination by major jurisdiction:

<u>Jurisdiction</u>	<u>Earliest Tax Year Subject to Examination</u>
U.S. Federal . . . . .	2005 <sup>(1)</sup>
New York State and City . . . . .	2004 <sup>(2)</sup>
United Kingdom . . . . .	2005
Japan . . . . .	2005
Hong Kong . . . . .	2002
Korea . . . . .	2003

<sup>(1)</sup> IRS examination of fiscal 2005, 2006 and 2007 began during 2008.

<sup>(2)</sup> New York State and City examination of fiscal 2004, 2005 and 2006 began in 2008.

All years subsequent to the above years remain open to examination by the taxing authorities. The firm believes that the liability for unrecognized tax benefits it has established is 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.

A reconciliation of the U.S. federal statutory income tax rate to the firm's effective income tax rate is set forth below:

	<u>Year Ended November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
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 . . . . .	—	1.8	1.6
Tax credits . . . . .	(4.3)	(0.5)	(0.6)
Foreign operations . . . . .	(29.8)	(1.6)	(1.3)
Tax-exempt income, including dividends . . . . .	(5.9)	(0.4)	(0.4)
Other . . . . .	<u>5.6</u> <sup>(1)</sup>	<u>(0.2)</u> <sup>(2)</sup>	<u>0.2</u>
Effective income tax rate . . . . .	<u>0.6%</u>	<u>34.1%</u>	<u>34.5%</u>

<sup>(1)</sup> Primarily includes the effect of FIN 48 liability increase.

<sup>(2)</sup> Primarily includes the effect of audit settlements.

Tax benefits of approximately \$645 million in November 2008, \$908 million in November 2007 and \$653 million in November 2006, related to the delivery of common stock underlying 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.



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

**Note 17. Regulation**

On September 21, 2008, Group Inc. became a bank holding company under the U.S. Bank Holding Company Act of 1956. As of that date, the Federal Reserve Board became the primary U.S. regulator of Group Inc., as a consolidated entity. Prior to September 21, 2008, Group Inc. was subject to regulation by the SEC as a Consolidated Supervised Entity (CSE) and was subject to group-wide supervision and examination by the SEC and to minimum capital standards on a consolidated basis. On September 26, 2008, the SEC announced that it was ending the CSE program. The firm's principal U.S. broker-dealer, GS&Co., remains subject to regulation by the SEC.

The firm is subject to regulatory capital requirements administered by the U.S. federal banking agencies. The firm's bank depository institution subsidiaries, including GS Bank USA, are subject to similar capital guidelines. Under the Federal Reserve Board's capital adequacy guidelines and the regulatory framework for prompt corrective action (PCA) that is applicable to GS Bank USA, the firm and its bank depository institution subsidiaries must meet specific capital guidelines that involve quantitative measures of assets, liabilities and certain off-balance-sheet items as calculated under regulatory reporting practices. The firm and its bank depository institution subsidiaries' capital amounts, as well as GS Bank USA's PCA classification, are also subject to qualitative judgments by the regulators about components, risk weightings and other factors. The firm anticipates reporting capital ratios as follows:

- Before Group Inc. became a bank holding company, it was subject to capital guidelines by the SEC as a CSE that were generally consistent with those set out in the Revised Framework for the International Convergence of Capital Measurement and Capital Standards issued by the Basel Committee on Banking Supervision (Basel II). The firm currently computes and reports its firmwide capital ratios in accordance with the Basel II requirements as applicable to the firm when it was regulated as a CSE for the purpose of assessing the adequacy of its capital. Under the Basel II framework as it applied to the firm when it was regulated as a CSE, the firm evaluates its Tier 1 Capital and Total Allowable Capital as a percentage of Risk-Weighted Assets (RWAs). As of November 2008, the firm's Total Capital Ratio (Total Allowable Capital as a percentage of RWAs) was 18.9% and the firm's Tier 1 Ratio (Tier 1 Capital as a percentage of RWAs) was 15.6%, in each case calculated under the Basel II framework as it applied to the firm when it was regulated as a CSE. The firm expects to continue to report to investors for a period of time its Basel II capital ratios as applicable to it when it was regulated as a CSE.
- The regulatory capital guidelines currently applicable to bank holding companies are based on the Capital Accord of the Basel Committee on Banking Supervision (Basel I), with Basel II to be phased in over time. The firm is currently working with the Federal Reserve Board to put in place the appropriate reporting and compliance mechanisms and methodologies to allow reporting of the Basel I capital ratios as of the end of March 2009.
- In addition, the firm is currently working to implement the Basel II framework as applicable to it as a bank holding company (as opposed to as a CSE). U.S. banking regulators have incorporated the Basel II framework into the existing risk-based capital requirements by requiring that internationally active banking organizations, such as Group Inc., transition to Basel II over the next several years.

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The Federal Reserve Board also has established minimum leverage ratio guidelines. The firm was not subject to these guidelines before becoming a bank holding company and, accordingly, is currently working with the Federal Reserve Board to finalize its methodology for calculating this ratio. The Tier 1 leverage ratio is defined as Tier 1 capital (as applicable to the firm as a bank holding company) divided by adjusted average total assets (which includes adjustments for disallowed goodwill and certain intangible assets). The minimum Tier 1 leverage ratio is 3% for bank holding companies that have received the highest supervisory rating under Federal Reserve Board guidelines or that have implemented the Federal Reserve Board's risk-based capital measure for market risk. Other bank holding companies must have a minimum Tier 1 leverage ratio of 4%. Bank holding companies may be expected to maintain ratios well above the minimum levels, depending upon their particular condition, risk profile and growth plans. As of November 2008, the firm's estimated Tier 1 leverage ratio was 6.1%. This ratio represents a preliminary estimate and may be revised in subsequent filings as the firm continues to work with the Federal Reserve Board to finalize the methodology for the calculation.

The firm's U.S. regulated broker-dealer subsidiaries include 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, and also effectively 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 Net Capital Requirement" as permitted by Rule 15c3-1. As of November 2008, GS&Co. had regulatory net capital, as defined by Rule 15c3-1, of \$10.92 billion, which exceeded the amounts required by \$8.87 billion. As of November 2008, GSEC had regulatory net capital, as defined by Rule 15c3-1, of \$1.38 billion, which exceeded the amounts required by \$1.29 billion. 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 2008 and November 2007, GS&Co. had tentative net capital and net capital in excess of both the minimum and the notification requirements.

As of November 2008, GS Bank USA, a New York State-chartered bank and a member of the Federal Reserve System and the FDIC, is regulated by the Federal Reserve Board and the New York State Banking Department and is subject to minimum capital requirements that (subject to certain exceptions) are similar to those applicable to bank holding companies. GS Bank USA was formed in November 2008 through the merger of the firm's existing Utah industrial bank (named GS Bank USA) into the firm's New York limited purpose trust company, with the surviving company taking the name GS Bank USA. As of November 2007, GS Bank USA's predecessor was a wholly owned industrial bank regulated by the Utah Department of Financial Institutions, was a member of the FDIC and was subject to minimum capital requirements. The firm computes the capital ratios for GS Bank USA in accordance with the Basel I framework for purposes of assessing the adequacy of its capital. In order to be considered a "well capitalized" depository institution under the Federal Reserve Board guidelines, GS Bank USA must maintain a Tier 1 capital ratio of at least 6%, a total capital ratio of at least 10% and a Tier 1 leverage ratio of at least 5%. In connection with the November 2008 asset transfer described below, GS Bank USA agreed with the Federal Reserve Board to minimum capital ratios in excess of these "well capitalized" levels. Accordingly, for a period of time, GS Bank USA is expected to maintain a Tier 1 capital ratio of at least 8%, a total capital ratio of at least 11% and a Tier 1 leverage ratio of at least 6%. In November 2008, the firm contributed subsidiaries with an aggregate of \$117.16 billion in assets into GS Bank USA (which brought total assets in GS Bank USA

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

to \$145.06 billion as of November 2008). As a result, the firm is currently working with the Federal Reserve Board to finalize its methodology for the Basel I calculations. As of November 2008, under Basel I, GS Bank USA's estimated Tier 1 capital ratio was 8.9% and estimated total capital ratio was 11.6%. In addition, GS Bank USA's estimated Tier 1 leverage ratio was 9.1%.

The deposits of GS Bank USA are insured by the FDIC to the extent provided by law. The Federal Reserve Board requires depository institutions to maintain cash reserves with a Federal Reserve Bank. The reserve balance deposited by the firm's depository institution subsidiaries held at the Federal Reserve Bank was approximately \$94 million and \$32 million as of November 2008 and November 2007, respectively. GS Bank Europe, a wholly owned credit institution, is regulated by the Irish Financial Services Regulatory Authority and is subject to minimum capital requirements. As of November 2008, GS Bank USA and GS Bank Europe were both in compliance with all regulatory capital requirements.

Transactions between GS Bank USA and Group Inc. and its subsidiaries and affiliates (other than, generally, subsidiaries of GS Bank USA) are regulated by the Federal Reserve Board. These regulations generally limit the types and amounts of transactions (including loans to and borrowings from GS Bank USA) that may take place and generally require those transactions to be on an arms-length basis.

The firm has U.S. insurance subsidiaries that are subject to state insurance regulation and oversight in the states in which they are domiciled and in the other states in which they are licensed. In addition, certain of the firm's insurance subsidiaries outside of the U.S. are regulated by the Bermuda Monetary Authority and by Lloyd's (which is, in turn, regulated by the U.K.'s Financial Services Authority (FSA)). The firm's insurance subsidiaries were in compliance with all regulatory capital requirements as of November 2008 and November 2007.

The firm's principal non-U.S. regulated subsidiaries include Goldman Sachs International (GSI) and Goldman Sachs Japan Co., Ltd. (GSJCL). GSI, the firm's regulated U.K. broker-dealer, is subject to the capital requirements of the FSA. GSJCL, the firm's regulated Japanese broker-dealer, is subject to the capital requirements imposed by Japan's Financial Services Agency. As of November 2008 and November 2007, GSI and GSJCL were in compliance with their local capital adequacy requirements. Certain other non-U.S. subsidiaries of the firm are also subject to capital adequacy requirements promulgated by authorities of the countries in which they operate. As of November 2008 and November 2007, these subsidiaries were in compliance with their local capital adequacy requirements.

The regulatory requirements referred to above restrict Group Inc.'s ability to withdraw capital from its regulated subsidiaries. As of November 2008 and November 2007, approximately \$26.92 billion and \$18.10 billion, respectively, of net assets of regulated subsidiaries were restricted as to the payment of dividends to Group Inc. In addition to limitations on the payment of dividends imposed by federal and state laws, the Federal Reserve Board and the FDIC have authority to prohibit or to limit the payment of dividends by the banking organizations they supervise (including GS Bank USA) if, in the Federal Reserve Board's opinion, payment of a dividend would constitute an unsafe or unsound practice in the light of the financial condition of the banking organization. As of November 2008, GS Bank USA was not able to declare dividends to Group Inc. without regulatory approval.

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

**Note 18. Business Segments**

In reporting to management, the firm's operating results are categorized into the following three business 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 and benefits expenses within the firm's segments reflect, among other factors, the overall performance of the firm as well as the 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 business segments. Due to the integrated nature of these 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:

		As of or for the Year Ended November		
		2008	2007	2006
		(in millions)		
<b>Investment Banking</b>	Net revenues . . . . .	\$ 5,185	\$ 7,555	\$ 5,629
	Operating expenses . . . . .	3,143	4,985	4,062
	Pre-tax earnings . . . . .	<u>\$ 2,042</u>	<u>\$ 2,570</u>	<u>\$ 1,567</u>
	Segment assets . . . . .	<u>\$ 1,948</u>	<u>\$ 5,526</u>	<u>\$ 4,967</u>
<b>Trading and Principal Investments</b>	Net revenues . . . . .	\$ 9,063	\$ 31,226	\$ 25,562
	Operating expenses . . . . .	11,808	17,998	14,962
	Pre-tax earnings/(loss) . . . . .	<u>\$ (2,745)</u>	<u>\$ 13,228</u>	<u>\$ 10,600</u>
	Segment assets . . . . .	<u>\$645,267</u>	<u>\$ 744,647</u>	<u>\$566,499</u>
<b>Asset Management and Securities Services</b>	Net revenues . . . . .	\$ 7,974	\$ 7,206	\$ 6,474
	Operating expenses . . . . .	4,939	5,363	4,036
	Pre-tax earnings . . . . .	<u>\$ 3,035</u>	<u>\$ 1,843</u>	<u>\$ 2,438</u>
	Segment assets . . . . .	<u>\$237,332</u>	<u>\$ 369,623</u>	<u>\$266,735</u>
<b>Total</b>	Net revenues <sup>(1)(2)</sup> . . . . .	\$ 22,222	\$ 45,987	\$ 37,665
	Operating expenses <sup>(3)</sup> . . . . .	19,886	28,383	23,105
	Pre-tax earnings <sup>(4)</sup> . . . . .	<u>\$ 2,336</u>	<u>\$ 17,604</u>	<u>\$ 14,560</u>
	Total assets . . . . .	<u>\$884,547</u>	<u>\$1,119,796</u>	<u>\$838,201</u>

<sup>(1)</sup> Net revenues include net interest as set forth in the table below:

	Year Ended November		
	2008	2007	2006
	(in millions)		
Investment Banking . . . . .	\$ 6	\$ —	\$ 16
Trading and Principal Investments . . . . .	968	1,512	1,535
Asset Management and Securities Services . . . . .	3,302	2,475	1,947
Total net interest . . . . .	<u>\$ 4,276</u>	<u>\$3,987</u>	<u>\$3,498</u>

<sup>(2)</sup> Net revenues includes non-interest income as set forth in the table below:

	Year Ended November		
	2008	2007	2006
	(in millions)		
Investment banking fees . . . . .	\$ 5,179	\$ 7,555	\$ 5,613
Equities commissions . . . . .	4,998	4,579	3,518
Asset management and other fees . . . . .	4,672	4,731	4,527
Trading and principal investments revenues . . . . .	3,097	25,135	20,509
Total non-interest income . . . . .	<u>\$17,946</u>	<u>\$42,000</u>	<u>\$34,167</u>

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

Trading and principal investments revenues include \$(61) million, \$6 million and \$(7) million for the years ended November 2008, November 2007 and November 2006, respectively, of realized gains/(losses) on securities held within the firm's insurance subsidiaries which are accounted for as available-for-sale under SFAS No. 115.

<sup>(3)</sup> Operating expenses include net provisions for a number of litigation and regulatory proceedings of \$(4) million, \$37 million and \$45 million for the years ended November 2008, November 2007 and November 2006, respectively, that have not been allocated to the firm's segments.

<sup>(4)</sup> Pre-tax earnings include total depreciation and amortization as set forth in the table below:

	<b>Year Ended November</b>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>
	(in millions)		
Investment Banking . . . . .	\$ 187	\$ 137	\$119
Trading and Principal Investments . . . . .	1,161	845	725
Asset Management and Securities Services . . . . .	277	185	151
Total depreciation and amortization . . . . .	\$1,625	\$1,167	\$995

***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. Since a significant portion of the firm's activities require cross-border coordination in order to facilitate the needs of the firm's clients, the methodology for allocating the firm's profitability to geographic regions is dependent on the judgment of management.

Geographic results are generally allocated as follows:

- Investment Banking: location of the client and investment banking team.
- Fixed Income, Currency and Commodities, and Equities: location of the trading desk.
- Principal Investments: location of the investment.
- Asset Management: location of the sales team.
- Securities Services: location of the primary market for the underlying security.

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

The following table sets forth the total net revenues, pre-tax earnings and net earnings of the firm and its consolidated subsidiaries by geographic region allocated on the methodology described above, as well as the percentage of total net revenues, pre-tax earnings and net earnings for each geographic region:

	Year Ended November					
	2008		2007		2006	
	(\$ in millions)					
Net revenues						
Americas <sup>(1)</sup> . . . . .	\$15,485	70%	\$23,412	51%	\$20,361	54%
EMEA <sup>(2)</sup> . . . . .	5,910	26	13,538	29	9,354	25
Asia . . . . .	827	4	9,037	20	7,950	21
Total net revenues . . . . .	<u>\$22,222</u>	<u>100%</u>	<u>\$45,987</u>	<u>100%</u>	<u>\$37,665</u>	<u>100%</u>
Pre-tax earnings						
Americas <sup>(1)</sup> . . . . .	\$ 4,879	N.M.%	\$ 7,673	43%	\$ 7,515	52%
EMEA <sup>(2)</sup> . . . . .	169	N.M.	5,458	31	3,075	21
Asia . . . . .	(2,716)	N.M.	4,510	26	4,015	27
Corporate <sup>(3)</sup> . . . . .	4	—	(37)	—	(45)	—
Total pre-tax earnings . . . . .	<u>\$ 2,336</u>	<u>100%</u>	<u>\$17,604</u>	<u>100%</u>	<u>\$14,560</u>	<u>100%</u>
Net earnings						
Americas <sup>(1)</sup> . . . . .	\$ 3,371	N.M.%	\$ 4,981	43%	\$ 4,855	51%
EMEA <sup>(2)</sup> . . . . .	694	N.M.	3,735	32	2,117	22
Asia . . . . .	(1,746)	N.M.	2,907	25	2,594	27
Corporate <sup>(3)</sup> . . . . .	3	—	(24)	—	(29)	—
Total net earnings . . . . .	<u>\$ 2,322</u>	<u>100%</u>	<u>\$11,599</u>	<u>100%</u>	<u>\$ 9,537</u>	<u>100%</u>

<sup>(1)</sup> Substantially all relates to the U.S.

<sup>(2)</sup> EMEA (Europe, Middle East and Africa).

<sup>(3)</sup> Consists of net provisions for a number of litigation and regulatory proceedings.

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

**Note 19. Interest Income and Interest Expense**

The following table sets forth the details of the firm's interest income and interest expense:

	Year Ended November		
	2008	2007	2006
		(in millions)	
Interest income <sup>(1)</sup>			
Deposits with banks . . . . .	\$ 188	\$ 119	\$ 159
Securities borrowed, securities purchased under agreements to resell, at fair value, and federal funds sold . . . . .	11,746	18,013	9,850
Trading assets . . . . .	13,150	13,120	10,717
Other interest <sup>(2)</sup> . . . . .	<u>10,549</u>	<u>14,716</u>	<u>14,460</u>
Total interest income . . . . .	<u>\$35,633</u>	<u>\$45,968</u>	<u>\$35,186</u>
Interest expense			
Deposits . . . . .	\$ 756	\$ 677	\$ 146
Securities loaned and securities sold under agreements to repurchase, at fair value . . . . .	7,414	12,612	9,525
Trading liabilities . . . . .	2,789	3,866	3,125
Short-term borrowings <sup>(3)</sup> . . . . .	1,864	3,398	2,905
Long-term borrowings <sup>(4)</sup> . . . . .	13,687	14,147	9,777
Other interest <sup>(5)</sup> . . . . .	<u>4,847</u>	<u>7,281</u>	<u>6,210</u>
Total interest expense . . . . .	<u>\$31,357</u>	<u>\$41,981</u>	<u>\$31,688</u>
Net interest income . . . . .	<u>\$ 4,276</u>	<u>\$ 3,987</u>	<u>\$ 3,498</u>

- <sup>(1)</sup> Interest income is recorded on an accrual basis based on contractual interest rates.
- <sup>(2)</sup> Primarily includes interest income on customer debit balances, securities borrowed and other interest-earning assets.
- <sup>(3)</sup> Includes interest on unsecured short-term borrowings and short-term other secured financings.
- <sup>(4)</sup> Includes interest on unsecured long-term borrowings and long-term other secured financings.
- <sup>(5)</sup> Primarily includes interest expense on customer credit balances, securities loaned and other interest-bearing liabilities.



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

**Note 20. Parent Company**

**Group Inc. — Condensed Statements of Earnings**

Year ended November	2008	2007	2006
	(in millions)		
<b>Revenues</b>			
Dividends from bank subsidiary <sup>(1)</sup>	\$ 2,922	\$ 18	\$ 285
Dividends from nonbank subsidiaries	3,716	4,273	5,076
Undistributed earnings/(loss) of subsidiaries	(3,971)	6,708	4,516
Principal investments <sup>(2)</sup>	(2,886)	2,062	1,951
Interest income <sup>(2)</sup>	7,167	9,049	7,231
<b>Total revenues</b>	<b>6,948</b>	<b>22,110</b>	<b>19,059</b>
<b>Interest expense <sup>(2)</sup></b>	<b>8,229</b>	<b>8,914</b>	<b>6,760</b>
Revenues, net of interest expense	(1,281)	13,196	12,299
<b>Operating expenses</b>			
Compensation and benefits	122	780	407
Other expenses <sup>(2)</sup>	471	281	177
<b>Total operating expenses</b>	<b>593</b>	<b>1,061</b>	<b>584</b>
Pre-tax earnings/(loss)	(1,874)	12,135	11,715
Provision/(benefit) for taxes	(4,196)	536	2,178
Net earnings	2,322	11,599	9,537
Preferred stock dividends	281	192	139
<b>Net earnings applicable to common shareholders</b>	<b>\$ 2,041</b>	<b>\$ 11,407</b>	<b>\$ 9,398</b>

**Group Inc. — Condensed Statements of Financial Condition**

As of November	2008	2007
	(in millions)	
<b>Assets</b>		
Cash and cash equivalents	\$ 1,035	\$ 62
Loans to and receivables from subsidiaries <sup>(2)</sup>		
Bank subsidiary <sup>(1)</sup>	19,247	1,626
Nonbank subsidiaries	157,086	174,589
Investments in subsidiaries and associates <sup>(2)</sup>		
Bank subsidiary <sup>(1)</sup>	13,322	4,028
Nonbank subsidiaries	38,375	36,333
Trading assets, at fair value	40,171	35,614
Other assets <sup>(2)</sup>	10,414	6,929
<b>Total assets</b>	<b>\$279,650</b>	<b>\$259,181</b>
<b>Liabilities and shareholders' equity</b>		
Unsecured short-term borrowings <sup>(3)</sup>		
With third parties	\$ 37,941	\$ 46,577
With subsidiaries	7,462	5,137
Payables to subsidiaries	754	392
Trading liabilities, at fair value	3,530	1,971
Other liabilities	5,247	5,038
Unsecured long-term borrowings <sup>(4)</sup>		
With third parties <sup>(2)</sup>	158,472	155,351
With subsidiaries <sup>(2) (5)</sup>	1,875	1,915
<b>Total liabilities</b>	<b>215,281</b>	<b>216,381</b>
<b>Commitments, contingencies and guarantees</b>		
<b>Shareholders' equity</b>		
Preferred stock	16,471	3,100
Common stock	7	6
Restricted stock units and employee stock options	9,284	9,302
Additional paid-in capital	31,071	22,027
Retained earnings	39,913	38,642
Accumulated other comprehensive income/(loss)	(202)	(118)
Common stock held in treasury, at cost	(32,175)	(30,159)
<b>Total shareholders' equity</b>	<b>64,369</b>	<b>42,800</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$279,650</b>	<b>\$259,181</b>

**Group Inc. — Condensed Statements of Cash Flows**

Year ended November	2008	2007	2006
	(in millions)		
<b>Cash flows from operating activities</b>			
Net earnings	\$ 2,322	\$ 11,599	\$ 9,537
Non-cash items included in net earnings			
Undistributed (earnings)/loss of subsidiaries <sup>(2)</sup>	3,971	(6,708)	(4,516)
Depreciation and amortization	1	11	7
Deferred income taxes	(2,178)	877	228
Share-based compensation	40	459	451
Changes in operating assets and liabilities			
Trading assets, at fair value	(4,661)	(17,795)	(7,763)
Trading liabilities, at fair value	1,559	86	(85)
Net receivables from subsidiaries	(12,177)	2,396	1,883
Other, net	(6,588)	5,448	4,187
<b>Net cash provided by/(used for) operating activities</b>	<b>(17,711)</b>	<b>(3,627)</b>	<b>3,929</b>
<b>Cash flows from investing activities</b>			
Purchase of property, leasehold improvements and equipment	(49)	(29)	—
Proceeds from sales of property, leasehold improvements and equipment	—	11	30
Issuance of short-term loans to subsidiaries, net of repayments	3,701	(22,668)	(12,953)
Issuance of term loans to subsidiaries	(14,242)	(48,299)	(12,362)
Repayments of term loans by subsidiaries	24,925	41,143	3,967
Dividends received <sup>(2)</sup>	6,638	4,291	5,361
Capital contributions to subsidiaries, net <sup>(2)</sup>	(22,245)	(4,517)	(7,898)
<b>Net cash used for investing activities</b>	<b>(1,272)</b>	<b>(30,068)</b>	<b>(23,855)</b>
<b>Cash flows from financing activities</b>			
Unsecured short-term borrowings, net	(10,564)	3,255	(6,621)
Other secured financing (short-term), net	—	(380)	380
Proceeds from issuance of long-term borrowings	35,645	53,041	44,043
Repayment of long-term borrowings, including the current portion	(23,959)	(13,984)	(12,590)
Common stock repurchased	(2,034)	(8,956)	(7,817)
Dividends and dividend equivalents paid on common stock, preferred stock and restricted stock units	(850)	(831)	(754)
Proceeds from issuance of common stock	6,105	791	1,613
Proceeds from issuance of preferred stock, net of issuance costs	13,366	—	1,349
Proceeds from issuance of common stock warrants	1,633	—	—
Excess tax benefit related to share-based compensation	614	817	464
Cash settlement of share-based compensation	—	(1)	(137)
<b>Net cash provided by financing activities</b>	<b>19,956</b>	<b>33,752</b>	<b>19,930</b>
<b>Net increase in cash and cash equivalents</b>	<b>973</b>	<b>57</b>	<b>4</b>
<b>Cash and cash equivalents, beginning of year</b>	<b>62</b>	<b>5</b>	<b>1</b>
<b>Cash and cash equivalents, end of year</b>	<b>\$ 1,035</b>	<b>\$ 62</b>	<b>\$ 5</b>

**SUPPLEMENTAL DISCLOSURES:**

Cash payments for third-party interest, net of capitalized interest, were \$7.18 billion, \$7.78 billion and \$6.11 billion for the years ended November 2008, November 2007 and November 2006, respectively.

Cash payments for income taxes, net of refunds, were \$99 million, \$3.27 billion and \$2.86 billion for the years ended November 2008, November 2007 and November 2006, respectively.

<sup>(1)</sup> GS Bank USA. For purposes of identifying bank subsidiaries, the reorganization described in Note 17 is given effect as of the earliest reporting period in this disclosure.

<sup>(2)</sup> Prior periods have been reclassified to conform to the current presentation.

<sup>(3)</sup> Includes \$11.67 billion and \$28.69 billion at fair value as of November 2008 and November 2007, respectively.

<sup>(4)</sup> Includes \$10.90 billion and \$10.29 billion at fair value as of November 2008 and November 2007, respectively.

<sup>(5)</sup> As of November 2008, unsecured long-term borrowings with subsidiaries by maturity date are \$506 million in 2009, \$512 million in 2010, \$184 million in 2011, \$126 million in 2012, \$142 million in 2013 and \$405 million in 2014-thereafter.

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

**Note 21. Subsequent Events**

On December 15, 2008, the Board approved a change in the firm's fiscal year-end from the last Friday of November to the last Friday of December. The change is effective for the firm's 2009 fiscal year. The firm's 2009 fiscal year began December 27, 2008 and will end December 25, 2009, resulting in a one-month transition period that began November 29, 2008 and ended December 26, 2008.

In December 2008, there was continued deterioration in the credit of LyondellBasell Finance Company, to which the firm had provided bridge loan financing. On January 6, 2009, certain legal entities within the LyondellBasell Industries AF S.C.A. group filed for bankruptcy. As a result, the firm incurred a loss of approximately \$850 million in December 2008 from marking the bridge and bank loan facilities held in LyondellBasell Finance Company to expected recovery levels.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Quarterly Results (unaudited)

The following represents the firm's unaudited quarterly results for 2008 and 2007. 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.

	2008 Quarter			
	First	Second	Third	Fourth
	(in millions, except per share data)			
Total revenues . . . . .	\$18,629	\$17,643	\$13,625	\$ 3,682
Interest expense . . . . .	<u>10,294</u>	<u>8,221</u>	<u>7,582</u>	<u>5,260</u>
Revenues, net of interest expense . . . . .	8,335	9,422	6,043	(1,578)
Operating expenses <sup>(1)</sup> . . . . .	<u>6,192</u>	<u>6,590</u>	<u>5,083</u>	<u>2,021</u>
Pre-tax earnings/(loss) . . . . .	2,143	2,832	960	(3,599)
Provision/(benefit) for taxes . . . . .	<u>632</u>	<u>745</u>	<u>115</u>	<u>(1,478)</u>
Net earnings/(loss) . . . . .	1,511	2,087	845	(2,121)
Preferred stock dividends . . . . .	<u>44</u>	<u>36</u>	<u>35</u>	<u>166</u>
Net earnings/(loss) applicable to common shareholders . . . . .	<u>\$ 1,467</u>	<u>\$ 2,051</u>	<u>\$ 810</u>	<u>\$ (2,287)</u>
Earnings/(loss) per common share				
Basic . . . . .	\$ 3.39	\$ 4.80	\$ 1.89	\$ (4.97)
Diluted . . . . .	3.23	4.58	1.81	(4.97)
Dividends declared and paid per common share . . . . .	0.35	0.35	0.35	0.35
	2007 Quarter			
	First	Second	Third	Fourth
	(in millions, except per share data)			
Total revenues . . . . .	\$22,280	\$20,351	\$23,803	\$21,534
Interest expense . . . . .	<u>9,550</u>	<u>10,169</u>	<u>11,469</u>	<u>10,793</u>
Revenues, net of interest expense . . . . .	12,730	10,182	12,334	10,741
Operating expenses <sup>(1)</sup> . . . . .	<u>7,871</u>	<u>6,751</u>	<u>8,075</u>	<u>5,686</u>
Pre-tax earnings . . . . .	4,859	3,431	4,259	5,055
Provision for taxes . . . . .	<u>1,662</u>	<u>1,098</u>	<u>1,405</u>	<u>1,840</u>
Net earnings . . . . .	3,197	2,333	2,854	3,215
Preferred stock dividends . . . . .	<u>49</u>	<u>46</u>	<u>48</u>	<u>49</u>
Net earnings applicable to common shareholders . . . . .	<u>\$ 3,148</u>	<u>\$ 2,287</u>	<u>\$ 2,806</u>	<u>\$ 3,166</u>
Earnings per common share				
Basic . . . . .	\$ 7.08	\$ 5.25	\$ 6.54	\$ 7.49
Diluted . . . . .	6.67	4.93	6.13	7.01
Dividends declared and paid per common share . . . . .	0.35	0.35	0.35	0.35

<sup>(1)</sup> The timing and magnitude of changes in the firm's bonus accruals can have a significant effect on results in a given quarter.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Common Stock Price Range

The following table sets forth, for the quarters indicated, the high and low sales prices per share of the firm's common stock.

	Sales Price					
	2008		2007		2006	
	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
First quarter . . . . .	\$229.35	\$169.00	\$222.75	\$191.50	\$146.35	\$124.23
Second quarter . . . . .	203.39	140.27	232.41	189.85	169.31	139.18
Third quarter . . . . .	190.04	152.25	233.97	157.38	157.00	136.79
Fourth quarter . . . . .	172.45	47.41	250.70	175.00	203.35	145.66

As of January 16, 2009, there were 9,909 holders of record of the firm's common stock.

On January 16, 2009, the last reported sales price for the firm's common stock on the New York Stock Exchange was \$73.05 per share.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Selected Financial Data

	As of or for the Year Ended November				
	2008	2007	2006	2005	2004
Income statement data (in millions)					
Total revenues . . . . .	\$ 53,579	\$ 87,968	\$ 69,353	\$ 43,391	\$ 29,839
Interest expense . . . . .	31,357	41,981	31,688	18,153	8,888
Revenues, net of interest expense . . . . .	22,222	45,987	37,665	25,238	20,951
Compensation and benefits . . . . .	10,934	20,190	16,457	11,758	9,681
Other operating expenses . . . . .	8,952	8,193	6,648	5,207	4,594
Pre-tax earnings . . . . .	\$ 2,336	\$ 17,604	\$ 14,560	\$ 8,273	\$ 6,676
Balance sheet data (in millions)					
Total assets . . . . .	\$884,547	\$1,119,796	\$838,201	\$706,804	\$531,379
Other secured financings (long-term) . . . . .	17,458	33,300	26,134	15,669	12,087
Unsecured long-term borrowings . . . . .	168,220	164,174	122,842	84,338	68,609
Total liabilities . . . . .	820,178	1,076,996	802,415	678,802	506,300
Total shareholders' equity . . . . .	64,369	42,800	35,786	28,002	25,079
Common share data (in millions, except per share amounts)					
Earnings per common share					
Basic . . . . .	\$ 4.67	\$ 26.34	\$ 20.93	\$ 11.73	\$ 9.30
Diluted . . . . .	4.47	24.73	19.69	11.21	8.92
Dividends declared and paid per common share . . . . .	1.40	1.40	1.30	1.00	1.00
Book value per common share <sup>(1)</sup> . . . . .	98.68	90.43	72.62	57.02	50.77
Average common shares outstanding					
Basic . . . . .	437.0	433.0	449.0	478.1	489.5
Diluted . . . . .	456.2	461.2	477.4	500.2	510.5
Selected data (unaudited)					
Employees					
Americas . . . . .	17,276	17,383	15,477	14,466	13,846
Non-Americas . . . . .	12,791	13,139	10,990	9,157	7,890
Total employees <sup>(2)</sup> . . . . .	30,067	30,522	26,467	23,623	21,736
Assets under management (in billions) <sup>(3)</sup>					
Asset class					
Alternative investments <sup>(4)</sup> . . . . .	\$ 146	\$ 151	\$ 145	\$ 110	\$ 95
Equity . . . . .	112	255	215	167	133
Fixed income . . . . .	248	256	198	154	134
Total non-money market assets . . . . .	506	662	558	431	362
Money markets . . . . .	273	206	118	101	90
Total assets under management . . . . .	\$ 779	\$ 868	\$ 676	\$ 532	\$ 452

<sup>(1)</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 485.4 million, 439.0 million, 450.1 million, 460.4 million and 494.0 million as of November 2008, November 2007, November 2006, November 2005 and November 2004, respectively.

<sup>(2)</sup> Excludes 4,671, 4,572, 3,868, 7,382 and 485 employees as of November 2008, November 2007, November 2006, November 2005 and November 2004, respectively, of consolidated entities held for investment purposes.

<sup>(3)</sup> Substantially all assets under management are valued as of calendar month-end.

<sup>(4)</sup> Primarily includes hedge funds, private equity, real estate, currencies, commodities and asset allocation strategies.

## SUPPLEMENTAL FINANCIAL INFORMATION

### Statistical Disclosures

#### *Distribution of Assets, Liabilities and Shareholders' Equity*

The following table sets forth a summary of consolidated average balances and interest rates for the years ended November 2008, November 2007 and November 2006.

	For the Year Ended November								
	2008			2007			2006		
	Average balance	Interest	Average rate	Average balance	Interest	Average rate	Average balance	Interest	Average rate
	(in millions, except rates)								
<b>Assets</b>									
Deposits with banks . . . . .	\$ 5,887	\$ 188	3.19%	\$ 3,516	\$ 119	3.38%	\$ 3,728	\$ 159	4.27%
U.S. . . . .	1,541	41	2.66	741	23	3.10	1,351	36	2.66
Non-U.S. . . . .	4,346	147	3.38	2,775	96	3.46	2,377	123	5.17
Securities borrowed, securities purchased under agreements to resell, at fair value, and federal funds sold . . . . .	421,157	11,746	2.79	348,691	18,013	5.17	308,509	9,850	3.19
U.S. . . . .	331,043	8,791	2.66	279,456	15,449	5.53	240,263	8,061	3.36
Non-U.S. . . . .	90,114	2,955	3.28	69,235	2,564	3.70	68,246	1,789	2.62
Trading assets <sup>(1)(2)</sup> . . . . .	328,208	13,150	4.01	336,412	13,120	3.90	265,878	10,717	4.03
U.S. . . . .	186,498	7,700	4.13	190,589	8,167	4.29	177,984	7,397	4.16
Non-U.S. . . . .	141,710	5,450	3.85	145,823	4,953	3.40	87,894	3,320	3.78
Other interest-earning assets <sup>(3)</sup> . . . . .	221,040	10,549	4.77	203,048	14,716	7.25	158,162	14,460	9.14
U.S. . . . .	131,778	4,438	3.37	97,830	6,480	6.62	96,517	9,321	9.66
Non-U.S. . . . .	89,262	6,111	6.85	105,218	8,236	7.83	61,645	5,139	8.34
<b>Total interest-earning assets</b> . . . . .	<u>976,292</u>	<u>35,633</u>	<u>3.65</u>	<u>891,667</u>	<u>45,968</u>	<u>5.16</u>	<u>736,277</u>	<u>35,186</u>	<u>4.78</u>
Cash and due from banks . . . . .	7,975			3,926			3,348		
Other noninterest-earning assets <sup>(2)</sup> . . . . .	154,727			102,312			80,856		
<b>Total Assets</b> . . . . .	<u>\$1,138,994</u>			<u>\$997,905</u>			<u>\$820,481</u>		
<b>Liabilities</b>									
Interest-bearing deposits . . . . .	\$ 26,455	756	2.86	\$ 13,227	677	5.12	\$ 2,853	146	5.12
U.S. . . . .	21,598	617	2.86	13,128	674	5.13	2,778	143	5.15
Non-U.S. . . . .	4,857	139	2.86	99	3	3.03	75	3	4.00
Securities loaned and securities sold under agreements to repurchase, at fair value . . . . .	194,935	7,414	3.80	214,511	12,612	5.88	206,992	9,525	4.60
U.S. . . . .	107,361	3,663	3.41	95,391	7,697	8.07	118,020	7,055	5.98
Non-U.S. . . . .	87,574	3,751	4.28	119,120	4,915	4.13	88,972	2,470	2.78
Trading liabilities <sup>(1)(2)</sup> . . . . .	95,377	2,789	2.92	109,736	3,866	3.52	99,967	3,125	3.13
U.S. . . . .	49,152	1,202	2.45	61,510	2,334	3.79	61,005	1,814	2.97
Non-U.S. . . . .	46,225	1,587	3.43	48,226	1,532	3.18	38,962	1,311	3.36
Commercial paper . . . . .	4,097	145	3.54	5,605	269	4.80	7,485	361	4.82
U.S. . . . .	3,147	121	3.84	4,871	242	4.97	6,859	331	4.83
Non-U.S. . . . .	950	24	2.53	734	27	3.68	626	30	4.79
Other borrowings <sup>(4)(5)</sup> . . . . .	99,351	1,719	1.73	89,924	3,129	3.48	58,277	2,544	4.37
U.S. . . . .	52,126	1,046	2.01	44,789	1,779	3.97	43,534	1,521	3.49
Non-U.S. . . . .	47,225	673	1.43	45,135	1,350	2.99	14,743	1,023	6.94
Long-term borrowings <sup>(5)(6)</sup> . . . . .	203,360	13,687	6.73	167,997	14,147	8.42	121,935	9,777	8.02
U.S. . . . .	181,775	12,306	6.77	158,694	13,317	8.39	110,186	9,396	8.53
Non-U.S. . . . .	21,585	1,381	6.40	9,303	830	8.92	11,749	381	3.24
Other interest-bearing liabilities <sup>(7)</sup> . . . . .	345,956	4,847	1.40	248,640	7,281	2.93	205,556	6,210	3.02
U.S. . . . .	214,780	2,184	1.02	142,002	3,666	2.58	114,874	2,932	2.55
Non-U.S. . . . .	131,176	2,663	2.03	106,638	3,615	3.39	90,682	3,278	3.61
<b>Total interest-bearing liabilities</b> . . . . .	<u>969,531</u>	<u>31,357</u>	<u>3.23</u>	<u>849,640</u>	<u>41,981</u>	<u>4.94</u>	<u>703,065</u>	<u>31,688</u>	<u>4.51</u>
Noninterest-bearing deposits . . . . .	4			—			—		
Other noninterest-bearing liabilities <sup>(2)</sup> . . . . .	122,292			110,306			86,368		
<b>Total liabilities</b> . . . . .	<u>1,091,827</u>			<u>959,946</u>			<u>789,433</u>		
<b>Shareholders' equity</b>									
Preferred stock . . . . .	5,157			3,100			2,400		
Common stock . . . . .	42,010			34,859			28,648		
<b>Total shareholders' equity</b> . . . . .	<u>47,167</u>			<u>37,959</u>			<u>31,048</u>		
<b>Total liabilities, preferred stock and shareholders' equity</b> . . . . .	<u>\$1,138,994</u>			<u>\$997,905</u>			<u>\$820,481</u>		
Interest rate spread . . . . .			0.42%			0.22%			0.27%
Net interest income and net yield on interest-earning assets . . . . .		\$ 4,276	0.44		\$ 3,987	0.45		\$ 3,498	0.48
U.S. . . . .		(169)	(0.03)		410	0.07		1,623	0.31
Non-U.S. . . . .		4,445	1.37		3,577	1.11		1,875	0.85
<b>Percentage of interest-earning assets and interest-bearing liabilities attributable to non-U.S. operations <sup>(8)</sup></b>									
Assets . . . . .			33.33%			36.23%			29.90%
Liabilities . . . . .			35.03			38.75			34.96

## SUPPLEMENTAL FINANCIAL INFORMATION

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- <sup>(1)</sup> Consists of cash trading instruments, including equity securities and convertible debentures.
  - <sup>(2)</sup> Derivative instruments are included in other noninterest-earning assets and other noninterest-bearing liabilities.
  - <sup>(3)</sup> Primarily consists of cash and securities segregated for regulatory and other purposes and receivables from customers and counterparties.
  - <sup>(4)</sup> Consists of short-term other secured financings and unsecured short-term borrowings, excluding commercial paper.
  - <sup>(5)</sup> Interest rates include the effects of hedging in accordance with SFAS No. 133.
  - <sup>(6)</sup> Consists of long-term other secured financings and unsecured long-term borrowings.
  - <sup>(7)</sup> Primarily consists of payables to customers and counterparties.
  - <sup>(8)</sup> Assets, liabilities and interest are attributed to U.S. and non-U.S. based on the principal place of operations of the legal entity in which the assets and liabilities are held.

## SUPPLEMENTAL FINANCIAL INFORMATION

### *Changes in Net Interest Income, Volume and Rate Analysis*

The following table sets forth an analysis of the effect on net interest income of volume and rate changes for the periods 2008 versus 2007 and 2007 versus 2006. In this analysis, changes due to volume/rate variance have been allocated to volume.

	For the Year Ended November					
	2008 versus 2007			2007 versus 2006		
	Increase (decrease) due to change in:		Net change	Increase (decrease) due to change in:		Net change
Volume	Rate	Volume		Rate		
	(in millions)					
<b>Interest-earning assets</b>						
Deposits with banks . . . . .	\$ 74	\$ (5)	\$ 69	\$ (5)	\$ (35)	\$ (40)
U.S. . . . .	21	(3)	18	(19)	6	(13)
Non-U.S. . . . .	53	(2)	51	14	(41)	(27)
Securities borrowed, securities purchased under agreements to resell, at fair value and federal funds sold . . . . .	2,055	(8,322)	(6,267)	2,203	5,960	8,163
U.S. . . . .	1,370	(8,028)	(6,658)	2,167	5,221	7,388
Non-U.S. . . . .	685	(294)	391	36	739	775
Trading assets . . . . .	(327)	357	30	2,508	(105)	2,403
U.S. . . . .	(169)	(298)	(467)	540	230	770
Non-U.S. . . . .	(158)	655	497	1,968	(335)	1,633
Other interest-earning assets . . . .	51	(4,218)	(4,167)	3,498	(3,242)	256
U.S. . . . .	1,143	(3,185)	(2,042)	87	(2,928)	(2,841)
Non-U.S. . . . .	(1,092)	(1,033)	(2,125)	3,411	(314)	3,097
<b>Change in interest income . . . . .</b>	<b>1,853</b>	<b>(12,188)</b>	<b>(10,335)</b>	<b>8,204</b>	<b>2,578</b>	<b>10,782</b>
<b>Interest-bearing liabilities</b>						
Interest-bearing deposits . . . . .	378	(299)	79	532	(1)	531
U.S. . . . .	242	(299)	(57)	531	—	531
Non-U.S. . . . .	136	—	136	1	(1)	—
Securities loaned and securities sold under agreements to repurchase, at fair value . . . . .	(943)	(4,255)	(5,198)	(582)	3,669	3,087
U.S. . . . .	408	(4,442)	(4,034)	(1,826)	2,468	642
Non-U.S. . . . .	(1,351)	187	(1,164)	1,244	1,201	2,445
Trading liabilities . . . . .	(371)	(706)	(1,077)	313	428	741
U.S. . . . .	(302)	(830)	(1,132)	19	501	520
Non-U.S. . . . .	(69)	124	55	294	(73)	221
Commercial paper . . . . .	(61)	(63)	(124)	(95)	3	(92)
U.S. . . . .	(66)	(55)	(121)	(99)	10	(89)
Non-U.S. . . . .	5	(8)	(3)	4	(7)	(3)
Other borrowings . . . . .	177	(1,587)	(1,410)	959	(374)	585
U.S. . . . .	147	(880)	(733)	50	208	258
Non-U.S. . . . .	30	(707)	(677)	909	(582)	327
Long-term debt . . . . .	2,349	(2,809)	(460)	3,852	518	4,370
U.S. . . . .	1,563	(2,574)	(1,011)	4,070	(149)	3,921
Non-U.S. . . . .	786	(235)	551	(218)	667	449
Other interest-bearing liabilities . . .	1,238	(3,672)	(2,434)	1,243	(172)	1,071
U.S. . . . .	740	(2,222)	(1,482)	701	33	734
Non-U.S. . . . .	498	(1,450)	(952)	542	(205)	337
<b>Change in interest expense . . . . .</b>	<b>2,767</b>	<b>(13,391)</b>	<b>(10,624)</b>	<b>6,222</b>	<b>4,071</b>	<b>10,293</b>
<b>Change in net interest income . . .</b>	<b>\$ (914)</b>	<b>\$ 1,203</b>	<b>\$ 289</b>	<b>\$ 1,982</b>	<b>\$ (1,493)</b>	<b>\$ 489</b>



## SUPPLEMENTAL FINANCIAL INFORMATION

### **Available-for-sale Securities Portfolio**

The following table sets forth the amortized cost, gross unrealized gains and losses, and fair value of available-for-sale securities at November 2008 and November 2007:

	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
	(in millions)			
<b>Available-for-sale securities, November 2008</b>				
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$ 259	\$—	\$ —	\$ 259
U.S. governments, federal agency and sovereign obligations . . . . .	574	23	(3)	594
Mortgage and other asset-backed loans and securities . . . . .	213	—	(49)	164
Corporate debt securities and other debt obligations . . .	<u>750</u>	<u>5</u>	<u>(90)</u>	<u>665</u>
<b>Total available-for-sale securities . . . . .</b>	<b><u>\$1,796</u></b>	<b><u>\$28</u></b>	<b><u>\$(142)</u></b>	<b><u>\$1,682</u></b>
<b>Available-for-sale securities, November 2007</b>				
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$ 29	\$—	\$ —	\$ 29
U.S. governments, federal agency and sovereign obligations . . . . .	389	9	—	398
Mortgage and other asset-backed loans and securities . . . . .	179	1	(2)	178
Corporate debt securities and other debt obligations . . .	<u>575</u>	<u>3</u>	<u>(14)</u>	<u>564</u>
<b>Total available-for-sale securities . . . . .</b>	<b><u>\$1,172</u></b>	<b><u>\$13</u></b>	<b><u>\$(16)</u></b>	<b><u>\$1,169</u></b>

**SUPPLEMENTAL FINANCIAL INFORMATION**

As of November 2008

	Due in One Year or Less		Due After One Year Through Five Years		Due After Five Years Through Ten Years		Due After Ten Years		Total	
	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>	Amount	Yield <sup>(1)</sup>
	(\$ in millions)									
<b>Fair value of available-for-sale securities</b>										
Commercial paper, certificates of deposit, time deposits and other money market instruments . . . . .	\$259	1%	\$ —	—%	\$ —	—%	\$ —	—%	\$ 259	1%
U.S. governments, federal agency and sovereign obligations . . . . .	—	—	144	2	133	4	317	5	594	4
Mortgage and other asset-backed loans and securities . . . . .	—	—	—	—	—	—	164	21	164	21
Corporate debt securities and other debt obligations . . . . .	<u>48</u>	16	<u>227</u>	7	<u>94</u>	8	<u>296</u>	9	<u>665</u>	9
<b>Total available-for-sale securities . . . . .</b>	<b><u>\$307</u></b>		<b><u>\$371</u></b>		<b><u>\$227</u></b>		<b><u>\$777</u></b>		<b><u>\$1,682</u></b>	
<b>Amortized cost of available-for-sale securities . . . . .</b>	<b>\$310</b>		<b>\$377</b>		<b>\$229</b>		<b>\$880</b>		<b>\$1,796</b>	

<sup>(1)</sup> Yields are calculated on a weighted average basis.

## SUPPLEMENTAL FINANCIAL INFORMATION

### **Deposits**

The following table sets forth a summary of the average balances and average interest rates for the firm's interest-bearing deposits for the years ended November 2008, November 2007 and November 2006:

	<u>Average Balances</u>			<u>Average Interest Rates</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(\$ in millions)					
<b>U.S.:</b>						
Savings <sup>(1)</sup> . . . . .	\$20,214	\$13,096	\$2,745	2.82%	5.12%	5.14%
Time . . . . .	<u>1,384</u>	<u>32</u>	<u>33</u>	3.40	9.96	5.42
Total U.S. deposits . . . . .	21,598	13,128	2,778	2.86	5.13	5.15
<b>Non-U.S.:</b>						
Demand . . . . .	4,842	99	75	2.83	3.03	4.00
Time . . . . .	<u>15</u>	<u>—</u>	<u>—</u>	13.00	—	—
Total Non-U.S. deposits . . . . .	<u>4,857</u>	<u>99</u>	<u>75</u>	2.86	3.03	4.00
<b>Total deposits</b> . . . . .	<u>\$26,455</u>	<u>\$13,227</u>	<u>\$2,853</u>	2.86%	5.12%	5.12%

<sup>(1)</sup> Amounts are available for withdrawal upon short notice, generally within seven days.

As of November 2008, the firm had \$55 million of non-U.S. time deposits greater than \$100,000.

### **Ratios**

The following table sets forth selected financial ratios:

	<u>Year Ended November</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Net income to average assets . . . . .	0.2%	1.2%	1.2%
Return on common shareholders' equity <sup>(1)</sup> . . . . .	4.9	32.7	32.8
Return on total shareholders' equity <sup>(2)</sup> . . . . .	4.9	30.6	30.7
Total average equity to average assets . . . . .	4.1	3.8	3.8
Dividend payout ratio <sup>(3)</sup> . . . . .	31.3	5.7	6.6

<sup>(1)</sup> Based on net income less preferred stock dividends as a percentage of average common shareholders' equity.

<sup>(2)</sup> Based on net income as a percentage of average total shareholders' equity.

<sup>(3)</sup> Dividends declared per common share as a percentage of net income per diluted share.

## SUPPLEMENTAL FINANCIAL INFORMATION

### **Short-term and Other Borrowed Funds** <sup>(1)</sup>

The following table sets forth a summary of the firm's securities loaned and securities sold under agreements to repurchase and short-term borrowings as of or for the years ended November as indicated below:

	<b>Securities Loaned and Securities Sold Under Agreements to Repurchase</b>			<b>Commercial Paper</b>			<b>Other Funds Borrowed</b> <sup>(2)(3)</sup>		
	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>
	(\$ in millions)								
Amounts outstanding at year-end . . . . .	\$ 79,943	\$187,802	\$169,700	\$ 1,125	\$4,343	\$ 1,489	\$ 72,758	\$ 99,624	\$70,705
Average outstanding during the year . . . . .	194,935	214,511	206,992	4,097	5,605	7,485	99,351	89,924	58,277
Maximum month-end outstanding . . . . .	256,596	270,991	278,560	12,718	8,846	18,227	109,927	105,845	82,353
<b>Weighted average interest rate</b>									
During the year <sup>(3)</sup> . . . . .	3.80%	5.88%	4.60%	3.54%	4.80%	4.82%	1.73%	3.48%	4.37%
At year-end. . . . .	3.27	5.15	5.52	2.79	4.81	4.99	2.06 <sup>(3)</sup>	3.11 <sup>(3)</sup>	3.93 <sup>(3)</sup>

<sup>(1)</sup> Includes borrowings maturing within one year of the financial statement date and borrowings that are redeemable at the option of the holder within one year of the financial statement date.

<sup>(2)</sup> Includes short-term secured financings of \$21.23 billion as of November 2008, \$32.41 billion as of November 2007 and \$24.29 billion as of November 2006.

<sup>(3)</sup> As of November 2008, November 2007 and November 2006, weighted average interest rates include the effects of hedging in accordance with SFAS No. 133.

### **Cross-border Outstandings**

Cross-border outstandings are based upon the Federal Financial Institutions Examination Council's (FFIEC) regulatory guidelines for reporting cross-border risk. Claims include cash, receivables, securities purchased under agreements to resell, securities borrowed and cash trading instruments, but exclude derivative instruments and commitments. Securities purchased under agreements to resell and securities borrowed are presented based on the domicile of the counterparty, without reduction for related securities collateral held.

The following table sets forth cross-border outstandings for each country in which cross-border outstandings exceed 0.75% of consolidated assets as of November 2008 in accordance with the FFIEC guidelines:

<b>Country</b>	<b>Banks</b>	<b>Governments</b>	<b>Other</b>	<b>Total</b>
	(in millions)			
United Kingdom . . . . .	\$5,104	\$4,600	\$51,531	\$61,235
Cayman Islands . . . . .	50	—	20,904	20,954
Germany . . . . .	3,973	2,518	7,825	14,316
France . . . . .	2,264	1,320	9,791	13,375
Japan . . . . .	4,003	100	3,354	7,457

**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 Exchange Act). 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 Exchange Act) occurred during the fourth quarter of our fiscal year ended November 28, 2008 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 are set forth in Part II, Item 8 of our Annual Report on Form 10-K.

**Item 9B. Other Information**

Not applicable.

## **PART III**

### **Item 10. Directors, Executive Officers and Corporate Governance**

Information relating to our executive officers is included on pages 51 to 52 of our Annual Report on Form 10-K. Information relating to our directors, including our audit committee and audit committee financial experts and the procedures by which shareholders can recommend director nominees, and our executive officers will be in our definitive Proxy Statement for our 2009 Annual Meeting of Shareholders to be held on May 8, 2009, which will be filed within 120 days of the end of our fiscal year ended November 28, 2008 (2009 Proxy Statement) and is incorporated herein by reference. Information relating to our Code of Business Conduct and Ethics that applies to our senior financial officers, as defined in the Code, is included in Part I, Item 1 of our Annual Report on Form 10-K.

### **Item 11. Executive Compensation**

Information relating to our executive officer and director compensation and the compensation committee of our board of directors will be in the 2009 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 our common stock and information relating to the security ownership of our management will be in the 2009 Proxy Statement and is incorporated herein by reference.

The following table provides information generally as of November 28, 2008, the last day of fiscal 2008, regarding securities to be issued on exercise of stock options, and securities remaining available for issuance under our equity compensation plans that were in effect during fiscal 2008.

	<u>Plan Category</u>	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</u>	<u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</u>	<u>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in the Second Column)</u>
Equity compensation plans approved by security holders	The Goldman Sachs Amended and Restated Stock Incentive Plan <sup>(1)</sup>	33,639,132 <sup>(2)</sup>	\$109.47 <sup>(2)</sup>	216,990,058 <sup>(3)</sup>
Equity compensation plans not approved by security holders	None	—	—	—
<b>Total</b>		<u>33,639,132</u> <sup>(2)</sup>		<u>216,990,058</u> <sup>(3)(4)</sup>

<sup>(1)</sup> The Goldman Sachs Amended and Restated Stock Incentive Plan (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 (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.

<sup>(3)</sup> Of these shares, 54,852,028 shares may be issued pursuant to outstanding restricted stock units, including 54,824,666 shares granted under the SIP and 27,362 shares granted under the 1999 Plan; 151,230 shares may be issued pursuant to outstanding performance-based units granted under the SIP.

<sup>(4)</sup> Represents shares remaining to be issued under the SIP (217,388,173 shares) and the 1999 Plan (27,362 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, and Director Independence

Information regarding certain relationships and related transactions and director independence will be in the 2009 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 2009 Proxy Statement and is incorporated herein by reference.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

#### (a) Documents filed as part of this Report:

##### 1. Consolidated Financial Statements

The consolidated financial statements required to be filed in our Annual Report on Form 10-K are included in Part II, Item 8 hereof.

##### 2. 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 December 12, 2006).
- 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).
- 4.3 Warrant Indenture, dated as of February 14, 2006, between The Goldman Sachs Group, Inc. and The Bank of New York, as trustee (incorporated by reference to Exhibit 4.34 to the Registrant's Post-Effective Amendment No. 3 to Form S-3, filed on March 1, 2006).
- 4.4 Senior Debt Indenture, dated as of December 4, 2007, among GS Finance Corp., as issuer, The Goldman Sachs Group, Inc., as guarantor, and The Bank of New York, as Trustee (incorporated by reference to Exhibit 4.69 to the Registrant's Post-Effective Amendment No. 10 to Form S-3, filed on December 4, 2007).
- 4.5 Form of floating rate senior debt security (TLGP) issued under the Senior Debt Indenture, dated as of July 16, 2008, between The Goldman Sachs Group, Inc. and The Bank of New York Mellon, as trustee.
- 4.6 Form of fixed rate senior debt security (TLGP) issued under the Senior Debt Indenture, dated as of July 16, 2008, between The Goldman Sachs Group, Inc. and The Bank of New York Mellon, as trustee.
- 4.7 Form of floating rate Medium-Term Note, Series D (TLGP) issued under the Senior Debt Indenture, dated as of July 16, 2008, between The Goldman Sachs Group, Inc. and The Bank of New York Mellon, as trustee.
- 4.8 Form of fixed rate Medium-Term Note, Series D (TLGP) issued under the Senior Debt Indenture, dated as of July 16, 2008, between The Goldman Sachs Group, Inc. and The Bank of New York Mellon, as trustee.
- 4.9 Senior Debt Indenture, dated as of July 16, 2008, between The Goldman Sachs Group, Inc. and The Bank of New York Mellon, as trustee (incorporated by reference to Exhibit 4.82 to the Registrant's Post-Effective Amendment No. 11 to Form S-3 (No. 333-130074), filed July 17, 2008).
- 4.10 Senior Debt Indenture, dated as of October 10, 2008, among GS Finance Corp., as issuer, The Goldman Sachs Group, Inc., as guarantor, and The Bank of New York Mellon, as trustee (incorporated by reference to Exhibit 4.70 to the Registrant's registration statement on Form S-3 (No. 333-154173), filed October 10, 2008).

*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.†
- 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 Amended and Restated Restricted Partner Compensation Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended February 24, 2006).†
- 10.4 Form of Employment Agreement for pre-IPO Participating Managing Directors (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 (No. 005-56295)).
- 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 (No. 005-56295)).
- 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 (No. 005-56295)).
- 10.17 Supplemental Registration Rights Instrument, dated as of December 21, 2001 (incorporated by reference to Exhibit 4.4 to the 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 the 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 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).†
- 10.23 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).†
- 10.24 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)).
- 10.25 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).†
- 10.26 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).†
- 10.27 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).†
- 10.28 Form of RSU Award Agreement for PMD Discount Stock Program (subject to transfer restrictions) (incorporated by reference to Exhibit 10.29 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.29 Form of RSU Award Agreement for PMD Discount Stock Program (not subject to transfer restrictions) (incorporated by reference to Exhibit 10.30 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.30 Form of RSU Award Agreement for PMD Discount Stock Program (subject to transfer restrictions) (French alternative award) (incorporated by reference to Exhibit 10.31 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.31 Form of RSU Award Agreement for PMD Discount Stock Program (not subject to transfer restrictions) (French alternative award) (incorporated by reference to Exhibit 10.32 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.32 Form of RSU Award Agreement for PMD Discount Stock Program (U.K. employee benefit trusts) (incorporated by reference to Exhibit 10.33 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.33 Form of Year-End Restricted Stock Award (incorporated by reference to Exhibit 10.34 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†

- 10.34 Form of Year-End Restricted Stock Award in Connection with Outstanding RSU Awards (incorporated by reference to Exhibit 10.35 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.35 The Goldman Sachs Group, Inc. Non-Qualified Deferred Compensation Plan for U.S. Participating Managing Directors (terminated as of December 15, 2008) (incorporated by reference to Exhibit 10.36 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.36 Form of Year-End Option Award Agreement.†
- 10.37 Form of Year-End RSU Award Agreement (not fully vested upon grant).†
- 10.38 Form of Year-End RSU Award Agreement (fully vested upon grant) (incorporated by reference to Exhibit 10.37 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.39 Form of Year-End RSU Award Agreement (French alternative award).†
- 10.40 Amendments to 2005 and 2006 Year-End RSU and Option Award Agreements (incorporated by reference to Exhibit 10.44 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 30, 2007).†
- 10.41 Form of Non-Employee Director Option Award Agreement.†
- 10.42 Form of Non-Employee Director RSU Award Agreement.†
- 10.43 Description of Non-Employee Director Compensation.†
- 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. (incorporated by reference to Exhibit 10.45 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 25, 2005).
- 10.46 Letter, dated November 10, 2006, from The Goldman Sachs Group, Inc. to Mr. Rajat K. Gupta (incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K, filed November 13, 2006).†
- 10.47 Goldman, Sachs & Co. Executive Life Insurance Policy and Certificate with Metropolitan Life Insurance Company for Participating Managing Directors (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 25, 2006).†
- 10.48 Form of Goldman, Sachs & Co. Executive Life Insurance Policy with Pacific Life & Annuity Company for Participating Managing Directors, including policy specifications and form of restriction on Policy Owner's Rights (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 25, 2006).†
- 10.49 Form of Signature Card for Equity Awards.†
- 10.50 Form of Employment Agreement for post-IPO Participating Managing Directors (incorporated by reference to Exhibit 10.50 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2006).†
- 10.51 Form of Second Amendment, dated November 25, 2006, to Agreement Relating to Noncompetition and Other Covenants, dated May 7, 1999, as amended effective November 27, 2004 (incorporated by reference to Exhibit 10.51 to the Registrant's Annual Report on Form 10-K for the fiscal year ended November 24, 2006).†
- 10.52 Description of PMD Retiree Medical Program (incorporated by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q for the period ended February 29, 2008).†

- 10.53 Letter, dated June 28, 2008, from The Goldman Sachs Group, Inc. to Mr. Lakshmi N. Mittal (incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K, filed June 30, 2008).†
- 10.54 Securities Purchase Agreement, dated September 29, 2008, between The Goldman Sachs Group, Inc. and Berkshire Hathaway Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the period ended August 29, 2008).
- 10.55 General Guarantee Agreement, dated October 21, 2008, made by The Goldman Sachs Group, Inc. relating to the obligations of Goldman Sachs Bank USA (incorporated by reference to Exhibit 4.85 to the Registrant's Post-Effective Amendment No. 1 to Form S-3, filed October 22, 2008).
- 10.56 Form of Letter Agreement between The Goldman Sachs Group, Inc. and each of Lloyd C. Blankfein, Gary D. Cohn, Jon Winkelried and David A. Viniar (incorporated by reference to Exhibit O to Amendment No. 70 to Schedule 13D, filed October 1, 2008, relating to the Registrant's common stock (No. 005-56295)).
- 10.57 Letter Agreement, dated as of October 26, 2008, including Securities Purchase Agreement — Standard Terms incorporated by reference therein, between The Goldman Sachs Group, Inc. and the United States Department of the Treasury (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed October 28, 2008).
- 10.58 Form of Letter Agreement, dated October 28, 2008, between The Goldman Sachs Group, Inc. and its senior executive officers relating to executive compensation limitations under the U.S. Treasury Department's Capital Purchase Program.†
- 10.59 General Guarantee Agreement, dated November 24, 2008, made by The Goldman Sachs Group, Inc. relating to the obligations of Goldman Sachs Bank (Europe) PLC.
- 10.60 Guarantee Agreement, dated November 28, 2008, between The Goldman Sachs Group, Inc. and Goldman Sachs Bank USA.
- 10.61 Collateral Agreement, dated November 28, 2008, between The Goldman Sachs Group, Inc., Goldman Sachs Bank USA and each other party that becomes a pledgor pursuant thereto.
- 10.62 Form of Performance-Based One-Time RSU Award Agreement.†
- 10.63 Form of Make-Whole One-Time RSU Award Agreement.†
- 10.64 Form of Incentive One-Time RSU Award Agreement.†
- 10.65 Form of Year-End Supplemental RSU Award Agreement (employees in France).†
- 10.66 Form of Signature Card for Equity Awards (employees in Asia outside China).†
- 10.67 Form of Signature Card for Equity Awards (employees in China).†
- 10.68 Amendments to Certain Equity Award Agreements.†
- 10.69 Amendments to Certain Non-Employee Director Equity Award Agreements.†
- 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.

## 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: January 26, 2009

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Lloyd C. Blankfein, Gary D. Cohn, Jon Winkelried, 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 our 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>
<u>/s/ Lloyd C. Blankfein</u> Lloyd C. Blankfein	Director, Chairman and Chief Executive Officer (Principal Executive Officer)	January 26, 2009
<u>/s/ John H. Bryan</u> John H. Bryan	Director	January 26, 2009
<u>/s/ Gary D. Cohn</u> Gary D. Cohn	Director	January 26, 2009
<u>/s/ Claes Dahlbäck</u> Claes Dahlbäck	Director	January 26, 2009
<u>/s/ Stephen Friedman</u> Stephen Friedman	Director	January 26, 2009
<u>/s/ William W. George</u> William W. George	Director	January 26, 2009
<u>/s/ Rajat K. Gupta</u> Rajat K. Gupta	Director	January 26, 2009
<u>/s/ James A. Johnson</u> James A. Johnson	Director	January 26, 2009
<u>/s/ Lois D. Juliber</u> Lois D. Juliber	Director	January 26, 2009
<u>/s/ Lakshmi N. Mittal</u> Lakshmi N. Mittal	Director	January 26, 2009
<u>/s/ Ruth J. Simmons</u> Ruth J. Simmons	Director	January 26, 2009

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ Jon Winkelried</u> Jon Winkelried	Director	January 26, 2009
<u>/s/ David A. Viniar</u> David A. Viniar	Chief Financial Officer (Principal Financial Officer)	January 26, 2009
<u>/s/ Sarah E. Smith</u> Sarah E. Smith	Principal Accounting Officer	January 26, 2009

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**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.

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## 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

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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.

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## 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;

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(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.

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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.

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 D, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on May 23, 2006, 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 D, are set forth in Appendix D 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

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Securities Issuance Committee, the Securities Issuance Committee created a series of shares of Preferred Stock designated as Perpetual Non-Cumulative Preferred Stock, Series E, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on May 14, 2007, 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 Perpetual Non-Cumulative Preferred Stock, Series E, are set forth in Appendix E 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 Perpetual Non-Cumulative Preferred Stock, Series F, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on May 14, 2007, 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 Perpetual Non-Cumulative Preferred Stock, Series F, are set forth in Appendix F 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 10% Cumulative Perpetual Preferred Stock, Series G, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on September 30, 2008, 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 10% Cumulative Perpetual Preferred Stock, Series G, are set forth in Appendix G 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 Fixed Rate Cumulative Perpetual Preferred Stock, Series H, by filing a certificate of designations of the Corporation with the Secretary of State of the State of Delaware on October 27, 2008, 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 Fixed Rate Cumulative Perpetual Preferred Stock, Series H, are set forth in Appendix H hereto and are incorporated herein by reference.

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## 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



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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

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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,

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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.

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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 22nd day of January, 2009.

By: /s/ Gregory K. Palm

Name: Gregory K. Palm

Title: Executive Vice President and 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.

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**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.

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(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.

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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



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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.

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## **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

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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 depositary 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.

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(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,

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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 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

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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 reversion 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

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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

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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



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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.

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**Section 3. Definitions.** As used herein with respect to Series B:

- (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) “Certificate of Designations” means this Certificate of Designations relating to the Series B, as it may be amended from time to time.
- (e) “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.
- (f) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.
- (g) “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.
- (h) “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.
- (i) “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.
- (j) “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.

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#### 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).

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(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

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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

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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

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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



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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 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).

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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 reversion 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.

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(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 $\frac{2}{3}$ % 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

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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

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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.

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**Section 3. Definitions.** As used herein with respect to Series C:

(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 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.

(e) “Certificate of Designations” means this Certificate of Designations relating to the Series C, 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 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.

(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 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.

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(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 C.

(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 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.



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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

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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.

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## **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

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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.

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(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,

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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

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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 reversion 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

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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;



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*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

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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.

**CERTIFICATE OF DESIGNATIONS**  
**OF**  
**FLOATING RATE NON-CUMULATIVE PREFERRED STOCK, SERIES D**  
**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 restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, by unanimous written consent dated May 16, 2005, adopted the following resolution creating a series of 60,000 shares of Preferred Stock of the Corporation designated as "Floating Rate Non-Cumulative Preferred Stock, Series D".

**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 restated certificate of incorporation and the amended and restated 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 D" ("Series D"). Each share of Series D shall be identical in all respects to every other share of Series D, 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 D shall be 60,000. Shares of Series D 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 D.

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**Section 3. Definitions.** As used herein with respect to Series D:

(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 D 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 D, as it may be amended from time to time.

(f) “Certification of Incorporation” shall mean the 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 D) that ranks junior to Series D 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 D) that ranks equally with Series D both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

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(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 D.

(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 D are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series D) that rank equally with Series D 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 D 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 D. 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, 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 D 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 D shall not be cumulative; holders of Series D 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 D on any Dividend Payment Date will be payable to holders of record of Series D 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.

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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 D, *provided* that, for any share of Series D 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 D 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 D, for each Dividend Period, shall be a rate per annum equal to the greater of (1) 0.67% 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 (or any successor or replacement page) 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 (or any successor or replacement page), 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.

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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 D 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 D 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 D 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 D 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 D and any shares of Parity Stock, all dividends declared on the Series D 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 D 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 D shall not be entitled to participate in any such dividends.

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## **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 D 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 D as to such distribution, in full an amount equal to \$25,000 per share (the "Series D 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 D and all holders of any stock of the Corporation ranking equally with the Series D as to such distribution, the amounts paid to the holders of Series D 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 D 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 D 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 D, 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 D 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 D may not be redeemed by the Corporation prior to May 24, 2011. On or after May 24, 2011, the Corporation, at its



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option, may redeem, in whole at any time or in part from time to time, the shares of Series D 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 hereinbelow) 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 D 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 D will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series D will have no right to require redemption of any shares of Series D.

(c) **Notice of Redemption.** Notice of every redemption of shares of Series D 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 D designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series D. Notwithstanding the foregoing, if the Series D or any depositary shares representing interests in the Series D 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 D 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 D 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 D 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 D 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.

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(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 D, 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 D for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series D 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,

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then, upon such affirmative election, the Series D 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 D, 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 D, 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 D of any election to qualify the Series D for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series D 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 D 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 D 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 D 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 D 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

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increased by two and the holders of Series D, 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 D, 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 D 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 D 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 D for at least four Dividend Periods (whether or not consecutive) after a Nonpayment Event, then the right of the holders of Series D to elect the Preferred Stock Directors shall cease (but subject always to reversion of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series D 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 D 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 D and all Voting Preferred Stock, when they have the voting rights described above (voting together as a single

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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 D 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 D 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 D 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 D.** 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 D, taken as a whole; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series D, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series D 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 D immediately prior to such consummation, taken as a whole;

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*provided, however*, that for all purposes of this Section 8(c), any increase in the amount of the authorized or issued Series D 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 D 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 D. In addition, any conversion of the Series D pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series D.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series D and one or more but not all other series of Preferred Stock, then only the Series D 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 D, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series D, the Corporation may amend, alter, supplement or repeal any terms of the Series D:

(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 D 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 D 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 D 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 D (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 D 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 D and any Voting Preferred

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Stock has been cast or given on any matter on which the holders of shares of Series D 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 D may deem and treat the record holder of any share of Series D 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 D 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 D 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 D 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**  
**PERPETUAL NON-CUMULATIVE PREFERRED STOCK, SERIES E**  
**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, by unanimous written consent dated May 14, 2007, adopted the following resolution creating a series of 17,500.1 shares of Preferred Stock of the Corporation designated as “Perpetual Non-Cumulative Preferred Stock, Series E”.

**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated 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 “Perpetual Non-Cumulative Preferred Stock, Series E” (“Series E”). Each share of Series E shall be identical in all respects to every other share of Series E.

**Section 2. Number of Shares.** The authorized number of shares of Series E shall be 17,500.1. Shares of Series E 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 E.



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**Section 3. Definitions.** As used herein with respect to Series E:

(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 E 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 E, as it may be amended from time to time.

(f) “Certification of Incorporation” shall mean the 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 E) that ranks junior to Series E 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) “Parity Stock” means any class or series of stock of the Corporation (other than Series E) that ranks equally with Series E both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(k) “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 E.

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(l) “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.

(m) “Reuters Screen LIBOR01” means the display designated on the Reuters 3000 Xtra (or such other page as may replace that page on that service or such other service as may be nominated by the British Bankers’ Association for the purpose of displaying London interbank offered rates for U.S. Dollar deposits).

(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 E are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series E) that rank equally with Series E 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 E 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 \$100,000 per share of Series E. Such dividends shall be payable 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), (a) if the shares of Series E are issued prior to June 1, 2012 (or if such date is not a Business Day, the next Business Day), on June 1 and December 1 of each year until June 1, 2012, and (b) thereafter, on March 1, June 1, September 1 and December 1 of each year (each a “Dividend Payment Date”); *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 E on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. If a Dividend Payment Date prior to June 1, 2012 is not a Business Day, the applicable dividend shall be paid on the first Business Day following that day without adjustment. Dividends on Series E shall not be cumulative; holders of Series E 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 E on any Dividend Payment Date will be payable to holders of record of Series E 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

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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 E) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable on the Series E in respect of a Dividend Period shall be computed by the Calculation Agent (i) if shares of Series E are issued prior to June 1, 2012, on the basis of a 360-day year consisting of twelve 30 day months until the Dividend Payment Date in June 2012 and (ii) thereafter, 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 E, for each Dividend Period, shall be (a) if the shares of Series E are issued prior to June 1, 2012, a rate per annum equal to 5.793% until the Dividend Payment date in June 2012, and (b) thereafter, a rate per annum that will reset quarterly and shall be equal to the greater of (i) three-month LIBOR for such Dividend Period plus 0.7675% and (ii) 4.000%. Three-month 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 Reuters Screen LIBOR01 (or any successor or replacement page) 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 Reuters Screen LIBOR01 (or any successor or replacement page), 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.

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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 E 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 E 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 E 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 E 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 E and any shares of Parity Stock, all dividends declared on the Series E 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 E 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

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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 E 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 E 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 E as to such distribution, in full an amount equal to \$100,000 per share (the “Series E 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 E and all holders of any stock of the Corporation ranking equally with the Series E as to such distribution, the amounts paid to the holders of Series E 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 E 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 E 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 E, 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 E 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.

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## Section 6. Redemption.

(a) **Optional Redemption.** The Series E may not be redeemed by the Corporation prior to the later of June 1, 2012 and the date of original issue of Series E. On or after that date, the Corporation, at its option, may redeem, in whole at any time or in part from time to time, the shares of Series E at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to \$100,000 per share, together (except as otherwise provided herein) 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 E 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 E will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series E will have no right to require redemption of any shares of Series E.

(c) **Notice of Redemption.** Notice of every redemption of shares of Series E 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 E designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series E. Notwithstanding the foregoing, if the Series E or any depositary shares representing interests in the Series E 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 E 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 E 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 E 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 E shall be redeemed from time to time. If fewer than all the shares represented by any certificate

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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 E, 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 E for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series E 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

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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 E 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 E, 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 E, 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 E of any election to qualify the Series E for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series E 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 E 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 E 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 E shall not have any voting rights except as set forth below or as otherwise from to time required by law.



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**(b) Right To Elect Two Directors Upon Nonpayment Events.** If and whenever dividends on any shares of Series E shall not have been declared and paid for Dividend Periods, whether or not consecutive, equivalent to at least eighteen months (a “Nonpayment Event”), the number of directors then constituting the Board of Directors shall automatically be increased by two and the holders of Series E, 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 E, 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 E 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 E 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 E for Dividend Periods, whether or not consecutive, equivalent to at least one year after a Nonpayment Event, then the right of the holders of Series E 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 E 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 E 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

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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 E 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 E 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 66⅔% of the shares of Series E 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 E 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 E.** 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 E, taken as a whole; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series E, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series E 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

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the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series E 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 E 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 E 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 E. In addition, any conversion of the Series E pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series E.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series E and one or more but not all other series of Preferred Stock, then only the Series E 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 E, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series E, the Corporation may amend, alter, supplement or repeal any terms of the Series E:

(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 E 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 E 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 E 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 E (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

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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 E 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 E and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series E 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 E may deem and treat the record holder of any share of Series E 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 E 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 E 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 E 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**  
**PERPETUAL NON-CUMULATIVE PREFERRED STOCK, SERIES F**  
**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, by unanimous written consent dated May 14, 2007, adopted the following resolution creating a series of 5,000.1 shares of Preferred Stock of the Corporation designated as “Perpetual Non-Cumulative Preferred Stock, Series F”.

**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated 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 “Perpetual Non-Cumulative Preferred Stock, Series F” (“Series F”). Each share of Series F shall be identical in all respects to every other share of Series F.

**Section 2. Number of Shares.** The authorized number of shares of Series F shall be 5,000.1. Shares of Series F 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 F.

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**Section 3. Definitions.** As used herein with respect to Series F:

(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 F 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 F, as it may be amended from time to time.

(f) “Certification of Incorporation” shall mean the 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 F) that ranks junior to Series F 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) “Parity Stock” means any class or series of stock of the Corporation (other than Series F) that ranks equally with Series F both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(k) “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 F.

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(l) “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.

(m) “Reuters Screen LIBOR01” means the display designated on the Reuters 3000 Xtra (or such other page as may replace that page on that service or such other service as may be nominated by the British Bankers’ Association for the purpose of displaying London interbank offered rates for U.S. Dollar deposits).

(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 F are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series F) that rank equally with Series F 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 F 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 \$100,000 per share of Series F. 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 March 1, June 1, September 1 and December 1 of each year (each a “Dividend Payment Date”); *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 F on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. If a Dividend Payment Date is not a Business Day, the applicable dividend shall be paid on the first Business Day following that day. Dividends on Series F shall not be cumulative; holders of Series F 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 F on any Dividend Payment Date will be payable to holders of record of Series F 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

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“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 F) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable on the Series F 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 F, for each Dividend Period, shall be (a) if the shares of Series F are issued prior to September 1, 2012, a rate per annum equal to three-month LIBOR plus 0.77% until the Dividend Payment date in September 2012, and (b) thereafter, a rate per annum that will reset quarterly and shall be equal to the greater of (i) three-month LIBOR for such Dividend Period plus 0.77% and (ii) 4.000%. Three-month 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 Reuters Screen LIBOR01 (or any successor or replacement page) 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 Reuters Screen LIBOR01 (or any successor or replacement page), 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.



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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 F 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 F 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 F 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 F 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 F and any shares of Parity Stock, all dividends declared on the Series F 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 F 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 F shall not be entitled to participate in any such dividends.

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## **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 F 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 F as to such distribution, in full an amount equal to \$100,000 per share (the "Series F 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 F and all holders of any stock of the Corporation ranking equally with the Series F as to such distribution, the amounts paid to the holders of Series F 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 F 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 F 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 F, 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 F 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 F may not be redeemed by the Corporation prior to the later of September 1, 2012 and the date of original issue of Series

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F. On or after that date, the Corporation, at its option, may redeem, in whole at any time or in part from time to time, the shares of Series F at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to \$100,000 per share, together (except as otherwise provided herein) 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 F 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 F will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series F will have no right to require redemption of any shares of Series F.

(c) **Notice of Redemption.** Notice of every redemption of shares of Series F 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 F designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series F. Notwithstanding the foregoing, if the Series F or any depositary shares representing interests in the Series F 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 F 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 F 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 F 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 F 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.

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(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 F, 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 F for treatment as Allowable Capital or Tier 1 Capital Equivalent without any sublimit or other quantitative restriction on the inclusion of the Series F 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,

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then, upon such affirmative election, the Series F 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 F, 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 F, 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 F of any election to qualify the Series F for Allowable Capital or Tier 1 Capital Equivalent treatment and of any determination to convert the Series F 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 F 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 F 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 F 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 F 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

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increased by two and the holders of Series F, 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 F, 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 F 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 F 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 F for at least four Dividend Periods (whether or not consecutive) after a Nonpayment Event, then the right of the holders of Series F to elect the Preferred Stock Directors shall cease (but subject always to reversion of such voting rights in the case of any future Nonpayment Event), and, if and when any rights of holders of Series F 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 F 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 F 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

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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 F 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 F 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 F 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 F.** 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 F, taken as a whole; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series F, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series F 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 F immediately prior to such consummation, taken as a whole;

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*provided, however*, that for all purposes of this Section 8(c), any increase in the amount of the authorized or issued Series F 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 F 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 F. In addition, any conversion of the Series F pursuant to Section 7 above shall not be deemed to adversely affect the rights, preferences, privileges and voting powers of the Series F.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 7(c) would adversely affect the Series F and one or more but not all other series of Preferred Stock, then only the Series F 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 F, so long as such action does not adversely affect the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of the Series F, the Corporation may amend, alter, supplement or repeal any terms of the Series F:

(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 F 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 F 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 F 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 F (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 F 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 F and any Voting Preferred



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Stock has been cast or given on any matter on which the holders of shares of Series F 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 F may deem and treat the record holder of any share of Series F 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 F 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 F 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 F 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**  
**10% CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES G**  
**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, at a meeting duly called and held on September 29, 2008, adopted the following resolution creating a series of 50,000 shares of Preferred Stock of the Corporation designated as "10% Cumulative Perpetual Preferred Stock, Series G".

**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 and September 29, 2006, the provisions of the restated certificate of incorporation and the amended and restated 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 "10% Cumulative Perpetual Preferred Stock, Series G" ("Series G"). Each share of Series G shall be identical in all respects to every other share of Series G.

**Section 2. Number of Shares.** The authorized number of shares of Series G shall be 50,000. Shares of Series G that are redeemed, purchased or otherwise acquired by the Corporation, or converted into another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series G may be reissued only as shares of any series other than Series G).

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**Section 3. Definitions.** As used herein with respect to Series G:

(a) “Bylaws” means the amended and restated bylaws of the Corporation, as they may be amended from time to time.

(b) “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.

(c) “Certificate of Designations” means this Certificate of Designations relating to the Series G, as it may be amended from time to time.

(d) “Certification of Incorporation” shall mean the restated certificate of incorporation of the Corporation, as it may be amended from time to time, and shall include this Certificate of Designations.

(e) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.

(f) “Junior Stock” means the Common Stock and any other class or series of stock of the Corporation (other than Series G) that ranks junior to Series G 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.

(g) “Original Issue Date” means October 1, 2008.

(h) “Parity Stock” means any class or series of stock of the Corporation (other than Series G) that ranks equally with Series G both in the payment of dividends and in the distribution of assets on any liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation’s (i) Floating Rate Non-Cumulative Preferred Stock, Series A; (ii) 6.20% Non-Cumulative Preferred Stock, Series B; (iii) Floating Rate Non-Cumulative Preferred Stock, Series C; (iv) Floating Rate Non-Cumulative Preferred Stock, Series D; (v) Perpetual Non-Cumulative Preferred Stock, Series E; and (vi) Perpetual Non-Cumulative Preferred Stock, Series F.

(i) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Series G.

(j) “Voting Parity Stock” means, with regard to any matter as to which the holders of Series G are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

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(k) “Voting Preferred Stock” means, with regard to any matter as to which the holders of Series G are entitled to vote as specified in Section 8 of this Certificate of Designations, any and all series of Preferred Stock (other than Series G) that rank equally with Series G 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 G shall be entitled to receive, on each share of Series G, out of funds legally available for the payment of dividends under Delaware law, cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 10% on (i) the amount of \$100,000 per share of Series G and (ii) the amount of accrued and unpaid dividends on such share of Series G, if any (giving effect to (A) any dividends paid through the Dividend Payment Date (as defined below) that begins such Dividend Period (other than the initial Dividend Period) and (B) any dividends (including dividends thereon at a per annum rate of 10% to the date of payment) paid during such Dividend Period). Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable 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 each November 10, February 10, May 10 and August 10 (each, a “Dividend Payment Date”), commencing on November 10, 2008; *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 G on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day. Dividends payable on the Series G in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on the Series G on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Series G on any Dividend Payment Date will be payable to holders of record of Series G 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 (as originally scheduled) 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.

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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 Original Issue Date of the Series G) and shall end on and include the calendar day next preceding the next Dividend Payment Date. Dividends payable in respect of a Dividend Period shall be payable in arrears on the first Dividend Payment Date after such Dividend Period.

Holders of Series G 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 G 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 G 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, Junior Stock or Parity 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 of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, or the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock or of one share of Parity Stock for or into another share of Parity Stock (with the same or lesser per share liquidation amount) or Junior Stock) during a Dividend Period, unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 4(a) above, dividends on such amount), on all outstanding shares of Series G have been declared and paid in full (or declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series G on the applicable record date). 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 or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business or, in connection with the issuance of Junior Stock or Parity Stock, to engage in ordinary sale and repurchase transactions to facilitate the distribution of such Junior Stock or Parity Stock.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) 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 related to such Dividend Payment Date) in full upon the Series G and any shares of Parity Stock, all dividends declared on the Series G 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 declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the Series G (including, if applicable as provided in Section 4(a) above,

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dividends on such amount) 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 G 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 G shall be entitled to receive for each share of Series G, 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 G as to such distribution, payment in full in an amount equal to the sum of (i) \$100,000 per share and (ii) the accrued and unpaid dividends thereon (including, if applicable as provided in Section 4(a) above, dividends on such amount), whether or not declared, to the date of payment.

(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 G and all holders of any stock of the Corporation ranking equally with the Series G as to such distribution, the amounts paid to the holders of Series G 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 G 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, including the Series G, on which dividends accrue on a cumulative basis, an amount equal to any accrued and unpaid dividends (including, if applicable, dividends on such amount), whether or not declared, as applicable), *provided* that the Liquidation Preference for any share of Series G shall be determined in accordance with Section 5(a) above.

(c) **Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Series G, the holders of other stock of the Corporation shall

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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 G 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 Corporation, at its option, subject to the approval of the Board of Governors of the Federal Reserve System, may redeem, in whole at any time or in part from time to time, the shares of Series G at the time outstanding, upon notice given as provided in Section 6(c) below, at a redemption price equal to the sum of (i) \$110,000 per share and (ii) the accrued and unpaid dividends thereon (including, if applicable as provided in Section 4(a) above, dividends on such amount), whether or not declared, to the redemption date, *provided* that the minimum number of shares of Series G redeemable at any time is the lesser of (i) 10,000 shares of Series G and (ii) the number of shares of Series G outstanding. The redemption price for any shares of Series G 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. An exchange of Series G for Spinco Preferred (as defined in the Securities Purchase Agreement, dated as of September 29, 2008, between the Corporation and Berkshire Hathaway Inc. (the “SPA”)) pursuant to Section 4.7 of the SPA, shall not be deemed to be a redemption for purposes of this Section 6.

(b) **No Sinking Fund.** The Series G will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Series G will have no right to require redemption of any shares of Series G.

(c) **Notice of Redemption.** Notice of every redemption of shares of Series G 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 G designated for

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redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series G. Notwithstanding the foregoing, if the Series G 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 G at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Series G 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 part of the shares of Series G 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 G 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 deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$50 million and selected by the Board of Directors, so as to be and continue to be available solely 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 from such bank or trust company, 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.** Holders of Series G 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 G shall not have any voting rights except as set forth below or as otherwise from time to time required by law.



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(b) **Class Voting Rights as to Particular Matters.** So long as any shares of Series G 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 66⅔% of the shares of Series G 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 G 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 G.** 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 G, taken as a whole; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series G, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series G 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 G immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 8(b), any increase in the amount of the 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 G 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 G.

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8(b) would adversely affect the Series G and one or more but not all other series of Preferred Stock, then only the Series G and

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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).

If any amendment, alteration, repeal, share exchange, reclassification, merger or consolidation specified in this Section 8(b) would adversely affect the Series G but would not similarly adversely affect all other series of Voting Parity Stock, then only the Series G and each other series of Voting Parity Stock as is similarly adversely affected by and entitled to vote on the matter, if any, shall vote on the matter together as a single class (in lieu of all other series of Preferred Stock).

(c) **Series G Voting Rights as to Particular Matters.** In addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation, so long as at least 10,000 shares of Series G are outstanding, the vote or consent of the holders of at least 50.1% of the shares of Series G at the time outstanding, voting 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 or Issuance 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, or the issuance of any shares of any class or series of capital stock of the Corporation, in each case, ranking senior to the Series G 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 G.** Any amendment, alteration or repeal of any provision of the Certificate of Incorporation so as to affect or change the rights, preferences, privileges or voting powers of the Series G so as not to be substantially similar to those in effect immediately prior to such amendment, alteration or repeal; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Series G, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Series G 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 as are substantially similar to the rights, preferences, privileges and voting powers, and limitations and restrictions of the Series G immediately prior to such consummation;

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*provided, however*, that for all purposes of this Section 8(c), 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 G 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 G.

(d) **Changes after Provision for Redemption.** No vote or consent of the holders of Series G shall be required pursuant to Section 8(b) or (c) 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 G (or, in the case of Section 8(c), more than 40,000 shares of Series G) shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 6 above.

(e) **Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Series G (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 of 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, and applicable law and the rules of any national securities exchange or other trading facility on which the Series G 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 G and any Voting Preferred Stock has been cast or given on any matter on which the holders of shares of Series G are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amount of the shares voted or covered by the consent (*provided* that the specified liquidation amount for any share of Series G shall be the Liquidation Preference for such share) as if the Corporation were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent.

**Section 9. Record Holders.** To the fullest extent permitted by applicable law, the Corporation and the transfer agent for the Series G may deem and treat the record holder of any share of Series G 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 G 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. Notwithstanding the foregoing, if the Series G are issued in book-entry form

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through The Depository Trust Company or any similar facility, such notices may be given to the holders of Series G in any manner permitted by such facility.

**Section 11. No Preemptive Rights.** No share of Series G 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. Replacement Certificates.** The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

**Section 13. Other Rights.** The shares of Series G shall not have any rights, preferences, privileges or voting powers 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**  
**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES H**  
**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 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, September 29, 2006 and October 13, 2008, the provisions of the restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, at a meeting duly called and held on October 26, 2008, adopted the following resolution creating a series of 10,000,000 shares of Preferred Stock of the Corporation designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series H".

**RESOLVED**, that pursuant to the authority vested in the Securities Issuance Committee and in accordance with the resolutions of the Board of Directors dated September 16, 2005, September 29, 2006 and October 13, 2008, the provisions of the restated certificate of incorporation and the amended and restated bylaws of the Corporation and applicable law, a series of Preferred Stock, par value \$0.01 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 and Number of Shares.** There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series H" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be 10,000,000.

**Section 2. Standard Provisions.** The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designations to the same extent as if such provisions had been set forth in full herein.

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**Section 3. Definitions.** The following terms are used in this Certificate of Designations (including the Standard Provisions in Annex A hereto) as defined below:

(a) “Common Stock” means the common stock, par value \$0.01 per share, of the Corporation.

(b) “Dividend Payment Date” means February 15, May 15, August 15 and November 15 of each year.

(c) “Junior Stock” means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(d) “Liquidation Amount” means \$1,000 per share of Designated Preferred Stock.

(e) “Minimum Amount” means \$2,500,000,000.

(f) “Parity Stock” means any class or series of stock of the Corporation (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Corporation’s (i) Floating Rate Non-Cumulative Preferred Stock, Series A; (ii) 6.20% Non-Cumulative Preferred Stock, Series B; (iii) Floating Rate Non-Cumulative Preferred Stock, Series C; (iv) Floating Rate Non-Cumulative Preferred Stock, Series D; (v) Perpetual Non-Cumulative Preferred Stock, Series E; (vi) Perpetual Non-Cumulative Preferred Stock, Series F; and (vii) 10% Cumulative Perpetual Preferred Stock, Series G.

(g) “Signing Date” means October 26, 2008.

**Section 4. Certain Voting Matters.** Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Designated Preferred Stock and any Voting Parity Stock has been cast or given on any matter on which the holders of shares of Designated Preferred Stock are entitled to vote shall be determined by the Corporation by reference to the specified liquidation amount of the shares voted or covered by the consent as if the Corporation were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent. For purposes of determining the voting rights of the holders of Designated Preferred Stock under Section 7 of the Standard Provisions forming part of this Certificate of Designations, each holder will be entitled to one vote for each \$1,000 of liquidation preference to which such holder’s shares are entitled.

**STANDARD PROVISIONS**

**Section 1. General Matters.** Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

**Section 2. Standard Definitions.** As used herein with respect to Designated Preferred Stock:

(a) “Applicable Dividend Rate” means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.

(b) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Corporation’s stockholders.

(d) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.

(f) “Certificate of Designations” means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) “Charter” means the Corporation’s certificate or articles of incorporation, articles of association, or similar organizational document.

(h) “Dividend Period” has the meaning set forth in Section 3(a).

(i) “Dividend Record Date” has the meaning set forth in Section 3(a).

(j) “Liquidation Preference” has the meaning set forth in Section 4(a).

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(k) “Original Issue Date” means the date on which shares of Designated Preferred Stock are first issued.

(l) “Preferred Director” has the meaning set forth in Section 7(b).

(m) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(n) “Qualified Equity Offering” means the sale and issuance for cash by the Corporation to persons other than the Corporation or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Corporation at the time of issuance under the applicable risk-based capital guidelines of the Corporation’s Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

(o) “Share Dilution Amount” has the meaning set forth in Section 3(b).

(p) “Standard Provisions” mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(q) “Successor Preferred Stock” has the meaning set forth in Section 5(a).

(r) “Voting Parity Stock” means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### **Section 3. Dividends.**

(a) **Rate.** Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends



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having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any 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.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

**(b) Priority of Dividends.** So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall

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not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice, *provided* that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) purchases by a broker-dealer subsidiary of the Corporation of capital stock of the Corporation for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary; (iv) any dividends or distributions of rights or Junior Stock in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; (v) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock. "Share Dilution Amount" means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the date of the Corporation's consolidated financial statements most recently filed with the Securities and Exchange Commission prior to the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) 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 related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock 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 declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) 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

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Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any 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 holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### **Section 4. 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 Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any 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 Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the “Liquidation Preference”).

(b) **Partial Payment.** If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) **Residual Distributions.** If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of

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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 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock 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 5. Redemption.**

(a) **Optional Redemption.** Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Corporation (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the “Minimum Amount” as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the “Successor Preferred Stock”) in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Corporation (or any successor by Business Combination)

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from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock 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 3 above.

(b) **No Sinking Fund.** The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) **Notice of Redemption.** Notice of every redemption of shares of Designated Preferred Stock 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 Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock 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 part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the

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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 deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely 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 from such bank or trust company, 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.

(f) **Status of Redeemed Shares.** Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

**Section 6. Conversion.** Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

**Section 7. Voting Rights.**

(a) **General.** The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) **Preferred Stock Directors.** Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Corporation's next annual meeting of stockholders (or at a special meeting called for that

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purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to reversion in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any 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. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) **Class Voting Rights as to Particular Matters.** So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 2/3% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate 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 Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to Designated Preferred Stock 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 Designated Preferred Stock.** Any amendment, alteration or repeal of any provision of the Certificate of Designations for the

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Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) **Share Exchanges, Reclassifications, Mergers and Consolidations.** Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock 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 Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and 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, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) **Changes after Provision for Redemption.** No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) 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 the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.



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(e) **Procedures for Voting and Consents.** The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (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 of the Board of Directors or any 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 Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

**Section 8. Record Holders.** To the fullest extent permitted by applicable law, the Corporation and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock 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 9. Notices.** All notices or communications in respect of Designated Preferred Stock 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 Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Corporation or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

**Section 10. No Preemptive Rights.** No share of Designated Preferred Stock 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 11. Replacement Certificates.** The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

**Section 12. Other Rights.** The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

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[FORM OF FLOATING RATE SENIOR DEBT SECURITY]

Registered No.

CUSIP No.  
ISIN No.

(Face of Security)

[IF A GLOBAL SECURITY, INSERT — THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE 2008 INDENTURE AS DEFINED ON THE REVERSE OF THIS SECURITY AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE 2008 INDENTURE AND THIS SECURITY.]

[IF DTC IS THE DEPOSITARY, INSERT — UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE GOLDMAN SACHS GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]

[INSERT ANY LEGEND REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND THE REGULATIONS THEREUNDER.]

THIS SECURITY IS GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE RIGHTS OF THE HOLDER OF THIS SECURITY ARE SUBJECT TO CERTAIN RIGHTS OF THE FDIC, AS AND TO THE EXTENT INDICATED IN THIS SECURITY, INCLUDING SECTIONS 7, 9, 10, 11, 12, 13, 14, 15 AND 16 ON THE REVERSE HEREOF.

(Face of Security continued on next page)

Title of Series: \_\_\_\_\_  
Title of Securities: \_\_\_\_\_

**THE GOLDMAN SACHS GROUP, INC.**

**[TITLE OF SECURITY]**

The Goldman Sachs Group, Inc., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”, which term includes any successor Person under the 2008 Indenture (as defined on the reverse of this Security)), for value received, hereby promises to pay to \_\_\_\_, or registered assigns, the principal sum of \_\_\_\_ on \_\_\_\_ and to pay interest thereon, from \_\_\_\_ or from the most recent Interest Payment Date to which interest has been paid or made available for payment, \_\_\_\_ on \_\_\_\_ in each year (each, an “Interest Payment Date”), commencing on \_\_\_\_ and at the Maturity of the principal hereof, until the principal hereof is paid or made available for payment, at the rate of **[IF APPLICABLE, INSERT - \_\_\_\_% above]****[LIBOR][EURIBOR]**, determined in accordance with the following provisions and reset effective each Interest Reset Date. **[IF FOLLOWING BUSINESS DAY CONVENTION APPLIES, INSERT —** If an Interest Payment Date would otherwise be a day that is not a Business Day, the Interest Payment Date will be postponed to the next day that is a Business Day. **[IF MODIFIED FOLLOWING BUSINESS DAY CONVENTION APPLIES, ALSO INSERT —** However, if that Business Day is in the next succeeding calendar month, the Interest Payment Date will instead be advanced to the immediately preceding day that is a Business Day. **]** **[IF FOLLOWING UNADJUSTED BUSINESS DAY CONVENTION APPLIES, INSERT —** If an Interest Payment Date would otherwise be a day that is not a Business Day, the payment due on that Interest Payment Date (but no such Interest Payment Date) will be postponed to the next day that is a Business Day; provided, however, that interest due with respect to such Interest Payment Date shall not accrue from and including such Interest Payment Date shall not accrue from and including such Interest Payment Date to and including the date of payment of such interest as so postponed **[IF MODIFIED FOLLOWING UNADJUSTED BUSINESS DAY CONVENTION APPLIES, ALSO INSERT —**, and provided further that, if such next succeeding Business Day would fall in the next succeeding calendar month, the date of payment with respect to such Interest Payment Date (but not such Interest Payment Date) will be advanced to the Business Day immediately preceding such Interest Payment Date. **]** Notwithstanding the foregoing, an Interest Payment Date that falls on the Maturity of this Security will not be changed. Any such installment of interest that is overdue shall also bear interest at the same rate in effect during the Interest Period ending on the due date of such installment of interest (to the extent that the payment of such interest shall be legally enforceable), from the date any such overdue amount first becomes due until it is paid or made available for payment. Notwithstanding the foregoing, interest on any installment of interest that is overdue shall be payable on demand.

Unless otherwise specified, interest on this Security shall be calculated on the basis of a 360-day year and the actual number of days elapsed. Payments of interest on this Security with respect to any Interest Payment Date or at the Maturity of the principal hereof will include interest accrued to but excluding such Interest Payment Date or the date of such Maturity, as the case may be. Accrued interest from the date of issue or from the last date to which interest has been paid or made available for payment shall be calculated by the Calculation Agent by *multiplying* the principal amount by an accrued interest factor. Such accrued interest factor shall be computed by adding the interest factors calculated for each day from and including the date of issue or from and including the last date to which interest has been paid or made available for payment, to but excluding the date for which accrued interest is being calculated. The interest factor for each such day shall be expressed as a decimal and computed by *dividing* the interest rate (also expressed as a decimal) in effect on such day by 360. Notwithstanding the foregoing, interest on this Security shall not be higher than the maximum rate permitted by New York law, as it may be modified by U.S. law of general applicability.

For the purposes of this Security, **[LIBOR][EURIBOR]** will be determined in the following manner:

**[IF LIBOR, INSERT —** LIBOR will be the offered rate for [insert applicable index maturity] deposits in [insert applicable index currency], as that rate appears on the Reuters Screen LIBOR Page as of

(Face of Security continued on next page)

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11:00 A.M., London time, on the relevant Interest Determination Date, beginning on the relevant Interest Reset Date. Notwithstanding the foregoing, LIBOR for the initial Interest Period will be the Initial Base Rate.

If the rate described above does not so appear on the Reuters Screen LIBOR Page, LIBOR will be determined on the basis of the rates, at approximately 11:00 A.M., London time, on the relevant Interest Determination Date, 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: [insert applicable index maturity] [insert applicable index currency] deposits, beginning on the relevant Interest Reset Date, and in a Representative Amount. The Calculation Agent will request the principal London office of each such bank to provide a quotation of its rate. If at least two quotations are provided, LIBOR for the relevant Interest Determination Date will be the arithmetic mean of the quotations.

If fewer than two quotations are provided as described above, LIBOR for the relevant Interest Determination Date will be the arithmetic mean of the rates for loans of the following kind to leading European banks quoted, at approximately 11:00 A.M., in [the principal financial center for the country of the applicable index currency], on that Interest Determination Date, by three major banks in [that principal financial center] selected by the Calculation Agent: [insert applicable index maturity] [insert applicable index currency] loans, beginning on the relevant Interest Reset Date, and in a Representative Amount.

If fewer than three banks selected by the Calculation Agent are quoting as described above, LIBOR for the new Interest Period will be LIBOR in effect for the prior Interest Period. If the Initial Base Rate has been in effect for the prior Interest Period, however, it will remain in effect for the new Interest Period.

For all purposes of this Security:

The term "Initial Base Rate" means the base rate in effect for the initial Interest Period. This rate will be \_\_\_%, which is the [insert applicable index maturity] deposits in [insert applicable index currency] LIBOR rate on \_\_\_, as determined by the Calculation Agent.

The term "Interest Determination Date" means **[IF INDEX CURRENCY IS NOT POUNDS STERLING, INSERT —** two London Business Days prior to] the first day of each Interest Period.

The term "Interest Period" means, with respect to the initial Interest Period, the period from and including \_\_\_to, but excluding, the initial Interest Reset Date and, with respect to the subsequent Interest Periods, the periods from and including an Interest Reset Date to, but excluding, the next Interest Reset Date.

The term "Interest Reset Date" means every \_\_\_, commencing on \_\_\_, on each of which the rate of interest on this Security will be reset. If any Interest Reset Date would otherwise be a day that is not a Business Day with respect to this Security, the Interest Reset Date shall be the next succeeding day that is a Business Day with respect to this Security. However, if that Business Day is in the next succeeding calendar month, the Interest Reset Date will instead be the immediately preceding Business Day. Notwithstanding the foregoing, an Interest Reset Date that falls on the Maturity of this Security will not be changed.

The term "London Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in London generally are authorized or obligated by law, regulation or executive order to close and is also a day on which dealings in [insert applicable index currency] are transacted in the London interbank market.

The term "Representative Amount" means an amount that, in the Calculation Agent's judgment, is representative of a single transaction in the relevant market at the relevant time.

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The term “Reuters Screen LIBOR Page” means the display on the Reuters Screen LIBOR01 Page or Reuters Screen LIBOR02 Page, as specified on the face hereof, or any successor or replacement page or pages on that or any successor service, on which London interbank rates of major banks for the Index Currency are displayed.]

**[IF EURIBOR, INSERT** — For the purposes of this Security, EURIBOR will be determined in the following manner:

EURIBOR will be the offered rate per annum for [insert applicable index maturity] deposits in euros, beginning on the second Euro Business Day after the relevant Interest Determination Date, as that rate appears on the Reuters Screen EURIBOR01 Page as of 11:00 A.M., Brussels time, on the relevant Interest Determination Date. EURIBOR for the initial Interest Period will be the Initial Base Rate.

If the rate described above does not so appear on the Reuters Screen EURIBOR01 Page, EURIBOR will be determined on the basis of the rates, at approximately 11:00 A.M., Brussels time, on the relevant Interest Determination Date, at which deposits of the following kind are offered to prime banks in the euro-zone interbank market by the principal euro-zone office of each of four major banks in that market selected by the Calculation Agent: [insert applicable index maturity] deposits in euros, beginning on the relevant Interest Reset Date, and in a Representative Amount. The Calculation Agent will request the principal euro-zone office of each of these banks to provide a quotation of its rate. If at least two quotations are provided, EURIBOR for the relevant Interest Determination Date will be the arithmetic mean of the quotations.

If fewer than two quotations are provided as described above, EURIBOR for the relevant Interest Determination Date will be the arithmetic mean of the rates for loans of the following kind to leading euro-zone banks quoted, at approximately 11:00 A.M., Brussels time, on that Interest Determination Date, by three major banks in the euro-zone selected by the Calculation Agent: loans of euros having the maturity of [insert applicable index maturity], beginning on the relevant Interest Reset Date, and in a Representative Amount.

If fewer than three banks selected by the Calculation Agent are quoting as described above, EURIBOR for the new Interest Period will be EURIBOR in effect for the prior Interest Period. If the Initial Base Rate has been in effect for the prior Interest Period, however, it will remain in effect for the new Interest Period.

For all purposes of this Security:

The term “Initial Base Rate” means the base rate in effect for the initial Interest Period. This rate will be \_\_\_%, which is the [insert applicable index maturity] deposits in euros EURIBOR rate on \_\_\_, as determined by the Calculation Agent.

The term “Interest Determination Date” means two Euro Business Days prior to the first day of each Interest Period.

The term “Interest Period” means, with respect to the initial Interest Period, the period from and including \_\_\_ to, but excluding, the initial Interest Reset Date and, with respect to the subsequent Interest Periods, the periods from and including an Interest Reset Date to, but excluding, the next Interest Reset Date.

The term “Interest Reset Date” means every \_\_\_, commencing on \_\_\_, on each of which the rate of interest on this Security will be reset. If any Interest Reset Date would otherwise be a day that is not a Business Day with respect to this Security, the Interest Reset Date shall be the next succeeding day that is a Business Day with respect to this Security. However, if that Business Day is in the next succeeding calendar month, the Interest Reset Date will instead be the immediately preceding Business Day.

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Notwithstanding the foregoing, an Interest Reset Date that falls on the Maturity of this Security will not be changed.

The term “Euro Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System, or any successor system, is open for business.

The term “Representative Amount” means an amount that, in the Calculation Agent’s judgment, is representative of a single transaction in the relevant market at the relevant time.

The term “Reuters Screen EURIBOR01 Page” means the display on the Reuters 3000 Xtra Service, or any successor or replacement service, on the page designated as “EURIBOR01” or successor or any replacement page or pages on which euro-zone interbank rates of major banks for deposits in euros are displayed.]

All percentages resulting from any calculation with respect to this Security shall be rounded upward or downward, as appropriate, to the next higher or lower one hundred-thousandth of a percentage point (e.g., 9.876541% (or .09876541) being rounded down to 9.87654% (or .0987654) and 9.876545% (or .09876545) being rounded up to 9.87655% (or .0987655)). All amounts used in or resulting from any calculation with respect to this Security shall be rounded upward or downward, as appropriate, to the nearest cent with one-half or more of a cent being rounded upward.

The interest so payable, and punctually paid or made available for payment, on any Interest Payment Date will, as provided in the 2008 Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the \_\_\_ (whether or not a Business Day, as defined below) next preceding such Interest Payment Date. Any interest so payable, but not punctually paid or made available for payment, on any Interest Payment Date will forthwith cease to be payable to the Holder on such Regular Record Date and such Defaulted Interest may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof being given to the Holder of this Security not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the 2008 Indenture. For the purpose of determining the Holder at the close of business on any relevant record date when business is not conducted, the close of business will mean 5:00 P.M., New York City time, on that day.

The Company and the Trustee acknowledge that the Company has not opted out of the debt guarantee program (the “Debt Guarantee Program”) established by the Federal Deposit Insurance Corporation (“FDIC”) under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations, 12 CFR Part 370, and at the FDIC’s website, www.fdic.gov/tlgp. The expiration date of the FDIC’s guarantee is the earlier of the maturity date of this debt or June 30, 2012.*

The Trustee is hereby designated as the duly authorized representative of the Holder for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the “Representative”). The Holder of this Security may elect not to be represented by the Representative with respect to this Security by providing written notice of such election to the Representative.

Notwithstanding any provision of this Security, any right of the Holder to receive payment in respect of this Security under the Debt Guarantee Program shall be subject to the procedures and other requirements of the Debt Guarantee Program, and the Holder will not be entitled under the Debt Guarantee

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Program to receive any additional interest or penalty amounts on account of any default or resulting delay in payment in respect of this Security.

***Currency and Manner of Payment***

**[IF PAYMENT IS IN U.S. DOLLARS, INSERT** — Payment of the principal of and premium or interest on this Security will be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Notwithstanding any other provision of this Security or the 2008 Indenture, if this Security is a Global Security, any payment in respect of this Security may be made pursuant to the Applicable Procedures of the Depositary as permitted in the 2008 Indenture.

Subject to the prior paragraph and except as provided in the next paragraph, payment of any amount payable on this Security will be made at the office or agency of the Company maintained for that purpose in The City of New York (and at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that, at the option of the Company and subject to the next paragraph, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Subject to the second preceding paragraph, payment of any amount payable on this Security will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least \$1,000,000 (or the equivalent in another currency) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.]

**[IF PAYMENT IS IN EUROS, INSERT** — Payment of the principal of and premium or interest on this Security will be made in euros. Notwithstanding any other provision of this Security or the 2008 Indenture, if this Security is a Global Security, any payment in respect of this Security may be made pursuant to the Applicable Procedures of the Depositary as permitted in the 2008 Indenture.

Subject to the prior paragraph and except as provided in the next [two][three] paragraphs, payment of any amount payable on this Security will be made at the office or agency of the Company maintained for that purpose in The City of New York (and at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that, at the option of the Company and subject to the next paragraph, payment of

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interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Subject to the second preceding paragraph, payment of any amount payable on this Security will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least USD\$1,000,000 (or the equivalent in euros) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.]

**[IF LISTED ON LUXEMBOURG STOCK EXCHANGE, INSERT** — So long as the Securities of this series are listed on the Official List of the Luxembourg Stock Exchange and such Stock Exchange shall so require, the Company will at all times maintain an office or agency in Luxembourg for the payment of the principal of and interest on the Securities of this series. Such Paying Agent in Luxembourg shall initially be Dexia Banque Internationale à Luxembourg société anonyme.]

***Payments Due on a Business Day***

**[IF LIBOR, INSERT** — Notwithstanding any provision of this Security or the 2008 Indenture, if the Maturity of the principal hereof occurs on a day that is not a Business Day, any amount of principal, premium or interest that would otherwise be due on this Security on a day (the “Specified Day”) that is not a Business Day may be paid or made available for payment on the next succeeding Business Day with the same force and effect as if such amount were paid on the Specified Day. For all purposes of this Security, “Business Day” means any day that is not a Saturday or Sunday, and that is not a day on which banking institutions generally are authorized or obligated by law, regulation or executive order to close in The City of New York and that is also a London Business Day; provided that, solely with respect to any payment to be made at any Place of Payment outside The City of New York or London, Business Day means any day that is a “Business Day” as defined above and that also is not a day on which banking institutions generally are authorized or obligated by law, regulation or executive order to close in such Place of Payment; provided further that, with respect to Section 12 of the reverse hereof and Exhibit B hereto, the definition of “Business Day” therein shall apply. The provisions of this paragraph shall apply to this Security in lieu of the provisions of Section 1.13 of the 2008 Indenture.]

**[IF EURIBOR, INSERT** — Notwithstanding any provision of this Security or the 2008 Indenture, if the Maturity of the principal hereof occurs on a day that is not a Business Day, any amount of principal, premium or interest that would otherwise be due on this Security on a day (the “Specified Day”) that is not a Business Day may be paid or made available for payment on the next succeeding Business Day with the same force and effect as if such amount were paid on the Specified Day. For all purposes of this Security, “Business Day” means any day that is not a Saturday or Sunday, and that is not a day on which banking institutions are generally authorized or obligated by law, regulation or executive order to close in

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The City of New York or London, and that is also a Euro Business Day, as defined below; provided that, with respect to Section 12 of the reverse hereof and Exhibit B hereto, the definition of “Business Day” therein shall apply. The term “Euro Business Day” means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System, or any successor system, is open for business. The provisions of this paragraph shall apply to this Security in lieu of the provisions of Section 1.13 of the 2008 Indenture.]

***[IF PAYMENT IS IN EUROS, INSERT — Payments Made in U.S. Dollars***

Notwithstanding any provision of this Security or the 2008 Indenture, if any amount payable on this Security is payable on any day and if euros are not available to the Company on the two Business Days before such day, due to the imposition of exchange controls, disruption in a currency market or any other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligation to pay such amount in euros by making such payment in U.S. dollars. The amount of such payment in U.S. dollars shall be determined by the Exchange Rate Agent on the basis of the noon buying rate for cable transfers in The City of New York for euros (the “Exchange Rate”) as of the latest day before the day on which such payment is to be made. Any payment made under such circumstances in U.S. dollars where the required payment is in euros will not constitute an Event of Default under this Security or the 2008 Indenture.

***Exchange Rate Agent***

As used herein, the “Exchange Rate Agent” shall initially mean [ ]; provided that the Company may, in its sole discretion, appoint any other institution (including any affiliate of the Company) to serve as any such agent from time to time. The Company will give the Trustee prompt written notice of any change in any such appointment. Insofar as this Security provides for any such agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any determination hereunder, such agent may do so from any institution or institutions of the kind contemplated hereby notwithstanding that any one or more of such institutions are any such agent, affiliates of any such agent or affiliates of the Company.

All determinations made by the Exchange Rate Agent pursuant to the terms of this Security shall be, absent manifest error, conclusive for all purposes and binding on the Holder of this Security and the Company. The Exchange Rate Agent shall not have any liability therefor.]

***Calculation Agent***

As used herein, the “Calculation Agent” shall initially mean The Bank of New York Mellon; provided that the Company may, in its sole discretion, appoint any other institution (including any affiliate of the Company) to serve as any such agent from time to time. The Company will give the Trustee prompt written notice of any change in any such appointment. Insofar as this Security provides for any such agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any determination hereunder, such agent may do so from any institution or institutions of the kind contemplated hereby notwithstanding that any one or more of such institutions are any such agent, affiliates of any such agent or affiliates of the Company.

All determinations made by the Calculation Agent may be made by such agent in its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Holder of this Security and the Company. The Calculation Agent shall not have any liability therefor.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

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Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the 2008 Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: \_\_\_\_\_

THE GOLDMAN SACHS GROUP, INC.

By \_\_\_\_\_  
Name:  
Title:

This is one of the Securities of the series designated herein and referred to in the 2008 Indenture.

Dated: \_\_\_\_\_

THE BANK OF NEW YORK MELLON, as Trustee

By \_\_\_\_\_  
Authorized Signatory

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(Reverse of Security)

**1. *Securities and Indenture.***

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”) issued and to be issued in one or more series under a Senior Debt Indenture, dated as of July 16, 2008 (herein called the “2008 Indenture”, which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York Mellon, as Trustee (herein called the “Trustee”, which term includes any successor trustee under the 2008 Indenture), and reference is hereby made to the 2008 Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

**2. *Series and Denominations.***

This Security is one of the series designated on the face hereof, limited to an aggregate principal amount as shall be determined and may be increased from time to time by the Company. Any election by the Company so to increase such aggregate principal amount shall be evidenced by a certificate of an Authorized Person (as defined in the Determination of an Authorized Person, dated \_\_\_\_, with respect to this series). References herein to “this series” mean the series of Securities designated on the face hereof. The Securities of this series are issuable only in registered form without coupons in denominations of integral multiples of \_\_\_\_, subject to a minimum denomination of \$\_\_\_\_.

**3. [IF APPLICABLE, INSERT-Additional Amounts.**

If the beneficial owner of this Security is a United States Alien (as defined below), the Company will pay all additional amounts that may be necessary so that every net payment of the principal of and interest on this Security to such beneficial owner, after deduction or withholding for or on account of any present or future tax, assessment or governmental charge imposed with respect to such payment by any U.S. Taxing Authority (as defined below), will not be less than the amount provided for in this Security to be then due and payable; provided, however, that the Company shall have no obligation to pay additional amounts for or on account of any one or more of the following:

(i) any tax, assessment or other governmental charge imposed solely because at any time there is or was a connection between such beneficial owner (or between a fiduciary, settlor, beneficiary or member of such beneficial owner, if such beneficial owner is an estate, trust or partnership) and the United States (as defined below) (other than the mere receipt of a payment on, or the ownership or holding of, a Security), including because such beneficial owner (or such fiduciary, settlor, beneficiary or member) at any time, for U.S. federal income tax purposes: (a) is or was a citizen or resident, or is or was treated as a resident, of the United States, (b) is or was present in the United States, (c) is or was engaged in a trade or business in the United States, (d) has or had a permanent establishment in the United States, (e) is or was a domestic or foreign personal holding company, a passive foreign investment company or a controlled foreign corporation, (f) is or was a corporation that accumulates earnings to avoid U.S. federal income tax or (g) is or was a “10-percent shareholder” of the Company as defined in section 871(h)(3) of the U.S. Internal Revenue Code or any successor provision;

(ii) any tax, assessment or governmental charge imposed solely because of a change in applicable law or regulation, or in any official interpretation or application of applicable law or regulation, that becomes effective more than 15 days after the day on which the payment becomes due or is made available, whichever occurs later;

(iii) any estate, inheritance, gift, sales, excise, transfer, wealth or personal property tax or any similar tax, assessment or other governmental charge;

(Reverse of Security continued on next page)

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(iv) any tax, assessment or other governmental charge imposed solely because such beneficial owner or any other Person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with the United States of the Holder or any beneficial owner of this Security, if compliance is required by statute, by regulation of the U.S. Treasury Department or by an applicable income tax treaty to which the United States is a party, as a precondition to exemption from such tax, assessment or other governmental charge;

(v) any tax, assessment or other governmental charge that is payable otherwise than by deduction or withholding from payments of principal of or interest on this Security;

(vi) any tax, assessment or other governmental charge imposed solely because the payment is to be made by a particular Paying Agent (which term may include the Company) and would not be imposed if made by another Paying Agent (which term may include the Company);

(vii) by or on behalf of a Holder who would be able to avoid such withholding or deduction by presenting this Security to another Paying Agent in a Member State of the European Union;

(viii) any tax, assessment or other governmental charge imposed solely because the Holder (1) is a bank purchasing this Security in the ordinary course of its lending business or (2) is a bank that is neither (A) buying this Security for investment purposes only nor (B) buying this Security for resale to a third party that either is not a bank or holding the note for investment purposes only; or

(ix) any combination of the taxes, assessments or other governmental charges described in items (i) through (viii) of this Section 3.

Additional amounts also will not be paid with respect to any payment of principal of or interest on this Security to any United States Alien who is a fiduciary or a partnership, or who is not the sole beneficial owner of any such payment, to the extent that the Company would not be required to pay additional amounts to any beneficiary or settlor of such fiduciary or any member of such a partnership, or to any beneficial owner of the payment, if that Person had been treated as the beneficial owner of this Security for this purpose.

The term "United States Alien" means any Person who, for U.S. federal income tax purposes, is a nonresident alien individual, a foreign corporation, a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust, or a nonresident alien fiduciary of an estate or trust that is not subject to U.S. federal income tax on a net income basis on income or gain from this Security. For the purposes of this Section 3 and Section 4 only, (a) the term "United States" means the United States of America (including the states thereof and the District of Columbia), together with the territories, possessions and all other areas subject to the jurisdiction of the United States of America and (b) the term "U.S. Taxing Authority" means the United States of America or any state, other jurisdiction or taxing authority in the United States.

Except as specifically provided in this Security, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Whenever in the Securities of this series (or in the 2008 Indenture, including in Sections 5.01(1) and 501(2) thereof, insofar as applicable to this series) there is a reference, in any context, to the payment of the principal of or interest on any Security of this series, such mention shall be deemed to include mention of any payment of additional amounts to United States Aliens in respect of such payment of principal or interest to the extent that, in such context, such additional amounts are, were or would be payable in respect thereof pursuant to this Section 3 or any corresponding section of another Security of

(Reverse of Security continued on next page)

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this series, as the case may be. Express mention of the payment of additional amounts in any provision of any Security of this series shall not be construed as excluding additional amounts in the provisions of any Security of this series (or of the 2008 Indenture insofar as it applies to this series) where such express mention is not made.]

**4. Redemption.**

The Securities of this series may be redeemed, as a whole but not in part, at the option of the Company, at a redemption price equal to 100% of the principal amount of the Securities to be redeemed, together with interest accrued to the date fixed for redemption, if, as a result of any amendment to, or change in, the laws or regulations of any U.S. Taxing Authority (as defined in Section 3 above), or any amendment to or change in any official interpretation or application of such laws or regulations, which amendment or change becomes effective or is announced on or after \_\_\_\_, the Company will become obligated to pay, on the next Interest Payment Date, additional amounts in respect of any Security of this series pursuant to Section 3 of this Security or any corresponding section of another Security of this series. If the Company becomes entitled to redeem the Securities of this series, it may do so on any day thereafter pursuant to the 2008 Indenture; provided, however, that (1) the Company gives the Holder of this Security notice of such redemption not more than 60 days nor less than 30 days prior to the date fixed for redemption as provided in the 2008 Indenture, (2) no such notice of redemption may be given earlier than 90 days prior to the next Interest Payment Date on which the Company would be obligated to pay such additional amounts and (3) at the time such notice is given, such obligation to pay such additional amounts remains in effect. Immediately prior to the giving of any notice of redemption of Securities pursuant to this Section 4, the Company will deliver to the Trustee an Officers' Certificate stating that the Company is entitled to effect such redemption and setting forth in reasonable detail a statement of facts showing that the conditions precedent to the right of the Company to so redeem the Securities have occurred. Interest installments due on or prior to a Redemption Date will be payable to the Holder of this Security or one or more Predecessor Securities, of record at the close of business on the relevant record date, all as provided in the 2008 Indenture.

**5. Defeasance.**

The 2008 Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the 2008 Indenture.

**6. Modification and Waiver.**

The 2008 Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company, and the rights of the Holders of the Securities to be affected, under the 2008 Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of all Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any series, may comprise fewer than all the Securities of such series). The 2008 Indenture also contains provisions (i) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any particular series, may comprise fewer than all the Securities of such series), on behalf of the Holders of all such affected Securities, to waive compliance by the Company with certain provisions of the 2008 Indenture and (ii) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding of any series to be affected (with each such series considered separately for this purpose), on behalf of the Holders of all Securities of such series, to waive certain past defaults under the 2008 Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

(Reverse of Security continued on next page)

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## **7. Remedies.**

Sections 5.01 and 5.02 of the 2008 Indenture are hereby amended with respect to the Securities of this series to the extent necessary to comply with Section 5.01 and Annex A of the Master Agreement, dated November 25, 2008, as the same may be amended from time to time (the "Master Agreement"), by and between the Company and the FDIC, attached hereto as Exhibit A. Subject to the immediately preceding sentence and Section 14 of the reverse of this Security, if an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the 2008 Indenture.

As provided in and subject to the provisions of the 2008 Indenture and subject to Section 14 of the reverse of this Security, the Holder of this Security shall not have the right to institute any proceeding with respect to the 2008 Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity.

The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

If so provided pursuant to the terms of any specific Securities, the above-referenced provisions of the 2008 Indenture regarding the ability of Holders to waive certain defaults, or to request the Trustee to institute proceedings (or to give the Trustee other directions) in respect thereof, may be applied differently with regard to such Securities.

No reference herein to the 2008 Indenture and no provision of this Security or of the 2008 Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

## **8. Transfer and Exchange.**

As provided in the 2008 Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the 2008 Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(Reverse of Security continued on next page)



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Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

This Security is a Global Security and is subject to the provisions of the 2008 Indenture relating to Global Securities, including the limitations in Section 3.05 thereof on transfers and exchanges of Global Securities (subject to Section 10 of the reverse of this Security).

**9. Subrogation.**

The FDIC shall be subrogated to all of the rights of the Holder and the Representative under this Security and the 2008 Indenture against the Company in respect of any amounts paid to the Holder, or for the benefit of the Holder, by the FDIC pursuant to the Debt Guarantee Program.

**10. Agreement to Execute Assignment upon Guarantee Payment.**

The Holder hereby authorizes the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the Holder pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Security as Exhibit B pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Company under this Security on behalf of the Holder. The Company hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Security and upon any such assignment, the FDIC shall be deemed the Holder of this Security for all purposes hereof, and the Company hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Security and the 2008 Indenture as a result of such assignment.

Section 3.05 of the 2008 Indenture is hereby amended with respect to the Securities of this series to the extent necessary to permit the Holder, the Representative and the Company to comply with this Section 10, Section 11 below or any other similar provision of this Security.

**11. Surrender of Senior Unsecured Debt Instrument to the FDIC.**

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Company is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the Holder shall, or the Holder shall cause the person or entity in possession to, promptly surrender to the FDIC this Security.

**12. Notice Obligations to FDIC of Payment Default.**

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Company is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default. Solely for the purpose of this Section 12, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

**13. Ranking.**

Any indebtedness of the Company to the FDIC arising under Section 2.03 of the Master Agreement will constitute a senior unsecured general obligation of the Company, ranking pari passu with any indebtedness hereunder.

(Reverse of Security continued on next page)

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**14. *No Event of Default during Time of Timely FDIC Guarantee Payments.***

There shall not be deemed to be an Event of Default under this Security or the 2008 Indenture which would permit or result in the acceleration of amounts due hereunder, if such an Event of Default is due solely to the failure of the Company to make timely payment hereunder, provided that the FDIC is making timely guarantee payments with respect to this Security in accordance with 12 C.F.R Part 370.

The following provisions of this paragraph shall apply to this Security in addition to, and without limiting, the foregoing provisions of this Section 14. No event that would otherwise constitute an Event of Default with respect to the Securities of this series shall constitute an Event of Default with respect to this Security, provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. As a result, upon the occurrence of any such event (including any event of the kind specified in said Section 5.01), neither the Trustee nor the Holder of this Security shall be entitled, with respect to this Security, to seek any remedies otherwise available, or to take any other action otherwise provided for, under the 2008 Indenture upon an Event of Default (including any right to accelerate the Maturity of the principal of this Security pursuant to Section 5.02 of the 2008 Indenture, any right to exchange (at the Holder's option) this Security for a Security that is not a Global Security pursuant to Section 3.05 thereof and any right to institute a proceeding pursuant to Section 5.07 thereof), provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. Without limiting the foregoing, no event, including any event of the kind specified in Section 5.01(5) or 5.01(6) of the 2008 Indenture, shall result in the automatic acceleration of the Maturity of the principal of this Security pursuant to Section 5.02 thereof. Notwithstanding the foregoing, however, the rights of the Holder of this Security pursuant to Section 5.08 of the 2008 Indenture shall not be affected by this Section 14. With regard to this Security, the provisions of Article Five of the 2008 Indenture shall be subject to, and shall be deemed modified as necessary to be consistent with, the provisions of this Section 14.

**15. *No Modifications without FDIC Consent.***

Without the express written consent of the FDIC, the Company and the Trustee agree not to amend, modify, supplement or waive any provision in this Security or the 2008 Indenture that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement.

**16. *Demand Obligations to FDIC upon the Company's Failure to Pay.***

On the 30th day after the date the Company defaults in payment of interest on this Security, which default has not been cured by the Company by such 30th day, in the case of default in interest, or at the Maturity, in the case of default in principal of this Security, the Representative shall make a demand on behalf of the Holder to the FDIC for payment on the guaranteed amount under the Debt Guarantee Program. Such demand shall be accompanied by a proof of claim, which shall include evidence, to the extent not previously provided in the Master Agreement, in form and content satisfactory to the FDIC, of: (A) the Representative's financial and organizational capacity to act as Representative; (B) the Representative's exclusive authority to act on behalf of the Holder and its fiduciary responsibility to the Holder when acting as such, as established by the terms of this Security and the 2008 Indenture; (C) the occurrence of a payment default; and (D) the authority to make an assignment of the Holder's right, title, and interest in this Security to the FDIC and to effect the transfer to the FDIC of the Holder's claim in any insolvency proceeding. Such assignment shall include the right of the FDIC to receive any and all distributions on this Security from the proceeds of the receivership or bankruptcy estate. Any demand under this Section 16 shall be made in writing and directed to the Director, Division of Resolution and Receiverships, Federal Deposit Insurance Corporation, Washington, D.C., and shall include all supporting evidences as provided in this Section 16, and shall certify to the accuracy thereof.

(Reverse of Security continued on next page)

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**[IF LISTED ON LUXEMBOURG STOCK EXCHANGE, INSERT —**

**17. Notices.**

Notices that are required hereunder or under the 2008 Indenture to be given to Holders of the Securities of this series shall be given to Holders of the Securities of this series as set forth in the 2008 Indenture and in the next paragraph.

So long as the Securities of this series are listed on the Official List of the Luxembourg Stock Exchange and such Stock Exchange shall so require, the Trustee will publish any such required notices in a daily newspaper of general circulation in Luxembourg. If publication in Luxembourg is not practical, the Trustee will publish any such required notices elsewhere in Europe. Published notices will be deemed to have been given on the date they are published. If publication as described in this paragraph becomes impossible, the Trustee may publish sufficient notice by alternate means that approximate the terms and conditions as described in this paragraph.]

**18. Governing Law.**

**This Security and the 2008 Indenture shall be governed by and construed in accordance with the laws of the State of New York.**

**19. Terms Defined in the 2008 Indenture.**

All terms used in this Security which are defined in the 2008 Indenture shall have the meanings assigned to them in the 2008 Indenture.

**[IF APPLICABLE, INSERT —** References in this Security to euro shall mean, as of any time, the coin or currency (if any) that is legal tender for the payment of private and public debt in all countries then participating in the European Economic and Monetary Union (or any successor union) pursuant to the Treaty on European Union of February 1992 (or any successor treaty), as it may be amended from time to time.]

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE [ \_\_\_\_\_ ]

(Please Print or Typewrite Name and Address Including Postal Zip Code of Assignee)

the attached Security and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_

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to transfer said Security on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

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NOTICE: Signature must be guaranteed.

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NOTICE: The signature to this assignment must correspond with the name of the Holder as written upon the face of the attached Security in every particular, without alteration or any change whatever.

**MASTER AGREEMENT**  
FEDERAL DEPOSIT INSURANCE CORPORATION  
TEMPORARY LIQUIDITY GUARANTEE PROGRAM — DEBT GUARANTEE PROGRAM

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TLGP MASTER AGREEMENT 11/24/08

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## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (this "Master Agreement") is being entered into as of the date set forth on the signature page hereto by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized under the laws of the United States of America and having its principal office in Washington, D.C. (the "FDIC"), and the entity whose name appears on the signature page hereto (the "Issuer").

### RECITALS

**WHEREAS**, on November 21, 2008, the FDIC issued its Final Rule, 12 C.F.R. Part 370 (as may be amended from time to time, the "Rule"), establishing the Temporary Liquidity Guarantee Program (the "Program"); and

**WHEREAS**, pursuant to the Rule, the FDIC will guarantee the payment of certain newly-issued "senior unsecured debt" (as defined in the Rule, hereinafter "Senior Unsecured Debt") issued by an "eligible entity" (as defined in the Rule); and

**WHEREAS**, the Issuer is an eligible entity for purposes of the Rule and has elected to participate in the debt guarantee component of the Program.

### ARTICLE I DEFINITIONS

**1.01. Certain Defined Terms.** As used in this Master Agreement, the following terms shall have the following meanings:

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

"FDIC" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"FDIC Guarantee" means the guarantee of payment by the FDIC of the Senior Unsecured Debt of the Issuer in accordance with the terms of the Program.

"Guarantee Payment" means any payment made by the FDIC under the Program with respect to Senior Unsecured Debt of the Issuer.

"Guarantee Payment Notice" has the meaning ascribed to such term in Section 2.02.

"Issuer" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"Issuer Make-Whole Payments" has the meaning ascribed to such term in Section 2.03.

TLGP MASTER AGREEMENT 11/24/08

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“Issuer Reports” means reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that the Issuer or any subsidiary of the Issuer is required to file with any governmental entity.

“Master Agreement” means this Master Agreement, together with all Annexes and amendments hereto.

“Material Adverse Effect” means a material adverse effect on the business, results of operations or financial condition of the Issuer and its consolidated subsidiaries taken as a whole.

“Program” has the meaning ascribed to such term in the Recitals.

“Reimbursement Payment” has the meaning ascribed to such term in Section 2.03.

“Relevant Provision” means any provision that is related to the principal, interest, payment, default or ranking of the Senior Unsecured Debt, any provision contained in Annex A or any other provision the amendment of which would require the consent of any or all of the holders of such debt.

“Representative” means the trustee, administrative agent, paying agent or other fiduciary or agent designated as the “Representative” under the governing documents for any Senior Unsecured Debt of the Issuer subject to the FDIC Guarantee for purposes of submitting claims or taking other actions under the Program.

“Rule” has the meaning ascribed to such term in the Recitals.

“Senior Unsecured Debt” has the meaning ascribed to such term in the Recitals.

**1.02. Terms Generally.** Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Master Agreement and not to any particular provision of this Master Agreement, and Article, Section and paragraph references are to the Articles, Sections and paragraphs of this Master Agreement unless otherwise specified, and the word “including” and words of similar import when used in this Master Agreement shall mean “including, without limitation”, unless otherwise specified.

## ARTICLE II SENIOR DEBT GUARANTEE

**2.01. Acknowledgement of Guarantee.** The FDIC hereby acknowledges that the Issuer has elected to participate in the debt guarantee component of the Program and that, as a result, the Issuer’s Senior Unsecured Debt is guaranteed by the FDIC to the extent set forth in, and subject to the provisions of, the Rule, and subject to the terms hereof.

**2.02. Guarantee Payments.** The Issuer understands and acknowledges that any Guarantee Payment with respect to a particular issue of Senior Unsecured Debt shall be paid by the FDIC directly to:



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- (a) the Representative with respect to such Senior Unsecured Debt if a Representative has been designated; or
  - (b) the registered holder(s) of such Senior Unsecured Debt if no Representative has been designated; or
  - (c) any registered holder of such Senior Unsecured Debt who has opted out of being represented by the designated Representative;

in each case, pursuant to the claims procedure set forth in the Rule. In no event shall the FDIC make any Guarantee Payment to the Issuer directly. The FDIC will provide prompt written notice to the Issuer of any Guarantee Payment made by the FDIC with respect to any of the Issuer's Senior Unsecured Debt (the "Guarantee Payment Notice").

**2.03. Issuer Make-Whole Payments.** In consideration of the FDIC providing the FDIC Guarantee with respect to the Senior Unsecured Debt of the Issuer, the Issuer hereby irrevocably and unconditionally covenants and agrees:

(a) to reimburse the FDIC immediately upon receipt of the Guarantee Payment Notice for all Guarantee Payments set forth in the Guarantee Payment Notice (the "Reimbursement Payment") (without duplication of any amounts actually received by the FDIC as subrogee or assignee under the governing documents of the relevant Senior Unsecured Debt of the Issuer);

(b) beginning as of the date of the Issuer's receipt of the Guarantee Payment Notice, to pay interest on any unpaid Reimbursement Payments until such Reimbursement Payments shall have been paid in full by the Issuer, at an interest rate equal to one percent (1%) per annum above the non-default interest rate payable on the Senior Unsecured Debt with respect to which the relevant Guarantee Payments were made, as calculated in accordance with the documents governing such Senior Unsecured Debt; and

(c) to reimburse the FDIC for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of the Issuer's payment obligations hereunder. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the FDIC's agents, counsel, accountants and experts.

Clauses (a), (b) and (c) above are collectively referred to herein as the "Issuer Make-Whole Payments". The indebtedness of the Issuer to the FDIC arising under this Section 2.03 constitutes a senior unsecured general obligation of the Issuer, ranking *pari passu* with other senior unsecured indebtedness of the Issuer, including without limitation Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

**2.04. Waiver of Defenses.** The Issuer hereby waives any defenses it might otherwise have to its payment obligations under any of the Issuer's Senior Unsecured Debt or under Section 2.03 hereof, in each case beginning at such time as the FDIC has made any Guarantee

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Payment with respect to such Senior Unsecured Debt and continuing until such time as all Issuer Make-Whole Payments have been received by the FDIC.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

**3.01. Organization and Authority.** The Issuer has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, except as has not had, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**3.02. Authorization, Enforceability.**

(a) The Issuer has the power and authority to execute and deliver this Master Agreement and to carry out its obligations hereunder. The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Issuer, and no further approval or authorization is required on the part of the Issuer. This Master Agreement is a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby and compliance by the Issuer with the provisions hereof, will not (i) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Issuer or any subsidiary of the Issuer under, any of the terms, conditions or provisions of, as applicable, (X) its organizational documents or (Y) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Issuer or any subsidiary of the Issuer may be bound, or to which the Issuer or any subsidiary of the Issuer may be subject, or (ii) violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Issuer or any subsidiary of the Issuer or any of their respective properties or assets except, in the case of clauses (i)(Y) and (ii), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(c) No prior notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity is required to be made or obtained by the Issuer in connection with the execution of this Master Agreement, except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals which have been made or obtained

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or the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**3.03. Reports.** Since December 31, 2007, the Issuer and each subsidiary of the Issuer has timely filed all Issuer Reports and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not individually or in the aggregate have a Material Adverse Effect. As of their respective dates of filing, the Issuer Reports complied in all material respects with all statutes and applicable rules and regulations of all applicable governmental entities. In the case of each such Issuer Report filed with or furnished to the Securities and Exchange Commission, if any, such Issuer Report (a) did not, as of its date, or if amended prior to the date of this Master Agreement, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, (b) complied as to form in all material respects with all applicable requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and (c) no executive officer of the Issuer or any subsidiary of the Issuer has failed in any respect to make the certifications required by him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002. With respect to all other Issuer Reports, the Issuer Reports were complete and accurate in all material respects as of their respective dates.

#### **ARTICLE IV NOTICE AND REPORTING**

**4.01. Reports of Existing and Future Guaranteed Debt.** The Issuer shall provide reports to the FDIC of the amount of all Senior Unsecured Debt subject to the FDIC Guarantee in accordance with the reporting requirements of the Rule.

**4.02. On-going Reporting.** The Issuer covenants and agrees that, for so long as it has outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee, it shall furnish or cause to be furnished to the FDIC (a) monthly reports, in such form as specified by the FDIC, containing information relating to the Issuer's outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee and such other information as may be requested in such form, and (b) such other information that the FDIC may reasonably request, such other information to be delivered within ten (10) Business Days of receipt by the Issuer of any such request.

**4.03. Notice of Defaults.** The Issuer covenants and agrees that it shall notify the FDIC within one (1) Business Day of any default in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of the Issuer (including debt that is not subject to the FDIC Guarantee), whether such debt is existing as of the date of this Master Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

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**ARTICLE V  
COVENANTS AND ACKNOWLEDGMENTS OF THE ISSUER**

**5.01. Terms to be included in Future Guaranteed Debt.** The governing documents for the issuance of any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain each of the provisions set forth in Annex A. If a particular issue of Senior Unsecured Debt is evidenced solely by a trade confirmation, the Issuer shall use commercially reasonable efforts to cause the holder of such debt to execute a written instrument setting forth the holder's agreement to be bound by the provisions set forth in Annex A. No document governing the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain any provision that would result in the automatic acceleration of the debt upon a default by the Issuer at any time during which the FDIC Guarantee is in effect or during which Guarantee Payments are being made in accordance with Section 370.12(b)(2) of the Rule.

**5.02. Breaches; False or Misleading Statements.** The Issuer acknowledges and agrees that (a) if it is in breach of any provision of this Master Agreement or (b) if it makes any false or misleading statement or representation in connection with the Issuer's participation in the Program, or makes any statement or representation in bad faith with the intent to influence the actions of the FDIC, the FDIC may take the enforcement actions provided in Section 370.11 of the Rule, including termination of the Issuer's participation in the Program. As set forth in the Rule, any termination of the Issuer's participation in the Program would solely have prospective effect, and would in no event affect the FDIC Guarantee with respect to Senior Unsecured Debt of the Issuer that is issued and outstanding prior to the termination of the Issuer's participation in the Program.

**5.03. No Modifications.** The Issuer covenants and agrees that it shall not amend, modify, or consent to any amendment or modification, or waive any Relevant Provision, without the express written consent of the FDIC.

**5.04. Waiver by the Issuer.** The Issuer acknowledges and agrees that if any covenant, stipulation or other provision of this Master Agreement that imposes on the Issuer the obligation to make any payment is at any time void under any provision of applicable law, the Issuer will not make any claim, counterclaim or institute any proceedings against the FDIC or any of its assignees or subrogees for any amount paid by the Issuer at any time, and the Issuer waives unconditionally and absolutely any rights and defenses, legal or equitable, which arise under or in connection with any such provision and which might otherwise be available to it for recovery of any amount due under this Master Agreement.

**ARTICLE VI  
GENERAL PROVISIONS**

**6.01. Amendment and Modification of this Master Agreement.** This Master Agreement may be amended, modified and supplemented in any and all respects, but only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Master Agreement.

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**6.02. Notices.** Unless otherwise provided herein, all notices and other communications hereunder shall be in writing and shall be deemed given when mailed, delivered personally, telecopied (which is confirmed) or sent by an overnight courier service, such as FedEx, to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

if to the Issuer, to the address appearing on the signature page hereto

if to the FDIC, to: The Federal Deposit Insurance Corporation  
Deputy Director, Receivership Operations Branch  
Division of Resolutions and Receiverships  
Attention: Master Agreement  
550 17th Street, N.W.  
Washington, DC 20429

**6.03. Counterparts.** This Master Agreement may be executed in counterparts, which, together, shall be considered one and the same agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original, executed counterparts, provided receipt of such counterparts is confirmed.

**6.04. Severability.** Any term or provision of this Master Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**6.05. Governing Law.** Federal law of the United States shall control this Master Agreement. To the extent that federal law does not supply a rule of decision, this Master Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law. Nothing in this Master Agreement will require any unlawful action or inaction by either party.

**6.06. Venue.** Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Master Agreement is to be instituted in the United States District Court in and for the District of Columbia or in any United States District Court in the jurisdiction where the Issuer's principal office is located.

**6.07. Assignment.** Neither this Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, and any purported assignment

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without such consent shall be void. Subject to the preceding sentence, this Master Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**6.08. Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Master Agreement, except the terms identified for definition in Article I and elsewhere in this Master Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Master Agreement or any provision hereof.

**6.09. Delivery Requirement.** The Issuer shall submit a completed, executed and dated copy of the signature page hereto to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the debt guarantee component of the Program in accordance with the delivery instructions set forth on the signature page.

**[SIGNATURES BEGIN ON NEXT PAGE]**

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**IN WITNESS WHEREOF**, the Issuer and the FDIC have caused this Master Agreement to be executed by their respective officers thereunto duly authorized.

**THE FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NAME OF ISSUER:**

THE GOLDMAN SACHS GROUP, INC.

By: /s/ DAVID VINIAR  
Name: David Viniar  
Chief Financial Officer

Address of Issuer: 85 Broad Street  
New York, New York 10004

FDIC Certificate Number: \_\_\_\_\_

RSSD ID or  
OTS Docket Number: 2380443

Date: 11/25/08

**Delivery Instructions**

Please deliver a completed, executed and dated copy of this Signature Page to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the Debt Guarantee Program. Email is the preferred method of delivery to MasterAgreement@fdic.gov, or you may send it by an overnight courier service such as FedEx to Senior Counsel, Special Issues Unit, E7056, Attention: Master Agreement, 3501 Fairfax Drive, Arlington, Virginia, 22226.

TLGP MASTER AGREEMENT 11/24/08

**Terms to be Included in Future Issuances of FDIC Guaranteed Senior Unsecured Debt**

The following provisions shall be included in the governing documents for the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee, in substantially the form presented below, unless otherwise specified. The appropriate name of the governing document(s) shall be inserted in place of the term "Agreement" where it appears in this Annex A.

Acknowledgement of the FDIC's Debt Guarantee Program

The parties to this Agreement acknowledge that the Issuer has not opted out of the debt guarantee program (the "**Debt Guarantee Program**") established by the Federal Deposit Insurance Corporation ("**FDIC**") under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's website, www.fdic.gov/tlgp. The expiration date of the FDIC's guarantee is the earlier of the maturity date of this debt or June 30, 2012.* [The italicized portion of the above provision shall be included exactly as written above]

Representative

The [insert name of the: trustee, administrative agent, paying agent or other fiduciary or agent to be designated as the duly authorized representative of the debt holders] is designated under this Agreement as the duly authorized representative of the holder[s] for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the "**Representative**"). Any holder may elect not to be represented by the Representative by providing written notice of such election to the Representative.

Subrogation

The FDIC shall be subrogated to all of the rights of the holder[s] and the Representative, if there shall be one, under this Agreement against the Issuer in respect of any amounts paid to the holder[s], or for the benefit of the holder[s], by the FDIC pursuant to the Debt Guarantee Program.

Agreement to Execute Assignment upon Guarantee Payment

[If there is a Representative, insert the following:]

The holder[s] hereby authorize the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the holder[s] pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Issuer under this Agreement on behalf of the holder[s]. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the



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FDIC shall be deemed a holder under this Agreement for all purposes hereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

[or, if (i) there is no Representative or (ii) the holder has exercised its right not to be represented by the Representative, insert the following:]

The holder[s] hereby agree that, at such time as the FDIC shall commence making any guarantee payments to the holder[s] pursuant to the Debt Guarantee Program, the holder[s] shall execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the holder[s] shall assign to the FDIC [its/their] right to receive any and all payments from the Issuer under this Agreement. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the FDIC shall be deemed a holder under this Agreement for all purposes thereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

#### Surrender of Senior Unsecured Debt Instrument to the FDIC

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Issuer is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the holder shall, or the holder shall cause the person or entity in possession to, promptly surrender to the FDIC the security certificate, note or other instrument evidencing such debt, if any.

#### Notice Obligations to FDIC of Payment Default

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Issuer is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default.

#### Ranking

Any indebtedness of the Issuer to the FDIC arising under Section 2.03 of the Master Agreement entered into by the Issuer and the FDIC in connection with the Debt Guarantee Program will constitute a senior unsecured general obligation of the Issuer, ranking *pari passu* with any indebtedness hereunder.

#### No Event of Default during Time of Timely FDIC Guarantee Payments

There shall not be deemed to be an event of default under this Agreement which would permit or result in the acceleration of amounts due hereunder, if such an event of default is due solely to the failure of the Issuer to make timely payment hereunder, provided that the FDIC is

TLGP MASTER AGREEMENT 11/24/08

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making timely guarantee payments with respect to the debt obligations hereunder in accordance with 12 C.F.R Part 370.

No Modifications without FDIC Consent

Without the express written consent of the FDIC, the parties hereto agree not to amend, modify, supplement or waive any provision in this Agreement that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement executed by the Issuer in connection with the Debt Guarantee Program.

TLGP MASTER AGREEMENT 11/24/08

ASSIGNMENT

This Assignment is made pursuant to the terms of Section 10 of the reverse of The Goldman Sachs Group, Inc.'s \_\_\_\_\_ Notes due \_\_\_\_\_, CUSIP No. \_\_\_\_\_ (the "Security"), between The Bank of New York Mellon (the "Representative"), acting on behalf of the Holder of the Security who have not opted out of representation by the Representative, and The Goldman Sachs Group, Inc. (the "Company") with respect to the debt obligations of the Company that are guaranteed under the Debt Guarantee Program. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Security. Solely for the purpose of this Assignment, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

For value received, the Representative, on behalf of the Holder (the "Assignor"), hereby assigns to the Federal Deposit Insurance Corporation (the "FDIC"), without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the Security; (b) the Senior Debt Indenture, dated July 16, 2008 (the "2008 Indenture"), by and between the Company and the Representative, with respect to the Security; and (c) any other instrument or agreement executed by the Company regarding obligations of the Company under the Security or the 2008 Indenture with respect to the Security (collectively, the "Assignment").

The Assignor hereby certifies that:

1. Without the FDIC's prior written consent, the Assignor has not:

- (a) agreed to any material amendment of the Security or to any material deviation from the provisions thereof; or
- (b) accelerated the maturity of the Security.

**[Instructions to the Assignor:** If the Assignor has not assigned or transferred any interest in the Security and related documentation, such Assignor must include the following representation.]

2. The Assignor has not assigned or otherwise transferred any interest in the Security;

**[Instructions to the Assignor:** If the Assignor has assigned a partial interest in the Security and related documentation, the Assignor must include the following representation.]

2. The Assignor has assigned part of its rights, title and interest in the Security to \_\_\_\_\_ pursuant to the \_\_\_\_\_ agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, as assignor, and \_\_\_\_\_, as assignee, an executed copy of which is attached hereto.

The Assignor acknowledges and agrees that this Assignment is subject to the Security and the 2008 Indenture and to the following:

1. In the event the Assignor receives any payment under or related to the Security from a party other than the FDIC (a "Non-FDIC Payment"):

(a) after the date of demand for a guarantee payment on the FDIC pursuant to 12 CFR Part 370, but prior to the date of the FDIC's first guarantee payment under the Security pursuant to 12 CFR Part 370, the Assignor shall promptly but in no event later than five (5) Business Days after receipt notify the FDIC of the date and the amount of such Non-FDIC Payment and shall apply such payment as payment made by the Company, and not as a guarantee payment made by the FDIC, and therefore, the amount of such payment shall be excluded from this Assignment; and

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(b) after the FDIC's first guarantee payment under the Security, the Assignor shall forward promptly to the FDIC such Non-FDIC Payment in accordance with the payment instructions provided in writing by the FDIC.

2. Acceptance by the Assignor of payment pursuant to the Debt Guarantee Program on behalf of the Holder shall constitute a release by the Holder of any liability of the FDIC under the Debt Guarantee Program with respect to such payment.

The Person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the FDIC that he/she/it is duly authorized to do so.

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IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this \_\_\_\_day of \_\_\_\_\_, 20\_\_.

Very truly yours,

[ASSIGNOR]

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Consented to and acknowledged by this \_\_\_\_day of \_\_\_\_, 20\_\_:

THE FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

<DOCUMENT>  
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<FILENAME> y74032exv4w6.htm  
<DESCRIPTION> EX-4.6: FORM OF FIXED RATE SENIOR DEBT SECURITY (TLGP)  
<TEXT>

[FORM OF FIXED RATE SENIOR DEBT SECURITY]

Registered No.

CUSIP No.  
ISIN No.

(Face of Security)

[IF A GLOBAL SECURITY, INSERT — THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE 2008 INDENTURE AS DEFINED ON THE REVERSE OF THIS SECURITY AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE 2008 INDENTURE AND THIS SECURITY.]

[IF DTC IS THE DEPOSITARY, INSERT — UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE GOLDMAN SACHS GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]

[INSERT ANY LEGEND REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND THE REGULATIONS THEREUNDER.]

THIS SECURITY IS GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE RIGHTS OF THE HOLDER OF THIS SECURITY ARE SUBJECT TO CERTAIN RIGHTS OF THE FDIC, AS AND TO THE EXTENT INDICATED IN THIS SECURITY, INCLUDING SECTIONS 7, 9, 10, 11, 12, 13, 14, 15 AND 16 ON THE REVERSE HEREOF.

(Face of Security continued on next page)

Title of Series: \_\_\_\_\_  
Title of Securities: \_\_\_\_\_

**THE GOLDMAN SACHS GROUP, INC.**

**[TITLE OF SECURITY]**

The Goldman Sachs Group, Inc., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”, which term includes any successor Person under the 2008 Indenture (as defined on the reverse of this Security)), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ on \_\_\_\_\_ and to pay interest thereon, from or from the most recent Interest Payment Date to which interest has been paid or made available for payment, on \_\_\_\_\_ in each year, commencing on \_\_\_\_\_ and at the Maturity of the principal hereof, at the rate of \_\_\_\_\_ % per annum, until the principal hereof is paid or made available for payment. Any such installment of interest that is overdue shall also bear interest at the rate of \_\_\_\_\_ % per annum (to the extent that the payment of such interest shall be legally enforceable), from the date any such overdue amount first becomes due until it is paid or made available for payment. Notwithstanding the foregoing, interest on any installment of interest that is overdue shall be payable on demand.

The interest so payable, and punctually paid or made available for payment, on any Interest Payment Date will, as provided in the 2008 Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the (whether or not a Business Day, as defined below) next preceding such Interest Payment Date. Any interest so payable, but not punctually paid or made available for payment, on any Interest Payment Date will forthwith cease to be payable to the Holder on such Regular Record Date and such Defaulted Interest may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof being given to the Holder of this Security not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the 2008 Indenture. For the purpose of determining the Holder at the close of business on any relevant record date when business is not conducted, the close of business will mean 5:00 P.M., New York City time, on that day.

The Company and the Trustee acknowledge that the Company has not opted out of the debt guarantee program (the “Debt Guarantee Program”) established by the Federal Deposit Insurance Corporation (“FDIC”) under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations, 12 CFR Part 370, and at the FDIC’s website, [www.fdic.gov/tlgp](http://www.fdic.gov/tlgp). The expiration date of the FDIC’s guarantee is the earlier of the maturity date of this debt or June 30, 2012.*

The Trustee is hereby designated as the duly authorized representative of the Holder for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the “Representative”). The Holder of this Security may elect not to be represented by the Representative with respect to this Security by providing written notice of such election to the Representative.

Notwithstanding any provision of this Security, any right of the Holder to receive payment in respect of this Security under the Debt Guarantee Program shall be subject to the procedures and other requirements of the Debt Guarantee Program, and the Holder will not be entitled under the Debt Guarantee Program to receive any additional interest or penalty amounts on account of any default or resulting delay in payment in respect of this Security.

(Face of Security continued on next page)



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***Currency and Manner of Payment***

**[IF PAYMENT IS IN U.S. DOLLARS, INSERT** — Payment of the principal of and premium or interest on this Security will be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Notwithstanding any other provision of this Security or the 2008 Indenture, if this Security is a Global Security, any payment in respect of this Security may be made pursuant to the Applicable Procedures of the Depositary as permitted in the 2008 Indenture.

Subject to the prior paragraph and except as provided in the next paragraph, payment of any amount payable on this Security will be made at the office or agency of the Company maintained for that purpose in The City of New York (and at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that, at the option of the Company and subject to the next paragraph, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Subject to the second preceding paragraph, payment of any amount payable on this Security will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least \$1,000,000 (or the equivalent in another currency) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.]

**[IF PAYMENT IS IN EUROS, INSERT** — Payment of the principal of and premium or interest on this Security will be made in euros. Notwithstanding any other provision of this Security or the 2008 Indenture, if this Security is a Global Security, any payment in respect of this Security may be made pursuant to the Applicable Procedures of the Depositary as permitted in the 2008 Indenture.

Subject to the prior paragraph and except as provided in the next [two] [three] paragraphs, payment of any amount payable on this Security will be made at the office or agency of the Company maintained for that purpose in The City of New York (and at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that, at the option of the Company and subject to the next paragraph, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Subject to the second preceding paragraph, payment of any amount payable on this Security will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least

(Face of Security continued on next page)

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USD\$1,000,000 (or the equivalent in euros) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.]

**[IF LISTED ON LUXEMBOURG STOCK EXCHANGE, INSERT** — So long as the Securities of this series are listed on the Official List of the Luxembourg Stock Exchange and such Stock Exchange shall so require, the Company will at all times maintain an office or agency in Luxembourg for the payment of the principal of and interest on the Securities of this series. Such Paying Agent in Luxembourg shall initially be Dexia Banque Internationale à Luxembourg société anonyme.]

***Payments Due on a Business Day***

Notwithstanding any provision of this Security or the 2008 Indenture, if any amount of principal, premium or interest would otherwise be due on this Security on a day (the “Specified Day”) that is not a Business Day, such amount may be paid or made available for payment on the Business Day that is next succeeding the Specified Day with the same force and effect as if such amount were paid on the Specified Day; and no interest will accrue on the amount so payable for the period from the Specified Day to such next succeeding Business Day. For all purposes of this Security, “Business Day” means any day that is not a Saturday or Sunday, and that is not a day on which banking institutions generally are authorized or obligated by law, regulation or executive order to close in The City of New York [;]**[IF PAYMENT IS IN EUROS, INSERT** — or London, and that is also a Euro Business Day, as defined below. The term “Euro Business Day” means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System, or any successor system, is open for business;] provided that, solely with respect to any payment to be made at any Place of Payment outside The City of New York**[IF PAYMENT IS IN EUROS, INSERT** — or London], Business Day means any day that is a “Business Day” as defined above and that is also not a day on which banking institutions generally are authorized or obligated by law, regulation or executive order to close in such Place of Payment; provided further that, with respect to Section 12 of the reverse hereof and Exhibit B hereto, the definition of “Business Day” therein shall apply. The provisions of this paragraph shall apply to this Security in lieu of the provisions of Section 1.13 of the 2008 Indenture.

**[IF PAYMENT IS IN EUROS, INSERT** — Payments Made in U.S. Dollars

Notwithstanding any provision of this Security or the 2008 Indenture, if any amount payable on this Security is payable on any day and if euros are not available to the Company on the two Business Days before such day, due to the imposition of exchange controls, disruption in a currency market or any other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligation to pay such amount in euros by making such payment in U.S. dollars. The amount of such payment in U.S. dollars shall be determined by the Exchange Rate Agent on the basis of the noon buying rate for cable transfers in The City of New York for euros (the “Exchange Rate”) as of the latest day before the day on which such payment is to be made. Any payment made under such circumstances in U.S. dollars where the

(Face of Security continued on next page)

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required payment is in euros will not constitute an Event of Default under this Security or the 2008 Indenture.

***Exchange Rate Agent***

As used herein, the “Exchange Rate Agent” shall initially mean [ ]; provided that the Company may, in its sole discretion, appoint any other institution (including any affiliate of the Company) to serve as any such agent from time to time. The Company will give the Trustee prompt written notice of any change in any such appointment. Insofar as this Security provides for any such agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any determination hereunder, such agent may do so from any institution or institutions of the kind contemplated hereby notwithstanding that any one or more of such institutions are any such agent, affiliates of any such agent or affiliates of the Company.

All determinations made by the Exchange Rate Agent pursuant to the terms of this Security shall be, absent manifest error, conclusive for all purposes and binding on the Holder of this Security and the Company. The Exchange Rate Agent shall not have any liability therefor.]

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the 2008 Indenture or be valid or obligatory for any purpose.

(Face of Security continued on next page)

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

THE GOLDMAN SACHS GROUP, INC.

By \_\_\_\_\_  
Name:  
Title:

This is one of the Securities of the series designated herein and referred to in the 2008 Indenture.

Dated:

THE BANK OF NEW YORK MELLON, as Trustee

By \_\_\_\_\_  
Authorized Signatory

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(Reverse of Security)

**1. *Securities and Indenture.***

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”) issued and to be issued in one or more series under a Senior Debt Indenture, dated as of July 16, 2008 (herein called the “2008 Indenture”, which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York Mellon, as Trustee (herein called the “Trustee”, which term includes any successor trustee under the 2008 Indenture), and reference is hereby made to the 2008 Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

**2. *Series and Denominations.***

This Security is one of the series designated on the face hereof, limited to an aggregate principal amount as shall be determined and may be increased from time to time by the Company. Any election by the Company so to increase such aggregate principal amount shall be evidenced by a certificate of an Authorized Person (as defined in the Determination of an Authorized Person, dated \_\_\_\_\_, with respect to this series). References herein to “this series” mean the series of Securities designated on the face hereof. The Securities of this series are issuable only in registered form without coupons in denominations of integral multiples of \_\_\_\_\_, subject to a minimum denomination of \$ \_\_\_\_\_.

**3. [IF APPLICABLE, INSERT — *Additional Amounts.***

If the beneficial owner of this Security is a United States Alien (as defined below), the Company will pay all additional amounts that may be necessary so that every net payment of the principal of and interest on this Security to such beneficial owner, after deduction or withholding for or on account of any present or future tax, assessment or governmental charge imposed with respect to such payment by any U.S. Taxing Authority (as defined below), will not be less than the amount provided for in this Security to be then due and payable; provided, however, that the Company shall have no obligation to pay additional amounts for or on account of any one or more of the following:

(i) any tax, assessment or other governmental charge imposed solely because at any time there is or was a connection between such beneficial owner (or between a fiduciary, settlor, beneficiary or member of such beneficial owner, if such beneficial owner is an estate, trust or partnership) and the United States (as defined below) (other than the mere receipt of a payment on, or the ownership or holding of, a Security), including because such beneficial owner (or such fiduciary, settlor, beneficiary or member) at any time, for U.S. federal income tax purposes: (a) is or was a citizen or resident, or is or was treated as a resident, of the United States, (b) is or was present in the United States, (c) is or was engaged in a trade or business in the United States, (d) has or had a permanent establishment in the United States, (e) is or was a domestic or foreign personal holding company, a passive foreign investment company or a controlled foreign corporation, (f) is or was a corporation that accumulates earnings to avoid U.S. federal income tax or (g) is or was a “10-percent shareholder” of the Company as defined in section 871(h)(3) of the U.S. Internal Revenue Code or any successor provision;

(ii) any tax, assessment or governmental charge imposed solely because of a change in applicable law or regulation, or in any official interpretation or application of applicable law or regulation, that becomes effective more than 15 days after the day on which the payment becomes due or is made available, whichever occurs later;

(iii) any estate, inheritance, gift, sales, excise, transfer, wealth or personal property tax or any similar tax, assessment or other governmental charge;

(Reverse of Security continued on next page)

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(iv) any tax, assessment or other governmental charge imposed solely because such beneficial owner or any other Person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with the United States of the Holder or any beneficial owner of this Security, if compliance is required by statute, by regulation of the U.S. Treasury Department or by an applicable income tax treaty to which the United States is a party, as a precondition to exemption from such tax, assessment or other governmental charge;

(v) any tax, assessment or other governmental charge that is payable otherwise than by deduction or withholding from payments of principal of or interest on this Security;

(vi) any tax, assessment or other governmental charge imposed solely because the payment is to be made by a particular Paying Agent (which term may include the Company) and would not be imposed if made by another Paying Agent (which term may include the Company);

(vii) by or on behalf of a Holder who would be able to avoid such withholding or deduction by presenting this Security to another Paying Agent in a Member State of the European Union;

(viii) any tax, assessment or other governmental charge imposed solely because the Holder (1) is a bank purchasing this Security in the ordinary course of its lending business or (2) is a bank that is neither (A) buying this Security for investment purposes only nor (B) buying this Security for resale to a third party that either is not a bank or holding the note for investment purposes only; or

(ix) any combination of the taxes, assessments or other governmental charges described in items (i) through (viii) of this Section 3.

Additional amounts also will not be paid with respect to any payment of principal of or interest on this Security to any United States Alien who is a fiduciary or a partnership, or who is not the sole beneficial owner of any such payment, to the extent that the Company would not be required to pay additional amounts to any beneficiary or settlor of such fiduciary or any member of such a partnership, or to any beneficial owner of the payment, if that Person had been treated as the beneficial owner of this Security for this purpose.

The term "United States Alien" means any Person who, for U.S. federal income tax purposes, is a nonresident alien individual, a foreign corporation, a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a nonresident alien individual or a nonresident alien fiduciary of a foreign estate or trust, or a nonresident alien fiduciary of an estate or trust that is not subject to U.S. federal income tax on a net income basis on income or gain from this Security. For the purposes of this Section 3 and Section 4 only, (a) the term "United States" means the United States of America (including the states thereof and the District of Columbia), together with the territories, possessions and all other areas subject to the jurisdiction of the United States of America and (b) the term "U.S. Taxing Authority" means the United States of America or any state, other jurisdiction or taxing authority in the United States.

Except as specifically provided in this Security, the Company shall not be required to make any payment with respect to any tax, assessment or other governmental charge imposed by any government or any political subdivision or taxing authority thereof or therein.

Whenever in the Securities of this series (or in the 2008 Indenture, including in Sections 5.01(1) and 501(2) thereof, insofar as applicable to this series) there is a reference, in any context, to the payment of the principal of or interest on any Security of this series, such mention shall be deemed to include mention of any payment of additional amounts to United States Aliens in respect of such payment of principal or interest to the extent that, in such context, such additional amounts are, were or would be

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payable in respect thereof pursuant to this Section 3 or any corresponding section of another Security of this series, as the case may be. Express mention of the payment of additional amounts in any provision of any Security of this series shall not be construed as excluding additional amounts in the provisions of any Security of this series (or of the 2008 Indenture insofar as it applies to this series) where such express mention is not made.]

**4. Redemption.**

The Securities of this series may be redeemed, as a whole but not in part, at the option of the Company, at a redemption price equal to 100% of the principal amount of the Securities to be redeemed, together with interest accrued to the date fixed for redemption, if, as a result of any amendment to, or change in, the laws or regulations of any U.S. Taxing Authority (as defined in Section 3 above), or any amendment to or change in any official interpretation or application of such laws or regulations, which amendment or change becomes effective or is announced on or after \_\_\_\_\_, the Company will become obligated to pay, on the next Interest Payment Date, additional amounts in respect of any Security of this series pursuant to Section 3 of this Security or any corresponding section of another Security of this series. If the Company becomes entitled to redeem the Securities of this series, it may do so on any day thereafter pursuant to the 2008 Indenture; provided, however, that (1) the Company gives the Holder of this Security notice of such redemption not more than 60 days nor less than 30 days prior to the date fixed for redemption as provided in the 2008 Indenture, (2) no such notice of redemption may be given earlier than 90 days prior to the next Interest Payment Date on which the Company would be obligated to pay such additional amounts and (3) at the time such notice is given, such obligation to pay such additional amounts remains in effect. Immediately prior to the giving of any notice of redemption of Securities pursuant to this Section 4, the Company will deliver to the Trustee an Officers' Certificate stating that the Company is entitled to effect such redemption and setting forth in reasonable detail a statement of facts showing that the conditions precedent to the right of the Company to so redeem the Securities have occurred. Interest installments due on or prior to a Redemption Date will be payable to the Holder of this Security or one or more Predecessor Securities, of record at the close of business on the relevant record date, all as provided in the 2008 Indenture.

**5. Defeasance.**

The 2008 Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the 2008 Indenture.

**6. Modification and Waiver.**

The 2008 Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company, and the rights of the Holders of the Securities to be affected, under the 2008 Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of all Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any series, may comprise fewer than all the Securities of such series). The 2008 Indenture also contains provisions (i) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any particular series, may comprise fewer than all the Securities of such series), on behalf of the Holders of all such affected Securities, to waive compliance by the Company with certain provisions of the 2008 Indenture and (ii) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding of any series to be affected (with each such series considered separately for this purpose), on behalf of the Holders of all Securities of such series, to waive certain past defaults under the 2008 Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the

(Reverse of Security continued on next page)

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registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

**7. Remedies.**

Sections 5.01 and 5.02 of the 2008 Indenture are hereby amended with respect to the Securities of this series to the extent necessary to comply with Section 5.01 and Annex A of the Master Agreement, dated November 25, 2008, as the same may be amended from time to time (the "Master Agreement"), by and between the Company and the FDIC, attached hereto as Exhibit A. Subject to the immediately preceding sentence and Section 14 of the reverse of this Security, if an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the 2008 Indenture.

As provided in and subject to the provisions of the 2008 Indenture and subject to Section 14 of the reverse of this Security, the Holder of this Security shall not have the right to institute any proceeding with respect to the 2008 Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

If so provided pursuant to the terms of any specific Securities, the above-referenced provisions of the 2008 Indenture regarding the ability of Holders to waive certain defaults, or to request the Trustee to institute proceedings (or to give the Trustee other directions) in respect thereof, may be applied differently with regard to such Securities.

No reference herein to the 2008 Indenture and no provision of this Security or of the 2008 Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

**8. Transfer and Exchange.**

As provided in the 2008 Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the 2008 Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

(Reverse of Security continued on next page)



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Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

This Security is a Global Security and is subject to the provisions of the 2008 Indenture relating to Global Securities, including the limitations in Section 3.05 thereof on transfers and exchanges of Global Securities (subject to Section 10 of the reverse of this Security).

**9. Subrogation.**

The FDIC shall be subrogated to all of the rights of the Holder and the Representative under this Security and the 2008 Indenture against the Company in respect of any amounts paid to the Holder, or for the benefit of the Holder, by the FDIC pursuant to the Debt Guarantee Program.

**10. Agreement to Execute Assignment upon Guarantee Payment.**

The Holder hereby authorizes the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the Holder pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Security as Exhibit B pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Company under this Security on behalf of the Holder. The Company hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Security and upon any such assignment, the FDIC shall be deemed the Holder of this Security for all purposes hereof, and the Company hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Security and the 2008 Indenture as a result of such assignment.

Section 3.05 of the 2008 Indenture is hereby amended with respect to the Securities of this series to the extent necessary to permit the Holder, the Representative and the Company to comply with this Section 10, Section 11 below or any other similar provision of this Security.

**11. Surrender of Senior Unsecured Debt Instrument to the FDIC.**

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Company is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the Holder shall, or the Holder shall cause the person or entity in possession to, promptly surrender to the FDIC this Security.

**12. Notice Obligations to FDIC of Payment Default.**

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Company is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default. Solely for the purpose of this Section 12, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

**13. Ranking.**

Any indebtedness of the Company to the FDIC arising under Section 2.03 of the Master Agreement will constitute a senior unsecured general obligation of the Company, ranking pari passu with any indebtedness hereunder.

(Reverse of Security continued on next page)

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**14. *No Event of Default during Time of Timely FDIC Guarantee Payments.***

There shall not be deemed to be an Event of Default under this Security or the 2008 Indenture which would permit or result in the acceleration of amounts due hereunder, if such an Event of Default is due solely to the failure of the Company to make timely payment hereunder, provided that the FDIC is making timely guarantee payments with respect to this Security in accordance with 12 C.F.R Part 370.

The following provisions of this paragraph shall apply to this Security in addition to, and without limiting, the foregoing provisions of this Section 14. No event that would otherwise constitute an Event of Default with respect to the Securities of this series shall constitute an Event of Default with respect to this Security, provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. As a result, upon the occurrence of any such event (including any event of the kind specified in said Section 5.01), neither the Trustee nor the Holder of this Security shall be entitled, with respect to this Security, to seek any remedies otherwise available, or to take any other action otherwise provided for, under the 2008 Indenture upon an Event of Default (including any right to accelerate the Maturity of the principal of this Security pursuant to Section 5.02 of the 2008 Indenture, any right to exchange (at the Holder's option) this Security for a Security that is not a Global Security pursuant to Section 3.05 thereof and any right to institute a proceeding pursuant to Section 5.07 thereof), provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. Without limiting the foregoing, no event, including any event of the kind specified in Section 5.01(5) or 5.01(6) of the 2008 Indenture, shall result in the automatic acceleration of the Maturity of the principal of this Security pursuant to Section 5.02 thereof. Notwithstanding the foregoing, however, the rights of the Holder of this Security pursuant to Section 5.08 of the 2008 Indenture shall not be affected by this Section 14. With regard to this Security, the provisions of Article Five of the 2008 Indenture shall be subject to, and shall be deemed modified as necessary to be consistent with, the provisions of this Section 14.

**15. *No Modifications without FDIC Consent.***

Without the express written consent of the FDIC, the Company and the Trustee agree not to amend, modify, supplement or waive any provision in this Security or the 2008 Indenture that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement.

**16. *Demand Obligations to FDIC upon the Company's Failure to Pay.***

On the 30th day after the date the Company defaults in payment of interest on this Security, which default has not been cured by the Company by such 30th day, in the case of default in interest, or at the Maturity, in the case of default in principal of this Security, the Representative shall make a demand on behalf of the Holder to the FDIC for payment on the guaranteed amount under the Debt Guarantee Program. Such demand shall be accompanied by a proof of claim, which shall include evidence, to the extent not previously provided in the Master Agreement, in form and content satisfactory to the FDIC, of: (A) the Representative's financial and organizational capacity to act as Representative; (B) the Representative's exclusive authority to act on behalf of the Holder and its fiduciary responsibility to the Holder when acting as such, as established by the terms of this Security and the 2008 Indenture; (C) the occurrence of a payment default; and (D) the authority to make an assignment of the Holder's right, title, and interest in this Security to the FDIC and to effect the transfer to the FDIC of the Holder's claim in any insolvency proceeding. Such assignment shall include the right of the FDIC to receive any and all distributions on this Security from the proceeds of the receivership or bankruptcy estate. Any demand under this Section 16 shall be made in writing and directed to the Director, Division of Resolution and Receiverships, Federal Deposit Insurance Corporation, Washington, D.C., and shall include all supporting evidences as provided in this Section 16, and shall certify to the accuracy thereof.

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**[IF LISTED ON LUXEMBOURG STOCK EXCHANGE, INSERT —**

**17. Notices.**

Notices that are required hereunder or under the 2008 Indenture to be given to Holders of the Securities of this series shall be given to Holders of the Securities of this series as set forth in the 2008 Indenture and in the next paragraph.

So long as the Securities of this series are listed on the Official List of the Luxembourg Stock Exchange and such Stock Exchange shall so require, the Trustee will publish any such required notices in a daily newspaper of general circulation in Luxembourg. If publication in Luxembourg is not practical, the Trustee will publish any such required notices elsewhere in Europe. Published notices will be deemed to have been given on the date they are published. If publication as described in this paragraph becomes impossible, the Trustee may publish sufficient notice by alternate means that approximate the terms and conditions as described in this paragraph.]

**18. Governing Law.**

**This Security and the 2008 Indenture shall be governed by and construed in accordance with the laws of the State of New York.**

**19. Terms Defined in the 2008 Indenture.**

All terms used in this Security which are defined in the 2008 Indenture shall have the meanings assigned to them in the 2008 Indenture.

**[IF APPLICABLE, INSERT —** References in this Security to euro shall mean, as of any time, the coin or currency (if any) that is legal tender for the payment of private and public debt in all countries then participating in the European Economic and Monetary Union (or any successor union) pursuant to the Treaty on European Union of February 1992 (or any successor treaty), as it may be amended from time to time.]

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF ASSIGNEE

[            ]

(Please Print or Typewrite Name and Address  
Including Postal Zip Code of Assignee)

the attached Security and all rights thereunder, and hereby irrevocably constitutes and appoints  
to transfer said Security on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature must be guaranteed.

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with  
the name of the Holder as written upon the face of the attached  
Security in every particular, without alteration or any change  
whatever.

**MASTER AGREEMENT**  
FEDERAL DEPOSIT INSURANCE CORPORATION  
TEMPORARY LIQUIDITY GUARANTEE PROGRAM — DEBT GUARANTEE PROGRAM

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TLGP MASTER AGREEMENT 11/24/08

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## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (this "Master Agreement") is being entered into as of the date set forth on the signature page hereto by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized under the laws of the United States of America and having its principal office in Washington, D.C. (the "FDIC"), and the entity whose name appears on the signature page hereto (the "Issuer").

### RECITALS

**WHEREAS**, on November 21, 2008, the FDIC issued its Final Rule, 12 C.F.R. Part 370 (as may be amended from time to time, the "Rule"), establishing the Temporary Liquidity Guarantee Program (the "Program"); and

**WHEREAS**, pursuant to the Rule, the FDIC will guarantee the payment of certain newly-issued "senior unsecured debt" (as defined in the Rule, hereinafter "Senior Unsecured Debt") issued by an "eligible entity" (as defined in the Rule); and

**WHEREAS**, the Issuer is an eligible entity for purposes of the Rule and has elected to participate in the debt guarantee component of the Program.

### ARTICLE I DEFINITIONS

**1.01. Certain Defined Terms.** As used in this Master Agreement, the following terms shall have the following meanings:

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

"FDIC" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"FDIC Guarantee" means the guarantee of payment by the FDIC of the Senior Unsecured Debt of the Issuer in accordance with the terms of the Program.

"Guarantee Payment" means any payment made by the FDIC under the Program with respect to Senior Unsecured Debt of the Issuer.

"Guarantee Payment Notice" has the meaning ascribed to such term in Section 2.02.

"Issuer" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"Issuer Make-Whole Payments" has the meaning ascribed to such term in Section 2.03.

TLGP MASTER AGREEMENT 11/24/08

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“Issuer Reports” means reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that the Issuer or any subsidiary of the Issuer is required to file with any governmental entity.

“Master Agreement” means this Master Agreement, together with all Annexes and amendments hereto.

“Material Adverse Effect” means a material adverse effect on the business, results of operations or financial condition of the Issuer and its consolidated subsidiaries taken as a whole.

“Program” has the meaning ascribed to such term in the Recitals.

“Reimbursement Payment” has the meaning ascribed to such term in Section 2.03.

“Relevant Provision” means any provision that is related to the principal, interest, payment, default or ranking of the Senior Unsecured Debt, any provision contained in Annex A or any other provision the amendment of which would require the consent of any or all of the holders of such debt.

“Representative” means the trustee, administrative agent, paying agent or other fiduciary or agent designated as the “Representative” under the governing documents for any Senior Unsecured Debt of the Issuer subject to the FDIC Guarantee for purposes of submitting claims or taking other actions under the Program.

“Rule” has the meaning ascribed to such term in the Recitals.

“Senior Unsecured Debt” has the meaning ascribed to such term in the Recitals.

**1.02. Terms Generally.** Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Master Agreement and not to any particular provision of this Master Agreement, and Article, Section and paragraph references are to the Articles, Sections and paragraphs of this Master Agreement unless otherwise specified, and the word “including” and words of similar import when used in this Master Agreement shall mean “including, without limitation”, unless otherwise specified.

## ARTICLE II SENIOR DEBT GUARANTEE

**2.01. Acknowledgement of Guarantee.** The FDIC hereby acknowledges that the Issuer has elected to participate in the debt guarantee component of the Program and that, as a result, the Issuer’s Senior Unsecured Debt is guaranteed by the FDIC to the extent set forth in, and subject to the provisions of, the Rule, and subject to the terms hereof.

**2.02. Guarantee Payments.** The Issuer understands and acknowledges that any Guarantee Payment with respect to a particular issue of Senior Unsecured Debt shall be paid by the FDIC directly to:



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- (a) the Representative with respect to such Senior Unsecured Debt if a Representative has been designated; or
  - (b) the registered holder(s) of such Senior Unsecured Debt if no Representative has been designated; or
  - (c) any registered holder of such Senior Unsecured Debt who has opted out of being represented by the designated Representative;

in each case, pursuant to the claims procedure set forth in the Rule. In no event shall the FDIC make any Guarantee Payment to the Issuer directly. The FDIC will provide prompt written notice to the Issuer of any Guarantee Payment made by the FDIC with respect to any of the Issuer's Senior Unsecured Debt (the "Guarantee Payment Notice").

**2.03. Issuer Make-Whole Payments.** In consideration of the FDIC providing the FDIC Guarantee with respect to the Senior Unsecured Debt of the Issuer, the Issuer hereby irrevocably and unconditionally covenants and agrees:

(a) to reimburse the FDIC immediately upon receipt of the Guarantee Payment Notice for all Guarantee Payments set forth in the Guarantee Payment Notice (the "Reimbursement Payment") (without duplication of any amounts actually received by the FDIC as subrogee or assignee under the governing documents of the relevant Senior Unsecured Debt of the Issuer);

(b) beginning as of the date of the Issuer's receipt of the Guarantee Payment Notice, to pay interest on any unpaid Reimbursement Payments until such Reimbursement Payments shall have been paid in full by the Issuer, at an interest rate equal to one percent (1%) per annum above the non-default interest rate payable on the Senior Unsecured Debt with respect to which the relevant Guarantee Payments were made, as calculated in accordance with the documents governing such Senior Unsecured Debt; and

(c) to reimburse the FDIC for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of the Issuer's payment obligations hereunder. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the FDIC's agents, counsel, accountants and experts.

Clauses (a), (b) and (c) above are collectively referred to herein as the "Issuer Make-Whole Payments". The indebtedness of the Issuer to the FDIC arising under this Section 2.03 constitutes a senior unsecured general obligation of the Issuer, ranking *pari passu* with other senior unsecured indebtedness of the Issuer, including without limitation Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

**2.04. Waiver of Defenses.** The Issuer hereby waives any defenses it might otherwise have to its payment obligations under any of the Issuer's Senior Unsecured Debt or under Section 2.03 hereof, in each case beginning at such time as the FDIC has made any Guarantee

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Payment with respect to such Senior Unsecured Debt and continuing until such time as all Issuer Make-Whole Payments have been received by the FDIC.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

**3.01. Organization and Authority.** The Issuer has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, except as has not had, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**3.02. Authorization, Enforceability.**

(a) The Issuer has the power and authority to execute and deliver this Master Agreement and to carry out its obligations hereunder. The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Issuer, and no further approval or authorization is required on the part of the Issuer. This Master Agreement is a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby and compliance by the Issuer with the provisions hereof, will not (i) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Issuer or any subsidiary of the Issuer under, any of the terms, conditions or provisions of, as applicable, (X) its organizational documents or (Y) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Issuer or any subsidiary of the Issuer may be bound, or to which the Issuer or any subsidiary of the Issuer may be subject, or (ii) violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Issuer or any subsidiary of the Issuer or any of their respective properties or assets except, in the case of clauses (i)(Y) and (ii), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(c) No prior notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity is required to be made or obtained by the Issuer in connection with the execution of this Master Agreement, except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals which have been made or obtained

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or the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**3.03. Reports.** Since December 31, 2007, the Issuer and each subsidiary of the Issuer has timely filed all Issuer Reports and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not individually or in the aggregate have a Material Adverse Effect. As of their respective dates of filing, the Issuer Reports complied in all material respects with all statutes and applicable rules and regulations of all applicable governmental entities. In the case of each such Issuer Report filed with or furnished to the Securities and Exchange Commission, if any, such Issuer Report (a) did not, as of its date, or if amended prior to the date of this Master Agreement, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, (b) complied as to form in all material respects with all applicable requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and (c) no executive officer of the Issuer or any subsidiary of the Issuer has failed in any respect to make the certifications required by him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002. With respect to all other Issuer Reports, the Issuer Reports were complete and accurate in all material respects as of their respective dates.

#### **ARTICLE IV NOTICE AND REPORTING**

**4.01. Reports of Existing and Future Guaranteed Debt.** The Issuer shall provide reports to the FDIC of the amount of all Senior Unsecured Debt subject to the FDIC Guarantee in accordance with the reporting requirements of the Rule.

**4.02. On-going Reporting.** The Issuer covenants and agrees that, for so long as it has outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee, it shall furnish or cause to be furnished to the FDIC (a) monthly reports, in such form as specified by the FDIC, containing information relating to the Issuer's outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee and such other information as may be requested in such form, and (b) such other information that the FDIC may reasonably request, such other information to be delivered within ten (10) Business Days of receipt by the Issuer of any such request.

**4.03. Notice of Defaults.** The Issuer covenants and agrees that it shall notify the FDIC within one (1) Business Day of any default in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of the Issuer (including debt that is not subject to the FDIC Guarantee), whether such debt is existing as of the date of this Master Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

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**ARTICLE V  
COVENANTS AND ACKNOWLEDGMENTS OF THE ISSUER**

**5.01. Terms to be included in Future Guaranteed Debt.** The governing documents for the issuance of any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain each of the provisions set forth in Annex A. If a particular issue of Senior Unsecured Debt is evidenced solely by a trade confirmation, the Issuer shall use commercially reasonable efforts to cause the holder of such debt to execute a written instrument setting forth the holder's agreement to be bound by the provisions set forth in Annex A. No document governing the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain any provision that would result in the automatic acceleration of the debt upon a default by the Issuer at any time during which the FDIC Guarantee is in effect or during which Guarantee Payments are being made in accordance with Section 370.12(b)(2) of the Rule.

**5.02. Breaches; False or Misleading Statements.** The Issuer acknowledges and agrees that (a) if it is in breach of any provision of this Master Agreement or (b) if it makes any false or misleading statement or representation in connection with the Issuer's participation in the Program, or makes any statement or representation in bad faith with the intent to influence the actions of the FDIC, the FDIC may take the enforcement actions provided in Section 370.11 of the Rule, including termination of the Issuer's participation in the Program. As set forth in the Rule, any termination of the Issuer's participation in the Program would solely have prospective effect, and would in no event affect the FDIC Guarantee with respect to Senior Unsecured Debt of the Issuer that is issued and outstanding prior to the termination of the Issuer's participation in the Program.

**5.03. No Modifications.** The Issuer covenants and agrees that it shall not amend, modify, or consent to any amendment or modification, or waive any Relevant Provision, without the express written consent of the FDIC.

**5.04. Waiver by the Issuer.** The Issuer acknowledges and agrees that if any covenant, stipulation or other provision of this Master Agreement that imposes on the Issuer the obligation to make any payment is at any time void under any provision of applicable law, the Issuer will not make any claim, counterclaim or institute any proceedings against the FDIC or any of its assignees or subrogees for any amount paid by the Issuer at any time, and the Issuer waives unconditionally and absolutely any rights and defenses, legal or equitable, which arise under or in connection with any such provision and which might otherwise be available to it for recovery of any amount due under this Master Agreement.

**ARTICLE VI  
GENERAL PROVISIONS**

**6.01. Amendment and Modification of this Master Agreement.** This Master Agreement may be amended, modified and supplemented in any and all respects, but only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Master Agreement.

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**6.02. Notices.** Unless otherwise provided herein, all notices and other communications hereunder shall be in writing and shall be deemed given when mailed, delivered personally, telecopied (which is confirmed) or sent by an overnight courier service, such as FedEx, to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

if to the Issuer, to the address appearing on the signature page hereto

if to the FDIC, to: The Federal Deposit Insurance Corporation  
Deputy Director, Receivership Operations Branch  
Division of Resolutions and Receiverships  
Attention: Master Agreement  
550 17th Street, N.W.  
Washington, DC 20429

**6.03. Counterparts.** This Master Agreement may be executed in counterparts, which, together, shall be considered one and the same agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original, executed counterparts, provided receipt of such counterparts is confirmed.

**6.04. Severability.** Any term or provision of this Master Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**6.05. Governing Law.** Federal law of the United States shall control this Master Agreement. To the extent that federal law does not supply a rule of decision, this Master Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law. Nothing in this Master Agreement will require any unlawful action or inaction by either party.

**6.06. Venue.** Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Master Agreement is to be instituted in the United States District Court in and for the District of Columbia or in any United States District Court in the jurisdiction where the Issuer's principal office is located.

**6.07. Assignment.** Neither this Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, and any purported assignment

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without such consent shall be void. Subject to the preceding sentence, this Master Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**6.08. Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Master Agreement, except the terms identified for definition in Article I and elsewhere in this Master Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Master Agreement or any provision hereof.

**6.09. Delivery Requirement.** The Issuer shall submit a completed, executed and dated copy of the signature page hereto to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the debt guarantee component of the Program in accordance with the delivery instructions set forth on the signature page.

**[SIGNATURES BEGIN ON NEXT PAGE]**

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**IN WITNESS WHEREOF**, the Issuer and the FDIC have caused this Master Agreement to be executed by their respective officers thereunto duly authorized.

**THE FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NAME OF ISSUER:**

THE GOLDMAN SACHS GROUP, INC.

By: /s/ DAVID VINIAR  
Name: David Viniar  
Chief Financial Officer

Address of Issuer: 85 Broad Street  
New York, New York 10004

FDIC Certificate Number: \_\_\_\_\_

RSSD ID or  
OTS Docket Number: 2380443

Date: 11/25/08

**Delivery Instructions**

Please deliver a completed, executed and dated copy of this Signature Page to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the Debt Guarantee Program. Email is the preferred method of delivery to MasterAgreement@fdic.gov, or you may send it by an overnight courier service such as FedEx to Senior Counsel, Special Issues Unit, E7056, Attention: Master Agreement, 3501 Fairfax Drive, Arlington, Virginia, 22226.

TLGP MASTER AGREEMENT 11/24/08

**Terms to be Included in Future Issuances of FDIC Guaranteed Senior Unsecured Debt**

The following provisions shall be included in the governing documents for the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee, in substantially the form presented below, unless otherwise specified. The appropriate name of the governing document(s) shall be inserted in place of the term "Agreement" where it appears in this Annex A.

Acknowledgement of the FDIC's Debt Guarantee Program

The parties to this Agreement acknowledge that the Issuer has not opted out of the debt guarantee program (the "**Debt Guarantee Program**") established by the Federal Deposit Insurance Corporation ("**FDIC**") under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's website, www.fdic.gov/tlgp. The expiration date of the FDIC's guarantee is the earlier of the maturity date of this debt or June 30, 2012.* [The italicized portion of the above provision shall be included exactly as written above]

Representative

The [insert name of the: trustee, administrative agent, paying agent or other fiduciary or agent to be designated as the duly authorized representative of the debt holders] is designated under this Agreement as the duly authorized representative of the holder[s] for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the "Representative"). Any holder may elect not to be represented by the Representative by providing written notice of such election to the Representative.

Subrogation

The FDIC shall be subrogated to all of the rights of the holder[s] and the Representative, if there shall be one, under this Agreement against the Issuer in respect of any amounts paid to the holder[s], or for the benefit of the holder[s], by the FDIC pursuant to the Debt Guarantee Program.

Agreement to Execute Assignment upon Guarantee Payment

[If there is a Representative, insert the following:]

The holder[s] hereby authorize the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the holder[s] pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Issuer under this Agreement on behalf of the holder[s]. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the



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FDIC shall be deemed a holder under this Agreement for all purposes hereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

[or, if (i) there is no Representative or (ii) the holder has exercised its right not to be represented by the Representative, insert the following:]

The holder[s] hereby agree that, at such time as the FDIC shall commence making any guarantee payments to the holder[s] pursuant to the Debt Guarantee Program, the holder[s] shall execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the holder[s] shall assign to the FDIC [its/their] right to receive any and all payments from the Issuer under this Agreement. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the FDIC shall be deemed a holder under this Agreement for all purposes thereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

#### Surrender of Senior Unsecured Debt Instrument to the FDIC

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Issuer is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the holder shall, or the holder shall cause the person or entity in possession to, promptly surrender to the FDIC the security certificate, note or other instrument evidencing such debt, if any.

#### Notice Obligations to FDIC of Payment Default

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Issuer is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default.

#### Ranking

Any indebtedness of the Issuer to the FDIC arising under Section 2.03 of the Master Agreement entered into by the Issuer and the FDIC in connection with the Debt Guarantee Program will constitute a senior unsecured general obligation of the Issuer, ranking *pari passu* with any indebtedness hereunder.

#### No Event of Default during Time of Timely FDIC Guarantee Payments

There shall not be deemed to be an event of default under this Agreement which would permit or result in the acceleration of amounts due hereunder, if such an event of default is due solely to the failure of the Issuer to make timely payment hereunder, provided that the FDIC is

TLGP MASTER AGREEMENT 11/24/08

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making timely guarantee payments with respect to the debt obligations hereunder in accordance with 12 C.F.R Part 370.

No Modifications without FDIC Consent

Without the express written consent of the FDIC, the parties hereto agree not to amend, modify, supplement or waive any provision in this Agreement that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement executed by the Issuer in connection with the Debt Guarantee Program.

TLGP MASTER AGREEMENT 11/24/08

ASSIGNMENT

This Assignment is made pursuant to the terms of Section 10 of the reverse of The Goldman Sachs Group, Inc.'s \_\_\_\_\_ Notes due \_\_\_\_\_, CUSIP No. \_\_\_\_\_ (the "Security"), between The Bank of New York Mellon (the "Representative"), acting on behalf of the Holder of the Security who have not opted out of representation by the Representative, and The Goldman Sachs Group, Inc. (the "Company", which has the meaning given such term in the Security) with respect to the debt obligations of the Company that are guaranteed under the Debt Guarantee Program. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Security. Solely for the purpose of this Assignment, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

For value received, the Representative, on behalf of the Holder (the "Assignor"), hereby assigns to the Federal Deposit Insurance Corporation (the "FDIC"), without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the Security; (b) the Senior Debt Indenture, dated July 16, 2008 (the "2008 Indenture"), by and between the Company and the Representative, with respect to the Security; and (c) any other instrument or agreement executed by the Company regarding obligations of the Company under the Security or the 2008 Indenture with respect to the Security (collectively, the "Assignment").

The Assignor hereby certifies that:

1. Without the FDIC's prior written consent, the Assignor has not:

- (a) agreed to any material amendment of the Security or to any material deviation from the provisions thereof; or
- (b) accelerated the maturity of the Security.

**[Instructions to the Assignor:** If the Assignor has not assigned or transferred any interest in the Security and related documentation, such Assignor must include the following representation.]

2. The Assignor has not assigned or otherwise transferred any interest in the Security;

**[Instructions to the Assignor:** If the Assignor has assigned a partial interest in the Security and related documentation, the Assignor must include the following representation.]

2. The Assignor has assigned part of its rights, title and interest in the Security to \_\_\_\_\_ pursuant to the \_\_\_\_\_ agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, as assignor, and \_\_\_\_\_, as assignee, an executed copy of which is attached hereto.

The Assignor acknowledges and agrees that this Assignment is subject to the Security and the 2008 Indenture and to the following:

1. In the event the Assignor receives any payment under or related to the Security from a party other than the FDIC (a "Non-FDIC Payment"):

(a) after the date of demand for a guarantee payment on the FDIC pursuant to 12 CFR Part 370, but prior to the date of the FDIC's first guarantee payment under the Security pursuant to 12 CFR Part 370, the Assignor shall promptly but in no event later than five (5) Business Days after receipt notify the FDIC of the date and the amount of such Non-FDIC Payment and shall apply such payment as payment made by the Company, and not as a guarantee payment made by the FDIC, and therefore, the amount of such payment shall be excluded from this Assignment; and

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(b) after the FDIC's first guarantee payment under the Security, the Assignor shall forward promptly to the FDIC such Non-FDIC Payment in accordance with the payment instructions provided in writing by the FDIC.

2. Acceptance by the Assignor of payment pursuant to the Debt Guarantee Program on behalf of the Holder shall constitute a release by the Holder of any liability of the FDIC under the Debt Guarantee Program with respect to such payment.

The Person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the FDIC that he/she/it is duly authorized to do so.

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IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Very truly yours,

[ASSIGNOR]

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Consented to and acknowledged by this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

THE FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

<DOCUMENT>  
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<FILENAME> y74032exv4w7.htm  
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**[FORM OF FLOATING RATE MEDIUM-TERM NOTE, SERIES D]**

**(Face of Security)**

**[IF A GLOBAL SECURITY, INSERT — THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE 2008 INDENTURE AS DEFINED ON THE REVERSE OF THIS SECURITY AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE 2008 INDENTURE AND THIS SECURITY.]**

**[IF DTC IS THE DEPOSITARY, INSERT — UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE GOLDMAN SACHS GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]**

**[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]**

**[INSERT ANY LEGEND REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND THE REGULATIONS THEREUNDER.]**

**THIS SECURITY IS GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE RIGHTS OF THE HOLDER OF THIS SECURITY ARE SUBJECT TO CERTAIN RIGHTS OF THE FDIC, AS AND TO THE EXTENT INDICATED IN THIS SECURITY, INCLUDING SECTIONS 8, 10, 11, 12, 13, 14, 15, 16 AND 17 ON THE REVERSE HEREOF.**

(Face of Security continued on next page)

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CUSIP No. \_\_\_\_\_

THE GOLDMAN SACHS GROUP, INC.  
MEDIUM-TERM NOTES, SERIES D  
(Floating Rate Security)

The following terms apply to this Security, as and to the extent shown below:

**PRINCIPAL AMOUNT:**

**SPECIFIED CURRENCY:** U.S. dollars for all payments unless otherwise specified below:

payments of principal and any premium:

payments of interest:

**EXCHANGE RATE AGENT:**

**ORIGINAL ISSUE DATE\*:**

**TRADE DATE:**

**STATED MATURITY DATE:**

**ORIGINAL ISSUE DISCOUNT SECURITY:**

Total Amount of OID:

Yield to Maturity:

Initial Accrual Period OID:

**BASE RATE:**

CD Rate:

CMS Rate:

CMT Rate:

- Designated CMT Reuters Screen Page:
- Designated CMT Index Maturity:

Commercial Paper Rate:

EURIBOR:

Federal Funds Rate:

- (Effective)/Open:

LIBOR:

- Reuters Screen LIBOR Page:
- Index Currency:

Prime Rate:

Treasury Rate:

11th District Cost of Funds Rate:

**INDEX MATURITY:**

**SPREAD:**

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\* This date shall be the issue date of this Security, unless there is a Predecessor Security, in which case this date shall be the issue date of the first Predecessor security.

(Face of Security continued on next page)



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**SPREAD MULTIPLIER:**

**INITIAL BASE RATE:**

**MAXIMUM RATE:**

**MINIMUM RATE:**

**INTEREST DETERMINATION DATE(S):** as provided in Sections 3(b) through 3(k), as applicable, on the reverse of this Security (unless otherwise specified), subject to the second paragraph under “Payments Due on a Business Day” below

**INTEREST PAYMENT DATE(S):**

**INTEREST RESET PERIOD:**

**INTEREST RESET DATE(S):** as provided in Section 3(a) on the reverse of this Security (unless otherwise specified)

**REDEMPTION COMMENCEMENT DATE:**

**REPAYMENT DATE(S):**

**REDEMPTION OR REPAYMENT PRICE(S):**

**CALCULATION AGENT:**

**DEFEASANCE:**

Full Defeasance:

Covenant Defeasance:

**DAY COUNT CONVENTION:**

**BUSINESS DAY CONVENTION:**

**OTHER TERMS:**

(Face of Security continued on next page)

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Terms left blank or marked “N/A”, “No”, “None” or in a similar manner do not apply to this Security except as otherwise may be specified.

Whenever used in this Security, the terms specified above that apply to this Security have the meanings specified above, unless the context requires otherwise. Other terms used in this Security that are not defined herein but that are defined in the 2008 Indenture referred to in Section 1 on the reverse of this Security are used herein as defined therein.

The Goldman Sachs Group, Inc., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”, which term includes any successor Person under the 2008 Indenture (as defined on the reverse of this Security)), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, as principal the Principal Amount on the Stated Maturity Date and to pay interest thereon, from the Original Issue Date or from the most recent Interest Payment Date to which interest has been paid or made available for payment, on the Interest Payment Date(s) in each year, commencing on the first such date that is at least 15 calendar days after the Original Issue Date, and at the Maturity of the principal hereof, at a rate per annum determined in accordance with the applicable provisions of Section 3 on the reverse hereof, until the principal hereof is paid or made available for payment. Any premium and any such installment of interest that is overdue at any time shall also bear interest (to the extent that the payment of such interest shall be legally enforceable) at the rate per annum at which the principal then bears interest, from the date any such overdue amount first becomes due until it is paid or made available for payment. Notwithstanding the foregoing, interest on any principal, premium or installment of interest that is overdue shall be payable on demand.

The interest so payable, and punctually paid or made available for payment, on any Interest Payment Date will, as provided in the 2008 Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the 15<sup>th</sup> calendar day (whether or not a Business Day, as such term is defined in Section 3(o) on the reverse hereof) next preceding such Interest Payment Date (a “Regular Record Date”); provided, however, if this Security is a Global Security, a Regular Record Date will instead occur on the fifth Business Day preceding such Interest Payment Date. Any interest so payable, but not punctually paid or made available for payment, on any Interest Payment Date will forthwith cease to be payable to the Holder on such Regular Record Date and such Defaulted Interest may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to the Holder of this Security not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the 2008 Indenture. For the purpose of determining a Holder at the close of business on any relevant record date when business is not conducted, the close of business will mean 5:00 P.M., New York City time, on that day.

(Face of Security continued on next page)

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The Company and the Trustee acknowledge that the Company has not opted out of the debt guarantee program (the “Debt Guarantee Program”) established by the Federal Deposit Insurance Corporation (“FDIC”) under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations, 12 CFR Part 370, and at the FDIC’s website, www.fdic.gov/tlgp. The expiration date of the FDIC’s guarantee is the earlier of the maturity date of this debt or June 30, 2012.*

The Trustee is hereby designated as the duly authorized representative of the Holder for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the “**Representative**”). The Holder of this Security may elect not to be represented by the Representative with respect to this Security by providing written notice of such election to the Representative.

Notwithstanding any provision of this Security, any right of the Holder to receive payment in respect of this Security under the Debt Guarantee Program shall be subject to the procedures and other requirements of the Debt Guarantee Program, and the Holder will not be entitled under the Debt Guarantee Program to receive any additional interest or penalty amounts on account of any default or resulting delay in payment in respect of this Security.

***Currency of Payment***

Payment of principal of (and premium, if any) and interest on this Security will be made in the Specified Currency for such payment, except as provided in this and the next three paragraphs. The Specified Currency for any payment shall be the currency specified as such on the face of this Security unless, at the time of such payment, such currency is not legal tender for the payment of public and private debts in the country issuing such currency on the Original Issue Date, in which case the Specified Currency for such payment shall be such coin or currency as at the time of such payment is legal tender for the payment of public and private debts in such country, except as provided in the next sentence. If the euro is specified on the face of this Security as the Specified Currency for any payment, the Specified Currency for such payment shall be such coin or currency as at the time of payment is legal tender for the payment of public and private debts in all EMU Countries (as defined in Section 3(o) on the reverse hereof), provided that, if on any day there are not at least two EMU Countries, or if on any day there are at least two EMU Countries but no coin or currency is legal tender for the payment of public and private debts in all EMU Countries, then the Specified Currency for such payment shall be deemed not to be available to the Company on such day.

Except as provided in the next paragraph, any payment to be made on this Security in a Specified Currency other than U.S. dollars will be made in U.S. dollars if the Person entitled to receive such payment transmits a written request for such payment

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to be made in U.S. dollars to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the payment is to be made. Such written request may be mailed, hand delivered, telecopied or delivered in any other manner approved by the Trustee. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date.

The U.S. dollar amount of any payment made pursuant to the immediately preceding paragraph will be determined by the Exchange Rate Agent based upon the highest bid quotation received by the Exchange Rate Agent as of 11:00 A.M., New York City time, on the second Business Day preceding the applicable payment date, from three (or, if three are not available, then two) recognized foreign exchange dealers selected by the Exchange Rate Agent in The City of New York, in each case for the purchase by the quoting dealer, for U.S. dollars and for settlement on such payment date of an amount of such Specified Currency for such payment equal to the aggregate amount of such Specified Currency payable on such payment date to all Holders of this Security who elect to receive U.S. dollar payments on such payment date, and at which the applicable dealer commits to execute a contract. If the Exchange Rate Agent determines that two such bid quotations are not available on such second Business Day, such payment will be made in the Specified Currency for such payment. All currency exchange costs associated with any payment in U.S. dollars on this Security will be borne by the Holder entitled to receive such payment, by deduction from such payment.

Notwithstanding the foregoing, if any amount payable on this Security is payable on any day (including at Maturity) in a Specified Currency other than U.S. dollars, and if such Specified Currency is not available to the Company on the two Business Days before such day, due to the imposition of exchange controls, disruption in a currency market or any other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligation to pay such amount in such Specified Currency by making such payment in U.S. dollars. The amount of such payment in U.S. dollars shall be determined by the Exchange Rate Agent on the basis of the noon buying rate for cable transfers in The City of New York, for such Specified Currency (the "Exchange Rate") as of the latest day before the day on which such payment is to be made. Any payment made under such circumstances in U.S. dollars where the required payment is in other than U.S. dollars will not constitute an Event of Default under the 2008 Indenture or this Security.

***Manner of Payment — U.S. Dollars***

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Except as provided in the next paragraph, payment of any amount payable on this Security in U.S. dollars will be made at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that, at the option of the Company and subject to the next paragraph, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Payment of any amount payable on this Security in U.S. dollars will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least \$1,000,000 (or the equivalent in another currency) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.

***Manner of Payment — Other Specified Currencies***

Payment of any amount payable on this Security in a Specified Currency other than U.S. dollars will be made by wire transfer of immediately available funds to such account as is maintained in such Specified Currency at a bank or other financial institution acceptable to the Company and the Trustee and as shall have been designated at least five Business Days prior to the applicable payment date by the Person entitled to receive such payment; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an

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Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Such account designation shall be made by transmitting the appropriate information to the Trustee at its Corporate Trust Office in the Borough of Manhattan, The City of New York, by mail, hand delivery, telecopier or in any other manner approved by the Trustee. Unless revoked, any such account designation made with respect to this Security by the Holder hereof will remain in effect with respect to any further payments with respect to this Security payable to such Holder. If a payment in a Specified Currency other than U.S. dollars with respect to this Security cannot be made by wire transfer because the required account designation has not been received by the Trustee on or before the requisite date or for any other reason, the Company will cause a notice to be given to the Holder of this Security at its registered address requesting an account designation pursuant to which such wire transfer can be made and such payment will be made within five Business Days after the Trustee's receipt of such a designation meeting the requirements specified above, with the same force and effect as if made on the due date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.

***Manner of Payment — Global Securities***

Notwithstanding any provision of this Security or the 2008 Indenture, if this Security is a Global Security, the Company may make any and all payments of principal, premium and interest on this Security pursuant to the Applicable Procedures of the Depositary for this Security as permitted in the 2008 Indenture.

***Payments Due on a Business Day***

Notwithstanding any provision of this Security or the 2008 Indenture, if the Maturity of the principal hereof occurs on a day that is not a Business Day, any amount of principal, premium or interest that would otherwise be due on this Security on such day (the "Specified Day") may be paid or made available for payment on the Business Day that is next succeeding the Specified Day with the same force and effect as if such amount were paid on the Specified Day, and no interest will accrue on the amount so payable for the period from the Specified Day to such next succeeding Business Day.

As specified on the face of this Security, one of the following Business Day Conventions shall apply to any relevant date other than one that falls on the date of Maturity of the principal hereof. If any such date would otherwise fall on a day that is not a Business Day:

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(i) if the Business Day Convention is “Following”, then such date will be postponed to the next day that is a Business Day;

(ii) if the Business Day Convention is “Modified Following”, then such date will be postponed to the next day that is a Business Day; provided that, if such next succeeding Business Day falls in the next calendar month, then such date will be advanced to the immediately preceding Business Day;

(iii) if the Business Day Convention is “Following Unadjusted”, any payment due on such date will be postponed to the next day that is a Business Day; provided that interest due with respect to such Interest Payment Date shall not accrue from and including such Interest Payment Date to and including such next succeeding Business Day; and

(iv) if the Business Day Convention is “Modified Following Unadjusted”, any payment due on such date will be postponed to the next day that is a Business Day; provided that interest due with respect to such Interest Payment Date shall not accrue from and including such Interest Payment Date to and including such next succeeding Business Day, and provided further that, if such next succeeding Business Day would fall in the next succeeding calendar month, the date of payment with respect to such Interest Payment Date will instead be advanced to the immediately preceding Business Day.

The provisions of the two immediately preceding paragraphs shall apply to this Security in lieu of the provisions of Section 1.13 of the 2008 Indenture.

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Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the 2008 Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

This is one of the Securities of the series designated herein and referred to in the 2008 Indenture.

Dated:

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
Authorized Signatory



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(Reverse of Security)

**1. *Securities and Indenture***

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”) issued and to be issued in one or more series under a Senior Debt Indenture, dated as of July 16, 2008 (herein called the “2008 Indenture”, which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York Mellon, as Trustee (herein called the “Trustee”, which term includes any successor trustee under the 2008 Indenture), and reference is hereby made to the 2008 Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

**2. *Series and Denominations***

This Security is one of the series designated on the face hereof, limited to an aggregate principal amount (or the equivalent thereof in any other currency or currencies or currency units) as shall be determined and may be increased from time to time by the Company. References herein to “this series” mean the series of Securities designated on the face hereof.

The Securities of this series are issuable only in registered form without coupons in “Authorized Denominations”, which term shall have the following meaning. For each Security of this series having a principal amount payable in U.S. dollars, the Authorized Denominations shall be \$1,000 and integral multiples of \$1,000 in excess thereof. For each Security of this series having a principal amount payable in a Specified Currency other than U.S. dollars, the Authorized Denominations shall be the amount of such Specified Currency equivalent, at the Exchange Rate on the first Business Day next preceding the date on which the Company accepts the offer to purchase such Security, to \$1,000 or any integral multiples of \$1,000 in excess thereof.

**3. *Interest Rate***

(a) ***Interest Rate Reset.*** The interest rate on this Security will be reset from time to time, as provided in this Section 3, and each date upon which such rate is reset as so provided is hereinafter called an “Interest Reset Date”. Unless otherwise specified on the face hereof, the Interest Reset Dates with respect to this Security will be as follows:

- (i) if the Interest Reset Period is daily, each Business Day;
- (ii) if the Interest Reset Period is weekly and the Base Rate is not the Treasury Rate, the Wednesday of each week;

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(iii) if the Interest Reset Period is weekly and the Base Rate is the Treasury Rate, except as otherwise provided in the definition of “Treasury Interest Determination Date” in Section 3(o) below, the Tuesday of each week;

(iv) if the Interest Reset Period is monthly, the third Wednesday of each month;

(v) if the Interest Reset Period is quarterly, the third Wednesday of each March, June, September and December;

(vi) if the Interest Reset Period is semi-annual, the third Wednesday of each of two months in each year specified under “Interest Reset Period” on the face hereof; and

(vii) if the Interest Reset Period is annual, the third Wednesday of the month in each year specified under “Interest Reset Period” on the face hereof;

provided, however, that (x) the Base Rate in effect from and including the Original Issue Date to but excluding the initial Interest Reset Date will be the Initial Base Rate and (y) if the Interest Reset Period is daily or weekly, the Base Rate in effect for each day following the second Business Day immediately prior to an Interest Payment Date to but excluding such Interest Payment Date, and for each day following the second Business Day immediately prior to the day of Maturity of the principal hereof to but excluding such day of Maturity, will be the Base Rate in effect on such applicable second Business Day; and provided, further, if so specified, that any Interest Reset Date shall be subject to adjustment as provided in the second paragraph under the heading “Payments Due on a Business Day” on the face of this Security.

Subject to applicable provisions of law and except as otherwise specified herein, on each Interest Reset Date the interest rate on this Security shall be the rate determined in accordance with such of the following Sections 3(b) through 3(k) as provide for determination of the Base Rate for this Security. The Calculation Agent shall determine the interest rate of this Security in accordance with the applicable Section below.

Unless the Base Rate is LIBOR or EURIBOR, the Calculation Agent will determine the interest rate of this Security that takes effect on any Interest Reset Date on a day no later than the Calculation Date (as defined in Section 3(o) below) corresponding to such Interest Reset Date. However, the Calculation Agent need not wait until the Calculation Date to determine such interest rate if the rate information it needs to make such determination in the manner specified in the applicable provisions of Sections 3(b) through 3(k) hereof is available from the relevant sources specified in such applicable provisions.

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Upon request of the Holder to the Calculation Agent, the Calculation Agent will provide the interest rate then in effect on this Security and, if determined, the interest rate that will become effective on the next Interest Reset Date.

(b) ***Determination of CD Rate.*** If the Base Rate specified on the face hereof is the CD Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate, on the second Business Day immediately preceding such Interest Reset Date (the “CD Interest Determination Date”), for negotiable U.S. dollar certificates of deposit having the Index Maturity as published in H.15(519) (as defined in Section 3(o) below) opposite the heading “CDs (secondary market)”. If the CD Rate cannot be determined as described above, the following procedures will apply in determining the CD Rate:

(i) If the rate described above does not appear in H.15(519) at 3:00 P.M., New York City time, on the Calculation Date corresponding to such CD Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the CD Rate shall be the rate described above as published in H.15 Daily Update, or another recognized electronic source used for displaying that rate, under the heading “CDs (secondary market)”.

(ii) If the rate described in clause (i) above does not appear in H.15(519), H.15 Daily Update or another recognized electronic source at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), then the CD Rate shall be the arithmetic mean of the following secondary market offered rates for negotiable U.S. dollar certificates of deposit of major U.S. money center banks having a remaining maturity closest to the Index Maturity specified on the face hereof and in a Representative Amount: the rates offered as of 10:00 A.M., New York City time, on such CD Interest Determination Date, by three leading nonbank dealers in negotiable U.S. dollar certificates of deposit in New York City, as selected by the Calculation Agent.

(iii) If fewer than three dealers selected by the Calculation Agent are quoting as described in clause (ii) above, the CD Rate will be the CD Rate in effect on such CD Interest Determination Date (or, in the case of the first Base Reset Date, the Initial Base Rate).

(c) ***Determination of CMS Rate.*** If the Base Rate specified on the face hereof is the CMS Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate, on the second Business Day immediately preceding such Interest Reset Date (the “CMS Interest Determination Date”), appearing on the Reuters Screen ISDAFIX2 Page under the heading “EURIBOR Basis-EUR” or “LIBOR Basis-EUR”, for the Index Maturity specified on the face hereof, at 10:00 A.M., London time. If the CMS

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Rate cannot be determined as described above, the following procedures will apply in determining the CMS Rate:

(i) If the rate described above does not appear on Reuters ISDAFIX2 page under the appropriate heading for the Index Maturity specified on the face hereof at 10:00 A.M., London time, on the Calculation Date corresponding to such CMS Interest Determination Date, unless the calculation is made earlier and the rate is available from that source at that time, then the CMS rate will be determined on the basis of the mid-market semi-annual swap rate quotations provided by five leading swap dealers in the London interbank market at approximately 10:00 A.M., London time, on the CMS Interest Determination Date. For this purpose, the semi-annual swap rate means the mean of the bid and offered rates for the semi-annual fixed leg, calculated on a 30/360 day count basis, of a fixed-for-floating euro interest rate swap transaction with a term equal to such Index Maturity commencing on the CMS Interest Determination Date with an acknowledged dealer of good credit in the swap market, where the floating leg, calculated on an actual /360 day count basis, is equivalent to EURIBOR (in the case of EURIBOR Basis-EUR) or LIBOR (in the case of LIBOR Basis-EUR) with a maturity of three months, as such rate may be determined as provided in Section 3(f). The Calculation Agent will select the five swap dealers in its sole discretion and will request the principal London office of each of those dealers to provide a quotation of its rate.

(ii) If at least three quotations are provided, the CMS Rate for the CMS Interest Determination Date will be the arithmetic mean of the quotations, eliminating the highest and lowest quotations or, in the event of equality, one of the highest and one of the lowest quotations.

(iii) If fewer than three quotations are provided, the Calculation Agent will determine the CMS Rate in its sole discretion.

(d) ***Determination of CMT Rate.*** If the Base Rate specified on the face hereof is the CMT Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the CMT Rate on the second Business Day immediately preceding such Interest Reset Date (the "CMT Interest Determination Date"). "CMT Rate" means the following rate as published in H.15(519) opposite the heading "Treasury constant maturities", as the yield is displayed on the Designated CMT Reuters Screen Page (as defined in Section 3(o) below) under the heading ". . . Treasury Constant Maturities . . .", under the column for the Designated CMT Index Maturity (as defined in Section 3(o) below):

(x) if the Designated CMT Reuters Screen Page is the Reuters Screen FRBCMT Page, the rate for such CMT Interest Determination Date; or

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(y) if the Designated CMT Reuters Screen Page is the Reuters Screen FEDCMT Page, the weekly or monthly average, as specified on the face hereof, for the week that ends immediately before the week in which such CMT Interest Determination Date falls, or for the month that ends immediately before the month in which such CMT Interest Determination Date falls, as applicable.

If the CMT Rate cannot be determined as described above, the following procedures will apply in determining the CMT Rate:

(i) If the applicable rate described above is not displayed on the relevant Designated CMT Reuters Screen Page at 3:00 P.M., New York City time, on the Calculation Date corresponding to such CMT Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the CMT Rate will be the applicable Treasury constant maturity rate described above — i.e., for the Designated CMT Index Maturity and for either such CMT Interest Determination Date or the weekly or monthly average, as applicable — as published in H.15(519).

(ii) If the applicable rate described in clause (i) above does not appear in H.15(519) at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from that source at that time), then the CMT Rate will be the Treasury constant maturity rate, or other U.S. Treasury rate, for the Designated CMT Index Maturity and with reference to such CMT Interest Determination Date, that:

(A) is published by the Board of Governors of the Federal Reserve System, or the U.S. Department of the Treasury, and

(B) is determined by the Calculation Agent to be comparable to the applicable rate formerly displayed on the Designated CMT Reuters Screen Page and published in H.15(519).

(iii) If the rate described in clause (ii) above does not appear in H.15(519) at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from that source at that time), then the CMT Rate will be the yield to maturity of the arithmetic mean of the following secondary market offered rates for the most recently issued Treasury Notes (as defined in Section 3 (o) below) having an original maturity of approximately the Designated CMT Index Maturity, having a remaining term to maturity of not less than the Designated CMT Index Maturity minus one year and in a Representative Amount: the offered rates, as of approximately 3:30 P.M., New York City time, on such CMT Interest Determination Date, of three primary U.S. government securities dealers in New York City selected by the Calculation Agent. In selecting such offered rates, the Calculation Agent will request

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quotations from five such primary dealers and will disregard the highest quotation — or, if there is equality, one of the highest — and the lowest quotation — or, if there is equality, one of the lowest.

(iv) If the Calculation Agent is unable to obtain three quotations of the kind described in clause (iii) above, the CMT Rate will be the yield to maturity of the arithmetic mean of the following secondary market offered rates for Treasury Notes having an original maturity longer than the Designated CMT Index Maturity, having a remaining term to maturity closest to the Designated CMT Index Maturity and in a Representative Amount: the offered rates, as of approximately 3:30 P.M., New York City time, on such CMT Interest Determination Date, of three primary U.S. government securities dealers in New York City selected by the Calculation Agent. In selecting such offered rates, the Calculation Agent will request quotations from five such primary dealers and will disregard the highest quotation — or, if there is equality, one of the highest — and the lowest quotation — or, if there is equality, one of the lowest. If two Treasury Notes with an original maturity longer than the CMT Designated Index Maturity have remaining terms to maturity that are equally close to the Designated CMT Index Maturity, the Calculation Agent will obtain quotations for the Treasury Notes with the shorter original term to maturity.

(v) If fewer than five but more than two such primary dealers are quoting as described in clause (iv) above, then the CMT Rate for such CMT Interest Determination Date will be based on the arithmetic mean of the offered rates so obtained, and neither the highest nor the lowest of such quotations will be disregarded.

(vi) If two or fewer primary dealers selected by the Calculation Agent are quoting as described in clause (v) above, the CMT Rate shall be the CMT Rate in effect on such CMT Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(e) ***Determination of Commercial Paper Rate.*** If the Base Rate specified on the face hereof is the Commercial Paper Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the Money Market Yield (as defined in Section 3(o) below) of the rate, for the second Business Day immediately preceding such Interest Reset Date (the “Commercial Paper Interest Determination Date”), for commercial paper having the Index Maturity specified on the face hereof, as published in H.15(519) opposite the heading “Commercial Paper — Nonfinancial”. If the Commercial Paper Rate cannot be determined as described above, the following procedures will apply in determining the Commercial Paper Rate:

(i) If the rate described above does not appear in H.15(519) at 3:00 P.M., New York City time, on the Calculation Date (as defined in Section 3(o))

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below) corresponding to such Commercial Paper Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the Commercial Paper Rate will be the rate, for such Commercial Paper Interest Determination Date, for commercial paper having the Index Maturity specified on the face hereof, as published in H.15 Daily Update (as defined in Section 3(o) below) or any other recognized electronic source used for displaying that rate, opposite the heading “Commercial Paper — Nonfinancial”.

(ii) If the rate described in clause (i) above does not appear in H.15(519), H.15 Daily Update or another recognized electronic source at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), the Commercial Paper Rate will be the Money Market Yield of the arithmetic mean of the following offered rates for U.S. dollar commercial paper that has the Index Maturity and is placed for an industrial issuer whose long-term bond rating is “AA”, or the equivalent, from a nationally recognized rating agency: the rates offered as of 11:00 A.M., New York City time, on such Commercial Paper Interest Determination Date by three leading U.S. dollar commercial paper dealers in New York City selected by the Calculation Agent.

(iii) If fewer than three dealers selected by the Calculation Agent are quoting as described in clause (ii) above, the Commercial Paper Rate shall be the Commercial Paper Rate in effect on such Commercial Paper Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(f) ***Determination of EURIBOR***. If the Base Rate specified on the face hereof is EURIBOR, the Base Rate that takes effect on any Interest Reset Date shall equal the interest rate for deposits in euros designated as “EURIBOR” and sponsored jointly by the European Banking Federation and ACI — The Financial Markets Association (or any company established by the joint sponsors for purposes of compiling and publishing that rate) on the second Euro Business Day (as defined in Section 3(o) below) before such Interest Reset Date (a “EURIBOR Interest Determination Date”), and will be determined in accordance with the following provisions:

(i) EURIBOR will be the offered rate for deposits in euros having the Index Maturity beginning on such Interest Reset Date, as that rate appears on the Reuters Screen EURIBOR01 Page as of 11:00 A.M., Brussels time, on such EURIBOR Interest Determination Date.

(ii) If the rate described in clause (i) above does not so appear on the Reuters Screen EURIBOR01 Page, EURIBOR will be determined on the basis of the rates, at approximately 11:00 A.M., Brussels time, on such EURIBOR Interest Determination Date, at which deposits of the following kind are offered to prime

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banks in the Euro-Zone (as defined in Section 3(o) below) interbank market by the principal Euro-Zone office of each of four major banks in that market selected by the Calculation Agent: euro deposits having the Index Maturity specified on the face hereof beginning on such Interest Reset Date and in a Representative Amount. The Calculation Agent will request the principal Euro-Zone office of each of these banks to provide a quotation of its rate. If at least two quotations are provided, EURIBOR for such EURIBOR Interest Determination Date will be the arithmetic mean of such quotations.

(iii) If fewer than two quotations are provided as described in clause (ii) above, EURIBOR for such EURIBOR Interest Determination Date will be the arithmetic mean of the rates for loans of the following kind to leading Euro-Zone banks quoted, at approximately 11:00 A.M., Brussels time, on such EURIBOR Interest Determination Date, by three major banks in the Euro-Zone selected by the Calculation Agent: loans of euros having the Index Maturity specified on the face hereof beginning on such Interest Reset Date and in a Representative Amount.

(iv) If fewer than three banks selected by the Calculation Agent are quoting as described in clause (iii) above, EURIBOR shall be the EURIBOR in effect on such EURIBOR Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(g) ***Determination of Federal Funds Rate.*** If the Base Rate specified on the face hereof is the Federal Funds (Effective) Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate, on the second Business Day immediately preceding such Interest Reset Date (the "Federal Funds Interest Determination Date"), as published in H.15(519) opposite the heading "Federal funds (effective)", as that rate is displayed on the Reuters Screen FEDFUNDS1 Page under the heading "EFFECT". If the Federal Funds (Effective) Rate cannot be determined as described above, the following procedures will apply in determining the Federal Funds (Effective) Rate:

(i) If the rate described above is not displayed on the Reuters Screen FEDFUNDS1 Page at 3:00 P.M., New York City time, on the Calculation Date corresponding to such Federal Funds Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the Federal Funds (Effective) Rate will be the rate described above as published in H.15 Daily Update, or another recognized electronic source used for displaying that rate, opposite the heading "Federal funds (effective)".

(ii) If the rate described in clause (i) above is not displayed on the Reuters Screen FEDFUNDS1 Page and does not appear in H.15(519), H.15 Daily Update or another recognized electronic source at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate

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is available from one of those sources at that time), the Federal Funds (Effective) Rate will be the arithmetic mean of the rates for the last transaction in overnight, U.S. dollar federal funds arranged, before 9:00 A.M., New York City time, on such Federal Funds Interest Determination Date, by three leading brokers of U.S. dollar federal funds transactions in New York City selected by the Calculation Agent.

(iii) If fewer than three brokers selected by the Calculation Agent are quoting as described in clause (ii) above, the Federal Funds (Effective) Rate will be the Federal Funds (Effective) Rate in effect on such Federal Funds Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

If the Base Rate specified on the face hereof is the Federal Funds Open Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate, on the Federal Funds Interest Determination Date, as published in H.15(519) under the heading "Federal funds" and opposite the caption "Open", as that rate is displayed on the Reuters Screen Page 5. If the Federal Funds Open Rate cannot be determined as described above, the following procedures will apply in determining the Federal Funds Open Rate:

(i) If the rate described above is not displayed on the Reuters Screen Page 5 at 5:00 P.M., New York City time, on such Federal Funds Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the Federal Funds Open Rate will be the rate for such day displayed on the FFPREBON Index page on Bloomberg (which is the Fed Funds Opening Rate as reported by Prebon Yamane (or a successor) on Bloomberg).

(ii) If the rate described in clause (i) above is not displayed on the Reuters Screen Page 5 and does not appear on the FFPREBON Index on Bloomberg at 5:00 P.M., New York City time, on such Federal Funds Interest Determination Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), the Federal Funds Open Rate will be the arithmetic mean of the rates for the last transaction in overnight, U.S. dollar federal funds arranged, before 9:00 A.M., New York City time, on such Federal Funds Interest Determination Date, quoted by three leading brokers of U.S. dollar federal funds transactions in New York City selected by the Calculation Agent.

(iii) If fewer than three brokers selected by the Calculation Agent are quoting as described in clause (ii) above, the Federal Funds Open Rate will be the Federal Funds Open Rate in effect on such Federal Funds Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

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(h) ***Determination of LIBOR.*** If the Base Rate specified on the face hereof is LIBOR, the Base Rate that takes effect on any Interest Reset Date shall be LIBOR on the corresponding LIBOR Interest Determination Date (as defined in Section 3(o) below). LIBOR will be the offered rate appearing on the Reuters Screen LIBOR Page (as defined in Section 3(o) below) as of 11:00 A.M., London time, on such LIBOR Interest Determination Date for deposits of the Index Currency having the Index Maturity beginning on such Interest Reset Date.

(i) If LIBOR does not so appear on the Reuters Screen LIBOR Page, then LIBOR will be determined on the basis of the rates, at approximately 11:00 A.M., London time, on such LIBOR Interest Determination Date, 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: deposits of the Index Currency having the Index Maturity specified on the face hereof beginning on the relevant Interest Reset Date and in a Representative Amount (as defined in Section 3(o) below). The Calculation Agent will request the principal London office of each such bank to provide a quotation of its rate. If at least two quotations are provided, LIBOR for such LIBOR Interest Determination Date will be the arithmetic mean of the quotations.

(ii) If fewer than two quotations are provided as described in clause (i) above, LIBOR for such LIBOR Interest Determination Date will be the arithmetic mean of the rates for loans of the following kind to leading European banks quoted, at approximately 11:00 A.M. in the principal financial center for the country issuing the Index Currency, on such LIBOR Interest Determination Date, by three major banks in that principal financial center selected by the Calculation Agent: loans of the Index Currency having the Index Maturity specified on the face hereof beginning on such Interest Reset Date and in a Representative Amount.

(iii) If fewer than three banks selected by the Calculation Agent are quoting as described in clause (ii) above, LIBOR will be the LIBOR in effect on such LIBOR Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(i) ***Determination of Prime Rate.*** If the Base Rate specified on the face hereof is the Prime Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate, for the second Business Day immediately preceding such Interest Reset Date (the “Prime Interest Determination Date”), published in H.15(519) opposite the heading “Bank prime loan”. If the Prime Rate cannot be determined as described above, the following procedures will apply in determining the Prime Rate:

(i) If the rate described above does not appear in H.15(519) at 3:00 P.M., New York City time, on the Calculation Date corresponding to such

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Prime Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), then the Prime Rate will be the rate, for such Prime Interest Determination Date, as published in H.15 Daily Update or another recognized electronic source used for the purpose of displaying that rate, opposite the heading “Bank prime loan”.

(ii) If the rate described in clause (i) above does not appear in H.15(519), H.15 Daily Update or another recognized electronic source at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), then the Prime Rate will be the arithmetic mean of the following rates as they appear on the Reuters Screen USPRIME 1 Page (as defined in Section 3(o) below): the rate of interest publicly announced by each bank appearing on that page as that bank’s prime rate or base lending rate, as of 11:00 A.M., New York City time, on such Prime Interest Determination Date.

(iii) If fewer than four of the rates referred to in clause (ii) above appear on the Reuters Screen USPRIME 1 Page, the Prime Rate will be the arithmetic mean of the Prime Rates or base lending rates, as of the close of business on such Prime Interest Determination Date, of three major banks in New York City selected by the Calculation Agent. For this purpose, the Calculation Agent will use rates quoted on the basis of the actual number of days in the year divided by a 360-day year.

(iv) If fewer than three banks selected by the Calculation Agent are quoting as described in clause (iii) above, the Prime Rate shall be the Prime Rate in effect on such Prime Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(j) ***Determination of Treasury Rate.*** If the Base Rate specified on the face hereof is the Treasury Rate, the Base Rate that takes effect on any Interest Reset Date shall equal the rate for the auction on the corresponding Treasury Interest Determination Date (as defined in Section 3 (o) below) of direct obligations of the United States (“Treasury Bills”) having the Index Maturity specified on the face hereof, as that rate appears on the Reuters Screen USAUCTION10 Page or the Reuters Screen USAUCTION11 Page under the heading “INVEST RATE”. If the Treasury Rate cannot be determined as described above, the following procedures will apply in determining the Treasury Rate:

(i) If the rate described above does not appear on either the Reuters Screen USAUCTION10 or USAUCTION11 Page at 3:00 P.M., New York City time, on the Calculation Date corresponding to such Treasury Interest Determination Date (unless the calculation is made earlier and the rate is available from that source at that time), the Treasury Rate will be the Bond Equivalent

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Yield (as defined in Section 3(o) below) of the rate, for such Treasury Interest Determination Date and for Treasury Bills having the Index Maturity specified on the face hereof, as announced by the U.S. Department of the Treasury.

(ii) If the auction rate described in clause (i) above is not so announced by 3:00 P.M., New York City time, on such Calculation Date, or if no such auction is held for the relevant week, then the Treasury Rate will be the Bond Equivalent Yield of the rate, for such Treasury Interest Determination Date and for Treasury Bills having the Index Maturity specified on the face hereof, as published in H.15(519) under the heading “U.S. government securities/Treasury bills (secondary market)”.

(iii) If the rate described in clause (ii) above does not appear in H.15(519) at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), then the Treasury Rate will be the rate, for such Treasury Interest Determination Date and for Treasury Bills having the Index Maturity specified on the face hereof, as published in H.15 Daily Update, or another recognized electronic source used for displaying that rate, under the heading “U.S. government securities/Treasury Bills (secondary market)”.

(iv) If the rate described in clause (iii) above does not appear in H.15 Daily Update or another recognized electronic source at 3:00 P.M., New York City time, on such Calculation Date (unless the calculation is made earlier and the rate is available from one of those sources at that time), the Treasury Rate will be the Bond Equivalent Yield of the arithmetic mean of the following secondary market bid rates for the issue of Treasury Bills with a remaining maturity closest to the Index Maturity specified on the face hereof: the rates bid as of approximately 3:30 P.M., New York City time, on such Treasury Interest Determination Date, by three primary U.S. government securities dealers in New York City selected by the Calculation Agent.

(v) If fewer than three dealers selected by the Calculation Agent are quoting as described in clause (iv) above, the Treasury Rate shall be the Treasury Rate in effect on such Treasury Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

(k) ***Determination of 11th District Rate***. If the Base Rate specified on the face hereof is the 11th District Cost of Funds Rate (the “11th District Rate”), the Base Rate that takes effect on any Interest Reset Date shall equal the 11th District Rate on the 11th District Interest Determination Date (as defined in Section 3(o) below) corresponding to such Interest Reset Date. The 11th District Rate on any 11th District Interest Determination Date shall be the rate equal to the monthly weighted average cost of funds for the calendar month immediately before such date, as displayed on the

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Reuters Screen COFI/ARMS Page opposite the heading “11TH Dist COFI:” as of 11:00 A.M., San Francisco time, on such date. If the 11th District Rate cannot be determined as described above, the following procedures will apply in determining the 11th District Rate:

(i) If the rate described above does not appear on the Reuters Screen COFI/ARMS Page on such 11th District Interest Determination Date, then the 11th District Rate on such date will be the monthly weighted average cost of funds paid by institutions that are members of the Eleventh Federal Home Loan Bank District for the calendar month immediately preceding such date, as most recently announced by the Federal Home Loan Bank of San Francisco as such monthly weighted average cost of funds.

(ii) If the Federal Home Loan Bank of San Francisco fails to announce the cost of funds described in clause (i) above on or before such 11th District Interest Determination Date, the 11th District Rate that takes effect on such Interest Reset Date will be the 11th District Rate in effect on such 11th District Interest Determination Date (or, in the case of the first Interest Reset Date, the Initial Base Rate).

Any of the interest rates determined in accordance with Sections 3(b) — (k) will be adjusted by the addition or subtraction of the Spread, if any, specified on the face hereof or by multiplying such Base Rate by the Spread Multiplier, if any, specified on the face hereof.

(l) ***Minimum and Maximum Limits.*** Notwithstanding the foregoing, the rate at which interest accrues on this Security (i) shall not at any time be higher than the Maximum Rate, if any, or less than the Minimum Rate, if any, specified on the face hereof, in each case on an accrual basis, and (ii) shall not at any time be higher than the maximum rate permitted by New York law, as the same may be modified by United States law of general application.

(m) ***Calculation of Interest.*** Payments of interest hereon with respect to any Interest Payment Date or at the Maturity of the principal hereof will include interest accrued to but excluding such Interest Payment Date or the date of such Maturity, as the case may be. Accrued interest from the date of issue or from the last date to which interest has been paid or made available for payment shall be calculated by the Calculation Agent by multiplying the Principal Amount by an accrued interest factor for the specified Interest Period. Such accrued interest factor shall be expressed as a decimal and computed by *multiplying* the interest rate (also expressed as a decimal) in effect on the applicable period by the Day Count Convention specified on the face hereof for such Interest Period.

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All percentages resulting from any calculation with respect to this Security will be rounded upward or downward, as appropriate, to the next higher or lower one hundred-thousandth of a percentage point (e.g., 9.876541% (or .09876541) being rounded down to 9.87654% (or .0987654) and 9.876545% (or .09876545) being rounded up to 9.87655% (or .0987655)). All amounts used in or resulting from any calculation with respect to this Security will be rounded upward or downward, as appropriate, to the nearest cent, in the case of U.S. dollars, or to the nearest corresponding hundredth of a unit, in the case of a currency other than U.S. dollars, with one-half cent or one-half of a corresponding hundredth of a unit or more being rounded upward.

(n) **Calculation Agent and Exchange Rate Agent.** The Company has initially appointed the institutions named on the face of this Security as Calculation Agent and Exchange Rate Agent, respectively, to act as such agents with respect to this Security, but the Company may, in its sole discretion, appoint any other institution (including any Affiliate of the Company) to serve as any such agent from time to time. The Company will give the Trustee prompt written notice of any change in any such appointment. Insofar as this Security provides for any such agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any determination hereunder, such agent may do so from any institution or institutions of the kind contemplated hereby notwithstanding that any one or more of such institutions are any such agent, Affiliates of any such agent or Affiliates of the Company.

All determinations made by the Calculation Agent or the Exchange Rate Agent may be made by such agent in its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Holder of this Security and the Company. Neither the Calculation Agent nor the Exchange Rate Agent shall have any liability therefor.

(o) **Definitions of Calculation Terms.** As used in this Security, the following terms have the meanings set forth below:

“Bond Equivalent Yield” means a yield expressed as a percentage and calculated in accordance with the following formula:

$$\text{Bond Equivalent Yield} = \frac{D \times N}{360 - (D \times M)} \times 100,$$

where

- “D” equals the annual rate for Treasury Bills quoted on a bank discount basis and expressed as a decimal;
- “N” equals 365 or 366, as the case may be; and

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- “M” equals the actual number of days in the applicable Interest Reset Period.

“Business Day” means, for this Security, a day that meets the requirements set forth in each of clauses (i) through (v) below, in each case to the extent such requirements apply to this Security as specified below:

- (i) is a New York Business Day;
- (ii) if the Base Rate is LIBOR, is also a London Business Day;
- (iii) if the Specified Currency for payment of principal of or interest on this Security is other than U.S. dollars or euros, is also a day on which banking institutions are not authorized or obligated by law, regulation or executive order to close in the principal financial center of the country issuing the Specified Currency;
- (iv) if the Base Rate is EURIBOR or if the Specified Currency for payment of principal of or interest on this Security is euros, or the Base Rate is LIBOR for which the Index Currency is euros, is also a Euro Business Day; and
- (v) solely with respect to any payment or other action to be made or taken at any Place of Payment outside The City of New York, is a Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in such Place of Payment generally are authorized or obligated by law, regulation or executive order to close.

Solely when used in the third paragraph under the heading “Currency of Payment” on the face of this Security, the meaning of the term “Business Day” shall be determined as if the Base Rate for this Security is neither LIBOR nor EURIBOR. With respect to Section 13 of the reverse hereof and Exhibit B hereto, the definition of “Business Day” therein shall apply.

The “Calculation Date” corresponding to any Commercial Paper Interest Determination Date, Prime Interest Determination Date, LIBOR Interest Determination Date, EURIBOR Interest Determination Date, Treasury Interest Determination Date, CMT Interest Determination Date, CD Interest Determination Date, CMS Interest Determination Date, Federal Funds Interest Determination Date or 11th District Interest Determination Date, as the case may be, means the earlier of:

- (i) the tenth day after such Interest Determination Date or, if any such day is not a Business Day, the next succeeding Business Day; and
- (ii) the Business Day immediately preceding the Interest Payment Date or the date of Maturity of the principal hereof, whichever is the day on which the next payment of interest will be due.

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The Calculation Date corresponding to any Interest Reset Date means the Calculation Date corresponding to the relevant interest determination date immediately preceding such Interest Reset Date.

“Day Count Convention” means:

- (i) if “1/1 (ISDA)”, 1;
- (ii) if “Actual/Actual (ISDA)” or “Act/Act (ISDA)”, the number of days in the Interest Period *divided* by 365 (or, if any portion of that Interest Period falls in a leap year, the *sum* of (1) the number of days in that portion of the Interest Period falling in a leap year *divided* by 366 and (2) the number of days in that portion of the Interest Period falling in a non-leap year *divided* by 365);
- (iii) if “Actual/Actual (ICMA)”, the number of days in the Interest Period, including February 29 in a leap year, *divided* by 360 or, if the Specified Currency is euro or pounds sterling, the number of days in the calendar year;
- (iv) if “Actual/Actual (Bond)”, the number of calendar days in the Interest Period, *divided* by the number of calendar days in the Interest Period *multiplied* by the number of Interest Periods in the calendar year;
- (v) if “Actual/Actual (Euro)”, the number of calendar days in the Interest Period *divided* by 365 or, if the Interest Period includes February 29, 366;
- (vi) if “Actual/365 (Fixed)”, “Act/365 (Fixed)”, “A/365 (Fixed)” or “A365F”, the actual number of days in the Interest Period *divided* by 365;
- (vii) if “Actual/360 (ISDA)”, “Act/360 (ISDA)” or “A/360 (ISDA)”, the number of days in the Interest Period *divided* by 360;
- (viii) if “Actual/360 (ICMA)”, the number of calendar days in the period, including February 29 in a leap year, *divided* by 360 days;
- (ix) if “30/360 (ISDA)”, “360/360 (ISDA)” or “Bond Basis (ISDA)”, the number of days in the Interest Period in respect of which payment is being made *divided* by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where

- “Y<sub>1</sub>” is the year, expressed as a number, in which the first day of the Interest Period falls;

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- “Y<sub>2</sub>” is the year, expressed as a number, in which the day immediately following the last day included in the Interest Period falls;
  - “M<sub>1</sub>” is the calendar month, expressed as a number, in which the first day of the Interest Period falls;
  - “M<sub>2</sub>” is the calendar month, expressed as a number, in which the day immediately following the last day included in the Interest Period falls;
  - “D<sub>1</sub>” is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and
  - “D<sub>2</sub>” is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30; and
- (x) if “30E/360”, “30E/360 (ISDA)” or “Eurobond Basis”, the number of days in the Interest Period in respect of which payment is being made *divided* by 360, calculated on a formula basis as follows:

$$\text{Day Count Fraction} = \frac{[360 \times (Y_2 - Y_1)] + [30 \times (M_2 - M_1)] + (D_2 - D_1)}{360}$$

where

- “Y<sub>1</sub>” is the year, expressed as a number, in which the first day of the Interest Period falls;
- “Y<sub>2</sub>” is the year, expressed as a number, in which the day immediately following the last day included in the Interest Period falls;
- “M<sub>1</sub>” is the calendar month, expressed as a number, in which the first day of the Interest Period falls;
- “M<sub>2</sub>” is the calendar month, expressed as a number, in which the day immediately following the last day included in the Interest Period falls;
- “D<sub>1</sub>” is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and
- “D<sub>2</sub>” is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (1) such number would be 31, and (2), if “30E/360 (ISDA)” is specified, that day is also the last day of February, in which case D<sub>2</sub> will be 30.

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“Designated CMT Index Maturity” means, if the Base Rate is the CMT Rate, the Index Maturity for this Security and will be the original period to maturity of a U.S. Treasury security — either 1, 2, 3, 5, 7, 10, 20 or 30 years — specified on the face hereof, provided that, if no such original maturity period is so specified, the Designated CMT Index Maturity will be 2 years.

“Designated CMT Reuters Screen Page” means, if the Base Rate is the CMT Rate, the Reuters Screen Page specified on the face hereof that displays Treasury constant maturities as reported in H.15(519), provided that, if no Reuters Screen Page is so specified, then the applicable page will be the Reuters Screen FEDCMT Page and provided, further, that if the Reuters Screen FEDCMT Page applies but it is not specified on the face hereof whether the weekly or monthly average applies, the weekly average will apply.

“EMU Countries” means, at any time, the countries (if any) then participating in the European Economic and Monetary Union (or any successor union) pursuant to the Treaty on European Union of February 1992 (or any successor treaty), as it may be amended from time to time.

“Euro Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System, or any successor system, is open for business.

“Euro-Zone” means, at any time, the region comprised of the EMU Countries.

“H.15(519)” means the weekly statistical release designated as such published by the Federal Reserve System Board of Governors, or its successor, available through the website of the Board of Governors of the Federal Reserve System at <http://www.federalreserve.gov/releases/h15/update/h15upd.htm>, or any successor site or publication.

“H.15 Daily Update” means the daily update of H.15(519), available through the website of the Board of Governors of the Federal Reserve System, at <http://www.federalreserve.gov/releases/h15/update/h15upd.htm>, or any successor site or publication.

“Index Maturity” means the period to maturity of the instrument or obligation on which the interest rate formula is based, as specified on the face hereof.

“Interest Period” means the period from and including an Interest Payment Date (or, with respect to the initial Interest Period, the Original Issue Date) to but excluding the next succeeding Interest Payment Date.

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The “LIBOR Interest Determination Date” corresponding to any Interest Reset Date means the second London Business Day preceding such Interest Reset Date, unless the Index Currency is pounds sterling, in which case the LIBOR Interest Determination Date will be the Interest Reset Date.

“London Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in London generally are authorized or obligated by law, regulation or executive order to close and, if the Base Rate for the Security is LIBOR, is also a day on which dealings in the Index Currency specified on the face hereof are transacted in the London interbank market.

“Money Market Yield” means a yield expressed as a percentage and calculated in accordance with the following formula:

$$\text{Money Market Yield} = \frac{D \times N}{360 - (D \times M)} \times 100,$$

where

- “D” equals the per annum rate for commercial paper quoted on a bank discount basis and expressed as a decimal; and
- “M” equals the actual number of days in the applicable Interest Reset Period.

“New York Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that 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.

“Representative Amount” means an amount that, in the Calculation Agent’s judgment, is representative of a single transaction in the relevant market at the relevant time.

“Reuters Screen” means the display on the Reuters 3000 Xtra service or any successor or replacement service, on the page or pages, or any successor or replacement page or pages on that service.

“Reuters Screen LIBOR Page” means the display on the Reuters Screen LIBOR01 Page or Reuters Screen LIBOR02 Page, as specified on the face hereof, or any successor or replacement page or pages, on which London interbank rates of major banks for the Index Currency are displayed.

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“Reuters Screen USPRIME1 Page” means the display on the Reuters Screen page titled “USPRIME1”, for the purpose of displaying prime rates or base lending rates of major U.S. banks.

The “Treasury Interest Determination Date” corresponding to any Interest Reset Date means the day of the week in which such Interest Reset Date falls on which Treasury bills would normally be auctioned. If, as the result of a legal holiday, an auction is so held on the Friday in the week immediately preceding the week in which such Interest Reset Day falls, such Friday will be the corresponding Treasury Interest Determination Date. If an auction date shall fall on a day that would otherwise be an Interest Reset Date, then such Interest Reset Date shall instead be the first Business Day immediately following such auction date.

“Treasury Notes” means direct, noncallable, fixed rate obligations of the U.S. government.

The “11th District Interest Determination Date” corresponding to a particular Interest Reset Date will be the last working day, in the first calendar month immediately preceding such Interest Reset Date, on which the Federal Home Loan Bank of San Francisco publishes the monthly average cost of funds paid by member institutions of the Eleventh Federal Home Loan Bank District for the second calendar month immediately preceding such Interest Reset Date.

References in this Security to U.S. dollars shall mean, as of any time, the coin or currency that is then legal tender for the payment of public and private debts in the United States of America.

References in this Security to the euro shall mean, as of any time, the coin or currency (if any) that is then legal tender for the payment of public and private debts in all EMU Countries.

References in this Security to a particular currency other than U.S. dollars and euros shall mean, as of any time, the coin or currency that is then legal tender for the payment of public and private debts in the country issuing such currency on the Original Issue Date.

References in this Security to a particular heading or headings on any of Designated CMT Reuters Screen Page, H.15(519), H.15 Daily Update, Reuters Screen LIBOR Page, Reuters Screen USPRIME 1 Page, Reuters Screen USAUCTION10 Page, Reuters Screen USAUCTION11 Page, Reuters Screen ISDAFIX2 Page, Reuters Screen COFI/ARMS Page, Reuters Screen Page 5 or Reuters Screen include any successor or replacement heading or headings as determined by the Calculation Agent.

#### **4. *Redemption***

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Unless a Redemption Commencement Date is specified on the face hereof, this Security shall not be redeemable at the option of the Company before the Stated Maturity Date. If a Redemption Commencement Date is so specified, and unless otherwise specified on the face hereof, this Security is subject to redemption upon not less than 30 days' nor more than 60 days' notice at any time and from time to time on or after the Redemption Commencement Date, in each case as a whole or in part, at the election of the Company and at the applicable Redemption Price specified on the face hereof (expressed as a percentage of the principal amount of this Security to be redeemed), together with accrued interest to the Redemption Date, but interest installments due on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant record date, all as provided in the 2008 Indenture.

**5. *Repayment at the Holder's Option***

Except as otherwise may be provided on the face hereof, if one or more Repayment Dates are specified on the face hereof, this Security will be repayable in whole or in part in an amount equal to any Authorized Denomination (provided that the remaining principal amount of any Security surrendered for partial repayment shall at least equal an Authorized Denomination), on any such Repayment Date, in each case at the option of the Holder and at the applicable Repayment Price specified on the face hereof (expressed as a percentage of the principal amount to be repaid), together with accrued interest to the applicable Repayment Date (but interest installments due on or prior to such Repayment Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Regular Record Date as provided in the 2008 Indenture). If this Security provides for more than one Repayment Date and the Holder exercises its option to elect repayment, the Holder shall be deemed to have elected repayment on the earliest Repayment Date after all conditions to such exercise have been satisfied, and references herein to the "applicable Repayment Date" shall mean such earliest Repayment Date.

In order for the exercise of such option to be effective and this Security to be repaid, the Company must receive at the applicable address of the Trustee set forth below (or at such other place or places of which the Company shall from time to time notify the Holder of this Security), on any Business Day not later than the 15th, and not earlier than the 25th, calendar day prior to the applicable Repayment Date (or, if either such calendar day is not a Business Day, the next succeeding Business Day), either (i) this Security, with the form below entitled "Option to Elect Repayment" duly completed and signed, or (ii) a facsimile transmission or letter from a member of a national securities exchange or the Financial Industry Regulatory Authority, Inc., a commercial bank or a trust company in the United States of America setting forth (a) the name, address and telephone number of the Holder of this Security, (b) the principal amount of this Security and the amount of this Security to be repaid, (c) a statement that the option to elect repayment is being exercised thereby and (d) a guarantee stating that

(Reverse of Security continued on next page)

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the Company will receive this Security, with the form below entitled "Option to Elect Repayment" duly completed and signed, not later than five Business Days after the date of such facsimile transmission or letter (provided that this Security and form duly completed and signed are received by the Company by such fifth Business Day). Any such election shall be irrevocable. The address to which such deliveries are to be made is The Bank of New York Mellon, Attention: Corporate Trust Administration, 101 Barclay Street, 4E, New York, New York 10286 (or at such other places as the Company or the Trustee shall notify the Holder of this Security). All questions as to the validity, eligibility (including time of receipt) and acceptance of any Security for repayment will be determined by the Company, whose determination will be final and binding. Notwithstanding the foregoing, (x) if this Security is a Global Security, the option of the Holder to elect repayment may be exercised in accordance with the Applicable Procedures of the Depository for this Security at least 15 calendar days prior to the applicable Repayment Date and (y) whether or not this Security is a Global Security, the option of the Holder to elect repayment may be exercised in any such manner as the Company may approve.

#### **6. *Transfer and Exchange***

As provided in the 2008 Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of Authorized Denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the 2008 Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor, of a different Authorized Denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

(Reverse of Security continued on next page)

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If this Security is a Global Security, this Security shall be subject to the provisions of the 2008 Indenture relating to Global Securities, including the limitations in Section 3.05 thereof on transfers and exchanges of Global Securities (subject to Section 11 of the reverse of this Security).

**7. Defeasance**

The 2008 Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the 2008 Indenture. If so specified on the face hereof, either or both of such provisions are applicable to this Security, as so specified.

**8. Remedies**

Sections 5.01 and 5.02 of the 2008 Indenture are hereby amended with respect to the Securities of this series to the extent necessary to comply with Section 5.01 and Annex A of the Master Agreement, dated November 25, 2008, as the same may be amended from time to time (the "Master Agreement"), by and between the Company and the FDIC, attached hereto as Exhibit A. Subject to the immediately preceding sentence and Section 15 of the reverse of this Security, if an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the 2008 Indenture.

As provided in and subject to the provisions of the 2008 Indenture and subject to Section 15 of the reverse of this Security, the Holder of this Security shall not have the right to institute any proceeding with respect to the 2008 Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity.

The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

If so provided pursuant to the terms of any specific Securities, the above-referenced provisions of the 2008 Indenture regarding the ability of Holders to waive

(Reverse of Security continued on next page)

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certain defaults, or to request the Trustee to institute proceedings (or to give the Trustee other directions) in respect thereof, may be applied differently with regard to such Securities.

No reference herein to the 2008 Indenture and no provision of this Security or of the 2008 Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

**9. *Modification and Waiver***

The 2008 Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company, and the rights of the Holders of the Securities to be affected, under the 2008 Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of all Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any series, may comprise fewer than all the Securities of such series). The 2008 Indenture also contains provisions (i) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any particular series, may comprise fewer than all the Securities of such series), on behalf of the Holders of all such affected Securities, to waive compliance by the Company with certain provisions of the 2008 Indenture and (ii) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding of any series to be affected (with each such series considered separately for this purpose), on behalf of the Holders of all Securities of such series, to waive certain past defaults under the 2008 Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

**10. *Subrogation***

The FDIC shall be subrogated to all of the rights of the Holder and the Representative under this Security and the 2008 Indenture against the Company in respect of any amounts paid to the Holder, or for the benefit of the Holder, by the FDIC pursuant to the Debt Guarantee Program.

**11. *Agreement to Execute Assignment upon Guarantee Payment***

The Holder hereby authorizes the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the Holder pursuant to the Debt Guarantee Program, to execute an assignment in the form

(Reverse of Security continued on next page)



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attached to this Security as Exhibit B pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Company under this Security on behalf of the Holder. The Company hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Security and upon any such assignment, the FDIC shall be deemed the Holder of this Security for all purposes hereof, and the Company hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Security and the 2008 Indenture as a result of such assignment.

Section 3.05 of the 2008 Indenture is hereby amended with respect to the Securities of this series to the extent necessary to permit the Holder, the Representative and the Company to comply with this Section 11, Section 12 below or any other similar provision of this Security.

**12. *Surrender of Senior Unsecured Debt Instrument to the FDIC***

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Company is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the Holder shall, or the Holder shall cause the person or entity in possession to, promptly surrender to the FDIC this Security.

**13. *Notice Obligations to FDIC of Payment Default***

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Company is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default. Solely for the purpose of this Section 13, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

**14. *Ranking***

Any indebtedness of the Company to the FDIC arising under Section 2.03 of the Master Agreement will constitute a senior unsecured general obligation of the Company, ranking pari passu with any indebtedness hereunder.

**15. *No Event of Default during Time of Timely FDIC Guarantee Payments***

There shall not be deemed to be an Event of Default under this Security or the 2008 Indenture which would permit or result in the acceleration of amounts due

(Reverse of Security continued on next page)

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hereunder, if such an Event of Default is due solely to the failure of the Company to make timely payment hereunder, provided that the FDIC is making timely guarantee payments with respect to this Security in accordance with 12 C.F.R Part 370.

The following provisions of this paragraph shall apply to this Security in addition to, and without limiting, the foregoing provisions of this Section 15. No event that would otherwise constitute an Event of Default with respect to the Securities of this series shall constitute an Event of Default with respect to this Security, provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. As a result, upon the occurrence of any such event (including any event of the kind specified in said Section 5.01), neither the Trustee nor the Holder of this Security shall be entitled, with respect to this Security, to seek any remedies otherwise available, or to take any other action otherwise provided for, under the 2008 Indenture upon an Event of Default (including any right to accelerate the Maturity of the principal of this Security pursuant to Section 5.02 of the 2008 Indenture, any right to exchange (at the Holder's option) this Security for a Security that is not a Global Security pursuant to Section 3.05 thereof and any right to institute a proceeding pursuant to Section 5.07 thereof), provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. Without limiting the foregoing, no event, including any event of the kind specified in Section 5.01(5) or 5.01(6) of the 2008 Indenture, shall result in the automatic acceleration of the Maturity of the principal of this Security pursuant to Section 5.02 thereof. Notwithstanding the foregoing, however, the rights of the Holder of this Security pursuant to Section 5.08 of the 2008 Indenture shall not be affected by this Section 15. With regard to this Security, the provisions of Article Five of the 2008 Indenture shall be subject to, and shall be deemed modified as necessary to be consistent with, the provisions of this Section 15.

**16. *No Modifications without FDIC Consent***

Without the express written consent of the FDIC, the Company and the Trustee agree not to amend, modify, supplement or waive any provision in this Security or the 2008 Indenture that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement.

**17. *Demand Obligations to FDIC upon the Company's Failure to Pay***

On the 30th day after the date the Company defaults in payment of interest on this Security, which default has not been cured by the Company by such 30th day, in the case of default in interest, or at the Maturity, in the case of default in principal of this

(Reverse of Security continued on next page)

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Security, the Representative shall make a demand on behalf of the Holder to the FDIC for payment on the guaranteed amount under the Debt Guarantee Program. Such demand shall be accompanied by a proof of claim, which shall include evidence, to the extent not previously provided in the Master Agreement, in form and content satisfactory to the FDIC, of: (A) the Representative's financial and organizational capacity to act as Representative; (B) the Representative's exclusive authority to act on behalf of the Holder and its fiduciary responsibility to the Holder when acting as such, as established by the terms of this Security and the 2008 Indenture; (C) the occurrence of a payment default; and (D) the authority to make an assignment of the Holder's right, title, and interest in this Security to the FDIC and to effect the transfer to the FDIC of the Holder's claim in any insolvency proceeding. Such assignment shall include the right of the FDIC to receive any and all distributions on this Security from the proceeds of the receivership or bankruptcy estate. Any demand under this Section 17 shall be made in writing and directed to the Director, Division of Resolution and Receiverships, Federal Deposit Insurance Corporation, Washington, D.C., and shall include all supporting evidences as provided in this Section 17, and shall certify to the accuracy thereof.

**18. *Governing Law***

**This Security and the 2008 Indenture shall be governed by and construed in accordance with the laws of the State of New York.**

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CUSIP NO. \_\_\_\_\_

ORIGINAL ISSUE DATE: \_\_\_\_\_

THE GOLDMAN SACHS GROUP, INC.  
MEDIUM-TERM NOTE, SERIES D

*OPTION TO ELECT REPAYMENT*

TO BE COMPLETED ONLY IF THIS SECURITY IS REPAYABLE  
AT THE OPTION OF THE HOLDER AND THE HOLDER  
ELECTS TO EXERCISE SUCH RIGHT

The undersigned hereby irrevocably requests and instructs the Company to repay the Security referred to in this notice (or the portion thereof specified below) at the applicable Repayment Price, together with interest to the Repayment Date, all as provided for in such Security, to the undersigned, whose name, address and telephone number are as follows:

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(please print name of the undersigned)

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(please print address of the undersigned)

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(please print telephone number of the undersigned)

If such Security provides for more than one Repayment Date, the undersigned requests repayment on the earliest Repayment Date after the requirements for exercising this option have been satisfied, and references in this notice to the Repayment Date mean such earliest Repayment Date. Terms used in this notice that are defined in such Security are used herein as defined therein.

For such Security to be repaid the Company must receive at the applicable address of the Trustee set forth below or at such other place or places of which the Company or the Trustee shall from time to time notify the Holder of such Security, any Business Day not later than the 15th or earlier than the 25th calendar day prior to the Repayment Date (or, if either such calendar day is not a Business Day, the next succeeding Business Day), (i) such Security, with this "Option to Elect Repayment" form duly completed and signed, or (ii) a facsimile transmission or letter from a member of a national securities exchange or the Financial Industry Regulatory Authority, Inc., a commercial bank or a trust company in the United States of America setting forth (a) the name, address and telephone number of the Holder of such Security, (b) the principal amount of such Security and the amount of such Security to be repaid, (c) a statement that the option to elect repayment is being exercised thereby and (d) a guarantee stating that such Security to be repaid with the form entitled "Option to Elect Repayment" on the

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addendum to the Security duly completed and signed will be received by the Company not later than five Business Days after the date of such facsimile transmission or letter (provided that such Security and form duly completed and signed are received by the Company by such fifth Business Day). The address to which such deliveries are to be made is:

The Bank of New York Mellon  
Attention: Corporate Trust Administration  
101 Barclay Street, 4E  
New York, New York 10286

or at such other place as the Company or the Trustee shall notify the Holder of such Security.

If less than the entire principal amount of such Security is to be repaid, specify the portion thereof (which shall equal any Authorized Denomination) that the Holder elects to have repaid:

\_\_\_\_\_

and specify the denomination or denominations (which shall equal any Authorized Denomination) of the Security or Securities to be issued to the Holder in respect of the portion of such Security not being repaid (in the absence of any specification, one Security will be issued in respect of the portion not being repaid):

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Notice: The signature to this Option to Elect Repayment must correspond with the name of the Holder as written on the face of such Security in every particular without alteration or enlargement or any other change whatsoever.

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ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Security, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM – as tenants in common

TEN ENT – as tenants by the entirety

JT TEN – as joint tenants with the right of survivorship and not as tenants in common

UNIF GIFT MIN ACT – \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act

\_\_\_\_\_  
(State)

Additional abbreviations may also be used  
though not in the above list.

\_\_\_\_\_

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

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PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF ASSIGNEE

/ \_\_\_\_\_ /

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(Please Print or Typewrite Name and Address  
Including Postal Zip Code of Assignee)

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the attached Security and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_

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to transfer said Security on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

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NOTICE: Signature must be guaranteed.

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NOTICE: The signature to this assignment must correspond with the name of the Holder as written upon the face of the attached Security in every particular, without alteration or enlargement or any change whatever.

**MASTER AGREEMENT**  
FEDERAL DEPOSIT INSURANCE CORPORATION  
TEMPORARY LIQUIDITY GUARANTEE PROGRAM — DEBT GUARANTEE PROGRAM

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TLGP MASTER AGREEMENT 11/24/08



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## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (this "Master Agreement") is being entered into as of the date set forth on the signature page hereto by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized under the laws of the United States of America and having its principal office in Washington, D.C. (the "FDIC"), and the entity whose name appears on the signature page hereto (the "Issuer").

### RECITALS

**WHEREAS**, on November 21, 2008, the FDIC issued its Final Rule, 12 C.F.R. Part 370 (as may be amended from time to time, the "Rule"), establishing the Temporary Liquidity Guarantee Program (the "Program"); and

**WHEREAS**, pursuant to the Rule, the FDIC will guarantee the payment of certain newly-issued "senior unsecured debt" (as defined in the Rule, hereinafter "Senior Unsecured Debt") issued by an "eligible entity" (as defined in the Rule); and

**WHEREAS**, the Issuer is an eligible entity for purposes of the Rule and has elected to participate in the debt guarantee component of the Program.

### ARTICLE I DEFINITIONS

**1.01. Certain Defined Terms.** As used in this Master Agreement, the following terms shall have the following meanings:

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

"FDIC" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"FDIC Guarantee" means the guarantee of payment by the FDIC of the Senior Unsecured Debt of the Issuer in accordance with the terms of the Program.

"Guarantee Payment" means any payment made by the FDIC under the Program with respect to Senior Unsecured Debt of the Issuer.

"Guarantee Payment Notice" has the meaning ascribed to such term in Section 2.02.

"Issuer" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"Issuer Make-Whole Payments" has the meaning ascribed to such term in Section 2.03.

TLGP MASTER AGREEMENT 11/24/08

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“Issuer Reports” means reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that the Issuer or any subsidiary of the Issuer is required to file with any governmental entity.

“Master Agreement” means this Master Agreement, together with all Annexes and amendments hereto.

“Material Adverse Effect” means a material adverse effect on the business, results of operations or financial condition of the Issuer and its consolidated subsidiaries taken as a whole.

“Program” has the meaning ascribed to such term in the Recitals.

“Reimbursement Payment” has the meaning ascribed to such term in Section 2.03.

“Relevant Provision” means any provision that is related to the principal, interest, payment, default or ranking of the Senior Unsecured Debt, any provision contained in Annex A or any other provision the amendment of which would require the consent of any or all of the holders of such debt.

“Representative” means the trustee, administrative agent, paying agent or other fiduciary or agent designated as the “Representative” under the governing documents for any Senior Unsecured Debt of the Issuer subject to the FDIC Guarantee for purposes of submitting claims or taking other actions under the Program.

“Rule” has the meaning ascribed to such term in the Recitals.

“Senior Unsecured Debt” has the meaning ascribed to such term in the Recitals.

**1.02. Terms Generally.** Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Master Agreement and not to any particular provision of this Master Agreement, and Article, Section and paragraph references are to the Articles, Sections and paragraphs of this Master Agreement unless otherwise specified, and the word “including” and words of similar import when used in this Master Agreement shall mean “including, without limitation”, unless otherwise specified.

## ARTICLE II SENIOR DEBT GUARANTEE

**2.01. Acknowledgement of Guarantee.** The FDIC hereby acknowledges that the Issuer has elected to participate in the debt guarantee component of the Program and that, as a result, the Issuer’s Senior Unsecured Debt is guaranteed by the FDIC to the extent set forth in, and subject to the provisions of, the Rule, and subject to the terms hereof.

**2.02. Guarantee Payments.** The Issuer understands and acknowledges that any Guarantee Payment with respect to a particular issue of Senior Unsecured Debt shall be paid by the FDIC directly to:

- 
- (a) the Representative with respect to such Senior Unsecured Debt if a Representative has been designated; or
  - (b) the registered holder(s) of such Senior Unsecured Debt if no Representative has been designated; or
  - (c) any registered holder of such Senior Unsecured Debt who has opted out of being represented by the designated Representative;

in each case, pursuant to the claims procedure set forth in the Rule. In no event shall the FDIC make any Guarantee Payment to the Issuer directly. The FDIC will provide prompt written notice to the Issuer of any Guarantee Payment made by the FDIC with respect to any of the Issuer's Senior Unsecured Debt (the "Guarantee Payment Notice").

**2.03. Issuer Make-Whole Payments.** In consideration of the FDIC providing the FDIC Guarantee with respect to the Senior Unsecured Debt of the Issuer, the Issuer hereby irrevocably and unconditionally covenants and agrees:

(a) to reimburse the FDIC immediately upon receipt of the Guarantee Payment Notice for all Guarantee Payments set forth in the Guarantee Payment Notice (the "Reimbursement Payment") (without duplication of any amounts actually received by the FDIC as subrogee or assignee under the governing documents of the relevant Senior Unsecured Debt of the Issuer);

(b) beginning as of the date of the Issuer's receipt of the Guarantee Payment Notice, to pay interest on any unpaid Reimbursement Payments until such Reimbursement Payments shall have been paid in full by the Issuer, at an interest rate equal to one percent (1%) per annum above the non-default interest rate payable on the Senior Unsecured Debt with respect to which the relevant Guarantee Payments were made, as calculated in accordance with the documents governing such Senior Unsecured Debt; and

(c) to reimburse the FDIC for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of the Issuer's payment obligations hereunder. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the FDIC's agents, counsel, accountants and experts.

Clauses (a), (b) and (c) above are collectively referred to herein as the "Issuer Make-Whole Payments". The indebtedness of the Issuer to the FDIC arising under this Section 2.03 constitutes a senior unsecured general obligation of the Issuer, ranking *pari passu* with other senior unsecured indebtedness of the Issuer, including without limitation Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

**2.04. Waiver of Defenses.** The Issuer hereby waives any defenses it might otherwise have to its payment obligations under any of the Issuer's Senior Unsecured Debt or under Section 2.03 hereof, in each case beginning at such time as the FDIC has made any Guarantee

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Payment with respect to such Senior Unsecured Debt and continuing until such time as all Issuer Make-Whole Payments have been received by the FDIC.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

**3.01. Organization and Authority.** The Issuer has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, except as has not had, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**3.02. Authorization, Enforceability.**

(a) The Issuer has the power and authority to execute and deliver this Master Agreement and to carry out its obligations hereunder. The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Issuer, and no further approval or authorization is required on the part of the Issuer. This Master Agreement is a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby and compliance by the Issuer with the provisions hereof, will not (i) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Issuer or any subsidiary of the Issuer under, any of the terms, conditions or provisions of, as applicable, (X) its organizational documents or (Y) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Issuer or any subsidiary of the Issuer may be bound, or to which the Issuer or any subsidiary of the Issuer may be subject, or (ii) violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Issuer or any subsidiary of the Issuer or any of their respective properties or assets except, in the case of clauses (i)(Y) and (ii), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(c) No prior notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity is required to be made or obtained by the Issuer in connection with the execution of this Master Agreement, except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals which have been made or obtained

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or the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**3.03. Reports.** Since December 31, 2007, the Issuer and each subsidiary of the Issuer has timely filed all Issuer Reports and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not individually or in the aggregate have a Material Adverse Effect. As of their respective dates of filing, the Issuer Reports complied in all material respects with all statutes and applicable rules and regulations of all applicable governmental entities. In the case of each such Issuer Report filed with or furnished to the Securities and Exchange Commission, if any, such Issuer Report (a) did not, as of its date, or if amended prior to the date of this Master Agreement, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, (b) complied as to form in all material respects with all applicable requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and (c) no executive officer of the Issuer or any subsidiary of the Issuer has failed in any respect to make the certifications required by him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002. With respect to all other Issuer Reports, the Issuer Reports were complete and accurate in all material respects as of their respective dates.

#### **ARTICLE IV NOTICE AND REPORTING**

**4.01. Reports of Existing and Future Guaranteed Debt.** The Issuer shall provide reports to the FDIC of the amount of all Senior Unsecured Debt subject to the FDIC Guarantee in accordance with the reporting requirements of the Rule.

**4.02. On-going Reporting.** The Issuer covenants and agrees that, for so long as it has outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee, it shall furnish or cause to be furnished to the FDIC (a) monthly reports, in such form as specified by the FDIC, containing information relating to the Issuer's outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee and such other information as may be requested in such form, and (b) such other information that the FDIC may reasonably request, such other information to be delivered within ten (10) Business Days of receipt by the Issuer of any such request.

**4.03. Notice of Defaults.** The Issuer covenants and agrees that it shall notify the FDIC within one (1) Business Day of any default in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of the Issuer (including debt that is not subject to the FDIC Guarantee), whether such debt is existing as of the date of this Master Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

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**ARTICLE V  
COVENANTS AND ACKNOWLEDGMENTS OF THE ISSUER**

**5.01. Terms to be included in Future Guaranteed Debt.** The governing documents for the issuance of any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain each of the provisions set forth in Annex A. If a particular issue of Senior Unsecured Debt is evidenced solely by a trade confirmation, the Issuer shall use commercially reasonable efforts to cause the holder of such debt to execute a written instrument setting forth the holder's agreement to be bound by the provisions set forth in Annex A. No document governing the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain any provision that would result in the automatic acceleration of the debt upon a default by the Issuer at any time during which the FDIC Guarantee is in effect or during which Guarantee Payments are being made in accordance with Section 370.12(b)(2) of the Rule.

**5.02. Breaches; False or Misleading Statements.** The Issuer acknowledges and agrees that (a) if it is in breach of any provision of this Master Agreement or (b) if it makes any false or misleading statement or representation in connection with the Issuer's participation in the Program, or makes any statement or representation in bad faith with the intent to influence the actions of the FDIC, the FDIC may take the enforcement actions provided in Section 370.11 of the Rule, including termination of the Issuer's participation in the Program. As set forth in the Rule, any termination of the Issuer's participation in the Program would solely have prospective effect, and would in no event affect the FDIC Guarantee with respect to Senior Unsecured Debt of the Issuer that is issued and outstanding prior to the termination of the Issuer's participation in the Program.

**5.03. No Modifications.** The Issuer covenants and agrees that it shall not amend, modify, or consent to any amendment or modification, or waive any Relevant Provision, without the express written consent of the FDIC.

**5.04. Waiver by the Issuer.** The Issuer acknowledges and agrees that if any covenant, stipulation or other provision of this Master Agreement that imposes on the Issuer the obligation to make any payment is at any time void under any provision of applicable law, the Issuer will not make any claim, counterclaim or institute any proceedings against the FDIC or any of its assignees or subrogees for any amount paid by the Issuer at any time, and the Issuer waives unconditionally and absolutely any rights and defenses, legal or equitable, which arise under or in connection with any such provision and which might otherwise be available to it for recovery of any amount due under this Master Agreement.

**ARTICLE VI  
GENERAL PROVISIONS**

**6.01. Amendment and Modification of this Master Agreement.** This Master Agreement may be amended, modified and supplemented in any and all respects, but only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Master Agreement.

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**6.02. Notices.** Unless otherwise provided herein, all notices and other communications hereunder shall be in writing and shall be deemed given when mailed, delivered personally, telecopied (which is confirmed) or sent by an overnight courier service, such as FedEx, to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

if to the Issuer, to the address appearing on the signature page hereto

if to the FDIC, to: The Federal Deposit Insurance Corporation  
Deputy Director, Receivership Operations Branch  
Division of Resolutions and Receiverships  
Attention: Master Agreement  
550 17th Street, N.W.  
Washington, DC 20429

**6.03. Counterparts.** This Master Agreement may be executed in counterparts, which, together, shall be considered one and the same agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original, executed counterparts, provided receipt of such counterparts is confirmed.

**6.04. Severability.** Any term or provision of this Master Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**6.05. Governing Law.** Federal law of the United States shall control this Master Agreement. To the extent that federal law does not supply a rule of decision, this Master Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law. Nothing in this Master Agreement will require any unlawful action or inaction by either party.

**6.06. Venue.** Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Master Agreement is to be instituted in the United States District Court in and for the District of Columbia or in any United States District Court in the jurisdiction where the Issuer's principal office is located.

**6.07. Assignment.** Neither this Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, and any purported assignment



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without such consent shall be void. Subject to the preceding sentence, this Master Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**6.08. Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Master Agreement, except the terms identified for definition in Article I and elsewhere in this Master Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Master Agreement or any provision hereof.

**6.09. Delivery Requirement.** The Issuer shall submit a completed, executed and dated copy of the signature page hereto to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the debt guarantee component of the Program in accordance with the delivery instructions set forth on the signature page.

**[SIGNATURES BEGIN ON NEXT PAGE]**

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**IN WITNESS WHEREOF**, the Issuer and the FDIC have caused this Master Agreement to be executed by their respective officers thereunto duly authorized.

**THE FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NAME OF ISSUER:**

THE GOLDMAN SACHS GROUP, INC.

By: /s/ DAVID VINIAR  
Name: David Viniar  
Chief Financial Officer

Address of Issuer: 85 Broad Street  
New York, New York 10004

FDIC Certificate Number: \_\_\_\_\_

RSSD ID or  
OTS Docket Number: 2380443

Date: 11/25/08

**Delivery Instructions**

Please deliver a completed, executed and dated copy of this Signature Page to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the Debt Guarantee Program. Email is the preferred method of delivery to MasterAgreement@fdic.gov, or you may send it by an overnight courier service such as FedEx to Senior Counsel, Special Issues Unit, E7056, Attention: Master Agreement, 3501 Fairfax Drive, Arlington, Virginia, 22226.

TLGP MASTER AGREEMENT 11/24/08

**Terms to be Included in Future Issuances of FDIC Guaranteed Senior Unsecured Debt**

The following provisions shall be included in the governing documents for the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee, in substantially the form presented below, unless otherwise specified. The appropriate name of the governing document(s) shall be inserted in place of the term "Agreement" where it appears in this Annex A.

Acknowledgement of the FDIC's Debt Guarantee Program

The parties to this Agreement acknowledge that the Issuer has not opted out of the debt guarantee program (the "**Debt Guarantee Program**") established by the Federal Deposit Insurance Corporation ("**FDIC**") under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's website, www.fdic.gov/tlgp. The expiration date of the FDIC's guarantee is the earlier of the maturity date of this debt or June 30, 2012.* [The italicized portion of the above provision shall be included exactly as written above]

Representative

The [insert name of the: trustee, administrative agent, paying agent or other fiduciary or agent to be designated as the duly authorized representative of the debt holders] is designated under this Agreement as the duly authorized representative of the holder[s] for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the "Representative"). Any holder may elect not to be represented by the Representative by providing written notice of such election to the Representative.

Subrogation

The FDIC shall be subrogated to all of the rights of the holder[s] and the Representative, if there shall be one, under this Agreement against the Issuer in respect of any amounts paid to the holder[s], or for the benefit of the holder[s], by the FDIC pursuant to the Debt Guarantee Program.

Agreement to Execute Assignment upon Guarantee Payment

[If there is a Representative, insert the following:]

The holder[s] hereby authorize the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the holder[s] pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Issuer under this Agreement on behalf of the holder[s]. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the

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FDIC shall be deemed a holder under this Agreement for all purposes hereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

[or, if (i) there is no Representative or (ii) the holder has exercised its right not to be represented by the Representative, insert the following:]

The holder[s] hereby agree that, at such time as the FDIC shall commence making any guarantee payments to the holder[s] pursuant to the Debt Guarantee Program, the holder[s] shall execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the holder[s] shall assign to the FDIC [its/their] right to receive any and all payments from the Issuer under this Agreement. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the FDIC shall be deemed a holder under this Agreement for all purposes thereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

#### Surrender of Senior Unsecured Debt Instrument to the FDIC

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Issuer is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the holder shall, or the holder shall cause the person or entity in possession to, promptly surrender to the FDIC the security certificate, note or other instrument evidencing such debt, if any.

#### Notice Obligations to FDIC of Payment Default

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Issuer is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default.

#### Ranking

Any indebtedness of the Issuer to the FDIC arising under Section 2.03 of the Master Agreement entered into by the Issuer and the FDIC in connection with the Debt Guarantee Program will constitute a senior unsecured general obligation of the Issuer, ranking *pari passu* with any indebtedness hereunder.

#### No Event of Default during Time of Timely FDIC Guarantee Payments

There shall not be deemed to be an event of default under this Agreement which would permit or result in the acceleration of amounts due hereunder, if such an event of default is due solely to the failure of the Issuer to make timely payment hereunder, provided that the FDIC is

TLGP MASTER AGREEMENT 11/24/08

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making timely guarantee payments with respect to the debt obligations hereunder in accordance with 12 C.F.R Part 370.

No Modifications without FDIC Consent

Without the express written consent of the FDIC, the parties hereto agree not to amend, modify, supplement or waive any provision in this Agreement that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement executed by the Issuer in connection with the Debt Guarantee Program.

TLGP MASTER AGREEMENT 11/24/08

ASSIGNMENT

This Assignment is made pursuant to the terms of Section 10 of the reverse of The Goldman Sachs Group, Inc.'s \_\_\_\_\_ Notes due \_\_\_\_\_, CUSIP No. \_\_\_\_\_ (the "Security"), between The Bank of New York Mellon (the "Representative"), acting on behalf of the Holder of the Security who have not opted out of representation by the Representative, and The Goldman Sachs Group, Inc. (the "Company") with respect to the debt obligations of the Company that are guaranteed under the Debt Guarantee Program. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Security. Solely for the purpose of this Assignment, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

For value received, the Representative, on behalf of the Holder (the "Assignor"), hereby assigns to the Federal Deposit Insurance Corporation (the "FDIC"), without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the Security; (b) the Senior Debt Indenture, dated July 16, 2008 (the "2008 Indenture"), by and between the Company and the Representative, with respect to the Security; and (c) any other instrument or agreement executed by the Company regarding obligations of the Company under the Security or the 2008 Indenture with respect to the Security (collectively, the "Assignment").

The Assignor hereby certifies that:

1. Without the FDIC's prior written consent, the Assignor has not:

- (a) agreed to any material amendment of the Security or to any material deviation from the provisions thereof; or
- (b) accelerated the maturity of the Security.

**[Instructions to the Assignor:** If the Assignor has not assigned or transferred any interest in the Security and related documentation, such Assignor must include the following representation.]

2. The Assignor has not assigned or otherwise transferred any interest in the Security;

**[Instructions to the Assignor:** If the Assignor has assigned a partial interest in the Security and related documentation, the Assignor must include the following representation.]

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2. The Assignor has assigned part of its rights, title and interest in the Security to \_\_\_\_\_ pursuant to the \_\_\_\_\_ agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, as assignor, and \_\_\_\_\_, as assignee, an executed copy of which is attached hereto.

The Assignor acknowledges and agrees that this Assignment is subject to the Security and the 2008 Indenture and to the following:

1. In the event the Assignor receives any payment under or related to the Security from a party other than the FDIC (a "Non-FDIC Payment"):

(a) after the date of demand for a guarantee payment on the FDIC pursuant to 12 CFR Part 370, but prior to the date of the FDIC's first guarantee payment under the Security pursuant to 12 CFR Part 370, the Assignor shall promptly but in no event later than five (5) Business Days after receipt notify the FDIC of the date and the amount of such Non-FDIC Payment and shall apply such payment as payment made by the Company, and not as a guarantee payment made by the FDIC, and therefore, the amount of such payment shall be excluded from this Assignment; and

(b) after the FDIC's first guarantee payment under the Security, the Assignor shall forward promptly to the FDIC such Non-FDIC Payment in accordance with the payment instructions provided in writing by the FDIC.

2. Acceptance by the Assignor of payment pursuant to the Debt Guarantee Program on behalf of the Holder shall constitute a release by the Holder of any liability of the FDIC under the Debt Guarantee Program with respect to such payment.

The Person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the FDIC that he/she/it is duly authorized to do so.

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IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Very truly yours,

[ASSIGNOR]

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Consented to and acknowledged by this \_\_\_day of \_\_\_\_\_, 20\_\_:

THE FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)



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**[FORM OF FIXED RATE MEDIUM-TERM NOTE, SERIES D]**

**(Face of Security)**

**[IF A GLOBAL SECURITY, INSERT — THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE 2008 INDENTURE AS DEFINED ON THE REVERSE OF THIS SECURITY AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE 2008 INDENTURE AND THIS SECURITY.]**

**[IF DTC IS THE DEPOSITARY, INSERT — UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE GOLDMAN SACHS GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]**

**[INSERT ANY LEGEND REQUIRED BY THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER.]**

**[INSERT ANY LEGEND REQUIRED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND THE REGULATIONS THEREUNDER.]**

**THIS SECURITY IS GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE RIGHTS OF THE HOLDER OF THIS SECURITY ARE SUBJECT TO CERTAIN RIGHTS OF THE FDIC, AS AND TO THE EXTENT INDICATED IN THIS SECURITY, INCLUDING SECTIONS 8, 10, 11, 12, 13, 14, 15, 16 AND 17 ON THE REVERSE HEREOF.**

(Face of Security continued on next page)

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CUSIP No. \_\_\_\_\_

THE GOLDMAN SACHS GROUP, INC.  
MEDIUM-TERM NOTES, SERIES D  
(Fixed Rate Security)

**PRINCIPAL AMOUNT:**

**STATED MATURITY DATE:**

**SPECIFIED CURRENCY:** U.S. dollars for all payments unless otherwise specified below:

- payments of principal and any premium:
- payments of interest:

**EXCHANGE RATE AGENT:**

**INTEREST RATE:** \_\_\_ % per annum

**INTEREST PAYMENT DATE(S):**

**ORIGINAL ISSUE DATE\*:**

**ORIGINAL ISSUE DISCOUNT SECURITY:**

- Total Amount of OID:
- Yield to Maturity:
- Initial Accrual Period OID:

**REDEMPTION COMMENCEMENT DATE:**

**REPAYMENT DATE(S):**

**REDEMPTION OR REPAYMENT PRICE(S):**

**DEFEASANCE:**

- Full Defeasance:
- Covenant Defeasance:

**OTHER TERMS:**

Terms left blank or marked "N/A", "No", "None" or in a similar manner do not apply to this Security except as otherwise may be specified.

Whenever used in this Security, the terms specified above that apply to this Security have the meanings specified above, unless the context requires otherwise. Other terms used in this Security that are not defined herein but that are defined in the 2008 Indenture referred to in Section 1 on the reverse of this Security are used herein as defined therein.

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\* This date shall be the issue date of this Security, unless there is a Predecessor Security, in which case this date shall be the issue date of the first Predecessor Security.

(Face of Security continued on next page)

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The Goldman Sachs Group, Inc., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the “Company”, which term includes any successor Person under the 2008 Indenture (as defined on the reverse of this Security)), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, as principal the Principal Amount on the Stated Maturity Date and to pay interest thereon, from the Original Issue Date or from the most recent Interest Payment Date to which interest has been paid or made available for payment, on the Interest Payment Date(s) in each year, commencing on the first such date that is at least 15 calendar days after the Original Issue Date, and at the Maturity of the principal hereof, at a rate per annum equal to the Interest Rate specified on the face hereof, until the principal hereof is paid or made available for payment. Any premium and any such installment of interest that is overdue at any time shall also bear interest (to the extent that the payment of such interest shall be legally enforceable) at the rate per annum at which the principal then bears interest, from the date any such overdue amount first becomes due until it is paid or made available for payment. Notwithstanding the foregoing, interest on any principal, premium or installment of interest that is overdue shall be payable on demand.

The interest so payable, and punctually paid or made available for payment, on any Interest Payment Date will, as provided in the 2008 Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the 15th calendar day (whether or not a Business Day, as such term is defined in Section 3 on the reverse hereof) next preceding such Interest Payment Date (a “Regular Record Date”); provided, however, if this Security is a Global Security, a Regular Record Date will instead occur on the fifth Business Day preceding such Interest Payment Date. Any interest so payable, but not punctually paid or made available for payment, on any Interest Payment Date will forthwith cease to be payable to the Holder on such Regular Record Date and such Defaulted Interest may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to the Holder of this Security not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the 2008 Indenture. For the purpose of determining a Holder at the close of business on any relevant record date when business is not conducted, the close of business will mean 5:00 P.M., New York City time, on that day.

The Company and the Trustee acknowledge that the Company has not opted out of the debt guarantee program (the “Debt Guarantee Program”) established by the Federal Deposit Insurance Corporation (“FDIC”) under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations,*

(Face of Security continued on next page)

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12 CFR Part 370, and at the FDIC's website, [www.fdic.gov/tlgp](http://www.fdic.gov/tlgp). The expiration date of the FDIC's guarantee is the earlier of the maturity date of this debt or June 30, 2012.

The Trustee is hereby designated as the duly authorized representative of the Holder for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the "Representative"). The Holder of this Security may elect not to be represented by the Representative with respect to this Security by providing written notice of such election to the Representative.

Notwithstanding any provision of this Security, any right of the Holder to receive payment in respect of this Security under the Debt Guarantee Program shall be subject to the procedures and other requirements of the Debt Guarantee Program, and the Holder will not be entitled under the Debt Guarantee Program to receive any additional interest or penalty amounts on account of any default or resulting delay in payment in respect of this Security.

***Currency of Payment***

Payment of principal of (and premium, if any) and interest on this Security will be made in the Specified Currency for such payment, except as provided in this and the next three paragraphs. The Specified Currency for any payment shall be the currency specified as such on the face of this Security unless, at the time of such payment, such currency is not legal tender for the payment of public and private debts in the country issuing such currency on the Original Issue Date, in which case the Specified Currency for such payment shall be such coin or currency as at the time of such payment is legal tender for the payment of public and private debts in such country, except as provided in the next sentence. If the euro is specified on the face of this Security as the Specified Currency for any payment, the Specified Currency for such payment shall be such coin or currency as at the time of payment is legal tender for the payment of public and private debts in all EMU Countries (as defined in Section 3 on the reverse hereof), provided that, if on any day there are not at least two EMU Countries, or if on any day there are at least two EMU Countries but no coin or currency is legal tender for the payment of public and private debts in all EMU Countries, then the Specified Currency for such payment shall be deemed not to be available to the Company on such day.

Except as provided in the next paragraph, any payment to be made on this Security in a Specified Currency other than U.S. dollars will be made in U.S. dollars if the Person entitled to receive such payment transmits a written request for such payment to be made in U.S. dollars to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the payment is to be made. Such written request may be mailed, hand delivered, telecopied or delivered in any other manner approved by the Trustee. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request

(Face of Security continued on next page)

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is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date.

The U.S. dollar amount of any payment made pursuant to the immediately preceding paragraph will be determined by the Exchange Rate Agent based upon the highest bid quotation received by the Exchange Rate Agent as of 11:00 A.M., New York City time, on the second Business Day preceding the applicable payment date, from three (or, if three are not available, then two) recognized foreign exchange dealers selected by the Exchange Rate Agent in The City of New York, in each case for the purchase by the quoting dealer, for U.S. dollars and for settlement on such payment date of an amount of such Specified Currency for such payment equal to the aggregate amount of such Specified Currency payable on such payment date to all Holders of this Security who elect to receive U.S. dollar payments on such payment date, and at which the applicable dealer commits to execute a contract. If the Exchange Rate Agent determines that two such bid quotations are not available on such second Business Day, such payment will be made in the Specified Currency for such payment. All currency exchange costs associated with any payment in U.S. dollars on this Security will be borne by the Holder entitled to receive such payment, by deduction from such payment.

Notwithstanding the foregoing, if any amount payable on this Security is payable on any day (including at Maturity) in a Specified Currency other than U.S. dollars, and if such Specified Currency is not available to the Company on the two Business Days before such day, due to the imposition of exchange controls, disruption in a currency market or any other circumstances beyond the control of the Company, the Company will be entitled to satisfy its obligation to pay such amount in such Specified Currency by making such payment in U.S. dollars. The amount of such payment in U.S. dollars shall be determined by the Exchange Rate Agent on the basis of the noon buying rate for cable transfers in The City of New York, for such Specified Currency (the "Exchange Rate") as of the latest day before the day on which such payment is to be made. Any payment made under such circumstances in U.S. dollars where the required payment is in other than U.S. dollars will not constitute an Event of Default under the 2008 Indenture or this Security.

***Manner of Payment – U.S. Dollars***

Except as provided in the next paragraph, payment of any amount payable on this Security in U.S. dollars will be made at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose), against surrender of this Security in the case of any payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date); provided, however, that,

(Face of Security continued on next page)

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at the option of the Company and subject to the next paragraph, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Payment of any amount payable on this Security in U.S. dollars will be made by wire transfer of immediately available funds to an account maintained by the payee with a bank located in the Borough of Manhattan, The City of New York, if (i) the principal of this Security is at least \$1,000,000 (or the equivalent in another currency) and (ii) the Holder entitled to receive such payment transmits a written request for such payment to be made in such manner to the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, on or before the fifth Business Day before the day on which such payment is to be made; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Any such request made with respect to any payment on this Security payable to a particular Holder will remain in effect for all later payments on this Security payable to such Holder, unless such request is revoked on or before the fifth Business Day before a payment is to be made, in which case such revocation shall be effective for such payment and all later payments. In the case of any payment of interest payable on an Interest Payment Date, such written request must be made by the Person who is the registered Holder of this Security on the relevant Regular Record Date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.

***Manner of Payment – Other Specified Currencies***

Payment of any amount payable on this Security in a Specified Currency other than U.S. dollars will be made by wire transfer of immediately available funds to such account as is maintained in such Specified Currency at a bank or other financial institution acceptable to the Company and the Trustee and as shall have been designated at least five Business Days prior to the applicable payment date by the Person entitled to receive such payment; provided that, in the case of any such payment due at the Maturity of the principal hereof (other than any payment of interest that first becomes due on an Interest Payment Date), this Security must be surrendered at the office or agency of the Company maintained for that purpose in The City of New York (or at any other office or agency maintained by the Company for that purpose) in time for the Paying Agent to make such payment in such funds in accordance with its normal procedures. Such account designation shall be made by transmitting the appropriate information to the Trustee at its Corporate Trust Office in the Borough of Manhattan, The City of New

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York, by mail, hand delivery, telecopier or in any other manner approved by the Trustee. Unless revoked, any such account designation made with respect to this Security by the Holder hereof will remain in effect with respect to any further payments with respect to this Security payable to such Holder. If a payment in a Specified Currency other than U.S. dollars with respect to this Security cannot be made by wire transfer because the required account designation has not been received by the Trustee on or before the requisite date or for any other reason, the Company will cause a notice to be given to the Holder of this Security at its registered address requesting an account designation pursuant to which such wire transfer can be made and such payment will be made within five Business Days after the Trustee's receipt of such a designation meeting the requirements specified above, with the same force and effect as if made on the due date. The Company will pay any administrative costs imposed by banks in connection with making payments by wire transfer with respect to this Security, but any tax, assessment or other governmental charge imposed upon any payment will be borne by the Holder of this Security and may be deducted from the payment by the Company or the Paying Agent.

***Manner of Payment – Global Securities***

Notwithstanding any provision of this Security or the 2008 Indenture, if this Security is a Global Security, the Company may make any and all payments of principal, premium and interest on this Security pursuant to the Applicable Procedures of the Depository for this Security as permitted in the 2008 Indenture.

***Payments Due on a Business Day***

Unless otherwise specified on the face of this Security, the following sentence shall apply to this Security. Notwithstanding any provision of this Security or the 2008 Indenture, if any amount of principal, premium or interest would otherwise be due on this Security on a day (the "Specified Day") that is not a Business Day, such amount may be paid or made available for payment on the Business Day that is next succeeding the Specified Day with the same force and effect as if such amount were paid on the Specified Day, and no interest will accrue on the amount so payable for the period from the Specified Day to such next succeeding Business Day. The provisions of this paragraph shall apply to this Security in lieu of the provisions of Section 1.13 of the 2008 Indenture.

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Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

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Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the 2008 Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

This is one of the Securities of the series designated herein and referred to in the 2008 Indenture.

Dated:

THE BANK OF NEW YORK MELLON, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

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(Reverse of Security)

**1. *Securities and Indenture***

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”) issued and to be issued in one or more series under a Senior Debt Indenture, dated as of July 16, 2008 (herein called the “2008 Indenture”, which term shall have the meaning assigned to it in such instrument), between the Company and The Bank of New York Mellon, as Trustee (herein called the “Trustee”, which term includes any successor trustee under the 2008 Indenture), and reference is hereby made to the 2008 Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

**2. *Series and Denominations***

This Security is one of the series designated on the face hereof, limited to an aggregate principal amount (or the equivalent thereof in any other currency or currencies or currency units) as shall be determined and may be increased from time to time by the Company. References herein to “this series” mean the series of Securities designated on the face hereof.

The Securities of this series are issuable only in registered form without coupons in “Authorized Denominations”, which term shall have the following meaning. For each Security of this series having a principal amount payable in U.S. dollars, the Authorized Denominations shall be \$1,000 and integral multiples of \$1,000 in excess thereof. For each Security of this series having a principal amount payable in a Specified Currency other than U.S. dollars, the Authorized Denominations shall be the amount of such Specified Currency equivalent, at the Exchange Rate on the first Business Day next preceding the date on which the Company accepts the offer to purchase such Security, to \$1,000 or any integral multiples of \$1,000 in excess thereof.

**3. *Exchange Rate Agent and Related Terms***

If the principal of or interest on this Security is payable in a Specified Currency other than U.S. dollars, the Company has initially appointed the institution named on the face of this Security as Exchange Rate Agent to act as such agent with respect to this Security, but the Company may, in its sole discretion, appoint any other institution (including any Affiliate of the Company) to serve as any such agent from time to time. The Company will give the Trustee prompt written notice of any change in any such appointment. Insofar as this Security provides for any such agent to obtain rates, quotes or other data from a bank, dealer or other institution for use in making any determination hereunder, such agent may do so from any institution or institutions of the

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kind contemplated hereby notwithstanding that any one or more of such institutions are such agent, Affiliates of such agent or Affiliates of the Company.

All determinations made by the Exchange Rate Agent may be made by such agent in its sole discretion and, absent manifest error, shall be conclusive for all purposes and binding on the Holder of this Security and the Company. The Exchange Rate Agent shall not have any liability therefor.

Unless otherwise specified on the face hereof, for all purposes of this Security, the term “Business Day” means each Monday, Tuesday, Wednesday, Thursday or Friday that (i) is not a day on which banking institutions in The City of New York generally are authorized or obligated by law, regulation or executive order to close, (ii) if the Specified Currency for any payment on this Security is other than U.S. dollars or euros, is not a day on which banking institutions in the principal financial center of the country issuing such Specified Currency generally are authorized or obligated by law, regulation or executive order to close, (iii) if the Specified Currency for any payment on this Security is euros, is not a Euro Business Day and (iv) solely with respect to any payment or other action to be made or taken at any Place of Payment outside The City of New York, is a Monday, Tuesday, Wednesday, Thursday or Friday that is not a day on which banking institutions in such Place of Payment generally are authorized or obligated by law, regulation or executive order to close. “Euro Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday on which the Trans-European Automated Real-Time Gross Settlement Express (TARGET) System, or any successor system, is open for business. With respect to Section 13 of the reverse hereof and Exhibit B hereto, the definition of “Business Day” therein shall apply.

References in this Security to U.S. dollars shall mean, as of any time, the coin or currency that is then legal tender for the payment of public and private debts in the United States of America.

References in this Security to the euro shall mean, as of any time, the coin or currency (if any) that is then legal tender for the payment of public and private debts in all EMU Countries. “EMU Countries” means, at any time, the countries (if any) then participating in the European Economic and Monetary Union (or any successor union) pursuant to the Treaty on European Union of February 1992 (or any successor treaty), as it may be amended from time to time.

References in this Security to a particular currency other than U.S. dollars and euros shall mean, as of any time, the coin or currency that is then legal tender for the payment of public and private debts in the country issuing such currency on the Original Issue Date.

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#### 4. *Redemption*

Unless a Redemption Commencement Date is specified on the face hereof, this Security shall not be redeemable at the option of the Company before the Stated Maturity Date. If a Redemption Commencement Date is so specified, and unless otherwise specified on the face hereof, this Security is subject to redemption upon not less than 30 days' nor more than 60 days' notice at any time and from time to time on or after the Redemption Commencement Date, in each case as a whole or in part, at the election of the Company and at the applicable Redemption Price specified on the face hereof (expressed as a percentage of the principal amount of this Security to be redeemed), together with accrued interest to the Redemption Date, but interest installments due on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant record date, all as provided in the 2008 Indenture.

#### 5. *Repayment at the Holder's Option*

Except as otherwise may be provided on the face hereof, if one or more Repayment Dates are specified on the face hereof, this Security will be repayable in whole or in part in an amount equal to any Authorized Denomination (provided that the remaining principal amount of any Security surrendered for partial repayment shall at least equal an Authorized Denomination), on any such Repayment Date, in each case at the option of the Holder and at the applicable Repayment Price specified on the face hereof (expressed as a percentage of the principal amount to be repaid), together with accrued interest to the applicable Repayment Date (but interest installments due on or prior to such Repayment Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Regular Record Date as provided in the 2008 Indenture). If this Security provides for more than one Repayment Date and the Holder exercises its option to elect repayment, the Holder shall be deemed to have elected repayment on the earliest Repayment Date after all conditions to such exercise have been satisfied, and references herein to the "applicable Repayment Date" shall mean such earliest Repayment Date.

In order for the exercise of such option to be effective and this Security to be repaid, the Company must receive at the applicable address of the Trustee set forth below (or at such other place or places of which the Company shall from time to time notify the Holder of this Security), on any Business Day not later than the 15th, and not earlier than the 25th, calendar day prior to the applicable Repayment Date (or, if either such calendar day is not a Business Day, the next succeeding Business Day), either (i) this Security, with the form below entitled "Option to Elect Repayment" duly completed and signed, or (ii) a facsimile transmission or letter from a member of a national securities exchange or the Financial Industry Regulatory Authority, Inc., a commercial bank or a trust company in the United States of America setting forth (a) the name, address and telephone number of the Holder of this Security, (b) the principal amount of

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this Security and the amount of this Security to be repaid, (c) a statement that the option to elect repayment is being exercised thereby and (d) a guarantee stating that the Company will receive this Security, with the form below entitled "Option to Elect Repayment" duly completed and signed, not later than five Business Days after the date of such facsimile transmission or letter (provided that this Security and form duly completed and signed are received by the Company by such fifth Business Day). Any such election shall be irrevocable. The address to which such deliveries are to be made is The Bank of New York Mellon, Attention: Corporate Trust Administration, 101 Barclay Street, 4E, New York, New York 10286 (or at such other places as the Company or the Trustee shall notify the Holder of this Security). All questions as to the validity, eligibility (including time of receipt) and acceptance of any Security for repayment will be determined by the Company, whose determination will be final and binding. Notwithstanding the foregoing, (x) if this Security is a Global Security, the option of the Holder to elect repayment may be exercised in accordance with the Applicable Procedures of the Depositary for this Security at least 15 calendar days prior to the applicable Repayment Date and (y) whether or not this Security is a Global Security, the option of the Holder to elect repayment may be exercised in any such manner as the Company may approve.

#### **6. *Transfer and Exchange***

As provided in the 2008 Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of Authorized Denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the 2008 Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor, of a different Authorized Denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or

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not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

If this Security is a Global Security, this Security shall be subject to the provisions of the 2008 Indenture relating to Global Securities, including the limitations in Section 3.05 thereof on transfers and exchanges of Global Securities (subject to Section 11 of the reverse of this Security).

#### **7. *Defeasance***

The 2008 Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the 2008 Indenture. If so specified on the face hereof, either or both of such provisions are applicable to this Security, as so specified.

#### **8. *Remedies***

Sections 5.01 and 5.02 of the 2008 Indenture are hereby amended with respect to the Securities of this series to the extent necessary to comply with Section 5.01 and Annex A of the Master Agreement, dated November 25, 2008, as the same may be amended from time to time (the "Master Agreement"), by and between the Company and the FDIC, attached hereto as Exhibit A. Subject to the immediately preceding sentence and Section 15 of the reverse of this Security, if an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the 2008 Indenture.

As provided in and subject to the provisions of the 2008 Indenture and subject to Section 15 of the reverse of this Security, the Holder of this Security shall not have the right to institute any proceeding with respect to the 2008 Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

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If so provided pursuant to the terms of any specific Securities, the above-referenced provisions of the 2008 Indenture regarding the ability of Holders to waive certain defaults, or to request the Trustee to institute proceedings (or to give the Trustee other directions) in respect thereof, may be applied differently with regard to such Securities.

No reference herein to the 2008 Indenture and no provision of this Security or of the 2008 Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

**9. *Modification and Waiver***

The 2008 Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company, and the rights of the Holders of the Securities to be affected, under the 2008 Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of all Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any series, may comprise fewer than all the Securities of such series). The 2008 Indenture also contains provisions (i) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding to be affected, considered together as one class for this purpose (such affected Securities may be Securities of the same or different series and, with respect to any particular series, may comprise fewer than all the Securities of such series), on behalf of the Holders of all such affected Securities, to waive compliance by the Company with certain provisions of the 2008 Indenture and (ii) permitting the Holders of a majority in principal amount of the Securities at the time Outstanding of any series to be affected (with each such series considered separately for this purpose), on behalf of the Holders of all Securities of such series, to waive certain past defaults under the 2008 Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

**10. *Subrogation***

The FDIC shall be subrogated to all of the rights of the Holder and the Representative under this Security and the 2008 Indenture against the Company in respect of any amounts paid to the Holder, or for the benefit of the Holder, by the FDIC pursuant to the Debt Guarantee Program.

(Reverse of Security continued on next page)



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**11. *Agreement to Execute Assignment upon Guarantee Payment***

The Holder hereby authorizes the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the Holder pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Security as Exhibit B pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Company under this Security on behalf of the Holder. The Company hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Security and upon any such assignment, the FDIC shall be deemed the Holder of this Security for all purposes hereof, and the Company hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Security and the 2008 Indenture as a result of such assignment.

Section 3.05 of the 2008 Indenture is hereby amended with respect to the Securities of this series to the extent necessary to permit the Holder, the Representative and the Company to comply with this Section 11, Section 12 below or any other similar provision of this Security.

**12. *Surrender of Senior Unsecured Debt Instrument to the FDIC***

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Company is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the Holder shall, or the Holder shall cause the person or entity in possession to, promptly surrender to the FDIC this Security.

**13. *Notice Obligations to FDIC of Payment Default***

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Company is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default. Solely for the purpose of this Section 13, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

**14. *Ranking***

Any indebtedness of the Company to the FDIC arising under Section 2.03 of the Master Agreement will constitute a senior unsecured general obligation of the Company, ranking pari passu with any indebtedness hereunder.

(Reverse of Security continued on next page)

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**15. *No Event of Default during Time of Timely FDIC Guarantee Payments***

There shall not be deemed to be an Event of Default under this Security or the 2008 Indenture which would permit or result in the acceleration of amounts due hereunder, if such an Event of Default is due solely to the failure of the Company to make timely payment hereunder, provided that the FDIC is making timely guarantee payments with respect to this Security in accordance with 12 C.F.R Part 370.

The following provisions of this paragraph shall apply to this Security in addition to, and without limiting, the foregoing provisions of this Section 15. No event that would otherwise constitute an Event of Default with respect to the Securities of this series shall constitute an Event of Default with respect to this Security, provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. As a result, upon the occurrence of any such event (including any event of the kind specified in said Section 5.01), neither the Trustee nor the Holder of this Security shall be entitled, with respect to this Security, to seek any remedies otherwise available, or to take any other action otherwise provided for, under the 2008 Indenture upon an Event of Default (including any right to accelerate the Maturity of the principal of this Security pursuant to Section 5.02 of the 2008 Indenture, any right to exchange (at the Holder's option) this Security for a Security that is not a Global Security pursuant to Section 3.05 thereof and any right to institute a proceeding pursuant to Section 5.07 thereof), provided that, if any amounts of principal or interest are due in respect of this Security and have not been paid (or made available for payment), the FDIC is making timely guarantee payments of such amounts in accordance with 12 C.F.R Part 370. Without limiting the foregoing, no event, including any event of the kind specified in Section 5.01(5) or 5.01(6) of the 2008 Indenture, shall result in the automatic acceleration of the Maturity of the principal of this Security pursuant to Section 5.02 thereof. Notwithstanding the foregoing, however, the rights of the Holder of this Security pursuant to Section 5.08 of the 2008 Indenture shall not be affected by this Section 15. With regard to this Security, the provisions of Article Five of the 2008 Indenture shall be subject to, and shall be deemed modified as necessary to be consistent with, the provisions of this Section 15.

**16. *No Modifications without FDIC Consent***

Without the express written consent of the FDIC, the Company and the Trustee agree not to amend, modify, supplement or waive any provision in this Security or the 2008 Indenture that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement.

(Reverse of Security continued on next page)

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**17. Demand Obligations to FDIC upon the Company's Failure to Pay**

On the 30th day after the date the Company defaults in payment of interest on this Security, which default has not been cured by the Company by such 30th day, in the case of default in interest, or at the Maturity, in the case of default in principal of this Security, the Representative shall make a demand on behalf of the Holder to the FDIC for payment on the guaranteed amount under the Debt Guarantee Program. Such demand shall be accompanied by a proof of claim, which shall include evidence, to the extent not previously provided in the Master Agreement, in form and content satisfactory to the FDIC, of: (A) the Representative's financial and organizational capacity to act as Representative; (B) the Representative's exclusive authority to act on behalf of the Holder and its fiduciary responsibility to the Holder when acting as such, as established by the terms of this Security and the 2008 Indenture; (C) the occurrence of a payment default; and (D) the authority to make an assignment of the Holder's right, title, and interest in this Security to the FDIC and to effect the transfer to the FDIC of the Holder's claim in any insolvency proceeding. Such assignment shall include the right of the FDIC to receive any and all distributions on this Security from the proceeds of the receivership or bankruptcy estate. Any demand under this Section 17 shall be made in writing and directed to the Director, Division of Resolution and Receiverships, Federal Deposit Insurance Corporation, Washington, D.C., and shall include all supporting evidences as provided in this Section 17, and shall certify to the accuracy thereof.

**18. Governing Law**

**This Security and the 2008 Indenture shall be governed by and construed in accordance with the laws of the State of New York.**

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CUSIP NO. \_\_\_\_\_

ORIGINAL ISSUE DATE: \_\_\_\_\_

THE GOLDMAN SACHS GROUP, INC.  
MEDIUM-TERM NOTE, SERIES D

*OPTION TO ELECT REPAYMENT*

TO BE COMPLETED ONLY IF THIS SECURITY IS REPAYABLE  
AT THE OPTION OF THE HOLDER AND THE HOLDER  
ELECTS TO EXERCISE SUCH RIGHT

The undersigned hereby irrevocably requests and instructs the Company to repay the Security referred to in this notice (or the portion thereof specified below) at the applicable Repayment Price, together with interest to the Repayment Date, all as provided for in such Security, to the undersigned, whose name, address and telephone number are as follows:

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(please print name of the undersigned)

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(please print address of the undersigned)

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(please print telephone number of the undersigned)

If such Security provides for more than one Repayment Date, the undersigned requests repayment on the earliest Repayment Date after the requirements for exercising this option have been satisfied, and references in this notice to the Repayment Date mean such earliest Repayment Date. Terms used in this notice that are defined in such Security are used herein as defined therein.

For such Security to be repaid the Company must receive at the applicable address of the Trustee set forth below or at such other place or places of which the Company or the Trustee shall from time to time notify the Holder of such Security, any Business Day not later than the 15th or earlier than the 25th calendar day prior to the Repayment Date (or, if either such calendar day is not a Business Day, the next succeeding Business Day), (i) such Security, with this "Option to Elect Repayment" form duly completed and signed, or (ii) a facsimile transmission or letter from a member of a national securities exchange or the Financial Industry Regulatory Authority, Inc., a commercial bank or a trust company in the United States of America setting forth (a) the name, address and telephone number of the Holder of such Security, (b) the principal amount of such Security and the amount of such Security to be repaid, (c) a statement that the option to elect repayment is being exercised thereby and (d) a guarantee stating that such Security to be repaid with the form entitled "Option to Elect Repayment" on the addendum to the Security duly completed and signed will be received by the Company not later than five Business Days after the date of such facsimile transmission or letter (provided that such Security and form duly completed and signed are received by the

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Company by such fifth Business Day). The address to which such deliveries are to be made is:

The Bank of New York Mellon  
Attention: Corporate Trust Administration  
101 Barclay Street, 4E  
New York, New York 10286

or at such other place as the Company or the Trustee shall notify the Holder of such Security.

If less than the entire principal amount of such Security is to be repaid, specify the portion thereof (which shall equal any Authorized Denomination) that the Holder elects to have repaid:

\_\_\_\_\_

and specify the denomination or denominations (which shall equal any Authorized Denomination) of the Security or Securities to be issued to the Holder in respect of the portion of such Security not being repaid (in the absence of any specification, one Security will be issued in respect of the portion not being repaid):

Date: \_\_\_\_\_

\_\_\_\_\_  
Notice: The signature to this Option to Elect Repayment must correspond with the name of the Holder as written on the face of such Security in every particular without alteration or enlargement or any other change whatsoever.



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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto

---

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
/ \_\_\_\_\_ /

---

(Please Print or Typewrite Name and Address  
Including Postal Zip Code of Assignee)

---

the attached Security and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_

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to transfer said Security on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

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NOTICE: Signature must be guaranteed.

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NOTICE: The signature to this assignment must correspond with the name of the Holder as written upon the face of the attached Security in every particular, without alteration or enlargement or any change whatever.

**MASTER AGREEMENT**  
FEDERAL DEPOSIT INSURANCE CORPORATION  
TEMPORARY LIQUIDITY GUARANTEE PROGRAM — DEBT GUARANTEE PROGRAM

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TLGP MASTER AGREEMENT 11/24/08



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## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (this "Master Agreement") is being entered into as of the date set forth on the signature page hereto by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized under the laws of the United States of America and having its principal office in Washington, D.C. (the "FDIC"), and the entity whose name appears on the signature page hereto (the "Issuer").

### RECITALS

**WHEREAS**, on November 21, 2008, the FDIC issued its Final Rule, 12 C.F.R. Part 370 (as may be amended from time to time, the "Rule"), establishing the Temporary Liquidity Guarantee Program (the "Program"); and

**WHEREAS**, pursuant to the Rule, the FDIC will guarantee the payment of certain newly-issued "senior unsecured debt" (as defined in the Rule, hereinafter "Senior Unsecured Debt") issued by an "eligible entity" (as defined in the Rule); and

**WHEREAS**, the Issuer is an eligible entity for purposes of the Rule and has elected to participate in the debt guarantee component of the Program.

### ARTICLE I DEFINITIONS

**1.01. Certain Defined Terms.** As used in this Master Agreement, the following terms shall have the following meanings:

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

"FDIC" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"FDIC Guarantee" means the guarantee of payment by the FDIC of the Senior Unsecured Debt of the Issuer in accordance with the terms of the Program.

"Guarantee Payment" means any payment made by the FDIC under the Program with respect to Senior Unsecured Debt of the Issuer.

"Guarantee Payment Notice" has the meaning ascribed to such term in Section 2.02.

"Issuer" has the meaning ascribed to such term in the introductory paragraph to this Master Agreement.

"Issuer Make-Whole Payments" has the meaning ascribed to such term in Section 2.03.

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“Issuer Reports” means reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that the Issuer or any subsidiary of the Issuer is required to file with any governmental entity.

“Master Agreement” means this Master Agreement, together with all Annexes and amendments hereto.

“Material Adverse Effect” means a material adverse effect on the business, results of operations or financial condition of the Issuer and its consolidated subsidiaries taken as a whole.

“Program” has the meaning ascribed to such term in the Recitals.

“Reimbursement Payment” has the meaning ascribed to such term in Section 2.03.

“Relevant Provision” means any provision that is related to the principal, interest, payment, default or ranking of the Senior Unsecured Debt, any provision contained in Annex A or any other provision the amendment of which would require the consent of any or all of the holders of such debt.

“Representative” means the trustee, administrative agent, paying agent or other fiduciary or agent designated as the “Representative” under the governing documents for any Senior Unsecured Debt of the Issuer subject to the FDIC Guarantee for purposes of submitting claims or taking other actions under the Program.

“Rule” has the meaning ascribed to such term in the Recitals.

“Senior Unsecured Debt” has the meaning ascribed to such term in the Recitals.

**1.02. Terms Generally.** Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Master Agreement and not to any particular provision of this Master Agreement, and Article, Section and paragraph references are to the Articles, Sections and paragraphs of this Master Agreement unless otherwise specified, and the word “including” and words of similar import when used in this Master Agreement shall mean “including, without limitation”, unless otherwise specified.

## ARTICLE II SENIOR DEBT GUARANTEE

**2.01. Acknowledgement of Guarantee.** The FDIC hereby acknowledges that the Issuer has elected to participate in the debt guarantee component of the Program and that, as a result, the Issuer’s Senior Unsecured Debt is guaranteed by the FDIC to the extent set forth in, and subject to the provisions of, the Rule, and subject to the terms hereof.

**2.02. Guarantee Payments.** The Issuer understands and acknowledges that any Guarantee Payment with respect to a particular issue of Senior Unsecured Debt shall be paid by the FDIC directly to:

- 
- (a) the Representative with respect to such Senior Unsecured Debt if a Representative has been designated; or
  - (b) the registered holder(s) of such Senior Unsecured Debt if no Representative has been designated; or
  - (c) any registered holder of such Senior Unsecured Debt who has opted out of being represented by the designated Representative;

in each case, pursuant to the claims procedure set forth in the Rule. In no event shall the FDIC make any Guarantee Payment to the Issuer directly. The FDIC will provide prompt written notice to the Issuer of any Guarantee Payment made by the FDIC with respect to any of the Issuer's Senior Unsecured Debt (the "Guarantee Payment Notice").

**2.03. Issuer Make-Whole Payments.** In consideration of the FDIC providing the FDIC Guarantee with respect to the Senior Unsecured Debt of the Issuer, the Issuer hereby irrevocably and unconditionally covenants and agrees:

(a) to reimburse the FDIC immediately upon receipt of the Guarantee Payment Notice for all Guarantee Payments set forth in the Guarantee Payment Notice (the "Reimbursement Payment") (without duplication of any amounts actually received by the FDIC as subrogee or assignee under the governing documents of the relevant Senior Unsecured Debt of the Issuer);

(b) beginning as of the date of the Issuer's receipt of the Guarantee Payment Notice, to pay interest on any unpaid Reimbursement Payments until such Reimbursement Payments shall have been paid in full by the Issuer, at an interest rate equal to one percent (1%) per annum above the non-default interest rate payable on the Senior Unsecured Debt with respect to which the relevant Guarantee Payments were made, as calculated in accordance with the documents governing such Senior Unsecured Debt; and

(c) to reimburse the FDIC for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of the Issuer's payment obligations hereunder. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the FDIC's agents, counsel, accountants and experts.

Clauses (a), (b) and (c) above are collectively referred to herein as the "Issuer Make-Whole Payments". The indebtedness of the Issuer to the FDIC arising under this Section 2.03 constitutes a senior unsecured general obligation of the Issuer, ranking *pari passu* with other senior unsecured indebtedness of the Issuer, including without limitation Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

**2.04. Waiver of Defenses.** The Issuer hereby waives any defenses it might otherwise have to its payment obligations under any of the Issuer's Senior Unsecured Debt or under Section 2.03 hereof, in each case beginning at such time as the FDIC has made any Guarantee

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Payment with respect to such Senior Unsecured Debt and continuing until such time as all Issuer Make-Whole Payments have been received by the FDIC.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

**3.01. Organization and Authority.** The Issuer has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, except as has not had, or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**3.02. Authorization, Enforceability.**

(a) The Issuer has the power and authority to execute and deliver this Master Agreement and to carry out its obligations hereunder. The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Issuer, and no further approval or authorization is required on the part of the Issuer. This Master Agreement is a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(b) The execution, delivery and performance by the Issuer of this Master Agreement and the consummation of the transactions contemplated hereby and compliance by the Issuer with the provisions hereof, will not (i) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Issuer or any subsidiary of the Issuer under, any of the terms, conditions or provisions of, as applicable, (X) its organizational documents or (Y) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Issuer or any subsidiary of the Issuer may be bound, or to which the Issuer or any subsidiary of the Issuer may be subject, or (ii) violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Issuer or any subsidiary of the Issuer or any of their respective properties or assets except, in the case of clauses (i)(Y) and (ii), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(c) No prior notice to, filing with, exemption or review by, or authorization, consent or approval of, any governmental entity is required to be made or obtained by the Issuer in connection with the execution of this Master Agreement, except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals which have been made or obtained

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or the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**3.03. Reports.** Since December 31, 2007, the Issuer and each subsidiary of the Issuer has timely filed all Issuer Reports and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not individually or in the aggregate have a Material Adverse Effect. As of their respective dates of filing, the Issuer Reports complied in all material respects with all statutes and applicable rules and regulations of all applicable governmental entities. In the case of each such Issuer Report filed with or furnished to the Securities and Exchange Commission, if any, such Issuer Report (a) did not, as of its date, or if amended prior to the date of this Master Agreement, as of the date of such amendment, contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, (b) complied as to form in all material respects with all applicable requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and (c) no executive officer of the Issuer or any subsidiary of the Issuer has failed in any respect to make the certifications required by him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002. With respect to all other Issuer Reports, the Issuer Reports were complete and accurate in all material respects as of their respective dates.

#### **ARTICLE IV NOTICE AND REPORTING**

**4.01. Reports of Existing and Future Guaranteed Debt.** The Issuer shall provide reports to the FDIC of the amount of all Senior Unsecured Debt subject to the FDIC Guarantee in accordance with the reporting requirements of the Rule.

**4.02. On-going Reporting.** The Issuer covenants and agrees that, for so long as it has outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee, it shall furnish or cause to be furnished to the FDIC (a) monthly reports, in such form as specified by the FDIC, containing information relating to the Issuer's outstanding Senior Unsecured Debt that is subject to the FDIC Guarantee and such other information as may be requested in such form, and (b) such other information that the FDIC may reasonably request, such other information to be delivered within ten (10) Business Days of receipt by the Issuer of any such request.

**4.03. Notice of Defaults.** The Issuer covenants and agrees that it shall notify the FDIC within one (1) Business Day of any default in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of the Issuer (including debt that is not subject to the FDIC Guarantee), whether such debt is existing as of the date of this Master Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee.

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**ARTICLE V  
COVENANTS AND ACKNOWLEDGMENTS OF THE ISSUER**

**5.01. Terms to be included in Future Guaranteed Debt.** The governing documents for the issuance of any Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain each of the provisions set forth in Annex A. If a particular issue of Senior Unsecured Debt is evidenced solely by a trade confirmation, the Issuer shall use commercially reasonable efforts to cause the holder of such debt to execute a written instrument setting forth the holder's agreement to be bound by the provisions set forth in Annex A. No document governing the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee shall contain any provision that would result in the automatic acceleration of the debt upon a default by the Issuer at any time during which the FDIC Guarantee is in effect or during which Guarantee Payments are being made in accordance with Section 370.12(b)(2) of the Rule.

**5.02. Breaches; False or Misleading Statements.** The Issuer acknowledges and agrees that (a) if it is in breach of any provision of this Master Agreement or (b) if it makes any false or misleading statement or representation in connection with the Issuer's participation in the Program, or makes any statement or representation in bad faith with the intent to influence the actions of the FDIC, the FDIC may take the enforcement actions provided in Section 370.11 of the Rule, including termination of the Issuer's participation in the Program. As set forth in the Rule, any termination of the Issuer's participation in the Program would solely have prospective effect, and would in no event affect the FDIC Guarantee with respect to Senior Unsecured Debt of the Issuer that is issued and outstanding prior to the termination of the Issuer's participation in the Program.

**5.03. No Modifications.** The Issuer covenants and agrees that it shall not amend, modify, or consent to any amendment or modification, or waive any Relevant Provision, without the express written consent of the FDIC.

**5.04. Waiver by the Issuer.** The Issuer acknowledges and agrees that if any covenant, stipulation or other provision of this Master Agreement that imposes on the Issuer the obligation to make any payment is at any time void under any provision of applicable law, the Issuer will not make any claim, counterclaim or institute any proceedings against the FDIC or any of its assignees or subrogees for any amount paid by the Issuer at any time, and the Issuer waives unconditionally and absolutely any rights and defenses, legal or equitable, which arise under or in connection with any such provision and which might otherwise be available to it for recovery of any amount due under this Master Agreement.

**ARTICLE VI  
GENERAL PROVISIONS**

**6.01. Amendment and Modification of this Master Agreement.** This Master Agreement may be amended, modified and supplemented in any and all respects, but only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Master Agreement.

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**6.02. Notices.** Unless otherwise provided herein, all notices and other communications hereunder shall be in writing and shall be deemed given when mailed, delivered personally, telecopied (which is confirmed) or sent by an overnight courier service, such as FedEx, to the parties at the following addresses (or at such other address for a party as shall be specified by such party by like notice):

if to the Issuer, to the address appearing on the signature page hereto

if to the FDIC, to: The Federal Deposit Insurance Corporation  
Deputy Director, Receivership Operations Branch  
Division of Resolutions and Receiverships  
Attention: Master Agreement  
550 17th Street, N.W.  
Washington, DC 20429

**6.03. Counterparts.** This Master Agreement may be executed in counterparts, which, together, shall be considered one and the same agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original, executed counterparts, provided receipt of such counterparts is confirmed.

**6.04. Severability.** Any term or provision of this Master Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**6.05. Governing Law.** Federal law of the United States shall control this Master Agreement. To the extent that federal law does not supply a rule of decision, this Master Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law. Nothing in this Master Agreement will require any unlawful action or inaction by either party.

**6.06. Venue.** Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Master Agreement is to be instituted in the United States District Court in and for the District of Columbia or in any United States District Court in the jurisdiction where the Issuer's principal office is located.

**6.07. Assignment.** Neither this Master Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party, and any purported assignment



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without such consent shall be void. Subject to the preceding sentence, this Master Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**6.08. Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Master Agreement, except the terms identified for definition in Article I and elsewhere in this Master Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Master Agreement or any provision hereof.

**6.09. Delivery Requirement.** The Issuer shall submit a completed, executed and dated copy of the signature page hereto to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the debt guarantee component of the Program in accordance with the delivery instructions set forth on the signature page.

**[SIGNATURES BEGIN ON NEXT PAGE]**

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**IN WITNESS WHEREOF**, the Issuer and the FDIC have caused this Master Agreement to be executed by their respective officers thereunto duly authorized.

**THE FEDERAL DEPOSIT INSURANCE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NAME OF ISSUER:**

THE GOLDMAN SACHS GROUP, INC.

By: /s/ DAVID VINIAR  
Name: David Viniar  
Chief Financial Officer

Address of Issuer: 85 Broad Street  
New York, New York 10004

FDIC Certificate Number: \_\_\_\_\_

RSSD ID or  
OTS Docket Number: 2380443

Date: 11/25/08

**Delivery Instructions**

Please deliver a completed, executed and dated copy of this Signature Page to the FDIC within five (5) business days of the date of the Issuer's election to continue participating in the Debt Guarantee Program. Email is the preferred method of delivery to MasterAgreement@fdic.gov, or you may send it by an overnight courier service such as FedEx to Senior Counsel, Special Issues Unit, E7056, Attention: Master Agreement, 3501 Fairfax Drive, Arlington, Virginia, 22226.

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**Terms to be Included in Future Issuances of FDIC Guaranteed Senior Unsecured Debt**

The following provisions shall be included in the governing documents for the issuance of Senior Unsecured Debt of the Issuer that is subject to the FDIC Guarantee, in substantially the form presented below, unless otherwise specified. The appropriate name of the governing document(s) shall be inserted in place of the term "Agreement" where it appears in this Annex A.

Acknowledgement of the FDIC's Debt Guarantee Program

The parties to this Agreement acknowledge that the Issuer has not opted out of the debt guarantee program (the "**Debt Guarantee Program**") established by the Federal Deposit Insurance Corporation ("**FDIC**") under its Temporary Liquidity Guarantee Program. As a result, *this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's website, www.fdic.gov/tlgp. The expiration date of the FDIC's guarantee is the earlier of the maturity date of this debt or June 30, 2012.* [The italicized portion of the above provision shall be included exactly as written above]

Representative

The [insert name of the: trustee, administrative agent, paying agent or other fiduciary or agent to be designated as the duly authorized representative of the debt holders] is designated under this Agreement as the duly authorized representative of the holder[s] for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the "**Representative**"). Any holder may elect not to be represented by the Representative by providing written notice of such election to the Representative.

Subrogation

The FDIC shall be subrogated to all of the rights of the holder[s] and the Representative, if there shall be one, under this Agreement against the Issuer in respect of any amounts paid to the holder[s], or for the benefit of the holder[s], by the FDIC pursuant to the Debt Guarantee Program.

Agreement to Execute Assignment upon Guarantee Payment

[If there is a Representative, insert the following:]

The holder[s] hereby authorize the Representative, at such time as the FDIC shall commence making any guarantee payments to the Representative for the benefit of the holder[s] pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the Representative shall assign to the FDIC its right as Representative to receive any and all payments from the Issuer under this Agreement on behalf of the holder[s]. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the

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FDIC shall be deemed a holder under this Agreement for all purposes hereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

[or, if (i) there is no Representative or (ii) the holder has exercised its right not to be represented by the Representative, insert the following:]

The holder[s] hereby agree that, at such time as the FDIC shall commence making any guarantee payments to the holder[s] pursuant to the Debt Guarantee Program, the holder[s] shall execute an assignment in the form attached to this Agreement as Exhibit [\_\_\_] [See Annex B to Master Agreement] pursuant to which the holder[s] shall assign to the FDIC [its/their] right to receive any and all payments from the Issuer under this Agreement. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of the indebtedness hereunder for all purposes of this Agreement and upon any such assignment, the FDIC shall be deemed a holder under this Agreement for all purposes thereof, and the Issuer hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Agreement as a result of such assignment.

#### Surrender of Senior Unsecured Debt Instrument to the FDIC

If, at any time on or prior to the expiration of the period during which senior unsecured debt of the Issuer is guaranteed by the FDIC under the Debt Guarantee Program (the "Effective Period"), payment in full hereunder shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the holder shall, or the holder shall cause the person or entity in possession to, promptly surrender to the FDIC the security certificate, note or other instrument evidencing such debt, if any.

#### Notice Obligations to FDIC of Payment Default

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations hereunder, or (b) expiration of the Effective Period, the Issuer is in default of any payment obligation hereunder, including timely payment of any accrued and unpaid interest, without regard to any cure period, the Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default.

#### Ranking

Any indebtedness of the Issuer to the FDIC arising under Section 2.03 of the Master Agreement entered into by the Issuer and the FDIC in connection with the Debt Guarantee Program will constitute a senior unsecured general obligation of the Issuer, ranking *pari passu* with any indebtedness hereunder.

#### No Event of Default during Time of Timely FDIC Guarantee Payments

There shall not be deemed to be an event of default under this Agreement which would permit or result in the acceleration of amounts due hereunder, if such an event of default is due solely to the failure of the Issuer to make timely payment hereunder, provided that the FDIC is

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making timely guarantee payments with respect to the debt obligations hereunder in accordance with 12 C.F.R Part 370.

No Modifications without FDIC Consent

Without the express written consent of the FDIC, the parties hereto agree not to amend, modify, supplement or waive any provision in this Agreement that is related to the principal, interest, payment, default or ranking of the indebtedness hereunder or that is required to be included herein pursuant to the Master Agreement executed by the Issuer in connection with the Debt Guarantee Program.

TLGP MASTER AGREEMENT 11/24/08

ASSIGNMENT

This Assignment is made pursuant to the terms of Section 10 of the reverse of The Goldman Sachs Group, Inc.'s \_\_\_\_\_ Notes due \_\_\_\_\_, CUSIP No. \_\_\_\_\_ (the "Security"), between The Bank of New York Mellon (the "Representative"), acting on behalf of the Holder of the Security who have not opted out of representation by the Representative, and The Goldman Sachs Group, Inc. (the "Company") with respect to the debt obligations of the Company that are guaranteed under the Debt Guarantee Program. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Security. Solely for the purpose of this Assignment, "Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or authorized by law to be closed in the State of New York.

For value received, the Representative, on behalf of the Holder (the "Assignor"), hereby assigns to the Federal Deposit Insurance Corporation (the "FDIC"), without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the Security; (b) the Senior Debt Indenture, dated July 16, 2008 (the "2008 Indenture"), by and between the Company and the Representative, with respect to the Security; and (c) any other instrument or agreement executed by the Company regarding obligations of the Company under the Security or the 2008 Indenture with respect to the Security (collectively, the "Assignment").

The Assignor hereby certifies that:

1. Without the FDIC's prior written consent, the Assignor has not:

- (a) agreed to any material amendment of the Security or to any material deviation from the provisions thereof; or
- (b) accelerated the maturity of the Security.

**[Instructions to the Assignor:** If the Assignor has not assigned or transferred any interest in the Security and related documentation, such Assignor must include the following representation.]

2. The Assignor has not assigned or otherwise transferred any interest in the Security;

**[Instructions to the Assignor:** If the Assignor has assigned a partial interest in the Security and related documentation, the Assignor must include the following representation.]

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2. The Assignor has assigned part of its rights, title and interest in the Security to \_\_\_\_\_ pursuant to the \_\_\_\_\_ agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, as assignor, and \_\_\_\_\_, as assignee, an executed copy of which is attached hereto.

The Assignor acknowledges and agrees that this Assignment is subject to the Security and the 2008 Indenture and to the following:

1. In the event the Assignor receives any payment under or related to the Security from a party other than the FDIC (a "Non-FDIC Payment"):

(a) after the date of demand for a guarantee payment on the FDIC pursuant to 12 CFR Part 370, but prior to the date of the FDIC's first guarantee payment under the Security pursuant to 12 CFR Part 370, the Assignor shall promptly but in no event later than five (5) Business Days after receipt notify the FDIC of the date and the amount of such Non-FDIC Payment and shall apply such payment as payment made by the Company, and not as a guarantee payment made by the FDIC, and therefore, the amount of such payment shall be excluded from this Assignment; and

(b) after the FDIC's first guarantee payment under the Security, the Assignor shall forward promptly to the FDIC such Non-FDIC Payment in accordance with the payment instructions provided in writing by the FDIC.

2. Acceptance by the Assignor of payment pursuant to the Debt Guarantee Program on behalf of the Holder shall constitute a release by the Holder of any liability of the FDIC under the Debt Guarantee Program with respect to such payment.

The Person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the FDIC that he/she/it is duly authorized to do so.

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IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this \_\_\_day of \_\_\_\_\_, 20\_\_.

Very truly yours,

[ASSIGNOR]

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Consented to and acknowledged by this \_\_\_day of \_\_\_, 20\_\_:

THE FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)



<DOCUMENT>  
<TYPE> EX-10.1  
<FILENAME> y74032exv10w1.htm  
<DESCRIPTION> EX-10.1: AMENDED AND RESTATED STOCK INCENTIVE PLAN  
<TEXT>

**THE GOLDMAN SACHS  
AMENDED AND RESTATED STOCK INCENTIVE PLAN**  
(amended and restated effective as of December 31, 2008)

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**THE GOLDMAN SACHS  
AMENDED AND RESTATED STOCK INCENTIVE PLAN**

**ARTICLE I**

**GENERAL**

**1.1 Purpose**

The purpose of The Goldman Sachs Amended and Restated Stock Incentive Plan is to attract, retain and motivate officers, directors, employees (including prospective employees), consultants and others who may perform services for the Firm (as hereinafter defined), to compensate them for their contributions to the long-term growth and profits of the Firm and to encourage them to acquire a proprietary interest in the success of the Firm.

The Plan was originally adopted by the Board of Directors of GS Inc. on April 30, 1999 as The Goldman Sachs 1999 Stock Incentive Plan (the "1999 SIP") and was amended and restated by the Board on January 16, 2003, subject to the approval by the shareholders of GS Inc. Such shareholder approval was obtained on April 1, 2003. The Plan was further amended and restated, effective as of December 31, 2008.

The amendments made to the 1999 SIP shall affect only Awards granted on or after the "Effective Date" (as hereinafter defined). Awards granted prior to the Effective Date shall be governed by the terms of the 1999 SIP and Award Agreements as in effect prior to the Effective Date. The terms of this Plan are not intended to affect the interpretation of the terms of the 1999 SIP as they existed prior to the Effective Date.

**1.2 Definitions of Certain Terms**

Unless otherwise specified in an applicable Award Agreement, the terms listed below shall have the following meanings for purposes of the Plan, any Award Agreement and any standardized terms and conditions that may be adopted from time to time by the Committee.

1.2.1 "Award" means an award made pursuant to the Plan.

1.2.2 "Award Agreement" means the written document or documents by which each Award is evidenced, including any Award Statement.

1.2.3 "Award Statement" means a written statement that reflects certain Award terms.

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1.2.4 “Board” means the Board of Directors of GS Inc.

1.2.5 “Business Day” means any day other than a Saturday, a Sunday or a day on which banking institutions in New York City are authorized or obligated by federal law or executive order to be closed.

1.2.6 “Cause” means (a) the Grantee’s conviction, whether following trial or by plea of guilty or *nolo contendere* (or similar plea), in a criminal proceeding (i) on a misdemeanor charge involving fraud, false statements or misleading omissions, wrongful taking, embezzlement, bribery, forgery, counterfeiting or extortion, or (ii) on a felony charge, or (iii) on an equivalent charge to those in clauses (i) and (ii) in jurisdictions which do not use those designations, (b) the Grantee’s engaging in any conduct which constitutes an employment disqualification under applicable law (including statutory disqualification as defined under the Exchange Act), (c) the Grantee’s willful failure to perform the Grantee’s duties to the Firm, (d) the Grantee’s violation of any securities or commodities laws, any rules or regulations issued pursuant to such laws, or the rules and regulations of any securities or commodities exchange or association of which the Firm is a member, (e) the Grantee’s violation of any Firm policy concerning hedging or pledging or confidential or proprietary information, or the Grantee’s material violation of any other Firm policy as in effect from time to time, (f) the Grantee’s engaging in any act or making any statement which impairs, impugns, denigrates, disparages or negatively reflects upon the name, reputation or business interests of the Firm or (g) the Grantee’s engaging in any conduct detrimental to the Firm. The determination as to whether Cause has occurred shall be made by the Committee in its sole discretion and, in such case, the Committee also may, but shall not be required to, specify the date such Cause occurred (including by determining that a prior termination of Employment was for Cause). Any rights the Firm may have hereunder and in any Award Agreement in respect of the events giving rise to Cause shall be in addition to the rights the Firm have under any other agreement with a Grantee or at law or in equity.

1.2.7 “Certificate” means a stock certificate (or other appropriate document or evidence of ownership) representing shares of Common Stock.

1.2.8 “Change in Control” means the consummation of a merger, consolidation, statutory share exchange or similar form of corporate transaction involving GS Inc. (a “Reorganization”) or sale or other disposition of all or substantially all of GS Inc.’s assets to an entity that is not an affiliate of GS Inc. (a “Sale”), that in each case requires the approval of GS Inc.’s stockholders under the law of GS Inc.’s jurisdiction of organization, whether for such Reorganization or Sale (or the issuance of securities of GS Inc. in such Reorganization or Sale), unless immediately following such Reorganization or Sale, either: (a) at least 50% of the total voting power (in respect of the election of directors, or similar officials in the case of an entity other than a corporation) of (i) the entity resulting from such Reorganization, or the entity which has acquired all or substantially all of the assets of GS Inc. in a Sale (in either case, the “Surviving Entity”), or (ii) if applicable, the ultimate parent entity that directly or indirectly has

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beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, as such Rule is in effect on the date of the adoption of the 1999 SIP) of 50% or more of the total voting power (in respect of the election of directors, or similar officials in the case of an entity other than a corporation) of the Surviving Entity (the "Parent Entity") is represented by GS Inc.'s securities (the "GS Inc. Securities") that were outstanding immediately prior to such Reorganization or Sale (or, if applicable, is represented by shares into which such GS Inc. Securities were converted pursuant to such Reorganization or Sale) or (b) at least 50% of the members of the board of directors (or similar officials in the case of an entity other than a corporation) of the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) following the consummation of the Reorganization or Sale were, at the time of the Board's approval of the execution of the initial agreement providing for such Reorganization or Sale, individuals (the "Incumbent Directors") who either (i) were members of the Board on the Effective Date or (ii) became directors subsequent to the Effective Date and whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of GS Inc.'s proxy statement in which such persons are named as nominees for director).

1.2.9 "Client" means any client or prospective client of the Firm to whom the Grantee provided services, or for whom the Grantee transacted business, or whose identity became known to the Grantee in connection with the Grantee's relationship with or employment by the Firm.

1.2.10 "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the applicable rulings and regulations thereunder.

1.2.11 "Committee" means the committee appointed by the Board to administer the Plan pursuant to Section 1.3, and, to the extent the Board determines it is appropriate for the compensation realized from Awards under the Plan to be considered "performance based" compensation under Section 162(m) of the Code, shall be a committee or subcommittee of the Board composed of two or more members, each of whom is an "outside director" within the meaning of Code Section 162(m), and which, to the extent the Board determines it is appropriate for Awards under the Plan to qualify for the exemption available under Rule 16b-3(d)(1) or Rule 16b-3(e) promulgated under the Exchange Act, shall be a committee or subcommittee of the Board composed of two or more members, each of whom is a "non-employee director" within the meaning of Rule 16b-3. Unless otherwise determined by the Board, the Committee shall be the Compensation Committee of the Board.

1.2.12 "Common Stock" means common stock of GS Inc., par value \$0.01 per share.

1.2.13 "Competitive Enterprise" means a business enterprise that (a) engages in any activity, (b) owns or controls a significant interest in or (c) is owned by, or a significant interest in which is owned or controlled by, any entity that engages in any activity, that, in any

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case, competes anywhere with any activity in which the Firm is engaged. The activities covered by this definition include, without limitation, financial services such as investment banking, public or private finance, lending, financial advisory services, private investing (for anyone other than the Grantee and members of the Grantee's family), merchant banking, asset or hedge fund management, insurance or reinsurance underwriting or brokerage, property management, or securities, futures, commodities, energy, derivatives or currency brokerage, sales, lending, custody, clearance, settlement or trading.

1.2.14 "Custody Account" means the custody account maintained by a Grantee with The Chase Manhattan Bank or such successor custodian as may be designated by GS Inc.

1.2.15 "Date of Grant" means the date specified in the Grantee's Award Agreement as the date of grant of the Award.

1.2.16 "Delivery Date" means each date specified in the Grantee's Award Agreement as a delivery date, provided, unless the Committee determines otherwise, such date is during a Window Period or, if such date is not during a Window Period, the first trading day of the first Window Period beginning after such date.

1.2.17 "Dividend Equivalent Right" means a dividend equivalent right granted under the Plan, which represents an unfunded and unsecured promise to pay to the Grantee amounts equal to all or any portion of the regular cash dividends that would be paid on shares of Common Stock covered by an Award if such shares had been delivered pursuant to an Award.

1.2.18 "Effective Date" means the date this Plan is approved by the stockholders of GS Inc. pursuant to Section 3.15 hereof.

1.2.19 "Employment" means the Grantee's performance of services for the Firm, as determined by the Committee. The terms "employ" and "employed" shall have their correlative meanings. The Committee in its sole discretion may determine (a) whether and when a Grantee's leave of absence results in a termination of Employment (for this purpose, unless the Committee determines otherwise, a Grantee shall be treated as terminating Employment with the Firm upon the occurrence of an Extended Absence), (b) whether and when a change in a Grantee's association with the Firm results in a termination of Employment and (c) the impact, if any, of any such leave of absence or change in association on Awards theretofore made. Unless expressly provided otherwise, any references in the Plan or any Award Agreement to a Grantee's Employment being terminated shall include both voluntary and involuntary terminations.

1.2.20 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and the applicable rules and regulations thereunder.

1.2.21 "Exercise Price" means (i) in the case of Options, the price specified in the Grantee's Award Agreement as the price-per-share of Common Stock at which such share can be purchased pursuant to the Option or (ii) in the case of SARs, the price specified in the Grantee's



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Award Agreement as the reference price-per-share of Common Stock used to calculate the amount payable to the Grantee.

1.2.22 “Expiration Date” means the date specified in the Grantee’s Award Agreement as the final expiration date of the Award.

1.2.23 “Extended Absence” means the Grantee’s inability to perform for six (6) continuous months, due to illness, injury or pregnancy-related complications, substantially all the essential duties of the Grantee’s occupation, as determined by the Committee.

1.2.24 “Fair Market Value” means, with respect to a share of Common Stock on any day, the fair market value as determined in accordance with a valuation methodology approved by the Committee.

1.2.25 “Firm” means GS Inc. and its subsidiaries and affiliates.

1.2.26 “Good Reason” means, in connection with a termination of employment by a Grantee following a Change in Control, (a) as determined by the Committee, a materially adverse alteration in the Grantee’s position or in the nature or status of the Grantee’s responsibilities from those in effect immediately prior to the Change in Control or (b) the Firm’s requiring the Grantee’s principal place of Employment to be located more than seventy-five (75) miles from the location where the Grantee is principally Employed at the time of the Change in Control (except for required travel on the Firm’s business to an extent substantially consistent with the Grantee’s customary business travel obligations in the ordinary course of business prior to the Change in Control).

1.2.27 “Grantee” means a person who receives an Award.

1.2.28 “GS Inc.” means The Goldman Sachs Group, Inc., and any successor thereto.

1.2.29 “Incentive Stock Option” means an option to purchase shares of Common Stock that is intended to qualify for special federal income tax treatment pursuant to Sections 421 and 422 of the Code, as now constituted or subsequently amended, or pursuant to a successor provision of the Code, and which is so designated in the applicable Option Award Agreement.

1.2.30 “Initial Exercise Date” means, with respect to an Option or an SAR, the date specified in the Grantee’s Award Agreement as the initial date on which such Award may be exercised, provided, unless the Committee determines otherwise, such date is during a Window Period or, if such date is not during a Window Period, the first trading day of the first Window Period beginning after such date.

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- 1.2.31 “1999 SIP” means The Goldman Sachs 1999 Stock Incentive Plan, as in effect prior to the Effective Date.
- 1.2.32 “Nonqualified Stock Option” means an option to purchase shares of Common Stock that is not an Incentive Stock Option.
- 1.2.33 “Option” means an Incentive Stock Option or a Nonqualified Stock Option or both, as the context requires.
- 1.2.34 “Outstanding” means any Award to the extent it has not been forfeited, cancelled, terminated, exercised or with respect to which the shares of Common Stock underlying the Award have not been previously delivered or other payments made.
- 1.2.35 “Plan” means The Goldman Sachs Amended and Restated Stock Incentive Plan, as described herein and as hereafter amended from time to time.
- 1.2.36 “RSU” means a restricted stock unit Award granted under the Plan, which represents an unfunded and unsecured promise to deliver shares of Common Stock in accordance with the terms of the RSU Award Agreement.
- 1.2.37 “RSU Shares” means shares of Common Stock that underlie an RSU.
- 1.2.38 “Restricted Share” means a share of Common Stock delivered under the Plan that is subject to certain transfer restrictions, forfeiture provisions and/or other terms and conditions specified herein and in the Restricted Share Award Agreement.
- 1.2.39 “Retirement” means termination of the Grantee’s Employment (other than for Cause) on or after the Date of Grant at a time when (a) the sum of the Grantee’s age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 55 and (b) the Grantee has completed at least five (5) years of service with the Firm (as determined by the Committee in its sole discretion).
- 1.2.40 “SAR” means a stock appreciation right granted under the Plan, which represents an unfunded and unsecured promise to deliver shares of Common Stock, cash or other property equal in value to the excess of the Fair Market Value per share of Common Stock over the Exercise Price per share of the SAR, subject to the terms of the SAR Award Agreement.
- 1.2.41 “SIP Administrator” means each person designated by the Committee as a “SIP Administrator” with the authority to perform day-to-day administrative functions for the Plan.
- 1.2.42 “Solicit” means any direct or indirect communication of any kind whatsoever, regardless of by whom initiated, inviting, advising, encouraging or requesting any person or entity, in any manner, to take or refrain from taking any action.

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1.2.43 “Vested” means, with respect to an Award, the portion of the Award that is not subject to a condition that the Grantee remain actively employed by the Firm in order for the Award to remain Outstanding. The fact that an Award becomes Vested shall not mean or otherwise indicate that the Grantee has an unconditional or nonforfeitable right to such Award, and such Award shall remain subject to such terms, conditions and forfeiture provisions as may be provided for in the Plan or in the Award Agreement.

1.2.44 “Vesting Date” means each date specified in the Grantee’s Award Agreement as a date on which part or all of an Award becomes Vested.

1.2.45 “Window Period” means a period designated by the Firm during which all employees of the Firm are permitted to purchase or sell shares of Common Stock (provided that, if the Grantee is a member of a designated group of employees who are subject to different restrictions, the Window Period may be a period designated by the Firm during which an employee of the Firm in such designated group is permitted to purchase or sell shares of Common Stock).

### 1.3 Administration

1.3.1 Subject to Sections 1.3.3 and 1.3.4, the Plan shall be administered by the Committee.

1.3.2 The Committee shall have complete control over the administration of the Plan and shall have the authority in its sole discretion to (a) exercise all of the powers granted to it under the Plan, (b) construe, interpret and implement the Plan and all Award Agreements, (c) prescribe, amend and rescind rules and regulations relating to the Plan, including rules governing its own operations, (d) make all determinations necessary or advisable in administering the Plan, (e) correct any defect, supply any omission and reconcile any inconsistency in the Plan, (f) amend the Plan to reflect changes in applicable law (whether or not the rights of the Grantee of any Award are adversely affected, unless otherwise provided in such Grantee’s Award Agreement), (g) grant Awards and determine who shall receive Awards, when such Awards shall be granted and the terms of such Awards, including setting forth provisions with regard to termination of Employment, such as termination of Employment for Cause or due to death, Extended Absence, or Retirement, (h) unless otherwise provided in an Award Agreement, amend any outstanding Award Agreement in any respect, whether or not the rights of the Grantee of such Award are adversely affected, including, without limitation, to (1) accelerate the time or times at which the Award becomes Vested, unrestricted or may be exercised (and, in connection with such acceleration, the Committee may provide that any shares of Common Stock acquired pursuant to such Award shall be Restricted Shares, which are subject to vesting, transfer, forfeiture or repayment provisions similar to those in the Grantee’s underlying Award), (2) accelerate the time or times at which shares of Common Stock are delivered under the Award (and, without limitation on the Committee’s rights, in connection

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with such acceleration, the Committee may provide that any shares of Common Stock delivered pursuant to such Award shall be Restricted Shares, which are subject to vesting, transfer, forfeiture or repayment provisions similar to those in the Grantee's underlying Award), (3) waive or amend any goals, restrictions or conditions set forth in such Award Agreement, or impose new goals, restrictions and conditions or (4) reflect a change in the Grantee's circumstances (e.g., a change to part-time employment status or a change in position, duties or responsibilities) and (i) determine at any time whether, to what extent and under what circumstances and method or methods (1) Awards may be (A) settled in cash, shares of Common Stock, other securities, other Awards or other property (in which event, the Committee may specify what other effects such settlement will have on the Grantee's Award, including the effect on any repayment provisions under the Plan or Award Agreement), (B) exercised or (C) canceled, forfeited or suspended, (2) shares of Common Stock, other securities, other Awards or other property and other amounts payable with respect to an Award may be deferred either automatically or at the election of the Grantee thereof or of the Committee, (3) to the extent permitted under applicable law, loans (whether or not secured by Common Stock) may be extended by the Firm with respect to any Awards, (4) Awards may be settled by GS Inc., any of its subsidiaries or affiliates or any of its or their designees and (5) the Exercise Price for any Option (other than an Incentive Stock Option, unless the Committee determines that such an Option shall no longer constitute an Incentive Stock Option) or SAR may be reset.

1.3.3 Actions of the Committee may be taken by the vote of a majority of its members present at a meeting (which may be held telephonically). Any action may be taken by a written instrument signed by a majority of the Committee members, and action so taken shall be fully as effective as if it had been taken by a vote at a meeting. The determination of the Committee on all matters relating to the Plan or any Award Agreement shall be final, binding and conclusive. The Committee may allocate among its members and delegate to any person who is not a member of the Committee or to any administrative group within the Firm, including the SIP Administrators or any of them, any of its powers, responsibilities or duties. In delegating its authority, the Committee shall consider the extent to which any delegation may cause Awards to fail to be deductible under Section 162(m) of the Code or to fail to meet the requirements of Rule 16(b)-3(d)(1) or Rule 16(b)-3(e) under the Exchange Act.

1.3.4 Notwithstanding anything to the contrary contained herein, the Board may, in its sole discretion, at any time and from time to time, grant Awards or administer the Plan. In any such case, the Board shall have all of the authority and responsibility granted to the Committee herein.

#### 1.3.5 No Liability

No member of the Board or the Committee or any employee of the Firm (each such person, a "Covered Person") shall have any liability to any person (including any Grantee) for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan or any Award. Each Covered Person shall be indemnified and held harmless by GS

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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 or any Award Agreement 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.

#### 1.4 Persons Eligible for Awards

Awards under the Plan may be made to such officers, directors, employees (including prospective employees), consultants and other individuals who may perform services for the Firm, as the Committee may select.

#### 1.5 Types of Awards Under Plan

Awards may be made under the Plan in the form of (a) Options, (b) SARs, (c) Restricted Shares, (d) RSUs, (e) Dividend Equivalent Rights and (f) other equity-based or equity-related Awards that the Committee determines are consistent with the purpose of the Plan and the interests of the Firm. No Incentive Stock Option (other than an Incentive Stock Option that may be assumed or issued by GS Inc. in connection with a transaction to which Section 424(a) of the Code applies) may be granted to a person who is not eligible to receive an Incentive Stock Option under the Code.

#### 1.6 Shares Available for Awards

1.6.1 Total Shares Available. Subject to adjustment pursuant to Section 1.6.2, the total number of shares of Common Stock which may be delivered pursuant to Awards

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granted under the Plan on or after the Effective Date shall not exceed two hundred and fifty million shares (250,000,000) and pursuant to Awards granted in the fiscal year beginning November 29, 2008 and each fiscal year thereafter until the expiration of the Plan shall not exceed five percent (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 then covered by Awards granted in such years. No further Awards shall be granted pursuant to the 1999 Plan. If, on or after the Effective Date, any Award that was granted on or after the Effective Date is forfeited or otherwise terminates or is canceled without the delivery of shares of Common Stock, shares of Common Stock are surrendered or withheld from any Award to satisfy any obligation of the Grantee (including Federal, state or foreign taxes) or shares of Common Stock owned by a Grantee are tendered to pay the exercise price of any Award granted under the Plan, then the shares covered by such forfeited, terminated or canceled Award or which are equal to the number of shares surrendered, withheld or tendered shall again become available to be delivered pursuant to Awards granted under this Plan. Notwithstanding the foregoing, but subject to adjustment as provided in Section 1.6.2, no more than one hundred million (100,000,000) shares of Common Stock that can be delivered under the Plan shall be deliverable pursuant to the exercise of Incentive Stock Options. The maximum number of shares of Common Stock with respect to which Options or SARs may be granted to an individual Grantee (i) in GS Inc.'s fiscal year ending in 2003 shall equal 2,500,000 shares of Common Stock and (ii) in each subsequent fiscal year shall equal 105% of the maximum number for the preceding fiscal year. Any shares of Common Stock (a) delivered by GS Inc., (b) with respect to which Awards are made hereunder and (c) with respect to which the Firm becomes obligated to make Awards, in each case through the assumption of, or in substitution for, outstanding awards previously granted by an acquired entity, shall not count against the shares of Common Stock available to be delivered pursuant to Awards under this Plan. Shares of Common Stock that may be delivered pursuant to Awards may be authorized but unissued Common Stock or authorized and issued Common Stock held in GS Inc.'s treasury or otherwise acquired for the purposes of the Plan.

1.6.2 Adjustments. The Committee shall adjust the number of shares of Common Stock authorized pursuant to Section 1.6.1 and shall adjust (including, without limitation, by payment of cash) the terms of any Outstanding Awards (including, without limitation, the number of shares of Common Stock covered by each Outstanding Award, the type of property to which the Award relates and the exercise or strike price of any Award), in such manner as it deems appropriate to prevent the enlargement or dilution of rights, for any increase or decrease in the number of issued shares of Common Stock (or issuance of shares of stock other than shares of Common Stock) resulting from a recapitalization, stock split, reverse stock split, stock dividend, spinoff, splitup, combination, reclassification or exchange of shares of Common Stock, merger, consolidation, rights offering, separation, reorganization or any other change in corporate structure or event the Committee determines in its sole discretion affects the capitalization of GS Inc., provided, however, that no such adjustment shall be required if the Committee determines that such action would cause an award to fail to satisfy the conditions of an applicable exception from the requirements of Section 409A of the Internal Revenue Code

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(“Section 409A”) or otherwise would subject a Grantee to an additional tax imposed under Section 409A in respect of an Outstanding Award. After any adjustment made pursuant to this Section 1.6.2, the number of shares of Common Stock subject to each Outstanding Award shall be rounded up or down to the nearest whole number as determined by the Committee.

1.6.3 Except as provided in this Section 1.6 or under the terms of any applicable Award Agreement, there shall be no limit on the number or the value of shares of Common Stock that may be subject to Awards to any individual under the Plan.

1.6.4 There shall be no limit on the amount of cash, securities (other than shares of Common Stock as provided in Section 1.6.1, as adjusted by 1.6.2) or other property that may be delivered pursuant to any Award.

## **ARTICLE II**

### **AWARDS UNDER THE PLAN**

#### **2.1 Agreements Evidencing Awards**

Each Award granted under the Plan shall be evidenced by an Award Agreement, which shall contain such provisions and conditions as the Committee deems appropriate (and which may incorporate by reference some or all of the provisions of the Plan). The Committee may grant Awards in tandem with or in substitution for any other Award or Awards granted under this Plan or any award granted under any other plan of the Firm. By accepting an Award pursuant to the Plan, a Grantee thereby agrees that the Award shall be subject to all of the terms and provisions of the Plan and the applicable Award Agreement.

#### **2.2 No Rights as a Shareholder**

No Grantee (or other person having rights pursuant to an Award) shall have any of the rights of a shareholder of GS Inc. with respect to shares of Common Stock subject to an Award until the delivery of such shares. Except as otherwise provided in Section 1.6.2, no adjustments shall be made for dividends or distributions on (whether ordinary or extraordinary, and whether in cash, Common Stock, other securities or other property), or other events relating to, shares of Common Stock subject to an Award for which the record date is prior to the date such shares are delivered.

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## 2.3 Options

2.3.1 Grant. The Committee may grant Awards of Options in such amounts and subject to such terms and conditions as the Committee may determine (and may include a grant of Dividend Equivalent Rights under Section 2.8 in connection with such Option grants).

2.3.2 Exercise. Options that are not Vested or that are not Outstanding may not be exercised. Outstanding Vested Options may be exercised in accordance with procedures established by the Committee (but, subject to the applicable Award Agreement, may not be exercised earlier than the Initial Exercise Date). The Committee may from time to time prescribe periods during which Outstanding Vested Options shall not be exercisable.

2.3.3 Payment of Exercise Price. Any acceptance by the Committee of a Grantee's written notice of exercise of a Vested Option shall be conditioned upon payment for the shares of Common Stock being purchased. Such payment may be made in cash or by such other methods as the Committee may from time to time prescribe.

2.3.4 Delivery of Shares. Unless otherwise determined by the Committee, or as otherwise provided in the applicable Award Agreement, and except as provided in Sections 3.3, 3.4, 3.11 and 3.17.1, and subject to Section 3.2, upon receipt of payment of the full Exercise Price (or upon satisfaction of procedures adopted by the Committee in connection with a "cashless" exercise method adopted by it) for shares of Common Stock subject to an Outstanding Vested Option, delivery of such shares of Common Stock shall be effected by book-entry credit to the Grantee's Custody Account. The Grantee shall be the beneficial owner and record holder of such shares of Common Stock properly credited to the Custody Account. No delivery of such shares of Common Stock shall be made to a Grantee unless the Grantee has timely returned all required documentation specified in the Grantee's Award Agreement or as otherwise required by the Committee or the SIP Administrator.

2.3.5 Repayment if Conditions Not Met. If the Committee determines that all terms and conditions of the Plan and a Grantee's Option Award Agreement in respect of exercised Options were not satisfied, then the Grantee shall be obligated to pay the Firm immediately upon demand therefor, an amount equal to the excess of the Fair Market Value (determined at the time of exercise) of the shares of Common Stock that were delivered in respect of such exercised Options over the Exercise Price paid therefor, without reduction for any shares of Common Stock applied to satisfy withholding tax or other obligations in respect of such shares.



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## 2.4 SARs

2.4.1 Grant. The Committee may grant Awards of SARs in such amounts and subject to such terms and conditions as the Committee may determine (and may include a grant of Dividend Equivalent Rights under Section 2.8 in connection with such SAR grants).

2.4.2 Exercise. SARs that are not Vested or that are not Outstanding may not be exercised. Outstanding Vested SARs may be exercised in accordance with procedures established by the Committee (but, subject to the applicable Award Agreement, may not be exercised earlier than the Initial Exercise Date). The Committee may from time to time prescribe periods during which Outstanding Vested SARs shall not be exercisable.

2.4.3 Delivery of Shares. Unless otherwise determined by the Committee, or as otherwise provided in the applicable Award Agreement, and except as provided in Sections 3.3, 3.4, 3.11 and 3.17.1, and subject to Section 3.2, upon exercise of an Outstanding Vested SAR for which payment will be made partly or entirely in shares of Common Stock, delivery of shares of Common Stock (and cash in respect of fractional shares), with a Fair Market Value (on the exercise date) equal to (i) the excess of (a) the Fair Market Value of a share of Common Stock (on the exercise date) over (b) the Exercise Price of such SAR multiplied by (ii) the number of SARs exercised, shall be effected by book-entry credit to the Grantee's Custody Account. The Grantee shall be the beneficial owner and record holder of such shares of Common Stock properly credited to the Custody Account on such date of delivery. No delivery of such shares of Common Stock shall be made to a Grantee unless the Grantee has timely returned all required documentation specified in the Grantee's Award Agreement or as otherwise required by the Committee or the SIP Administrator.

2.4.4 Repayment if Conditions Not Met. If the Committee determines that all terms and conditions of the Plan and a Grantee's SAR Award Agreement in respect of exercised SARs were not satisfied, then the Grantee shall be obligated to pay the Firm immediately upon demand therefor, an amount equal to the excess of the Fair Market Value (determined at the time of exercise) of the shares of Common Stock subject to the exercised SARs over the Exercise Price therefor, without reduction for any amount applied to satisfy withholding tax or other obligations in respect of such SARs.

## 2.5 Restricted Shares

2.5.1 Grant. The Committee may grant or offer for sale Awards of Restricted Shares in such amounts and subject to such terms and conditions as the Committee may determine. Upon the issuance of such shares in the name of the Grantee, the Grantee shall have the rights of a shareholder with respect to the Restricted Shares and shall become the record holder of such shares, subject to the provisions of the Plan and any restrictions and conditions as the Committee may include in the applicable Award Agreement. In the event that a Certificate is

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issued in respect of Restricted Shares, such Certificate may be registered in the name of the Grantee but shall be held by a custodian (which may be GS Inc. or one of its affiliates) until the time the restrictions lapse.

2.5.2 Repayment if Conditions Not Met. If the Committee determines that all terms and conditions of the Plan and a Grantee's Restricted Share Award Agreement in respect of Restricted Shares which have become Vested were not satisfied, then the Grantee shall be obligated to pay the Firm immediately upon demand therefor, an amount equal to the Fair Market Value (determined at the time such shares became Vested) of such Restricted Shares, without reduction for any amount applied to satisfy withholding tax or other obligations in respect of such Restricted Shares.

## 2.6 RSUs

2.6.1 Grant. The Committee may grant Awards of RSUs in such amounts and subject to such terms and conditions as the Committee may determine. A Grantee of an RSU has only the rights of a general unsecured creditor of GS Inc. until delivery of shares of Common Stock, cash or other securities or property is made as specified in the applicable Award Agreement.

2.6.2 Delivery of Shares. Unless otherwise determined by the Committee, or as otherwise provided in the applicable Award Agreement, and except as provided in Sections 3.3, 3.4, 3.11 and 3.17.3, and subject to Section 3.2, on each Delivery Date the number or percentage of RSU Shares specified in the Grantee's Award Agreement with respect to the Grantee's then Outstanding Vested RSUs (which amount may be rounded to avoid fractional RSU Shares) shall be delivered. Unless otherwise determined by the Committee, or as otherwise provided in the applicable Award Agreement, delivery of RSU Shares shall be effected by book-entry credit to the Grantee's Custody Account. The Grantee shall be the beneficial owner and record holder of any RSU Shares properly credited to the Grantee's Custody Account. No delivery of shares of Common Stock underlying a Grantee's RSUs shall be made unless the Grantee has timely returned all required documentation specified in the Grantee's Award Agreement or as otherwise determined by the Committee or the SIP Administrator.

2.6.3 Repayment if Conditions Not Met. If the Committee determines that all terms and conditions of the Plan and a Grantee's RSU Award Agreement in respect of the delivery of shares underlying such RSUs were not satisfied, then the Grantee shall be obligated to pay the Firm immediately upon demand therefor, an amount equal to the Fair Market Value (determined at the time of delivery) of the shares of Common Stock delivered with respect to such Delivery Date, without reduction for any shares applied to satisfy withholding tax or other obligations in respect of such shares of Common Stock.

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## 2.7 Other Stock-Based Awards

The Committee may grant other types of equity-based or equity-related Awards (including the grant or offer for sale of unrestricted shares of Common Stock) in such amounts and subject to such terms and conditions as the Committee shall determine. Such Awards may entail the transfer of actual shares of Common Stock to Plan participants, or payment in cash or otherwise of amounts based on the value of shares of Common Stock, and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States.

## 2.8 Dividend Equivalent Rights

2.8.1 Grant. The Committee may grant, either alone or in connection with any other Award, a Dividend Equivalent Right.

2.8.2 Payment. The Committee shall determine whether payments in connection with a Dividend Equivalent Right shall be made in cash, in shares of Common Stock or in another form, whether they shall be conditioned upon the exercise of any Award to which they relate, the time or times at which they shall be made and such other terms and conditions as the Committee shall deem appropriate.

2.8.3 Certain Section 162(m) Related Conditions. No Dividend Equivalent Right shall be conditioned on the exercise of any Option or SAR, if and to the extent such Dividend Equivalent Right would cause the compensation payable to a “covered employee” as a result of the related Option or SAR not to constitute performance-based compensation under Section 162(m)(4)(C) of the Code.

## 2.9 Adoption of Standardized Award Terms and Conditions

The Committee may, in its discretion, adopt standardized terms and conditions that, unless and to the extent a Grantee’s Award Agreement expressly provides otherwise, shall apply to such Awards as may be determined by the Committee in its discretion. Any such standardized terms and conditions shall have the same force and effect as if expressly incorporated into the Plan and each applicable Award Agreement.

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**ARTICLE III**  
**MISCELLANEOUS**

**3.1 Amendment of the Plan or Award Agreement**

3.1.1 Unless otherwise provided in the Plan or in an Award Agreement, the Board may from time to time suspend, discontinue, revise or amend the Plan in any respect whatsoever, including in any manner that adversely affects the rights, duties or obligations of any Grantee of an Award.

3.1.2 Unless otherwise determined by the Board, shareholder approval of any suspension, discontinuance, revision or amendment shall be obtained only to the extent necessary to comply with any applicable law, rule or regulation; provided, however, if and to the extent the Board determines that it is appropriate for Awards granted under the Plan to constitute performance-based compensation within the meaning of Section 162(m)(4)(C) of the Code, no amendment that would require stockholder approval in order for amounts paid pursuant to the Plan to constitute performance-based compensation within the meaning of Section 162(m)(4)(C) of the Code shall be effective without the approval of the stockholders of GS Inc. as required by Section 162(m) of the Code and the regulations thereunder and, if and to the extent the Board determines it is appropriate for the Plan to comply with the provisions of Section 422 of the Code, no amendment that would require stockholder approval under Section 422 of the Code shall be effective without the approval of the stockholders of GS Inc.

**3.2 Tax Withholding**

3.2.1 As a condition to the delivery of any shares of Common Stock, other property or cash pursuant to any Award or the lifting or lapse of restrictions on any Award, or in connection with any other event that gives rise to a federal or other governmental tax withholding obligation on the part of the Firm relating to an Award (including, without limitation, FICA tax), (a) the Firm may deduct or withhold (or cause to be deducted or withheld) from any payment or distribution to the Grantee, whether or not pursuant to the Plan, (b) the Committee shall be entitled to require that the Grantee remit cash to the Firm (through payroll deduction or otherwise) or (c) the Firm may enter into any other suitable arrangements to withhold, in each case in an amount sufficient in the opinion of the Firm to satisfy such withholding obligation.

3.2.2 If the event giving rise to the withholding obligation involves a transfer of shares of Common Stock, then, at the discretion of the Committee, the Grantee may satisfy the withholding obligation described under Section 3.2.1 by electing to have GS Inc. withhold shares

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of Common Stock (which withholding, unless otherwise provided in the applicable Award Agreement, will be at a rate not in excess of the statutory minimum rate) or by tendering previously owned shares of Common Stock, in each case having a Fair Market Value equal to the amount of tax to be withheld (or by any other mechanism as may be required or appropriate to conform with local tax and other rules). For this purpose, Fair Market Value shall be determined as of the date on which the amount of tax to be withheld is determined (and GS Inc. may cause any fractional share amount to be settled in cash).

### 3.3 Required Consents and Legends

3.3.1 If the Committee shall at any time determine that any consent (as hereinafter defined) is necessary or desirable as a condition of, or in connection with, the granting of any Award, the delivery of shares of Common Stock or the delivery of any cash, securities or other property under the Plan, or the taking of any other action thereunder (each such action being hereinafter referred to as a “plan action”), then such plan action shall not be taken, in whole or in part, unless and until such consent shall have been effected or obtained to the full satisfaction of the Committee. The Committee may direct that any Certificate evidencing shares delivered pursuant to the Plan shall bear a legend setting forth such restrictions on transferability as the Committee may determine to be necessary or desirable, and may advise the transfer agent to place a stop order against any legended shares.

3.3.2 By accepting an Award, each Grantee shall have expressly provided consent to the items described in Section 3.3.3(d) hereof.

3.3.3 The term “consent” as used herein with respect to any plan action includes (a) any and all listings, registrations or qualifications in respect thereof upon any securities exchange or under any federal, state or local law, or law, rule or regulation of a jurisdiction outside the United States, (b) any and all written agreements and representations by the Grantee with respect to the disposition of shares, or with respect to any other matter, which the Committee may deem necessary or desirable to comply with the terms of any such listing, registration or qualification or to obtain an exemption from the requirement that any such listing, qualification or registration be made, (c) any and all other consents, clearances and approvals in respect of a plan action by any governmental or other regulatory body or any stock exchange or self-regulatory agency, (d) any and all consents by the Grantee to (i) the Firm’s supplying to any third party recordkeeper of the Plan such personal information as the Committee deems advisable to administer the Plan, (ii) the Firm’s deducting amounts from the Grantee’s wages, or another arrangement satisfactory to the Committee, to reimburse the Firm for advances made on the Grantee’s behalf to satisfy certain withholding and other tax obligations in connection with an Award and (iii) the Firm’s imposing sales and transfer procedures and restrictions and hedging restrictions on shares of Common Stock delivered under the Plan and (e) any and all consents or authorizations required to comply with, or required to be obtained under, applicable

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local law or otherwise required by the Committee. Nothing herein shall require GS Inc. to list, register or qualify the shares of Common Stock on any securities exchange.

#### 3.4 Right of Offset

The Firm shall have the right to offset against its obligation to deliver shares of Common Stock (or other property or cash) under the Plan or any Award Agreement any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, repayment obligations under any Awards, or amounts repayable to the Firm pursuant to tax equalization, housing, automobile or other employee programs) the Grantee then owes to the Firm and any amounts the Committee otherwise deems appropriate pursuant to any tax equalization policy or agreement.

#### 3.5 Nonassignability

Except to the extent otherwise expressly provided in the applicable Award Agreement, no Award (or any rights and obligations thereunder) granted to any person under the Plan may 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, other than by will or by the laws of descent and distribution, and all such Awards (and any rights thereunder) shall be exercisable during the life of the Grantee only by the Grantee or the Grantee's legal representative. Notwithstanding the preceding sentence, the Committee may permit, under such terms and conditions that it deems appropriate in its sole discretion, a Grantee to transfer any Award to any person or entity that the Committee so determines. Any sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge or other disposition in violation of the provisions of this Section 3.5 shall be void. All of the terms and conditions of this Plan and the Award Agreements shall be binding upon any permitted successors and assigns.

#### 3.6 Requirement of Consent and Notification of Election Under Section 83(b) of the Code or Similar Provision

No election under Section 83(b) of the Code (to include in gross income in the year of transfer the amounts specified in Code Section 83(b)) or under a similar provision of the law of a jurisdiction outside the United States may be made unless expressly permitted by the terms of the Award Agreement or by action of the Committee in writing prior to the making of such election. If a Grantee of an Award, in connection with the acquisition of shares of Common Stock under the Plan or otherwise, is expressly permitted under the terms of the Award Agreement or by such Committee action to make any such election and the Grantee makes the election, the Grantee shall notify the Committee of such election within ten (10) days of filing

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notice of the election with the Internal Revenue Service or other governmental authority, in addition to any filing and notification required pursuant to regulations issued under Code Section 83(b) or other applicable provision.

### 3.7 Requirement of Notification Upon Disqualifying Disposition Under Section 421(b) of the Code

If any Grantee shall make any disposition of shares of Common Stock delivered pursuant to the exercise of an Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to certain disqualifying dispositions), such Grantee shall notify GS Inc. of such disposition within ten (10) days thereof.

### 3.8 Change in Control

3.8.1 The Committee may provide in any Award Agreement for provisions relating to a Change in Control, including, without limitation, the acceleration of the exercisability of, or the lapse of restrictions or deemed satisfaction of goals with respect to, any Outstanding Awards.

3.8.2 Unless otherwise provided in the applicable Award Agreement and except as otherwise determined by the Committee, in the event of a merger, consolidation, mandatory share exchange or other similar business combination of GS Inc. with or into any other entity ("successor entity") or any transaction in which another person or entity acquires all of the issued and outstanding Common Stock of GS Inc., or all or substantially all of the assets of GS Inc., Outstanding Awards may be assumed or a substantially equivalent Award may be substituted by such successor entity or a parent or subsidiary of such successor entity, and such an assumption or substitution shall not be deemed to violate this Plan or any provision of any Award Agreement.

### 3.9 Other Conditions to Awards

Unless the Committee determines otherwise, the Grantee's rights in respect of all of his or her Outstanding Awards (whether or not Vested) shall immediately terminate and such Awards shall cease to be Outstanding if: (a) the Grantee attempts to have any dispute under the Plan or his or her Award Agreement resolved in any manner that is not provided for by Section 3.17, (b) the Grantee in any manner, directly or indirectly, (1) Solicits any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm or (2) interferes with or damages (or attempts to interfere with or damage) any relationship between the Firm and any Client or (3) Solicits any person who is an employee of the Firm to resign from the Firm or to apply for or accept employment with any Competitive

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Enterprise, (c) the Grantee fails to certify to GS Inc., in accordance with procedures established by the Committee, that the Grantee has complied, or the Committee determines that the Grantee in fact has failed to comply, with all the terms and conditions of the Plan or Award Agreement or (d) any event constituting Cause occurs with respect to the Grantee. By exercising any Option or SAR or by accepting delivery of shares of Common Stock or any other payment under this Plan, the Grantee shall be deemed to have represented and certified at such time that the Grantee has complied with all the terms and conditions of the Plan and the Award Agreement.

### 3.10 Right of Discharge Reserved

Neither the grant of an Award nor any provision in the Plan or in any Award Agreement shall confer upon any Grantee the right to continued Employment by the Firm or affect any right that the Firm may have to terminate or alter the terms and conditions of the Grantee's Employment.

### 3.11 Nature and Form of Payments

3.11.1 Any and all grants of Awards and deliveries of shares of Common Stock, cash or other property under the Plan shall be in consideration of services performed or to be performed for the Firm by the Grantee. Awards under the Plan may, in the sole discretion of the Committee, be made in substitution in whole or in part for cash or other compensation otherwise payable to an Employee. Without limitation on Section 1.3 hereof, unless otherwise specifically provided in an Award Agreement or by applicable law, the Committee shall be permitted with respect to any or all Awards to exercise all of the rights described in Section 1.3.2(h) and 1.3.2(i). Deliveries of shares of Common Stock may be rounded to avoid fractional shares. In addition, the Firm may pay cash in lieu of fractional shares.

3.11.2 All grants of Awards and deliveries of shares of Common Stock, cash or other property under the Plan shall constitute a special discretionary incentive payment to the Grantee and shall not be required to be taken into account in computing the amount of salary or compensation of the Grantee for the purpose of determining any contributions to or any benefits under any pension, retirement, profit-sharing, bonus, life insurance, severance or other benefit plan of the Firm or under any agreement with the Grantee, unless the Firm specifically provides otherwise.

### 3.12 Non-Uniform Determinations

None of Committee's determinations under the Plan and Award Agreements need to be uniform and any such determinations may be made by it selectively among persons who receive, or are eligible to receive, Awards under the Plan (whether or not such persons are



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similarly situated). Without limiting the generality of the foregoing, the Committee shall be entitled, among other things, to make non-uniform and selective determinations under Award Agreements, and to enter into non-uniform and selective Award Agreements, as to (a) the persons to receive Awards, (b) the terms and provisions of Awards, (c) whether a Grantee's Employment has been terminated for purposes of the Plan and (d) any adjustments to be made to Awards pursuant to Section 1.6.2 or otherwise.

### 3.13 Other Payments or Awards

Nothing contained in the Plan shall be deemed in any way to limit or restrict the Firm from making any award or payment to any person under any other plan, arrangement or understanding, whether now existing or hereafter in effect.

### 3.14 Plan Headings; References to Laws, Rules or Regulations

The headings in this Plan are for the purpose of convenience only, and are not intended to define or limit the construction of the provisions hereof.

Any reference in this Plan to any law, rule or regulation shall be deemed to include any amendments, revisions or successor provisions to such law, rule or regulation.

### 3.15 Date of Adoption and Term of Plan; Shareholder Approval Required

The 1999 SIP was originally adopted by the Board on April 30, 1999 and was amended and restated by the Board on January 16, 2003. The adoption of the Plan as amended and restated on January 16, 2003 was conditioned on the approval of the stockholders of GS Inc. in accordance with Treasury Regulation §1.162-27(e)(4), Section 422 of the Code, the rules of the New York Stock Exchange and other applicable law, and such approval was obtained on April 1, 2003. The Plan was further amended and restated effective as of December 31, 2008. Unless sooner terminated by the Board, the Plan shall terminate on the tenth anniversary of the Effective Date. The Board reserves the right to terminate the Plan at any time. All Awards made under the Plan prior to the termination of the Plan shall remain in effect until such Awards have been satisfied or terminated in accordance with the terms and provisions of the Plan and the applicable Award Agreements.

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### 3.16 Governing Law

**ALL RIGHTS AND OBLIGATIONS UNDER THE PLAN AND EACH AWARD AGREEMENT 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.**

### 3.17 Arbitration

3.17.1 Unless otherwise specified in an applicable Award Agreement, it shall be a condition of each Award that any dispute, controversy or claim between the Firm and a Grantee, arising out of or relating to or concerning the Plan or applicable Award Agreement, 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 in New York City (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 the Grantee must first be submitted to the Committee in accordance with claims procedures determined by the Committee. This Section is subject to the provisions of Sections 3.17.2 and 3.17.3 below.

3.17.2 Unless otherwise specified in an applicable Award Agreement, it shall be a condition of each Award that the Firm and the Grantee 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 or the Award that is not otherwise arbitrated or resolved according to Section 3.17.1. This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. By accepting an Award, the Grantee acknowledges that the forum designated by this Section 3.17.2 has a reasonable relation to the Plan, any applicable Award and to the Grantee’s relationship with the Firm. Notwithstanding the foregoing, nothing herein shall preclude the Firm from bringing any suit, action or proceeding in any other court for the purpose of enforcing the provisions of this Section 3.17 or otherwise.

3.17.3 Unless otherwise specified in an applicable Award Agreement, the agreement by the Grantee and the Firm as to forum is independent of the law that may be applied in the suit, action or proceeding and the Grantee and the Firm agree to such forum even if the forum may under applicable law choose to apply non-forum law. By accepting an Award, (a) the Grantee waives, to the fullest extent permitted by applicable law, any objection which the Grantee may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Section 3.17.2, (b) the Grantee undertakes not to commence any action arising out of or relating to or concerning any Award in any forum other than a forum described in Section 3.17 and (c) the Grantee agrees 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 Grantee and the Firm.

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3.17.4 Unless otherwise specified in an applicable Award Agreement, by accepting an Award, the Grantee irrevocably appoints each General Counsel of GS Inc. as his or her agent for service of process in connection with any suit, action or proceeding arising out of or relating to or concerning this Plan or any Award which is not arbitrated pursuant to the provisions of Section 3.17.1, who shall promptly advise the Grantee of any such service of process.

3.17.5 Unless otherwise specified in an applicable Award Agreement, by accepting an Award, the Grantee agrees to keep confidential the existence of, and any information concerning, a dispute, controversy or claim described in this Section 3.17, except that the Grantee 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).

### 3.18 Severability; Entire Agreement

If any of the provisions of this Plan or any Award Agreement 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; provided that, if any of such provisions is finally held to be invalid, illegal or unenforceable because it exceeds the maximum scope determined to be acceptable to permit such provision to be enforceable, such provision shall be deemed to be modified to the minimum extent necessary to modify such scope in order to make such provision enforceable hereunder. By accepting an Award, the Grantee acknowledges that the Plan and any Award Agreements contain the entire agreement of the parties with respect to the subject matter thereof and supersede all prior agreements, promises, covenants, arrangements, communications, representations and warranties between them, whether written or oral with respect to the subject matter thereof.

### 3.19 Waiver of Claims

By accepting an Award, the Grantee recognizes and agrees that prior to being selected by the Committee to receive an Award he or she has no right to any benefits under such Award. Accordingly, in consideration of the Grantee's receipt of any Award, he or she expressly waives any right to contest the amount of any Award, the terms of any Award Agreement, any determination, action or omission hereunder or under any Award Agreement by the Committee, the SIP Administrator, GS Inc. or the Board or any amendment to the Plan or any Award Agreement (other than an amendment to this Plan or an Award Agreement to which his or her consent is expressly required by the express terms of an Award Agreement), and the Grantee expressly waives any claim related in any way to any Award including any claim based upon any

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promissory estoppel or other theory in connection with any Award and the Grantee's employment with the Firm.

### 3.20 No Third Party Beneficiaries

Except as expressly provided in an Award Agreement, neither the Plan nor any Award Agreement shall confer on any person other than the Firm and the Grantee of the Award any rights or remedies thereunder; provided that the exculpation and indemnification provisions of Section 1.3.5 shall inure to the benefit of a Covered Person's estate, beneficiaries and legatees.

### 3.21 Limitations Imposed by Section 162(m) of the Code

Notwithstanding any other provision hereunder, prior to a Change in Control, if and to the extent that the Committee determines GS Inc.'s federal tax deduction in respect of a particular Grantee's Award may be limited as a result of Section 162(m) of the Code, the Committee may determine to delay delivery or payment under the Award in such manner as it deems appropriate, including the following actions:

3.21.1 With respect to such Grantee's Options, SARs and Dividend Equivalent Rights, the Committee may delay the payment in respect of such Options, SARs and Dividend Equivalent Rights until a date that is within 30 Business Days after the earlier to occur of (i) the date that compensation paid to the Grantee is no longer subject to the deduction limitation under Section 162(m) of the Code and (ii) the occurrence of a Change in Control. In the event that a Grantee exercises an Option or SAR or would receive a payment in respect of a dividend equivalent right at a time when the Grantee is a "covered employee" and the Committee determines to delay the payment in respect of any such Award, the Committee shall credit cash, or, in the case of an amount payable in Common Stock, the Fair Market Value of the Common Stock, payable to the Grantee to a book account. The Grantee shall have no rights in respect of such book account, and the amount credited thereto shall be subject to the transfer restrictions in Section 3.5. The Committee may credit additional amounts to such book account as it may determine in its sole discretion. Any book account created hereunder shall represent only an unfunded unsecured promise to pay the amount credited thereto to the Grantee in the future.

3.21.2 With respect to such Grantee's Restricted Shares, the Committee may require the Grantee to surrender to the Committee any certificates and agreements with respect to such Restricted Shares in order to cancel the Awards of Restricted Shares. In exchange for such cancellation, the Committee shall credit the Fair Market Value of the Restricted Shares subject to such Awards to a book account. The amount credited to the book account shall be paid to the Grantee within 30 Business Days after the earlier to occur of (i) the date that compensation paid to the Grantee is no longer subject to the deduction limitation under Section 162(m) of the Code and (ii) the occurrence of a Change in Control. The Grantee shall have no rights in respect of

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such book account, and the amount credited thereto shall be subject to the transfer restrictions in Section 3.5. The Committee may credit additional amounts to such book account as it may determine in its sole discretion. Any book account created hereunder shall represent only an unfunded unsecured promise to pay the amount credited thereto to the Grantee in the future.

3.21.3 With respect to such Grantee's RSUs, the Committee may elect to delay delivery of such RSU Shares until a date that is within 30 Business Days after the earlier to occur of (i) the date that compensation paid to the Grantee is no longer subject to the deduction limitation under Section 162(m) of the Code and (ii) the occurrence of a Change in Control.

### 3.22 Certain Limitations on Transactions Involving Common Stock; Fees and Commissions

3.22.1 Each Grantee shall be subject to, and acceptance of an Award shall constitute an agreement to be subject to the Firm's policies in effect from time to time concerning trading in Common Stock, hedging or pledging and confidential or proprietary information. In addition, with respect to any shares of Common Stock delivered to any Grantee in respect of an Award, sales of such Common Stock shall be effected in accordance such rules and procedures as may be adopted from time to time with respect to sales of such shares of Common Stock (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).

3.22.2 Each Grantee may be required to pay any brokerage costs or other fees or expenses associated with any Award, including without limitation, in connection with the sale of any shares of Common Stock delivered in respect of any Award or the exercise of an Option or SAR.

### 3.23 Deliveries

Deliveries of shares of Common Stock, cash or other property under the Plan shall be made to the Grantee reasonably promptly after the Delivery Date or any other date such delivery is called for, but in no case more than thirty (30) Business Days after such date.

### 3.24 Successors and Assigns of GS Inc.

The terms of this Plan shall be binding upon and inure to the benefit of GS Inc. and its successors and assigns.

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IN WITNESS WHEREOF, and as evidence of the adoption of this amended and restated Plan effective as of December 31, 2008 by GS Inc., it has caused the same to be signed by its duly authorized officer this 21st day of January, 2009.

THE GOLDMAN SACHS GROUP, INC.

By: /s/ Esta E. Stecher  
Name: Esta E. Stecher  
Title: Executive Vice President and General Counsel

<DOCUMENT>  
<TYPE> EX-10.36  
<FILENAME> y74032exv10w36.htm  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ YEAR-END OPTION AWARD**

This Award Agreement sets forth the terms and conditions of the \_\_\_\_ Year-End award (this “Award”) of Nonqualified Stock Options (“Year-End Options”) 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 Award Statement delivered to you sets forth (i) the Date of Grant of the Year-End Options, (ii) the number of Year-End Options, (iii) the Exercise Price of each Year-End Option, (iv) the Vesting Dates for the Year-End Options, (v) the Initial Exercisability Dates for the Year-End Options and (vi) the Transferability Date (as defined below) for the shares underlying your Year-End Options. Until shares of Common Stock (“Shares”) are delivered to you pursuant to Paragraph 7 after you exercise your Year-End Options, you have no rights as a shareholder of GS Inc. In addition, as set forth in your Award Statement, Shares delivered pursuant to the exercise of your Year-End Options may be subject to transfer restrictions as described in Paragraph 6(e) below. **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 13. BY EXECUTING THE RELATED SIGNATURE CARD (WHICH, AMONG OTHER THINGS, OPENS THE CUSTODY ACCOUNT REFERRED TO IN PARAGRAPH 7 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. Expiration Date. The Expiration Date for your Year-End Options is \_\_\_\_ (in New York). Notwithstanding anything to the contrary in this Award Agreement, but subject to earlier termination as provided in this Award Agreement or otherwise in accordance with the Plan, on the Expiration Date all of your then Outstanding Year-End Options shall terminate.

4. Vesting.

(a) In General. Except as provided below in Paragraphs 4(b), 4(c), 4(d), 5(a), 5(b), 10(g), 10(i) and 11, on each Vesting Date you shall become Vested in the number or percentage of your Year-End Options 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 for your Outstanding Vested Year-End Options to become exercisable, all other terms and conditions of this Award Agreement shall continue to apply to such Vested Year-End Options, and failure to meet such terms and conditions may result in the termination of this Award (as a result of which no Shares subject to any such Vested Year-End Options would be delivered).

(b) Death. Notwithstanding any other provision of this Award Agreement (except Paragraph 10(i)), if you die prior to an applicable Vesting Date, 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, any such Year-End Options that were Outstanding but that had not yet become Vested immediately prior to your death shall become Vested, but all other conditions of this Award Agreement shall continue to apply.



(c) Extended Absence, Retirement and Downsizing.

(i) Notwithstanding any other provision of this Award Agreement, but subject to Paragraph 5(c), 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 (as defined below), the condition set forth in Paragraph 5(a) shall be waived with respect to any Year-End Options that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End Options shall become Vested), but all other conditions of this Award Agreement shall continue to apply. Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (A) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60, (B) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion), and (C) you have completed one year of service with the Firm following the Date of Grant (as determined by the Committee in its sole discretion).

(ii) 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 5(a) shall be waived with respect to your Year-End Options that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End Options 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."

(d) Change in Control. Notwithstanding any other provision of this Award Agreement (except Paragraph 10(i)), if there is a Change in Control and your Employment terminates as described in Paragraph 6(d), the condition set forth in Paragraph 5(a) shall be waived with respect to any Year-End Options that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End Options shall become Vested), but all other terms and conditions of this Award Agreement shall continue to apply.

5. Termination of Year-End Options Upon Certain Events.

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 4(b), 4(c), 4(d) 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 Year-End Options that were Outstanding but had not yet become Vested immediately prior to your termination of Employment immediately shall terminate.

(b) Unless the Committee determines otherwise, your rights in respect of all of your Outstanding Year-End Options (whether or not Vested) shall immediately terminate, such Year-End Options shall cease to be Outstanding, and no Shares shall be delivered in respect thereof, if at any time prior to the date you exercise such Year-End Options:

(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 13 or Section 3.17 of the Plan;

(ii) any event that constitutes Cause has occurred;

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(iii) (A) you in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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 exercising any Year-End Option under this Award Agreement, or 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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party;

(vi) as a result of any action brought by you, it is determined that any of the terms or conditions for exercise of your Year-End Options or delivery of Shares in respect thereto are invalid; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace or substitute for, or otherwise in respect of, any Outstanding Year-End Options.

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.

For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 5(b)(v), regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 5(b)(ii).

(c) Without limiting the application of Paragraph 5(b), your Outstanding Year-End Options that become Vested in accordance with Paragraph 4(c)(i) immediately shall terminate, and such Outstanding Year-End Options shall cease to be Outstanding if, prior to the original Vesting Date with respect to such Year-End Options, 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

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Paragraph 5(c) 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.”

**6. Exercisability of Year-End Options.**

(a) **In General.** Only Year-End Options that are Outstanding and Vested can be exercised. Outstanding Vested Year-End Options must be exercised subject to Paragraph 6(e) and in accordance with procedures established by the Committee from time to time but, subject to Paragraphs 6(b), 6(d) and 10(g), not earlier than the applicable Initial Exercise Date. Except as otherwise provided in this Award Agreement, reasonably promptly (but in no case more than thirty (30) Business Days) after each date specified as the Initial Exercise Date on your Award Statement, the number or percentage of your Year-End Options specified next to such Initial Exercise Date on the Award Statement that are Outstanding and Vested will become exercisable. If the applicable Initial Exercise Date is not during a Window Period, such Year-End Options will become exercisable on a date specified by the Committee that is not more than 30 Business Days after the first Trading Day of the first Window Period that begins thereafter. For this purpose, a “Trading Day” is a day on which Shares trade regular way on the New York Stock Exchange. The Committee may from time to time prescribe periods during which the Vested Year-End Options shall not be exercisable. In addition, the exercise procedures established by the Committee may require you to take specific steps in order to exercise your Year-End Options within a minimum time prior to the effective date of exercise.

(b) **Death.** Notwithstanding any other provision of this Award Agreement (except Paragraph 10(i)), if you die and, at the time of your death, you have any Outstanding Year-End Options or any Restricted Shares (as defined in Paragraph 6(e)):

(i) the Transfer Restrictions described in Paragraph 6(e) shall cease to apply to any Restricted Shares (as defined in Paragraph 6(e)) and shall not apply to any Shares acquired in connection with any subsequent exercise of Year-End Options, and

(ii) subject to Paragraph 9, such Outstanding Year-End Options (A) shall be exercisable by the representative of your estate or, to the extent you specifically bequeath any of your Outstanding Year-End Options under your will in accordance with such procedures, if any, as may be adopted by the Committee to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee) (a “Charitable Beneficiary”), by the Charitable Beneficiary, in either case in accordance with Paragraph 6(a) beginning on the date that is 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 and (B) unless earlier terminated in accordance with the terms of this Award Agreement, shall remain exercisable until the Expiration Date.

(c) **Other Terminations of Employment.** Subject to Paragraphs 5(b), 5(c) and 10(i), upon the termination of your Employment for any reason (other than death or Cause), but subject to Paragraphs 6(d) and 10(g), your then Outstanding Vested Year-End Options shall be exercisable in accordance with Paragraph 6(a) beginning on the applicable Initial Exercise Date and, unless earlier terminated in accordance with the terms of this Award Agreement, shall remain exercisable until the Expiration Date.

(d) **Change in Control.** Notwithstanding anything to the contrary in this Award Agreement (except Paragraph 10(i)), if 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, as

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provided in Paragraph 4(d), (i) all of your Year-End Options that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment, shall become Vested, (ii) all of your Outstanding Vested Year-End Options shall become exercisable and, unless earlier terminated in accordance with the terms of this Award Agreement, shall remain exercisable until the Expiration Date, and (iii) the Transfer Restrictions described in Paragraph 6(e) will cease to apply.

(e) Transfer Restrictions on Shares after Exercise. Subject to Paragraphs 6(b), 6(d) and 10(g), notwithstanding any other provision of this Award Agreement, (i) (A) no sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge or other disposition of (including through the use of any cash-settled instrument) any Shares acquired in connection with the exercise of your Year-End Options, whether voluntarily or involuntarily by you; and (B) no exercise of any Year-End Options involving the sale of Shares acquired in respect of such exercise (the restrictions in clauses (i)(A) and (i)(B) of this Paragraph 6(e) being referred to collectively as the "Transfer Restrictions") may be effected before the transferability date specified on your Award Statement (the "Transferability Date"), and any purported sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge, other disposition or exercise in violation of the Transfer Restrictions shall be void; and (ii) if and to the extent Shares subject to your Year-End Options are certificated, the certificates representing such Shares, shall bear a legend specifying that such Shares are subject to the restrictions described in this Paragraph 6(e) and GS Inc. shall advise its transfer agent to place a stop order against the transfer of such Shares in violation of such Transfer Restrictions. Any Shares acquired in connection with any exercise of your Year-End Options prior to the Transferability Date (such Shares, "Restricted Shares") shall be held in the Custody Account or other account designated by the Firm. Within 30 Business Days after the Transferability Date (or any other date for which removal of the Transfer Restrictions is called for), GS Inc. shall take, or shall cause to be taken, such steps as may be necessary to remove the Transfer Restrictions.

(f) Forfeiture of Restricted Shares. Unless the Committee determines otherwise, and except as provided in Paragraph 6(b), 6(d) and 10(g), your rights in respect of any Restricted Shares immediately shall terminate and such Restricted Shares shall be cancelled if:

(i) any event constituting Cause has occurred;

(ii) 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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(iii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Restricted Shares.

For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm, shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 6(f)(ii), regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 6(f)(i).

#### 7. Delivery.

(a) Subject to Section 6(e), unless otherwise determined by the Committee, or as otherwise provided in this Award Agreement, including, without limitation, Paragraphs 10 and 11, after receipt of payment of the Exercise Price in respect of a Year-End Option, a Share shall be delivered by book-entry credit to your Custody Account or to a brokerage account, as approved or required by the Firm, and until the

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Transferability Date, shall be subject to the Transfer Restrictions. 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 the provisions of Section 3.21.1 of the Plan, as a result of which delivery of your Shares may be delayed. In accordance with Section 1.3.2(h) of the Plan, in the discretion of the Committee, in lieu of all or any portion of the Shares otherwise deliverable upon the exercise of all or any portion of your Year-End Options, 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.

(b) In the discretion of the Committee, delivery of Shares (including Restricted Shares) may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your Year-End Options, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

8. Repayment. The provisions of Section 2.3.5 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 exercise were not satisfied) shall apply to this Award.

9. Non-transferability. Except as otherwise may be provided in this Paragraph or as otherwise may be provided by the Committee, and without limiting any permitted transfer in accordance with Paragraph 10(g), 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 9 or Section 3.5 of the Plan shall be void. The Committee may adopt procedures pursuant to which some or all recipients of Year-End Options may transfer some or all of their Year-End Options through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

10. 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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm's \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form

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of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(b) If you are or become a Managing Director, your rights in respect of your Year-End Options 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 Year-End Options 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, 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 Year-End Options 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 exercise of your Year-End Options or the sale of Shares delivered to you hereunder.

(f) Without limiting the application of Paragraph 6(e), GS Inc. may affix to Certificates representing Shares issued pursuant to this Award Agreement upon exercise of your Year-End Options 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 Paragraphs 5(b) and 6(f), if:

(i) your Employment with the Firm terminates solely because you resigned to accept employment at any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization, or any agency or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment your continued holding of your Year-End Options and/or Restricted Shares would result in an actual or perceived conflict of interest ("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 Year-End Options and/or Restricted Shares;

then, in the case of Paragraph 10(g)(i) above only, the condition set forth in Paragraph 5(a) shall be waived with respect to any Outstanding Year-End Options you then hold that had not yet become Vested (as a result of which such Year-End Options shall become Vested) and, in the cases of Paragraphs 10(g)(i) and 10(g)(ii) above,

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any Transfer Restrictions shall cease to apply and, at the sole discretion of the Firm, (a) such Outstanding Year-End Options shall be cancelled and as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment (the "Release Date") you shall receive a payment equal to the excess (if any) of (x) the Fair Market Value of a Share on the Business Day immediately prior to the Release Date multiplied by the number of your Year-End Options that were Outstanding immediately prior to such cancellation over (y) the Exercise Price multiplied by the number of such Outstanding Year-End Options; (b) the Initial Exercise Date shall become the Release Date; or (c) if and to the extent provided in any procedures adopted by the Committee, you may be permitted to transfer your Outstanding Year-End Options for value to a party or parties acceptable to the Firm (which may include the Firm). Notwithstanding anything else herein, the actions described in this Paragraph 10(g) shall be permitted only at such time and if and to the extent as would not result in the imposition of any additional tax to you under Section 409A of the Code (which governs the taxation of certain deferred compensation).

(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your Year-End Options, you understand and agree that, if you are or become a "senior executive officer" (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the "EESA")):

(i) No term or condition will apply to your Year-End Options or Restricted Shares to the extent that such term or condition would result in a violation of the Firm's obligations under the U.S. Treasury's TARP Capital Purchase Program (the "CPP"), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your Year-End Options or Restricted Shares as the Firm deems necessary in its sole discretion to satisfy the Firm's obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any Year-End Options, in accordance with Paragraph 8 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm's obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your Year-End Options or Restricted Shares that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

11. Right of Offset. Subject to Paragraph 15, the obligation to deliver Shares under this Award Agreement upon exercise of your Year-End Options 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

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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. For the avoidance of doubt, your acceptance of Paragraph 10(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your Year-End Options or Restricted Shares contemplated under such Paragraph. 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 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. 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. Section 409A of the Code. This Award is intended to be exempt from the provisions of Section 409A of the Code ("Section 409A"). Notwithstanding anything else herein (but subject to Paragraph 10(i)) or in the Plan, no action described herein, including without limitation Paragraphs 7, 10(g) and 11, or in the Plan shall be permitted if the Firm determines such action would result in the imposition of additional tax under Section 409A.

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:

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Name:

Title:



<DOCUMENT>  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ YEAR-END RSU AWARD**

This Award Agreement sets forth the terms and conditions of the \_\_\_\_ Year-End award (this “Award”) of RSUs (“Year-End 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

2. Award. The number of Year-End 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. In addition, as set forth in your Award Statement, some or all of any Shares delivered pursuant to your Year-End RSUs may be subject to transfer restrictions following the Delivery Date as described in Paragraph 3(b)(iv) below. **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 and Transfer Restrictions.

(a) Vesting. Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 6, 7, 9, 10 and 15, on each Vesting Date you shall become Vested in the number or percentage of Year-End 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 Year-End RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply to such Vested Year-End 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 Year-End RSUs would be delivered).

(b) Delivery and Transfer Restrictions.

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(i) The Delivery Dates with respect to this Award shall be the dates specified (next to the number or percentage of Year-End RSUs) as such on your Award Statement if such date is during a Window Period or, if such date is not during a Window Period, the first Trading Day of the first Window Period beginning after that 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, 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 each date specified as a Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding Year-End RSUs with respect to which such 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, as approved or required 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 Year-End 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.

(iv) Except as provided in Paragraphs 3(c), 7, and 9(g), until the date specified on your Award Statement as the "Transferability Date": (A) on each Delivery Date (or any other date delivery of Shares is called for hereunder), 50% of gross delivered Shares underlying Year-End RSUs identified on your Award Statement as "Base" Year-End RSUs will be subject to the "Transfer Restrictions" (as hereinafter defined) (such Shares, "Restricted Shares") and 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 (B) if and to the extent your Restricted Shares are certificated, the Certificates representing the Restricted Shares are subject to the restrictions in this Paragraph 3(b)(iv), and GS Inc. shall advise its transfer agent to place a stop order against your Restricted Shares. Within 30 Business Days after the Transferability Date (or any other date described herein on which 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. Year-End RSUs identified on your Award Statement as "Supplemental" Year-End RSUs, if any, will not be subject to Transfer Restrictions.

(v) In the discretion of the Committee, delivery of Shares (including Restricted Shares) may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your Year-End RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares

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while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(i) and 15), if you die prior to the Delivery Date and/or the Transferability Date, the Shares underlying your then Outstanding Year-End RSUs shall be delivered to the representative of your estate and any Transfer Restrictions shall cease to apply 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding Year-End RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee).

**4. Termination of Year-End RSUs and Non-Delivery of Shares; Termination and Cancellation of Restricted Shares.**

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 6, 7, and 9(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 Year-End RSUs that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment immediately shall terminate, such Year-End RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof. Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 7, and 9(g), if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

(b) Unless the Committee determines otherwise, and except as provided in Paragraphs 6 and 7, your rights in respect of all of your Outstanding Year-End RSUs (whether or not Vested) immediately shall terminate, such Year-End 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) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

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(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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding Year-End RSUs.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (A) any Firm employee or consultant (1) with whom you personally worked while employed by the Firm, or (2) 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 (B) any Managing Director of the Firm.

(c) Unless the Committee determines otherwise, and except as provided in Paragraph 7, your rights in respect of all of your Restricted Shares immediately shall terminate and such Restricted Shares shall be cancelled if:

(i) any event constituting Cause has occurred;

(ii) 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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(iii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Restricted Shares.

(d) For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v) and 4(c)(ii), regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii) and 4(c)(i).

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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, Downsizing and Approved Termination for Program Analysts.

(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 (as defined below), the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End RSUs shall become Vested), but all other terms and conditions of this Award Agreement shall continue to apply (including any applicable Transfer Restrictions). Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (i) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60, (ii) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion), and (iii) you have completed one year of service with the Firm following the Date of Grant (as determined by the Committee in its sole discretion). Any termination of Employment by reason of Extended Absence or Retirement shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

(b) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding Year-End RSUs that become Vested in accordance with Paragraph 6(a) immediately shall terminate, such Outstanding Year-End 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 Year-End 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 Year-End RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply (including any applicable Transfer Restrictions). 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

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“downsizing.” Your termination of Employment by reason of “downsizing” shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

(d) Notwithstanding any other provision of this Award Agreement, if you are classified by the Firm as a “program analyst,” and your Employment is terminated without Cause solely by reason of an “approved termination” with respect to your participation in the program prior to any Vesting Date specified on your Award Statement, the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End RSUs that were Outstanding but had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply (including any applicable Transfer Restrictions). Unless otherwise determined by the Committee, for purposes of this Paragraph 6(d), an “approved termination” shall mean a termination of Employment from the analyst program where: (i) you complete your analyst program, (ii) you receive a bonus for completing the analyst program and (iii) you terminate Employment with the Firm immediately after you complete the analyst program, without any “stay-on” or other agreement or understanding to continue Employment with the Firm. If you agree to stay with the Firm as an employee after your analyst program ends and then later terminate Employment, you will not have an “approved termination.” An “approved termination” shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement (except Paragraphs 9(i) and 15), 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 Year-End RSUs, whether or not Vested, shall be delivered and any Transfer Restrictions shall cease to apply.

8. Dividend Equivalent Rights; Dividends. Each Year-End RSU shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding Year-End 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 Year-End RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to Year-End RSUs that are Outstanding on the relevant record date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan. You shall be entitled to receive on a current basis any regular cash dividend paid by GS, Inc. in respect of your Restricted Shares, or, if the Restricted Shares are held in escrow, the Firm will direct the transfer/paying agent to distribute the dividends to you in respect of your Restricted Shares.

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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm’s \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to

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provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(b) If you are or become a Managing Director, your rights in respect of the Year-End 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 Year-End 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 Year-End 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 Year-End 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 any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding Year-End RSUs and/or Restricted Shares would result in an actual or perceived conflict of interest ("Conflicted Employment"); or



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(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 Year-End RSUs and/or Restricted Shares;

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 Year-End RSUs you then hold that had not yet become Vested (as a result of which such Year-End RSUs shall become Vested) and, in the case of Paragraphs 9(g)(i) and 9(g)(ii) above, any Transfer Restrictions shall cease to apply, and, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of Shares underlying, your then Outstanding Vested Year-End RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your Year-End RSUs, you understand and agree that, if you are or become a “senior executive officer” (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the “EESA”)):

(i) No term or condition will apply to your Year-End RSUs or Restricted Shares to the extent that such term or condition would result in a violation of the Firm’s obligations under the U.S. Treasury’s TARP Capital Purchase Program (the “CPP”), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your Year-End RSUs or Restricted Shares as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any Year-End RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your Year-End RSUs or Restricted Shares that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), the obligation to deliver Shares or to remove the Transfer Restrictions 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.

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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. For the avoidance of doubt, your acceptance of Paragraph 9(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your Year-End RSUs or Restricted Shares contemplated under such Paragraph. 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 in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of Year-End RSUs may transfer some or all of their Year-End RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation"), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections

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1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the event of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(i), Paragraph 9(i) will govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your Year-End RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) and (c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your Year-End RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a “specified employee” (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding Year-End RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding Year-End RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory

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documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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:

<DOCUMENT>  
<TYPE> EX-10.39  
<FILENAME> y74032exv10w39.htm  
<DESCRIPTION> EX-10.39: FORM OF YEAR-END RSU AWARD AGREEMENT (FRENCH ALTERNATIVE AWARD)  
<TEXT>

**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ YEAR-END FRENCH ALTERNATIVE RSU AWARD**

This Award Agreement sets forth the terms and conditions of the \_\_\_\_ Year-End award (this “Award”) of French Alternative RSUs (“Year-End French Alternative RSUs”), which is comprised of “Base” Year-End 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

2. Award.

(a) The number of Year-End French Alternative RSUs subject to this Award is set forth (as “\_\_\_\_ Year-End Base RSUs (French Alternative)”) 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. In addition, as set forth in your Award Statement, all Shares delivered pursuant to your Year-End French Alternative RSUs will be subject to transfer restrictions following the Delivery Date as described in Paragraph 3(b)(iv) below. **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.**

(b) This Award is made available to you solely because you are an employee of the Firm on the Date of Grant who does not own shares representing 10% or more of the issued share capital of GS Inc.

3. Vesting and Delivery and Transfer Restrictions.

(a) Vesting. Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 6, 7, 9, 10 and 15, on each Vesting Date you shall become Vested in the number or percentage of Year-End French

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Alternative 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 Year-End French Alternative RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply to such Vested Year-End French Alternative 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 Year-End French Alternative RSUs would be delivered).

(b) Delivery and Transfer Restrictions.

(i) The Delivery Dates with respect to this Award shall be the dates specified (next to the number or percentage of Year-End French Alternative RSUs) as such on your Award Statement if such date is during a Window Period or, if such date is not during a Window Period, the first Trading Day of the first Window Period beginning after that date. For this purpose, a "Trading Day" is a day on which Shares trade regular way on the New York Stock Exchange. Notwithstanding any other provision to the contrary in this Award Agreement or your Award Statement, a Delivery Date shall not occur prior to the expiration of a minimum period of two years following the Date of Grant, except as provided in Paragraph 3(c) hereof.

(ii) Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 5, 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 each date specified as a Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding Year-End French Alternative RSUs with respect to which such 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 a special custody account or a special brokerage account, as approved or required by the Firm and shall be subject to the Transfer Restrictions described in Paragraph 3(b)(iv) hereof until the applicable "Transferability Date" (defined below) identified on your Award Statement. 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) Notwithstanding Section 1.3.2(i) of the Plan, you shall receive, on each Delivery Date, Shares only to the exclusion of cash, other securities, other Awards or other property.

(iv) Notwithstanding any other provision to the contrary in this Award Agreement (except as provided in Paragraphs 3(c), 7 and 9(h)) or the Award Statement and except as may be determined by the Firm in a manner it concludes, in its sole discretion, is consistent with the deferral of French income taxes with respect to the Year-End French Alternative RSUs: (A) on each Delivery Date (or any other date delivery of Shares is called for hereunder) and until the date specified herein as the applicable Transferability Date (which date shall not occur prior to the expiration of a minimum period of two years following the applicable Delivery Date) (all such dates, the "Transferability Dates"), all of the delivered Shares underlying your Year-End French Alternative RSUs for which the applicable Delivery Date has occurred will be subject to the "Transfer Restrictions" (as hereinafter defined) (such Shares, "Restricted Shares") and 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

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Transfer Restrictions shall be void; and (B) until the applicable Transferability Date, if and to the extent your Restricted Shares are certificated, the Certificates representing such Restricted Shares are subject to the restrictions in this Paragraph 3(b)(iv), and GS Inc. shall advise its transfer agent to place a stop order against the transfer of such Restricted Shares in violation of the Transfer Restrictions. Within 30 Business Days after the Transferability Date (or any other date described herein on which 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. Shares underlying 50% of your French Alternative Year-End RSUs with a Delivery Date (as specified on your Award Statement) of \_\_\_ will have a Transferability Date of \_\_\_. Shares underlying (i) the remaining 50% of your French Alternative Year-End RSUs with a Delivery Date (as specified on your Award Statement) of \_\_\_ - and (ii) 100% of your French Alternative Year-End RSUs with a Delivery Date (as specified on your Award Statement) of \_\_\_ will have a Transferability Date of \_\_\_.

(v) In the discretion of the Committee, delivery of Shares (including Restricted Shares) may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your French Alternative Year-End RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(j) and 15), if you die prior to the Delivery Date and/or the Transferability Date, the Shares underlying your then Outstanding Year-End French Alternative RSUs shall be delivered to the representative of your estate and any Transfer Restrictions shall cease to apply 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding Year-End French Alternative RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee).

4. Termination of Year-End French Alternative RSUs and Non-Delivery of Shares; Retrocession of Restricted Shares.

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 6, 7, and 9(h), if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, your rights in respect of your Year-End French Alternative RSUs that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment immediately shall terminate, such Year-End French Alternative RSUs shall cease to be Outstanding and no Shares shall be delivered in respect thereof. Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 7, and 9(h), if your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm, any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).



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(b) Unless the Committee determines otherwise, and except as provided in Paragraphs 6 and 7, your rights in respect of all of your Outstanding Year-End French Alternative RSUs (whether or not Vested) immediately shall terminate, such Year-End French Alternative 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) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding Year-End French Alternative RSUs.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (A) any Firm employee or consultant (1) with whom you personally worked while employed by the Firm, or (2) 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 (B) any Managing Director of the Firm.

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Notwithstanding the foregoing, your Outstanding Year-End French Alternative RSUs with a Vesting Date (as specified on your Award Statement) of December 31, \_\_\_\_ that become Vested will not be subject to Paragraph 4(b)(iii) following December 31, \_\_\_\_.

(c) Unless the Committee determines otherwise, and except as provided in Paragraph 7, your rights in respect of all of your Restricted Shares immediately shall terminate and such Restricted Shares shall be retroceded for no consideration if:

(i) any event constituting Cause has occurred;

(ii) 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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party; or

(iii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Restricted Shares.

(d) For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v) and 4(c)(ii), regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii) and 4(c)(i).

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, Downsizing and Approved Termination for Program Analysts.

(a) Notwithstanding any other provision of this Award Agreement, but subject to Paragraphs 3(b)(i) and 3(b)(iv) and 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 (as defined below), the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End French Alternative RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End French Alternative RSUs shall become Vested), but all other terms and conditions of this Award Agreement shall continue to apply (including any applicable Transfer Restrictions). Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (i) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60, (ii) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion), and (iii) you have completed one year of service with the Firm following the Date of Grant (as determined by the Committee in its sole discretion). Any termination of Employment by reason of Extended

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Absence or Retirement shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

(b) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding Year-End French Alternative RSUs that become Vested in accordance with Paragraph 6(a) immediately shall terminate, such Outstanding Year-End French Alternative 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 Year-End French Alternative 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 Year-End French Alternative RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End French Alternative RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply (including, without limitation, Paragraphs 3(b)(i) and 3(b)(iv)). 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.” Your termination of Employment by reason of “downsizing” shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

(d) Notwithstanding any other provision of this Award Agreement, if you are classified by the Firm as a “program analyst,” and your Employment is terminated without Cause solely by reason of an “approved termination” with respect to your participation in the program prior to any Vesting Date specified on your Award Statement, the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End French Alternative RSUs that were Outstanding but had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End French Alternative RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply (including, without limitation, Paragraphs 3(b)(i) and 3(b)(iv)). Unless otherwise determined by the Committee, for purposes of this Paragraph 6(d), an “approved termination” shall mean a termination of Employment from the analyst program where: (i) you complete your analyst program, (ii) you receive a bonus for completing the analyst program and (iii) you terminate Employment with the Firm immediately after you complete the analyst program, without any “stay-on” or other agreement or understanding to continue Employment with the Firm. If you agree to stay with the Firm as an employee after your analyst program ends and then later terminate Employment, you will not have an

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“approved termination.” An “approved termination” shall not affect any applicable Transfer Restrictions, and any Transfer Restrictions shall continue to apply until the Transferability Date as provided in Paragraph 3(b)(iv).

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement (except Paragraphs 3(b)(i), 3(b)(iv), 9(j) and 15), 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 Year-End French Alternative RSUs, whether or not Vested, shall be delivered (but not earlier than the second anniversary of the Date of Grant) and the Transfer Restrictions shall cease to apply (but not earlier than the second anniversary of the applicable Delivery Date).

8. Dividend Equivalent Rights; Dividends. Each Year-End French Alternative RSU shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding Year-End French Alternative 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 Year-End French Alternative RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to Year-End French Alternative RSUs that are Outstanding on the relevant record date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan. You shall be entitled to receive on a current basis any regular cash dividend paid by GS, Inc. in respect of your Restricted Shares held in a special custody account or in a special brokerage account, and the Firm will direct the transfer/paying agent to distribute the dividends to you in respect of your Restricted Shares.

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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm’s \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(b) If you are or become a Managing Director, your rights in respect of the Year-End French Alternative RSUs are conditioned on your becoming a party to any shareholders’ agreement to which other similarly situated employees of the Firm are a party.

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(c) Your rights in respect of your Year-End French Alternative 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 Year-End French Alternative 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 Year-End French Alternative 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) In addition to the legends described in Paragraph 3(b)(iv) hereof, 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) You undertake to comply with (and take all steps requested by the Firm to assure that it complied with) the reporting requirements to be established by French law and regulations in order to benefit from the tax and social security regime set forth under article 83 of the Finance Bill for 2005 (#2004-1484) dated December 30, 2004, article 41 of the law #2005-842 dated July 26, 2005 and articles 34, 39, 40 and article 41 of the Law #2006-1770 dated December 30, 2006.

(h) Without limiting the application of Paragraph 4(b), if:

(i) your Employment with the Firm terminates solely because you resigned to accept employment at any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding Year-End French Alternative RSUs and/or the Restricted Shares delivered in respect of your Year-End French Alternative RSUs would result in an actual or perceived conflict of interest ("Conflicted Employment"); or

(ii) following your termination of Employment other than described in Paragraph 9(h)(i), you notify the Firm that you have accepted or intend to accept Conflicted Employment at a

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time when you continue to hold Outstanding Year-End French Alternative RSUs and/or Restricted Shares delivered in respect of Year-End French Alternative RSUs;

then, in the case of Paragraph 9(h)(i) above only, the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End French Alternative RSUs you then hold that had not yet become Vested (as a result of which such Year-End French Alternative RSUs shall become Vested) and, in the case of Paragraphs 9(h)(i) and 9(h)(ii) above, any Transfer Restrictions shall cease to apply, and, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of Shares underlying, your then Outstanding Vested Year-End French Alternative RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

(i) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(j) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your Year-End French Alternative RSUs, you understand and agree that, if you are or become a “senior executive officer” (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the “EESA”)):

(i) No term or condition will apply to your Year-End French Alternative RSUs or Restricted Shares to the extent that such term or condition would result in a violation of the Firm’s obligations under the U.S. Treasury’s TARP Capital Purchase Program (the “CPP”), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your Year-End French Alternative RSUs or Restricted Shares as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any Year-End French Alternative RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your Year-End French Alternative RSUs or Restricted Shares that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), the obligation to deliver Shares or to remove the Transfer Restrictions 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.

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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. For the avoidance of doubt, your acceptance of Paragraph 9(j) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your Year-End French Alternative RSUs or Restricted Shares contemplated under such Paragraph. 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 in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of Year-End French Alternative RSUs may transfer some or all of their Year-End French Alternative RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation"), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full

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authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the event of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(j), Paragraph 9(j) will govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your Year-End French Alternative RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3 (b) and (c), 6(b) and (c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your Year-End French Alternative RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs (but not earlier than the second anniversary of the Date of Grant); provided, however, that, if you are a “specified employee” (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period) (but not earlier than the second anniversary of the Date of Grant). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding Year-End French Alternative RSUs shall be paid to you within the calendar year that includes the date of distribution of any



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corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding Year-End French Alternative RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(h) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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.

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**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:

<DOCUMENT>  
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**THE GOLDMAN SACHS AMENDED AND RESTATED STOCK INCENTIVE PLAN  
OUTSIDE DIRECTOR \_\_\_\_\_**

This Award Agreement sets forth the terms and conditions of an award granted to you under The Goldman Sachs Amended and Restated Stock Incentive Plan (the “Plan”) of Options to purchase shares of Common Stock (“Shares”).

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.

2. Award. The Award Statement sets forth (i) the Date of Grant, (ii) the number of Options granted, (iii) the per-Share Exercise Price and (iv) the Initial Exercise Date. Until the Shares are delivered to you pursuant to Paragraph 6, you have no rights as a shareholder of GS Inc. **This Award is subject to all terms and provisions of the Plan and this Award Agreement.**

3. Expiration Date. Subject to the terms of the Plan, the Options shall expire and no longer be exercisable on the Expiration Date (as identified on your Award Statement).

4. Vesting. You shall be fully Vested in the Options on the Date of Grant.

5. Exercisability of Vested Options.

(a) General. To the extent Outstanding and unexercised, but subject to Paragraph 5(d) hereof, the Options may be exercised in accordance with procedures established by the Committee, but not earlier than the Initial Exercise Date. The Committee may from time to time prescribe periods during which the Options shall not be exercisable.

(b) Death. Notwithstanding any other provision of this Award Agreement, if you die and any Options remain unexercised, and provided your rights in respect of such Options have not previously terminated, such Options shall be exercisable by the representative of your estate or, to the extent you specifically bequeath any such Options under your will in accordance with such procedures, if any, as may be adopted by the Committee to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee) (a “Charitable Beneficiary”), by the Charitable Beneficiary, in either case in accordance with the procedures described in Paragraph 5(a) 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 and shall, unless earlier terminated or cancelled in accordance with the terms of this Agreement, remain exercisable until the Expiration Date and shall thereafter terminate. The Transfer Restrictions described in Paragraph 5(d) shall be removed.

(c) Other Terminations. Upon your separation from the Board of Directors of GS Inc. for any reason, your Outstanding and unexercised Options shall remain exercisable until the Expiration Date, and shall thereafter terminate.

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(d) Certain Restrictions on Transfer of Shares and Exercise of Options. Until the earlier of (I) the date on which you cease to be a director of the GS Inc. Board, or (II) \_\_\_\_ (the "Transferability Date"): (i) (A) no sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge or other disposition of (including through the use of any cash-settled instrument) any Shares acquired in connection with the exercise of your Options, whether voluntarily or involuntarily by you; and (B) no exercise of any Options involving the sale of Shares acquired in respect of such exercise (the restrictions in clauses (i)(A) and (i)(B) of this Paragraph 5(d) being referred to collectively as the "Transfer Restrictions") may be effected, and any purported sale, exchange, transfer, assignment, pledge, hypothecation, fractionalization, hedge, other disposition or exercise in violation of the Transfer Restrictions shall be void; and (ii) if and to the extent Shares subject to your Options are certificated, the certificates representing such Shares shall bear a legend specifying that such Shares are subject to the restrictions described in this Paragraph 5(d) and GS Inc. may advise its transfer agent to place a stop order against the transfer of such Shares in violation of such Transfer Restrictions. Any Shares acquired in connection with any exercise of your Options prior to the Transferability Date shall be held in a custody or other account designated by the Firm. Within 30 Business Days after the Transferability Date (or any other date for which removal of the Transfer Restrictions is called for), GS Inc. shall take, or shall cause to be taken, such steps as may be necessary to remove the Transfer Restrictions.

6. Delivery. Without limiting the application of Paragraph 5(d), unless otherwise determined by the Committee, or as otherwise provided in this Award Agreement, and except as provided in Paragraph 8, upon receipt of payment of the Exercise Price for Shares subject to one or more Options, delivery of the appropriate number of Shares shall be effected by book-entry credit to the Custody Account or to a brokerage account, as approved or required by the Firm. No delivery of Shares shall be made unless you have timely established the Custody Account or a brokerage account, as approved or required by the Firm. You shall be the beneficial owner of any Shares properly credited to the Custody Account or delivered to a brokerage account, as approved or required by the Firm. You shall have no right to any dividend or distribution with respect to such Shares if the record date for such dividend or distribution is prior to the date the Custody Account or brokerage account, as approved or required by the Firm, is properly credited with such Shares. The Firm may deliver cash or other property in lieu of all or any portion of the Shares otherwise deliverable in accordance with this Paragraph 6.

7. Conflicted Employment. Without otherwise limiting the application of Paragraph 5(d), if you accept employment at any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Options would result in an actual or perceived conflict of interest ("Conflicted Employment") then the Transfer Restrictions set forth in Paragraph 5(d) shall cease to apply and, at the sole discretion of the Firm: (a) such Outstanding Options shall be cancelled and as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment (the "Release Date") you shall receive a payment equal to the excess (if any) of (x) the Fair Market Value of a Share on the Business Day immediately prior to the Release Date multiplied by the number of your Options that were Outstanding immediately prior to such cancellation over (y) the Exercise Price multiplied by the number of such Options;

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(b) the Initial Exercise Date with respect to your Outstanding Options shall become the Release Date; or (c) if and to the extent provided in any procedures adopted by the Committee, you may be permitted to transfer your Outstanding Options for value to a party or parties acceptable to the Firm (which may include the Firm). Notwithstanding anything else herein, the actions described in this Paragraph 7 shall be permitted only at such time and if and to the extent as would not result in the imposition of any additional tax to you under Section 409A of the Code (which governs taxation of certain deferred compensation).

8. Non-transferability. Except as otherwise may be provided in this Paragraph or as otherwise may be provided by the Committee, and without limiting any permitted transfer in accordance with Paragraph 7, the limitations set forth in Section 3.5 of the Plan shall apply with respect to the Options. Any purported transfer or assignment in violation of the provisions of this Paragraph 8 or Section 3.5 of the Plan shall be void. The Committee may adopt procedures pursuant to which you may transfer some or all of your Options through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

9. Withholding, Consents and Legends.

(a) The delivery of Shares upon exercise of your Outstanding Options is conditioned on your satisfaction of any applicable withholding taxes (in accordance with Section 3.2 of the Plan, provided that the Committee may determine not to apply the minimum withholding rate specified in Section 3.2.2 of the Plan).

(b) Your rights in respect of the Options 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, and by accepting this Award you shall be deemed to consent and agree to the items specified in Section 3.3.3(d) of the Plan.

(c) In addition to the restrictions listed in Paragraph 5(d), 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.

10. Successors and Assigns of GS Inc. The terms and conditions of this Award Agreement shall be binding upon and shall inure to the benefit of GS Inc. and its successors and assigns.

11. Committee Discretion. The Committee shall have full discretion with respect to any actions to be taken or determinations to be made in connection with this Award

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Agreement, and its determinations shall be final, binding and conclusive in accordance with Section 1.3 of the Plan.

12. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement in any respect in accordance with Section 1.3 of the Plan, and the Board may amend the Plan in any respect in accordance with Section 3.1 of the Plan.

13. 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.**

14. Section 409A of the Code. This Award is intended to be exempt from the provisions of Section 409A of the Code ("Section 409A"). Notwithstanding anything else herein or in the Plan, no action described herein, including without limitation Paragraphs 6 and 7, or in the Plan shall be permitted if the Firm determines such action would result in the imposition of additional tax under Section 409A.

15. 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.

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**IN WITNESS WHEREOF**, GS Inc. has caused this Award Agreement to be duly executed and delivered as of \_\_\_\_.

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed:

By: \_\_\_\_\_



<DOCUMENT>  
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**THE GOLDMAN SACHS  
AMENDED AND RESTATED STOCK INCENTIVE PLAN  
OUTSIDE DIRECTOR \_\_\_\_\_**

This Award Agreement sets forth the terms and conditions of an Award of RSUs granted to you under The Goldman Sachs Amended and Restated Stock Incentive Plan (the “Plan”) as of \_\_\_\_.

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 which are not defined in this Award Agreement have the meanings as used or defined in the Plan. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 11.**

2. **Award.** \_\_\_\_RSUs are subject to this Award. Each RSU constitutes an unfunded and unsecured promise of GS Inc. 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”) (or cash or other property equal to the Fair Market Value thereof) on the Delivery Date as 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 subject to all terms and provisions of the Plan and this Award Agreement.**

3. **Delivery.**

(a) **In General.** Except as provided below in this Paragraph 3 and subject to Paragraphs 6, 7 and 11, the Delivery Date shall be on the last Business Day in May in the year following the year in which you cease to be a director of the GS Inc. Board. The Firm may deliver cash or other property in lieu of all or any portion of the Shares otherwise deliverable on the Delivery Date. Unless otherwise determined by the Committee, or as otherwise provided in this Award Agreement, delivery of Shares shall be effected by book-entry credit to the Custody Account or to a brokerage account, as approved or required by the Firm. No delivery of Shares shall be made unless you have timely established the Custody Account or a brokerage account, as approved or required by the Firm. You shall be the beneficial owner of any Shares properly credited to the Custody Account or delivered to a brokerage account, as approved or required by the Firm. You shall have no right to any dividend or distribution with respect to such Shares if the record date for such dividend or distribution is prior to the date the Custody Account or brokerage account, as approved or required by the Firm, is properly credited with such Shares.

(b) **Death.** Notwithstanding any other Paragraph of this Award Agreement (except Paragraph 11), if you die prior to the Delivery Date, the Shares (or cash or other property in lieu of all or any portion thereof) corresponding to your Outstanding 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically

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bequeath some or all of your Outstanding RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee).

4. Dividend Equivalent Rights. Prior to the delivery of Shares (or cash or other property in lieu thereof) pursuant to this Award Agreement, at or after the time of distribution of any regular cash dividend paid by GS Inc. in respect of the Common Stock, you shall be entitled to receive an amount in cash or other property equal to such regular cash dividend payment as would have been made in respect of the Shares not yet delivered, as if the Shares had been actually delivered.

5. Non-transferability. Except as may otherwise be provided in this Paragraph or as otherwise may be provided by the Committee, the limitations 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 5 or Section 3.5 of the Plan shall be void. The Committee may adopt procedures pursuant to which you may transfer some or all of your RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

6. Conflicted Employment. Notwithstanding anything in this Award Agreement to the contrary, if you accept employment at any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding RSUs would result in an actual or perceived conflict of interest ("Conflicted Employment"), then you shall receive, at the sole discretion of the Firm, either a lump sum cash payment in respect of, or delivery of Shares underlying, your then Outstanding RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

7. Withholding, Consents and Legends.

(a) The delivery of Shares is conditioned on your satisfaction of any applicable withholding taxes in accordance with Section 3.2 of the Plan, provided that the Committee may determine not to apply the minimum withholding rate specified in Section 3.2.2 of the Plan.

(b) Your rights in respect of the 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, and, by accepting this Award, you agree to the matters described in Section 3.3.3(d) of the Plan.

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(c) 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. GS Inc. may advise the transfer agent to place a stop order against any legended Shares.

8. Successors and Assigns of GS Inc. The terms and conditions of this Award Agreement shall be binding upon and shall inure to the benefit of GS Inc. and its successors and assigns.

9. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement in any respect in accordance with Section 1.3 of the Plan, and the Board may amend the Plan in any respect in accordance with Section 3.1 of the Plan. Notwithstanding the foregoing and Sections 1.3.2(f), 1.3.2(h) and 3.1 of the Plan, no such amendment shall materially adversely affect your rights and obligations under this Award Agreement without your consent (or the consent of your estate, if such consent is obtained after your death), except that the Committee reserves the right to accelerate the delivery of the Shares and in its discretion provide that such Shares may not be transferable until the Delivery Date. Any amendment of this Award Agreement shall be in writing signed by an authorized member of the Board or any other person or persons authorized by the Board.

10. 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.**

11. Compliance of Award Agreement and Plan with Section 409A. The provisions of this Paragraph 11 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to “Section 409A” refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a “deferral of compensation” or “deferred compensation” as those terms are defined in the regulations under Section 409A (“409A deferred compensation”), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 11 and the other provisions of this Award Agreement, this Paragraph 11 shall govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 7(a) and (b), and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by December 31 of the calendar year in which the Delivery Date occurs unless, in order to permit

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such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(a) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(b), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) Notwithstanding any provision of Paragraph 4 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding RSUs.

(f) The timing of delivery or payment referred to in Paragraph 6 shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(g) Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(h) Delivery of Shares in respect of this Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

12. 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.

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**IN WITNESS WHEREOF**, GS Inc. and you have caused this Award Agreement to be duly executed and delivered.

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed:

By: \_\_\_\_\_

<DOCUMENT>  
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<FILENAME> y74032exv10w43.htm  
<DESCRIPTION> EX-10.43: DESCRIPTION OF NON-EMPLOYEE DIRECTOR COMPENSATION  
<TEXT>

### **Description of Non-Employee Director Compensation**

For fiscal 2008, the compensation for the non-employee directors of The Goldman Sachs Group, Inc. (Group Inc.) consisted of:

- a \$75,000 annual retainer awarded on December 17, 2008 as 953 fully vested restricted stock units (RSUs) to each non-employee director of Group Inc., other than Lakshmi N. Mittal, who became a director in late June 2008 and received a prorated retainer of \$37,500 as 477 fully vested RSUs, and Edward M. Liddy, who resigned as a director in early October 2008 and received a prorated cash retainer of \$62,500;
- a \$25,000 committee chair fee awarded on December 17, 2008 as 318 fully vested RSUs to each committee chair, other than Stephen Friedman, who became Chair of the Audit Committee in early October 2008 and received a prorated committee chair fee of \$4,167 as 53 fully vested RSUs, and Mr. Liddy, who resigned as Chair of the Audit Committee in early October 2008 and received a prorated cash committee chair fee of \$20,833; and
- the following grants awarded on December 17, 2008:
  - 2,900 fully vested RSUs for each of Claes Dahlbäck, Mr. Friedman, William W. George, Lois D. Juliber and Ruth J. Simmons;
  - 1,450 fully vested RSUs and 5,800 fully vested stock options (Options) for John H. Bryan and James A. Johnson;
  - 11,600 fully vested Options for Rajat K. Gupta;
  - a prorated grant of 1,450 fully vested RSUs for Mr. Mittal; and
  - \$190,385 in cash in lieu of a prorated annual equity grant for Mr. Liddy, a retired director.

Non-employee directors (other than Mr. Mittal, who joined during the year) elected whether to receive RSUs, Options or a combination of RSUs and Options.

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 in connection with non-employee director compensation for fiscal 2008 have an exercise price of \$78.78 (the closing price per share of Common Stock on the NYSE on the date of grant). One-third of the Options awarded generally become exercisable in each of January 2010, January 2011 and January 2012, provided that all of the Options granted to a non-employee director become exercisable on the date the non-employee director ceases to be a director of Group Inc. For so long as the non-employee director remains a director of Group Inc., the Common Stock underlying any exercised Option cannot be transferred before January 2014.

The Group Inc. Board of Directors, upon the recommendation of the Corporate Governance and Nominating Committee, has a policy on stock ownership that requires each non-employee director to beneficially own at least 5,000 shares of Common Stock or fully vested RSUs within two years of becoming a director. All non-employee directors of Group Inc. are in compliance with this policy.

Non-employee directors of Group Inc. are permitted to participate in Group Inc.'s employee matching gift program on the same terms as employees. Under the program for 2008, Group Inc. matched gifts of up to \$20,000 in the aggregate per participating individual.

Non-employee directors receive no compensation other than directors' fees.



<DOCUMENT>  
<TYPE> EX-10.49  
<FILENAME> y74032exv10w49.htm  
<DESCRIPTION> EX-10.49: FORM OF SIGNATURE CARD FOR EQUITY AWARDS  
<TEXT>

**The Goldman Sachs Group, Inc.**  
SIGNATURE CARD FOR \_\_\_\_ YEAR-END AWARDS AND THE BNY MELLON CUSTODY ACCOUNT  
AND CONSENT TO RECEIVE ELECTRONIC DELIVERY

**IMPORTANT: PLEASE REVIEW, EXECUTE AND RETURN THIS FORM TO: EQUITY COMPENSATION  
(DIVISION OF HCM), 30 HUDSON STREET, 35TH FLOOR, JERSEY CITY, NJ 07302.**

**YOU MUST PROPERLY EXECUTE THIS FORM TO ACKNOWLEDGE ACCEPTANCE OF THE TERMS AND  
CONDITIONS OF YOUR AWARD(S) AND RELATED MATTERS.**

1. I have received and agree to be bound by The Goldman Sachs Amended and Restated Stock Incentive Plan (the "SIP") and the Award Agreement(s) applicable to me in connection with the \_\_\_\_ Year-End Award(s) (the "Award(s)") that I have been granted by the Firm (as defined below). I confirm that I have accepted the Award(s) subject to the terms and conditions contained in the SIP and the Award Agreement(s), including but not limited to, the requirement that disputes relating to the Award(s) and the Award Agreement(s) be decided through arbitration in New York City and be governed by New York law.

As a condition of this grant, I understand that the Award(s) (as well as any other award that the Firm may grant to me under the SIP) is/are subject to other governing law provisions (as outlined in this signature card, in the current or otherwise then current Award Summary (as defined below) or otherwise as may be required under applicable law) and, as a condition to receiving such awards, I agree to be bound thereby. I also understand that the Firm may grant to me other awards under the SIP that also may contain (among other terms and conditions) arbitration and other governing law provisions and, as a condition to receiving such awards, I agree to be bound thereby. As a condition of this grant, I agree to provide upon request an appropriate certification regarding my U.S. tax status on Form W-8BEN, Form W-9, or other appropriate form, and I understand that failure to supply a required form may result in the imposition of backup withholding on certain payments I receive pursuant to this grant.

Further, as a condition of this grant, if I am a person who has worked in the United Kingdom at any time during the earnings period relating to any award under the SIP, as determined by the Firm, when requested and as directed by the Firm, I will agree to a Joint Election under s431 ITEPA 2003 of the laws of the United Kingdom for full or partial disapplication of Chapter 2 Income Tax (Earnings and Pension) Act 2003 under the laws of the United Kingdom and will sign and return such election in respect of all future deliveries of shares underlying the Award(s) and any previous grants made to me under the SIP and understand that the Firm intends to meet its delivery obligations in shares with respect to my Award(s), except as may be prohibited by law or described in the accompanying Award Agreement or supplementary materials.

If I have worked in Switzerland at any time during the earnings period relating to the Award(s) granted to me as determined by the Firm, (i) I acknowledge that my Award(s) are subject to tax in accordance with the rulings and method of calculation of taxable values to be agreed by the Firm with the Federal and/or Zurich/Geneva cantonal/communal tax authorities or as otherwise directed by the Firm, and (ii) I hereby agree to be bound by any rulings agreed by the Firm in respect of any Award(s), which is expected to result in taxation at the time of delivery of shares (or cash or other property in lieu thereof), and (iii) I undertake to declare and make a full and accurate income tax declaration in respect of my Award(s) in accordance with the above ruling or as directed by the Firm.

I understand and acknowledge that any transfer provisions (including, where applicable, escrow and other similar provisions, but specifically excluding any transfer restrictions imposed on any Award(s) in the Award Agreement(s) or the SIP) in the SIP or related documents will not apply to me (i) to the extent that the applicability of those provisions would affect the availability of relevant exemptions or tax favorable treatment, or (ii) otherwise in circumstances determined by the Firm in its sole discretion.

2. I have read and understand the Firm's "Notice Periods for Recipients of Year-End Equity-Based Awards" (the "Notice Policy"), pursuant to which I am required to provide certain specified advance notice of my intent to leave employment with the Firm. I understand that in executing this form, I will be agreeing to provide my employing entity with advance notice of my intention to leave employment with the Firm as follows:

- In the Americas, Japan and Asia Ex-Japan (excluding India): 60 days in advance of my termination date
- In Europe, the Middle East, Africa and India: 90 days in advance of my termination date

and that, where applicable (see the provisions in the Award Summary), the provisions of the Notice Policy constitute a permanent change to my terms and conditions of employment. I agree to this change in consideration of my continued employment with the Firm and my acceptance of the Award(s), and I agree to be bound by the Notice Policy as in effect from time-to-time.

I also understand that the terms and conditions of my employment shall be permanently changed so that, in the event that I resign from the Firm, the Firm may either:

- Unilaterally waive or reduce the notice period otherwise applicable to my employment, or
- Take such other action as shall have that effect.

I acknowledge that the Firm retains its right to bring forward the end of the notice period to such earlier date, and that I will not be entitled to any salary, wages, or benefits after such earlier date. In addition, I understand that I will not receive pay in lieu for any period of notice that has been waived or reduced.

This agreement concerning my notice period is being made for and on behalf of my Goldman Sachs employing entity, and implementation of the Notice Policy does not create an employment relationship between me and The Goldman Sachs Group, Inc.

I understand that unless the notice period is waived by agreement or unilaterally as set out above, or I have exercised a statutory right to make a payment in lieu of my notice period, I will be paid my base salary and will continue to receive all mandatory benefits during the notice period. I understand that during my notice period I may (subject to any local laws to the contrary) be required to remain away from the Firm's offices, and/or be removed from any assigned duties or assigned to other suitable duties during my notice period.

I understand that if I fail to give the full amount of notice as set out above, or to comply in any respect with the Notice Policy, I will have failed to meet an obligation I have under an agreement with the Firm, as a result of which the Firm may have certain rights and I may be subject to certain legal and equitable rights and remedies, including, without limitation, the forfeiture of the Award(s) and any other awards granted to me (whether before or after the Award(s)) under the SIP. The forfeiture of such Award(s) will also apply where I fail to give the full amount of notice by exercising any right I may have under applicable legislation to make a payment in lieu of such notice. I also understand that, if I fail to comply with the Notice Policy, the Firm may be entitled to an injunction from a court restraining me from violating it.

I understand that, for employees of Archon Group, L.P., the Notice Policy applies only to Senior Executives.

3. I have read and understand the Firm's hedging and pledging policies (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 agree to be bound by them (with respect to the Award(s) and any prior awards under the SIP), both during and following my employment with the Firm.

4. If a custody account is required, I request that The Bank of New York Mellon ("BNY Mellon") (successor in interest to Mellon Bank, N.A.) open a custody account for me as described in the enclosed Custody Agreement among BNY Mellon (as successor in interest to Mellon Bank N.A.), The Goldman Sachs Group, Inc., and myself. I have received and agree to be bound by the Custody Agreement (or any other such custody agreement previously entered into by me or on my behalf), including the applicable restrictions on transfers, pledges and withdrawals of Common Stock, the provisions permitting the Firm to monitor my custody account, and the limitations on the liability of BNY Mellon and the Firm. I also agree to open an account with any other custodian or broker selected by the Firm, if the Firm, in its sole discretion, requires me to open an account with such custodian or broker as a condition to delivery of shares (or cash or other property) underlying the Award(s).

5. If the Firm advanced or loaned me funds to pay certain taxes (including income taxes and Social Security, or similar contributions) in connection with the Award(s) (or does so in the future), and if I have not signed a separate loan agreement governing repayment, I authorize the Firm to withhold from my compensation any amounts required to reimburse it for any such advance or loan to the extent permitted by applicable law.

I understand and agree that, if I leave the Firm, I am required immediately to repay any outstanding amount. I further understand and agree that the Firm has the right to offset, to the extent permitted by the Award Agreement and applicable law (including Section 409A of the U.S. Internal Revenue Code of 1986, as amended, which limits the Firm's ability to offset in the case of United States taxpayers under certain circumstances), any outstanding amounts that I then owe the Firm against its delivery obligations under the Award(s) or against any other amounts the Firm then owes me. I understand that the delivery of shares pursuant to the Award(s) is conditioned on my satisfaction of any applicable taxes or social security contributions (collectively referred to as "tax" or "taxes" for purposes of the SIP and all related documents) in accordance with the SIP. To the extent permitted by applicable law, the Firm, in its sole discretion, may require me to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on me or the Firm in connection with the grant, vesting or delivery of the Award(s) by requiring me to choose

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between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of shares delivered to me pursuant to the Award(s). However, in no event shall any such choice or the choice specified in paragraph 6, below, determine, or give me any discretion to affect, the timing of the delivery of shares or payment of tax obligations. I understand and agree that the Firm may reduce any year-end cash bonus that I may receive by an amount equal to the estimated Indian Fringe Benefit Tax applicable to any award (whether or not vested), as determined by the Firm in its sole discretion.

6. If I am an individual with separate employment contracts (at any time during and/or after the Firm's \_\_\_ fiscal year), I acknowledge and agree that the Firm may, in its sole discretion, require (to the extent permitted by applicable law) that I provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to my separate employment contracts by requiring me to choose between remitting such amount (i) in cash (or through payroll deductions or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of shares delivered to me pursuant to the Award(s) (or any other of my awards outstanding under the SIP).

7. In connection with any Award Agreement or other interest I may receive in the SIP or any shares of Common Stock of The Goldman Sachs Group, Inc. that I may receive in connection with the Award(s) or any award I have previously received or may receive, or in connection with any amendment or variation thereof or any documents listed in paragraph 8, I hereby consent to (a) the acceptance by me of the Award(s) electronically, (b) the giving of instructions in electronic form whether by me or the Firm, and (c) the receipt in electronic form at my email address maintained at Goldman Sachs or via Goldman Sachs' intranet site (or, if I am no longer employed by the Firm, at such other email address as I may specify, or via such other electronic means as the Firm and I may agree) all notices and information that the Firm is required by law to send to me in connection therewith including, without limitation, any document (or part thereof) constituting part of a prospectus covering securities that have been registered under the U.S. Securities Act of 1933, the information contained in any such document and any information required to be delivered to me under Rule 428 of the U.S. Securities Act of 1933, including, for example, the annual report to security holders or the annual report on Form 10-K of The Goldman Sachs Group, Inc. for its latest fiscal year, and that all prior elections that I may have made relating to the delivery of any such document in physical form are hereby revoked and superseded. I agree to check Goldman Sachs' intranet site (or, if I am no longer employed by the Firm, such other electronic site as the Firm and I may agree) periodically as I deem appropriate for any new notices or information concerning the SIP. I understand that I am not required to consent to the receipt of such documents in electronic form in order to receive the Award(s) and that I may decline to receive such documents in electronic form by contacting Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, which will provide me with hard copies of such documents upon request. I also understand that this consent is voluntary and may be revoked at any time on three business days' written notice.

8. I hereby acknowledge that I have received in electronic form in accordance with my consent in paragraph 7 the following documents:

- The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Summary of The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Custody Agreement with BNY Mellon;
- The \_\_\_ Annual Report for The Goldman Sachs Group, Inc.;
- The annual report on Form 10-K for The Goldman Sachs Group, Inc. for the fiscal year ended \_\_\_, filed with the Securities Exchange Commission on \_\_\_;
- The Award Agreement(s); and
- Summaries of the Award(s) ("Award Summary").

9. I expressly authorize any appropriate representative of the Firm to make any notifications, filings or remittances of funds that may be required in connection with the SIP or otherwise on my behalf. Further, if I am an employee who is resident in South Africa at the time of share acquisition, by accepting my Award(s), I expressly authorize any appropriate representative of the Firm to make any required notification on my behalf to the Reserve Bank of South Africa (or its authorized dealer) in relation to any acquisition of shares for no consideration under the SIP or other similar filing that may otherwise be required in South Africa. I acknowledge that any such authorization is effective from the date of acceptance of my Award(s) until such time as I expressly revoke the authorization by written notice to any appropriate representative of the Firm. I understand that this authorization does not create any obligation on the Firm to deal with any such notifications, filings or remittances of funds that I may be required to make in connection with the SIP and I accept full responsibility in this regard.

#### **Consent to Data Collection, Processing and Transfers:**

I understand and agree that in connection with the SIP and any other Firm benefit plan (the "Programs"), to the extent permitted under the laws of the applicable jurisdiction, the Firm may collect and process various data that is personal to me, including my name, address, work location, hire date, Social Security or Social Insurance or taxpayer identification number (required for tax purposes), type and amount of SIP or other benefit plan award, citizenship or residency (required for tax purposes) and other similar information reasonably necessary for the administration of such Programs (collectively referred to as "Information") and provide such Information to its affiliates and BNY Mellon (and its affiliates) or any other service provider, whether in the United States or elsewhere, as is reasonably necessary for the administration of the Programs and under the laws of these jurisdictions. I understand that, in certain circumstances, foreign courts, law enforcement agencies or regulatory agencies may be entitled to access the Information. I understand that, unless I explicitly authorize otherwise, the Firm, its affiliates and its service providers (through their respective employees in charge of the relevant electronic and manual processing) will use this Information only for purposes of administering the Programs. I understand that, in the United States and in other countries to which such Information may be transferred for the administration of the Programs, the level of data protection is not equivalent to data protection standards in the member states of the European Union. I understand that, upon request, to Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, to the extent required under the laws of the applicable jurisdiction, I may have access to and obtain communication of the Information and may exercise any of my rights in respect of such Information, including objecting to the processing of the Information and requesting that the Information be corrected (if wrong), completed or clarified (if incomplete or equivocal), or erased (if cannot legally be collected or kept). Upon request, to the extent required under the laws of the applicable jurisdiction, Equity Compensation (division of HCM) will also provide me, free of charge, with a list of all the service providers used in connection with the Programs at the time of request. I understand that, if I refuse to authorize the use and transfer of the Information consistent with the above, I may not benefit from the Programs. I authorize the use and transfer of the Information consistent with the above for the period of administration of the Programs. In particular, I authorize (within the limits described above): (i) the data processing by the Firm (which means The

Goldman Sachs Group, Inc. and its subsidiaries and affiliates); (ii) the data processing by BNY Mellon and its affiliates; (iii) the data processing by the Firm's other service providers; and (iv) the data transfer to the United States and other countries. I further acknowledge that the Information may be retained by such persons beyond the period of administration of the Programs to the extent permitted under the laws of the applicable jurisdiction and I so authorize.

**Other Legal Notices:**

**FOR ARGENTINA EMPLOYEES ONLY**

This is a private offer. It is not subject to the supervision of the Comision Nacional de Valores (CNV) or any other governmental authority in Argentina.

**FOR AUSTRALIA EMPLOYEES ONLY**

"This document is provided for your information only. This document does not constitute an offer of securities. Your individual offer of participation will be given to you directly with a printed copy of the disclosure document."

**FOR BRAZIL EMPLOYEES ONLY**

Please note that the offer of an award under the SIP does not constitute a public offer in Brazil, and therefore it is not subject to registration with the Brazilian authorities.

According to Brazilian regulations, individuals resident in Brazil must inform the Central Bank of Brazil yearly the amounts of any nature, the assets and rights (including cash and other deposits) held outside of the Brazilian territory. Please consult your own legal counsel on the terms and conditions for presentation of such information.

By accepting the Award(s), you acknowledge that the Firm has provided you with Portuguese translations of the Award Summary, Award Agreement and Signature Card, but that the original English version of these documents controls. (Ao aceitar esta outorga, Você reconhece que a Empresa lhe disponibilizou a versão em português do Award Summary, do Award Agreement e do Signature Card; porém a versão original em inglês desses documentos prevalecerá.)

**FOR CANADA EMPLOYEES IN QUEBEC ONLY**

By accepting the Award(s), you acknowledge and agree that you and the Firm expressly wish that all documents related to the Award(s) (including, without limitation, the Plan document, this Signature Card, the Award Agreement and the Award Summary) be in English.

**FOR THE PEOPLE'S REPUBLIC OF CHINA EMPLOYEES ONLY**

All documentation in relation to the Award(s) is intended for your personal use and in your capacity as an employee of the Firm (and/or its affiliate) and is being given to you solely for the purpose of providing you with information concerning

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the Award(s) which the Firm may grant to you as an employee of the Firm (and/or its affiliate) in accordance with the terms of the SIP, this documentation and the applicable Award Agreement(s). The grant of the Award(s) has not been and will not be registered with the China Securities Regulatory Commission of the People's Republic of China pursuant to relevant securities laws and regulations, and the Award(s) may not be offered or sold within the mainland of the People's Republic of China by means of any of the documentation in relation to the Award(s) through a public offering or in circumstances which require a registration or approval of the China Securities Regulatory Commission of the People's Republic of China in accordance with the relevant securities laws and regulations.

#### **FOR FRANCE EMPLOYEES ONLY**

Disclaimer: The current award is not covered by any prospectus which is the subject of the AMF's approval. Grantees can only receive this award for their own account ("compte propre") in the conditions laid down by articles D. 411-1, D. 411-2, D.411-3, D.411-4, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the French Monetary and Financial Code. Any direct or indirect dissemination into the public of the financial instruments acquired can only take place within the conditions of articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the French Monetary and Financial Code.

By accepting this award, you acknowledge that the Firm has provided you with French translations of the Award Summary, Award Agreement and Signature Card, but that the original English version of these documents control.

Avertissement: La présente attribution ne donne pas lieu à un prospectus soumis au visa de l'Autorité des marchés financiers. Les personnes qui y participent ne peuvent le faire que pour compte propre dans les conditions fixées par les articles D. 411-1, D. 411-2, D.411-3, D.411-4, D.734-1, D. 744-1, D. 754-1 et D. 764-1 du Code monétaire et financier. La diffusion, directe ou indirecte, dans le public des instruments financiers ainsi acquis, ne peut être réalisée que dans les conditions prévues aux articles L. 411-1, L. 411-2 L. 412-1 et L. 621-8 à L. 621-8-3 du Code monétaire et financier.

En acceptant cet octroi, vous reconnaissez que la Société vous a transmis une version française de l'*Award Summary* (Résumé de l'Octroi), l'*Award Agreement* (Contrat d'Octroi) et de la *Signature Card* (Carte de Signature), mais que seule la version originale en langue anglaise fait foi."

#### **FOR GERMANY EMPLOYEES ONLY**

The Award(s) are offered to you by The Goldman Sachs Group, Inc. ("GS Inc.") in accordance with the terms of the SIP which are summarized in the Award Summary. More information about GS Inc. is available on [www.gs.com](http://www.gs.com). You are being offered Award(s) under the SIP in order to provide an additional incentive and to encourage employee share ownership and so increase your interest in the Firm's success. Please refer to the section entitled *Shares Available for Awards* in the SIP for information on the maximum number of GS Inc. shares that can be offered under the SIP. The obligation to publish a prospectus under the Prospectus Directive does not apply to the offer because of Article 4(1)(e) of that directive.

"Die Prämien werden Ihnen von der The Goldman Sachs Group, Inc. („GS Inc.“) gemäß den in der Prämienübersicht aufgeführten Bestimmungen des Erwerbsplans angeboten. Weitere Informationen über GS Inc. finden Sie unter [www.gs.com](http://www.gs.com). Die Prämien werden Ihnen im Rahmen des Erwerbsplans angeboten, um einen zusätzlichen Anreiz darzustellen und Sie als Mitarbeiter zum Erwerb von Aktien zu ermutigen, um so Ihren Anteil am Erfolg des Unternehmens zu vergrößern. Informationen zur Anzahl der im Rahmen des Plans angebotenen GS Inc.-Aktien entnehmen Sie bitte dem Abschnitt *als Prämien erhältliche Aktien* im Erwerbsplan. Die Verpflichtung zur Veröffentlichung eines Emissionsprospekts gemäß der europäischen Prospekttrichtlinie trifft auf Grund von Artikel 4(1)(e) dieser Richtlinie nicht auf dieses Angebot zu."

#### **FOR HONG KONG EMPLOYEES ONLY**

##### **WARNING:**

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in doubt about any of the contents of this document, you should obtain independent professional advice.

By accepting the Award(s), you acknowledge and accept that you will not be permitted to transfer awards to persons who fall outside the definition of 'qualifying persons' in the Companies Ordinance (*i.e.*, a person who is not a current or former director, employee, officer, consultant of the Firm or a person other than the offeree's wife, husband, widow, widower, child or step-child under the age of 18 years, or as otherwise defined), even if otherwise permitted under the SIP or any of the related documents.

#### **FOR INDIA EMPLOYEES ONLY**

This website does not invite offers from the public for subscription or purchase of the securities of any body corporate under any law for the time being in force in India. The website is not a prospectus under the applicable laws for the time being in force in India. Goldman Sachs does not intend to market, promote, invite offers for subscription or purchase of the securities of any body corporate by this website. The information provided on this website is for the record only. Any person who subscribes or purchases securities of any body corporate should consult his own investment advisers before making any investments. Goldman Sachs shall not be liable or responsible for any such investment decision made by any person.

#### **FOR MONACO EMPLOYEES ONLY**

By accepting your Award(s), you expressly renounce the jurisdiction of Monaco (and, if applicable, France and notably the application of articles 14 and 15 of the French Civil Code) in connection with any dispute relating to your Award(s).

#### **FOR RUSSIA EMPLOYEES ONLY**

None of the information contained in the documents referred to in paragraph 8 of this signature card or in this signature card constitutes an advertisement of the Award(s) in Russia and must not be passed on to third parties or otherwise be made publicly available in Russia. The Award(s) have not been and will not be registered in Russia and are not intended for "placement" or "public circulation" in Russia.

#### **FOR SWEDEN EMPLOYEES ONLY**

By accepting the Award(s), you acknowledge and accept that any transfer provisions (including, where applicable, escrow and other similar provisions) in the SIP or any related documents do not apply to you.

#### **FOR UK EMPLOYEES ONLY**

This document is approved by Goldman Sachs International (“GSI”), Peterborough Court, 133 Fleet Street, London EC4A 2BB, which is authorized and regulated by the Financial Services Authority. The document relates to investments and investment services of The Goldman Sachs Group Inc. and other institutions, including BNY Mellon, relating to custodial and delivery operations. In some or all respects, the regulatory system applying to these entities, including any compensation arrangements and rules made under the Financial Services and Markets Act 2000 for the protection of private customers, will be different from that of the United Kingdom.

This document does not have regard to the specific investment objectives, financial situation and particular needs of any specific person who may receive it. Recipients should seek their own financial advice.

The Award(s) is/are subject to the terms and conditions set forth in the SIP and the Award Agreement. The price of shares and the income from such shares (if any) can fluctuate and may be affected by changes in the exchange rate for U.S. Dollars. Past performance will not necessarily be repeated. Levels and bases of taxation may change from time to time. Investors should consult their own tax advisers in order to understand tax consequences. The Goldman Sachs Group, Inc. has (and its associates, including GSI, may have) a material interest in the shares and the investments that are the subject of this document.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Employee ID #: \_\_\_\_\_

Year End (General)

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[Letterhead of The Goldman Sachs Group, Inc.]

October 28, 2008

[Name of Senior Executive Officer],  
c/o The Goldman Sachs Group, Inc.,  
85 Broad Street,  
New York, New York 10004.

Dear \_\_\_\_\_,

The Goldman Sachs Group, Inc. (“*GS Group*”) has entered into a letter agreement, dated October 26, 2008 (including the Securities Purchase Agreement – Standard Terms incorporated by reference therein, the “*Securities Purchase Agreement*”), with the United States Department of Treasury (“*Treasury*”) as part of GS Group’s participation in the Treasury’s TARP Capital Purchase Program (the “*CPP*”).

For GS Group to participate in the CPP and as a condition to the closing of the investment contemplated by the Securities Purchase Agreement, GS Group is required to establish specified standards for incentive compensation to its “senior executive officers” (as defined below), and to make changes to certain of its compensation arrangements. To comply with these requirements, and in consideration of the benefits that you will receive as a result of GS Group’s participation in the CPP, you agree as follows:

- (1) *No Golden Parachute Payments.* GS Group is prohibiting any golden parachute payment (as defined below) to you during any “CPP Covered Period.” A “*CPP Covered Period*” is any period during which (A) you are a senior executive officer and (B) Treasury holds an equity or debt position acquired from GS Group in the CPP.
- (2) *Recovery of Bonus and Incentive Compensation.* Any bonus or incentive compensation payments to you during a CPP Covered Period is subject to recovery or “clawback” by GS Group if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.
- (3) *Compensation Program Amendments.* Each of GS Group’s compensation, bonus, incentive and other benefit plans, programs, arrangements and

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agreements (including, without limitation, the Amended and Restated Stock Incentive Plan and each RSU, stock option and other agreement thereunder, the Partner Compensation Plan, the Restricted Partner Compensation Plan and any document governing any employee special investment) (collectively, “*Benefit Plans*”) applicable to you hereby is amended if and to the extent necessary to give effect to provisions (1) and (2) and as required under the Securities Purchase Agreement.

In addition, the CPP requires the Compensation Committee of GS Group’s Board of Directors to review annually with GS Group’s senior risk officers the features of the Benefit Plans to ensure that they do not encourage senior executive officers to take unnecessary and excessive risks that threaten the value of GS Group. If and to the extent that, as a result of any such review, the Compensation Committee determines any revision to any Benefit Plan is appropriate, you hereby agree to any such revisions and you agree to execute such additional documents as GS Group deems necessary or appropriate to effect such revisions.

(4) *Definitions and Interpretation.* This letter shall be interpreted as follows:

- “Senior executive officer” means GS Group’s “senior executive officers” as defined in subsection 111(b)(3) of EESA and the regulations governing the CPP.
- “Golden parachute payment” has the same meaning in subsection 111(b)(2)(C) of EESA.
- “EESA” means the Emergency Economic Stabilization Act of 2008 as implemented by guidance or regulation that has been issued and is in effect as of the “Closing Date” as defined in the Securities Purchase Agreement.
- “GS Group” includes any entities treated as a single employer with GS Group under 31 C.F.R. § 30.1(b) (as in effect on the Closing Date). (We note that you also are delivering a waiver pursuant to the Securities Purchase Agreement, and, as between GS Group and you, the term “employer” in that waiver will be deemed to mean GS Group as used in this letter).
- The term “CPP Covered Period” shall be limited by, and interpreted in a manner consistent with, 31 C.F.R. § 30.11 (as in effect on the Closing Date).
- Provisions (1) and (2) of this letter are intended to, and will be interpreted, administered and construed to, comply with Section 111 of EESA and the regulations thereunder and the regulations governing the CPP (as in effect on the Closing Date) and, to the maximum extent consistent with the preceding, to permit operation of the Benefit Plans in accordance with their terms before giving effect to this letter.

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This letter is subject to the provisions of Annex A, which is part hereof.

\* \* \*

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Name:  
Title:

Intending to be legally bound, I agree  
with and accept the foregoing terms.

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## ANNEX A

### Section 1. Arbitration

(a) Any dispute, controversy or claim between the The Goldman Sachs Group, Inc and its subsidiaries and affiliates (the "Firm") and the Senior Executive Officer Grantee, arising out of or relating to or concerning this letter (this "Agreement"), 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 in New York City (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 the Senior Executive Officer must first be submitted to the Compensation Committee (the "Committee") in accordance with claims procedures determined by the Committee. This Section 1 is subject to the provisions of paragraphs (b) and (c) below.

(b) The Firm and the Senior Executive Officer 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 this Agreement that is not otherwise arbitrated or resolved according to paragraph (a) above. This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. The Senior Executive Officer acknowledges that the forum designated by this paragraph (b) has a reasonable relation to this Agreement and to the Senior Executive Officer's relationship with the Firm. Notwithstanding the foregoing, nothing herein shall preclude the Firm from bringing any suit, action or proceeding in any other court for the purpose of enforcing the provisions of this Section 1 or otherwise.

(c) The agreement by the Senior Executive Officer and the Firm as to forum is independent of the law that may be applied in the suit, action or proceeding and the Senior Executive Officer and the Firm agree to such forum even if the forum may under applicable law choose to apply non-forum law. The Senior Executive Officer hereby (i) waives, to the fullest extent permitted by applicable law, any objection which the Senior Executive Officer may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Section 1(b), (ii) undertakes not to commence any action arising out of or relating to or concerning this Agreement in any forum other than a forum described in this Section 1 and (iii) agrees 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 Senior Executive Officer and the Firm.

(d) The Senior Executive Officer irrevocably appoints each General Counsel of GS Group as his or her agent for service of process in connection with any suit, action or proceeding arising out of or relating to or concerning this Agreement which is not arbitrated pursuant to the provisions of Section 1(a), who shall promptly advise the Senior Executive Officer of any such service of process.

(e) The Senior Executive Officer agrees to keep confidential the existence of, and any information concerning, a dispute, controversy or claim described in this Section 1, except that the Senior Executive Officer 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

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agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute, controversy or claim).

Section 2. Governing Law. THIS AGREEMENT 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.

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**GENERAL GUARANTEE AGREEMENT**

This General Guarantee Agreement, dated November 24, 2008 (this “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 Bank (Europe) PLC, a public company with limited liability incorporated in Ireland and a subsidiary of the Guarantor (the “Company”), may owe any Obligations (as defined below) from time to time. In this Guarantee, the “Company” shall also mean any banking subsidiary of the Guarantor, whether now existing or hereafter formed, that succeeds to the business of Goldman Sachs Bank (Europe) PLC.

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) in connection with any deposit, loan, letter of credit or similar borrowing or lending obligation or 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, insolvency, dissolution, examinership, reorganization 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

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assert any defense to payment available to the Company, other than those arising in a bankruptcy, examinership 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, of any of the Obligations, or interest thereon is rescinded or must otherwise be restored or returned by such Party upon the bankruptcy, insolvency, examinership 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 the 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



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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

Name: Elizabeth E. Beshel

Title: Authorized Officer

<DOCUMENT>  
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## GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT**, dated as of November 28, 2008 (this “**Agreement**”), between The Goldman Sachs Group, Inc., a Delaware corporation (the “**Parent**”), and Goldman Sachs Bank USA, a bank chartered under the Laws of the State of New York (together with its predecessors, the “**Bank**”).

### RECITALS:

WHEREAS, in connection with the Parent becoming a bank holding company under the U.S. Bank Holding Company Act of 1956, as amended, on September 21, 2008, Goldman Sachs Capital Markets, L.P., a limited partnership organized under the Laws of the State of New York, was merged with and into The Goldman Sachs Trust Company, a limited-purpose trust chartered under the Laws of the State of New York (“**GS Trust**”), then Goldman Sachs Capital Markets L.L.C., a Delaware limited liability company, was merged with and into GS Trust, and then Goldman Sachs Bank USA, an industrial bank chartered under the Laws of the State of Utah, was merged with and into GS Trust, in each case with GS Trust as the surviving entity (collectively, the “**Merger**”);

WHEREAS, upon consummation of the Merger, GS Trust changed its name to Goldman Sachs Bank USA and received approval to become a member bank of the Federal Reserve System (the “**Federal Reserve System**”) and to expand its banking powers;

WHEREAS, the Bank is a wholly owned subsidiary of the Parent;

WHEREAS, in connection with the restructuring described above, the Board of Governors of the Federal Reserve System (the “**Federal Reserve Board**”) has provided guidance to the Bank via teleconference and in a written summary, issued October 10, 2008, that sets forth the principal terms of the exemption that it has granted to the Bank from the provisions of Section 23A of the Federal Reserve Act, as amended (the “**Section 23A Exemption**”), to permit the Parent or another Affiliate to transfer certain assets to the Bank without complying with the provisions of Regulation W that would otherwise apply to such transfers (such assets, as further defined below, the “**Transferred Assets**”), and has indicated that it will provide to the Bank a formal written statement of all the terms of the Section 23A Exemption in due course;

WHEREAS, as a further condition to granting the Section 23A Exemption, the Federal Reserve Board has imposed the requirement that the Parent provide certain guarantees in respect of the Transferred Assets, and the Parent has agreed to provide such guarantees (collectively, the “**Guarantee**”);

WHEREAS, this Agreement is intended to satisfy that condition; and

WHEREAS, upon receipt by the Bank of the final written statement of the terms of the Section 23A Exemption, the parties hereto intend to amend this Agreement and the Collateral Agreement (as defined below), as necessary, to reflect the terms of such Section 23A Exemption;

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, hereby agree as follows:

### 1. Definitions; Interpretation.

(a) The following terms have the following meanings:

“**Action**” means any claim, action, suit, arbitration or proceeding by or before any Governmental Authority or arbitral body.

“**Affiliate**” means any “affiliate” of the Bank, as defined in Regulation W.

“**Agreement**” has the meaning given to that term in the Preamble.

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“**Bank**” has the meaning given to that term in the Preamble.

“**Bank Subsidiary**” means any Subsidiary of the Bank.

“**Business Day**” means any day that (x) is not a Saturday, a Sunday or other day on which commercial banks in The City of New York, State of New York, are required or authorized by Law to be closed and (y) is a day on which the New York Stock Exchange, Inc. is open for trading during its regular trading session (notwithstanding its closing prior to its scheduled closing time).

“**Collateral Agreement**” means the Collateral Agreement, dated as of November 28, 2008, between the Bank and the Parent and certain of its Subsidiaries from time to time.

“**Credit-Related Losses**” means any losses (any such loss to be calculated as the difference, if negative, between the Original Transfer Value of such Transferred Asset and its sale price) incurred upon the sale of any Transferred Assets by the Bank or any Bank Subsidiary to any party other than the Bank or any other Bank Subsidiary, except to the extent that the Bank determines, by reference to credit spreads applicable to the relevant obligor and using the valuation methods used in the Bank’s market and risk management activities, that such losses do not arise from any deterioration in the creditworthiness of any obligor in respect of such Transferred Asset.

“**Derivatives**” means any swaps, options, futures, forwards, and other assets arising from similar transactions.

“**Federal Reserve Board**” has the meaning given to that term in the Recitals.

“**Federal Reserve System**” has the meaning given to that term in the Recitals.

“**Governmental Authority**” means any domestic or foreign governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity.

“**GS Trust**” has the meaning given to that term in the Recitals.

“**Guarantee**” has the meaning given to that term in the Recitals.

“**Law**” means any federal, state, local or foreign law, statute or ordinance, or any rule, regulation, standard or agency requirement, of any Governmental Authority.

“**Low-Quality Asset**” has the meaning specified in Regulation W.

“**Merger**” has the meaning given to that term in the Recitals.

“**Mortgage Servicing Rights**” means the right to service a mortgage and collect a fee.

“**Non-Bank Subsidiary**” means any Subsidiary of the Parent other than the Bank or any Bank Subsidiary.

“**Non-Performing Asset**” means any Transferred Asset that the Bank has identified as non-performing on the basis that, under the relevant documentation relating to such Transferred Asset, a Default or Event of Default (each defined in such documentation) or any similar event, however described, has occurred.

“**Original Transfer Value**” means, with respect to any Transferred Asset, (x) if that Transferred Asset was purchased by the Bank or any Bank Subsidiary from the Parent or any Non-Bank Subsidiary, the purchase price paid by the Bank or such Bank Subsidiary for such Transferred Asset, and (y) if that Transferred Asset was contributed to the Bank or any Bank

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Subsidiary by the Parent or any Non-Bank Subsidiary, either directly or by contributing the equity of or other interests in any Person that owns such Transferred Asset to the Bank or any Bank Subsidiary, the fair value of the Transferred Asset as of the date initially recognized by the Bank.

“**Parent**” has the meaning given to that term in the Preamble.

“**Person**” means a natural person, corporation, limited liability company, partnership, joint venture, trust, estate, unincorporated organization or Governmental Authority.

“**Regulation W**” means the Federal Reserve regulation pursuant to Section 23A codified at 12 C.F.R. Part 223.

“**Section 23A Exemption**” has the meaning given to that term in the Recitals.

“**Servicing Advances**” means a payment of funds by the Bank, as servicer of a mortgage pursuant to any Transferred Mortgage Servicing Rights, for the purpose of preserving collateral or enforcing rights.

“**Subsidiary**” has the meaning given to that term in Regulation W.

“**Termination Date**” means, with respect to any Transferred Asset, the earlier of (x) the date on which all amounts due under or in respect of such Transferred Asset have been paid in full, and (y) the date on which such Transferred Asset is sold by the Bank or any Bank Subsidiary to any Person other than the Bank or any other Bank Subsidiary; *provided, however*, that the Termination Date with respect to any Transferred Derivative shall be the fifth anniversary of the date on which such Transferred Derivative was transferred by the Parent or any Non-Bank Subsidiary to the Bank or any Bank Subsidiary.

“**Transferred Assets**” has the meaning given to that term in the Recitals; *provided, however*, that for the avoidance of doubt, “**Transferred Assets**” shall not include any loans that are held by any Bank Subsidiary in which a participation has been granted pursuant to the Master Participation Agreement entered into by certain Bank Subsidiaries and certain Non-Bank Subsidiaries in connection with the Mergers.

“**Transferred Derivatives**” means any Transferred Assets that are Derivatives.

“**Transferred Mortgage Servicing Rights**” means any Transferred Assets that are Mortgage Servicing Rights.

In interpreting this Agreement:

(i) words in the singular shall include the plural and vice versa, and words of one gender shall include the other gender as the context requires;

(ii) references to Articles, Sections, paragraphs, Exhibits, Annexes and Schedules are references to the Articles, Sections and paragraphs of, and Exhibits, Annexes and Schedules to, this Agreement unless otherwise specified;

(iii) references to “**\$**” shall mean U.S. dollars;

(iv) the words “**includes**” and “**including**” and words of similar import shall be deemed to be followed by the words “**without limitation**” unless otherwise specified;

(v) the word “**or**” shall not be exclusive;

(vi) the words “**herein**”, “**hereof**” and “**hereunder**”, and similar terms, are to be deemed to refer to this Agreement as a whole and not to any specific section;

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(vii) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement;

(viii) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted;

(ix) if a word or phrase is defined, the other grammatical forms of such word or phrase have a corresponding meaning; and

(x) references to any statute, listing rule, rule, standard, regulation or other law (a) include a reference to the corresponding rules and regulations and (b) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time; and

(xi) references to any section of any statute, listing rule, rule, standard, regulation or other law include any successor to such section.

## **2. Parent Guarantee.**

The Guarantee shall consist of the following commitments of the Parent:

### **(a) Repurchase of Low-Quality Assets.**

(i) The Parent hereby irrevocably and unconditionally agrees to purchase or cause a Non-Bank Subsidiary to purchase from the Bank or any Bank Subsidiary (A) any Transferred Asset, other than any Transferred Derivative or Transferred Mortgage Servicing Right, that becomes a Low-Quality Asset at any time subsequent to the transfer of such Transferred Asset to the Bank or any Bank Subsidiary and prior to the Termination Date with respect to such Transferred Asset, and (B) any Transferred Asset that the Federal Reserve Bank of New York or the Federal Reserve Board may require the Parent to purchase in the discretion of the staff of either the Federal Reserve Bank of New York or the Federal Reserve Board;

(ii) The purchase price payable by the Parent or Non-Bank Subsidiary for any Transferred Asset pursuant to this Section 2(a) shall be the Original Transfer Value of the Transferred Asset.

(iii) Any purchases required to be made pursuant to this Section 2(a) shall occur not later than fifteen (15) days following the end of the calendar quarter in which the Transferred Asset became a Low-Quality Asset; *provided* that, to the extent the Transferred Asset is a Non-Performing Asset, any such repurchase shall occur not later than fifteen (15) days following its identification as such by the Bank.

### **(b) Reimbursement.**

#### **(i) Credit-Related Losses.**

(A) The Parent hereby irrevocably and unconditionally agrees to reimburse the Bank or any Bank Subsidiary for any Credit-Related Losses incurred by the Bank or such Bank Subsidiary upon the sale of any Transferred Asset other than a Transferred Derivative or a Transferred Mortgage Servicing Right to any Person other than the Bank or any other Bank Subsidiary.

(B) The Parent shall pay all such reimbursements that it is required to pay to the Bank pursuant to this Section 2(b)(i) no later than fifteen (15) days following the end of the calendar quarter in which the sale was made; *provided* that, to the extent the Transferred Asset is a Non-Performing Asset, any such reimbursement shall occur not later than fifteen (15) days following its identification as such by the Bank.

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**(ii) Derivatives.**

(A) The Parent hereby irrevocably and unconditionally agrees that, if the Bank or any Bank Subsidiary downgrades the counterparty to any Transferred Derivative to a seven or below in the Bank's internal credit rating system in any calendar quarter during the five years immediately following the transfer of the Transferred Derivative from the Parent or any Non-Bank Subsidiary to the Bank or any Bank Subsidiary, the Parent will pay to the Bank or such Bank Subsidiary an amount equal to any change in the credit valuation adjustment (minus the value of any hedge or offsets held by the Bank or such Bank Subsidiary) relating to such Transferred Derivative from the time of such transfer to the time of the downgrade.

(B) The Parent hereby further irrevocably and unconditionally agrees that, if the counterparty to any Transferred Derivative defaults at any time during the five years following the transfer of the Transferred Asset from Parent or any Non-Bank Subsidiary to the Bank or any Bank Subsidiary, the Parent will pay to the Bank or such Bank Subsidiary an amount equal to the then-replacement cost of all of the Bank's or such Bank Subsidiary's Transferred Derivative transactions with such counterparty, net of proceeds from any liquidation of collateral applied by the Bank or such Bank Subsidiary to the obligations of such counterparty under any such Transferred Derivatives and any amounts recovered from the defaulting counterparty.

(C) In calculating the Parent's payment obligations upon a counterparty default, as set forth in Section 2(b)(ii)(B), the Parent may reduce such obligations:

- (I) by the amount of any previous payment made by the Parent to the Bank or any Bank Subsidiary as a result of an internal rating downgrade of the applicable counterparty pursuant to Section 2(b)(ii)(A);
- (II) to the extent that the Bank or any Bank Subsidiary has received payment under any hedge or other credit loss protection arrangement put in place with respect to such Transferred Derivative (i) prior to the time at which such Transferred Derivative was transferred to the Bank or any Bank Subsidiary or (ii) after the time at which such Transferred Derivative was transferred to the Bank or any Bank Subsidiary, if the cost of such hedge or other credit loss protection arrangement was paid by the Parent or any Non-Bank Subsidiary.

In addition, to the extent that, after the time at which the Parent has made such a payment to the Bank, the Bank receives payment under a hedge or other credit loss protection arrangement meeting the criteria set forth in (i) or (ii) of the foregoing clause (II) or otherwise receives payment from the defaulting counterparty, the Bank or the relevant Bank Subsidiary shall reimburse the Parent for any such payment so received by it.

(D) The Parent shall pay all such reimbursements that it is required to pay to the Bank or any Bank Subsidiary pursuant to Section 2(b)(ii) no later than fifteen (15) days following the end of the calendar quarter in which the derivatives counterparty is downgraded by the Bank or such Bank Subsidiary or defaults, as applicable; *provided, however*, that (A) to the extent the Transferred Asset is a Non-Performing Asset, any such payment shall occur not later than fifteen (15) days following its identification as such, and (B) with respect to any payment required pursuant to Section 2(b)(ii)(B), such payment shall be made promptly following the later of the date of such default and the date on which any collateral relating to such counterparty has been liquidated and the

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proceeds, if any, of such liquidation have been received by the Bank but in no event later than 180 days following the date of such default.

(E) As an alternative to the Parent making any payment that would otherwise be required pursuant to this Section 2(b)(ii), the Parent may, at its option, (I) repurchase by way of assignment, novation, participation or total return swap the Transferred Derivative in respect of which the Parent would be required to make such payment for an amount equal to the Original Transfer Value of such Transferred Derivative or (II) to the extent permitted under the Federal Reserve Board's final written statement of the terms of the Section 23A Exemption, post collateral of the type set forth in Section 223.42(c)(1) of Regulation W with respect to any Transferred Derivative in an amount equal to the then-current replacement cost of all the Bank's derivative transactions with the relevant counterparty minus the value of any collateral held and/or the mark-to-market value notional amount of any credit loss protection owned by the Bank, which collateral would be returned to the Parent upon the expiration of the Transferred Derivative.

**(iii) Mortgage Servicing Rights.**

(A) The Parent hereby irrevocably and unconditionally agrees to reimburse the Bank or any Bank Subsidiary an amount equal to any impairment recognized or direct write-downs related to any Transferred Mortgage Servicing Rights or related Servicing Advances.

(B) The Parent shall pay all such reimbursements that it is required to pay to the Bank pursuant to this Section 2(b)(iii) no later than thirty (30) days following the end of the calendar quarter in which the impairment was recognized or the write-down taken.

(C) The Bank will hold an amount of risk-based capital equal to the impairment recognized or direct write-down taken on any Transferred Mortgage Servicing Rights or related Servicing Advances so long as the Bank retains ownership or control of such Transferred Mortgage Servicing Rights or Servicing Advances, in lieu of the risk-based capital that would otherwise apply to a similar asset that is not a Transferred Mortgage Servicing Right or related Servicing Advance.

(D) As an alternative to the Parent making any payment that would otherwise be required pursuant to this Section 2(b)(iii) and the maintenance of capital by the Bank in accordance with Section 2(b)(iii)(C), the Parent may, at its option, purchase the applicable Transferred Mortgage Servicing Rights and Servicing Advances at an amount equal to the Original Transfer Value of such Transferred Mortgage Servicing Rights or Servicing Advances, as applicable.

(E) In calculating the Parent's payment obligations pursuant to this Section 2(b)(iii), the Parent may reduce such obligations to the extent that the Bank or any Bank Subsidiary has received payment under any hedge or other credit loss protection arrangement put in place with respect to such Transferred Mortgage Servicing Rights or Servicing Advances, as applicable, (i) prior to the time at which such Transferred Mortgage Servicing Rights or Servicing Advances, as applicable, was transferred to the Bank or any Bank Subsidiary or (ii) after the time at which such Transferred Mortgage Servicing Rights or Servicing Advances, as applicable, was transferred to the Bank or any Bank Subsidiary, if the cost of such hedge or other credit loss protection arrangement was paid by the Parent or any Affiliate of the Parent other than the Bank or any Bank Subsidiary.

**3. Collateral.**

The Parent shall secure its obligations pursuant to this Agreement as set forth in the Collateral Agreement.



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#### **4. Termination.**

This Agreement shall terminate on the Business Day after the Termination Date of the last Transferred Asset held by the Bank or any Bank Subsidiary.

#### **5. Notices.**

Unless otherwise provided herein, all notices and other communications provided to either party under this Agreement shall be in writing and addressed to such party at its address as set forth below. Unless otherwise provided herein, any notice, if mailed and properly addressed with postage prepaid, shall be deemed given three (3) Business Days after being sent; if hand delivered, shall be deemed given on the date of such delivery; and if delivered by overnight courier, shall be deemed given on the date of such delivery.

If to the Parent:  
The Goldman Sachs Group, Inc.  
1 New York Plaza  
New York, NY 10004  
Telephone: (212) 902-1000  
Attention: Treasury

If to the Bank:  
Goldman Sachs Bank USA  
85 Broad Street  
New York, New York 10004  
Telephone: (212) 902-1000  
Attention: General Counsel

#### **6. Severability.**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party to this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

#### **7. Entire Agreement.**

This Agreement, together with the Collateral Agreement, constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement and supersedes all prior agreements and undertakings, both written and oral.

#### **8. Assignment.**

This Agreement may not be assigned, in whole or in part, by either party, by operation of Law or otherwise, without the express written agreement of the other party hereto. Any attempted assignment in violation of this Section 8 shall be void, except that each party shall have the right to assign all of its rights and obligations to any entity that succeeds, directly or indirectly, to substantially all of such party's assets by merger or otherwise. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties hereto and their permitted successors and assigns.

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**9. Amendment or Modification.**

This Agreement may be amended or modified only by an agreement in writing executed by both of the parties hereto; *provided* that the parties hereto agree that, upon receipt by the Bank of the final written statement of the terms of the Section 23A Exemption, they shall amend this Agreement as necessary to reflect the terms and conditions contained in such statement.

**10. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person or party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**11. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall in all respects be governed by, and construed in accordance with, the Laws of the State of New York.

(b) Each of the Parent and the Bank irrevocably and unconditionally:

(i) submits for itself and its property in any Action arising out of or relating to the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement and in respect of the transactions contemplated by this Agreement, to the exclusive jurisdiction of the Courts of the State of New York sitting in the County of New York, the United States District Court for the Southern District of New York, and appellate courts having jurisdiction of appeals from any of the foregoing, and agrees that all claims in respect of any such Action shall be heard and determined in such New York State court or, to the extent permitted by Law, in such federal court;

(ii) consents that any such Action may and shall be brought in such courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such Action in any such court or that such Action was brought in an inconvenient court and agrees not to assert, plead or claim the same;

(iii) agrees that service of process in any such Action may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address as provided in Section 5; and

(iv) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by the Laws of the State of New York.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

**12. Counterparts.**

This Agreement may be executed in one or more counterparts, and by the different parties to each such agreement in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in Portable Document File (PDF) format shall be as effective as delivery of a manually executed counterpart of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Guarantee Agreement as of the date set forth below.

Date: November 28, 2008

**PARENT:**

**THE GOLDMAN SACHS GROUP, INC.**

By: /s/ Elizabeth E. Beshel  
Name: Elizabeth E. Beshel  
Title: Treasurer

**THE BANK:**

**GOLDMAN SACHS BANK USA**

By: /s/ Peter O'Hagan  
Name: Peter O'Hagan  
Title: Chief Executive Officer

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COLLATERAL AGREEMENT

dated as of November 28, 2008

between

GOLDMAN SACHS BANK USA,

and

THE GOLDMAN SACHS GROUP, INC., AS PARENT,  
EACH SUBSIDIARY OF THE GOLDMAN SACHS GROUP, INC.  
THAT IS A SIGNATORY HERETO, AS PLEDGORS

and

EACH OTHER PLEDGOR WHO BECOMES PARTY  
TO THIS AGREEMENT FROM TIME TO TIME

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## COLLATERAL AGREEMENT

**COLLATERAL AGREEMENT**, dated as of November 28, 2008 (this “**Agreement**”), is made between **Goldman Sachs Bank USA**, a bank chartered under the Laws of the State of New York (the “**Bank**”), and **The Goldman Sachs Group, Inc.**, a Delaware corporation (the “**Parent**”), each Subsidiary of the Parent that is a signatory hereto and, each other party who becomes a Pledgor pursuant to this Agreement from time to time (each of the Parent, each such Subsidiary and each such other pledgor, a “**Pledgor**”).

### RECITALS:

**WHEREAS**, in connection with the Parent becoming a bank holding company under the U.S. Bank Holding Company Act of 1956, as amended, on September 21, 2008, Goldman Sachs Capital Markets, L.P., a limited partnership organized under the Laws of the State of New York, was merged with and into The Goldman Sachs Trust Company, a limited-purpose trust chartered under the Laws of the State of New York (“**GS Trust**”), then Goldman Sachs Capital Markets L.L.C., a Delaware limited liability company, was merged with and into GS Trust, and then Goldman Sachs Bank USA, an industrial bank chartered under the Laws of the State of Utah, was merged with and into GS Trust, in each case with GS Trust as the surviving entity (collectively, the “**Merger**”);

**WHEREAS**, upon consummation of the Merger, GS Trust changed its name to Goldman Sachs Bank USA and received approval to become a member bank of the Federal Reserve System (the “**Federal Reserve System**”) and to expand its banking powers;

**WHEREAS**, the Bank is a wholly owned Subsidiary of the Parent;

**WHEREAS**, in connection with the restructuring described above, the Board of Governors of the Federal Reserve System (the “**Federal Reserve Board**”) has provided guidance to the Bank via teleconference and in a written summary, issued October 10, 2008, that sets forth the principal terms of the exemption it has granted the Bank from the provisions of Section 23A of the Federal Reserve Act, as amended (the “**Section 23A Exemption**”), to permit the Parent or another Affiliate to transfer certain assets to the Bank without complying with the provisions of Regulation W that would otherwise apply to such transfers (such assets, the “**Transferred Assets**”), and has indicated that it will provide to the Bank a formal written statement of all the terms of the Section 23A Exemption in due course;

**WHEREAS**, as a condition to granting the Section 23A Exemption, the Federal Reserve Board has imposed the requirement that the Parent provide certain guarantees in respect of the Transferred Assets, and the Parent has agreed to provide such guarantees (collectively, the “**Guarantee**”), pursuant to the Guarantee Agreement, dated as of November 28, 2008 (the “**Guarantee Agreement**”), between the Parent and the Bank;

**WHEREAS**, as a further condition to granting the Section 23A Exemption, the Federal Reserve Board has required that the Parent pledge or cause its subsidiaries to pledge certain Collateral to the Bank to secure the obligations of the Parent pursuant to the Guarantee Agreement;

**WHEREAS**, this Agreement is intended to satisfy such condition; and

**WHEREAS**, upon receipt by the Bank of the final written statement of the terms of the Section 23A Exemption, the parties hereto intend to amend this Agreement and the Guarantee Agreement, as necessary to reflect the terms of such Section 23A Exemption;

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**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parent, the Bank and each other Pledgor from time to time, intending to be legally bound, hereby agree as follows:

## **SECTION 1. DEFINITIONS; INTERPRETATION**

1.1 **General Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“**Affiliate**” means any “affiliate” of the Bank as defined in Regulation W.

“**Agreement**” has the meaning specified in the Preamble.

“**Bank**” has the meaning specified in the Preamble.

“**Business Day**” means any day that (x) is not a Saturday, a Sunday or other day on which commercial banks in The City of New York, State of New York, are required or authorized by Law to be closed and (y) is a day on which the New York Stock Exchange, Inc. is open for trading during its regular trading session (notwithstanding its closing prior to its scheduled closing time).

“**Cash Collateral Account**” means any deposit accounts at the Bank identified on *Schedule 1* from time to time, including any successor or replacement accounts acquired after the date of this Agreement.

“**Certificated Security**” has the meaning specified in Article 8 of the UCC.

“**Collateral**” has the meaning specified in Section 2(a).

“**Commodities Accounts**” has the meaning specified in Article 9 of the UCC.

“**Federal Reserve Board**” has the meaning specified in the Recitals.

“**Federal Reserve System**” has the meaning specified in the Recitals.

“**Fund**” means any investment vehicle created in the ordinary course of the private equity, mezzanine lending or hedge fund business of the Parent or any of its Subsidiaries and in which equity interests are sold to third parties.

“**General Intangibles**” has the meaning specified in Article 9 of the UCC.

“**Governmental Authority**” means any domestic or foreign governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity.

“**GS Trust**” has the meaning specified in the Recitals.

“**Guarantee**” has the meaning specified in the Recitals.

“**Guarantee Agreement**” has the meaning specified in the Recitals.

“**Haircut**” means, with respect to any Security, Pledged Equity Interest, General Intangible or Instrument, the percentage specified with respect to such Security in *Schedule 1* from time to time.

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“**Instruments**” has the meaning specified in Article 9 of the UCC.

“**Investment Property**” has the meaning specified in Article 9 of the UCC.

“**Law**” means any federal, state, local or foreign law, statute or ordinance, or any rule, regulation, standard or agency requirement, of any Governmental Authority.

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien or charge of any kind.

“**Merger**” has the meaning specified in the Recitals.

“**Original Transfer Value**” has the meaning specified in the Guarantee Agreement.

“**Outstanding Aggregate Transfer Value**” means, on any date, the aggregate Original Transfer Value of all the Transferred Assets with respect to which the Termination Date has not occurred on or prior to that date.

“**Parent**” has the meaning specified in the Preamble.

“**Permitted Filings**” means any financing statements or other instruments similar in effect, whether already filed or filed hereafter, in connection with Permitted Liens.

“**Permitted Liens**” means any Liens, whether now existing or hereafter arising, granted by any Pledgor with respect to Pledged Equity Interests owned by such Pledgor, to secure the performance of the obligations of such Pledgor or any other Person under any agreement entered into by such Pledgor in connection with its acquisition of or ownership of such Pledged Equity Interests.

“**Person**” means an individual, corporation, association, partnership, trust, joint venture, business trust or incorporated organization or other entity or organization, or a Governmental Authority.

“**Pledged Equity Interests**” has the meaning specified in Section 2(a)(iii).

“**Pledgor**” has the meaning specified in the Preamble.

“**Proceeds**” means: (i) all “**proceeds**” as defined in Article 9 of the UCC and (ii) whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

“**Record**” has the meaning specified in Article 9 of the UCC.

“**Regulation W**” means Regulation W of the Federal Reserve Board, 12 C.F.R. Part 223.

“**Section 23A Exemption**” has the meaning specified in the Recitals.

“**Secured Obligations**” has the meaning specified in Section 3.

“**Securities**” has the meaning specified in Section 2(a)(ii).

“**Securities Account**” has the meaning specified in Article 8 of the UCC.

“**Subsidiary**” has the meaning given to that term in Regulation W.



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“**Termination Date**” has the meaning specified in the Guarantee Agreement.

“**Transferred Assets**” has the meaning specified in the Recitals.

“**UCC**” means at any time the Uniform Commercial Code as in effect in the State of New York; *provided, however*, that if, by reason of mandatory provisions of Law, the validity or perfection of the Bank’s security interest in any item of Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “**UCC**” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such validity or perfection.

“**Uncertificated Securities**” has the meaning specified in Article 8 of the UCC.

“**Value**” has the meaning specified in Section 5.

“**Valuation Date**” means the last Business Day in each calendar quarter beginning with the last such Business Day in December 2008, for so long as this Agreement shall be in effect.

## 1.2 Interpretation.

In interpreting this Agreement:

(a) words in the singular shall include the plural and vice versa, and words of one gender shall include the other gender as the context requires;

(b) references to Articles, Sections, paragraphs, Exhibits, Annexes and Schedules are references to the Articles, Sections and paragraphs of, and Exhibits, Annexes and Schedules to, this Agreement unless otherwise specified;

(c) references to “\$” shall mean U.S. dollars;

(d) the words “**includes**” and “**including**” and words of similar import shall be deemed to be followed by the words “**without limitation**” unless otherwise specified;

(e) the word “**or**” shall not be exclusive;

(f) the words “**herein**”, “**hereof**” or “**hereunder**”, and similar terms, are to be deemed to refer to this Agreement as a whole and not to any specific section;

(g) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement;

(h) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted;

(i) if a word or phrase is defined, the other grammatical forms of such word or phrase have a corresponding meaning;

(j) references to any statute, listing rule, rule, standard, regulation or other law (i) include a reference to the corresponding rules and regulations and

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- (ii) include a reference to each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time;
- (k) references to any section of any statute, listing rule, rule, standard, regulation or other law include any successor to such section; and
- (l) all references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

## **SECTION 2. GRANT OF SECURITY INTEREST**

(a) Each Pledgor hereby grants to the Bank, for the Bank's benefit, a security interest in and continuing lien on all of such Pledgor's right, title and interest in, to and under all of the following types of collateral listed in *Schedule 1* with respect to such Pledgor from time to time, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which are collectively referred to as the "**Collateral**"):

(i) all Cash Collateral Accounts and all deposits credited to the Cash Collateral Accounts;

(ii) all Securities Accounts and all stocks, bonds, security entitlements, financial assets or other securities, financial assets or investment property (as such terms are defined in the UCC) now or hereafter in the possession, custody or control of the Bank, including any of the foregoing from time to time deposited in or credited to such Securities Accounts (the "**Securities**");

(iii) interests in general or limited partnerships, limited liability companies and shares or other equity interests in companies or business trusts (collectively, "**Pledged Equity Interests**");

(iv) all General Intangibles;

(v) all Instruments; and

(vi) all Proceeds, products, accessions and profits of or in respect of the foregoing.

(b) All the Collateral shall be subject to review and approval by the Federal Reserve Board.

(c) For the avoidance of doubt, the parties agree that in the case of Pledged Equity Interests, the Collateral includes any obligations associated with such Pledged Equity Interests.

## **SECTION 3. SECURITY FOR GUARANTEE**

This Agreement shall secure, and the Collateral shall be collateral security for, the prompt and complete payment and performance when due of all of the Parent's obligations under the Guarantee Agreement (the "**Secured Obligations**").

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#### SECTION 4. COLLATERAL REQUIREMENT; SUBSTITUTIONS

(a) The Parent shall, at all times prior to the termination of the Guarantee Agreement, cause Collateral to be maintained subject to a fully perfected security interest under this Agreement with an aggregate Value not less than five percent (5%) of the Outstanding Aggregate Transfer Value.

(b) If the aggregate Value of the Collateral on any Valuation Date, as determined pursuant to Section 5, is less than five percent (5%) of the Outstanding Aggregate Transfer Value as of that date, then not later than five (5) Business Days following such determination the Parent shall pledge or cause one or more of its Subsidiaries to pledge additional Collateral to the Bank in an amount that will restore the total Value of the Collateral to not less than five percent (5%) of such Outstanding Aggregate Transfer Value as determined on such Valuation Date.

(c) If the aggregate Value of the Collateral on any Valuation Date, as determined pursuant to Section 5, is greater than five percent (5%) of the Outstanding Aggregate Transfer Value, then the Bank shall, without unreasonable delay, take such measures as may be necessary to release the Lien of the Bank on those portions of the Collateral designated by the Parent and having a Value as of such Valuation Date not greater than the amount of the excess; *provided, however*, that if the aggregate Value of the Collateral immediately after giving effect to the release of the Collateral so designated would be less than the amount required pursuant to Sections 4(a) and 4(b), then the Bank will have no obligation to release any Collateral pursuant to this Section 4(c).

(d) If any Pledgor wishes to obtain the release of any Collateral that has been pledged by it pursuant hereto, then it may provide or cause another Pledgor to provide replacement Collateral to the Bank with a Value at the time of such substitution, as determined pursuant to Section 5, not less than the Value of the Collateral that is to be released. Upon the delivery of such replacement Collateral to the Bank and/or the completion of all measures necessary to provide to the Bank a fully perfected security interest in such replacement Collateral, the Bank shall, without unreasonable delay, take such measures as may be necessary to release the Lien of the Bank on the Collateral to be released; *provided, however*, that if the aggregate Value of the Collateral immediately after giving effect to the delivery of such replacement Collateral and the release of the Collateral to be released would be less than the amount required pursuant to Sections 4(a) and 4(b), then the Bank will have no obligation to release any Collateral pursuant to this Section 4(d).

#### SECTION 5. VALUATION

(a) For purposes of this Agreement, the “**Value**” of each type of Collateral on any date shall be determined by the Bank as follows:

(i) the “**Value**” of any Cash Collateral Accounts or deposit credited to any Cash Collateral Account shall be the balance thereof as of the close of business on the Business Day immediately preceding the relevant date; and

(ii) the “**Value**” of any other Collateral shall be (i) if the asset is recorded in the books and records on which the consolidated audited financial statements of the Parent are based, the valuation assigned to such Collateral as of the close of business on the most recent regular valuation date prior to the relevant date on which The Goldman Sachs Group Inc. has determined such valuation for purposes

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of maintaining its books and records or applying its market and risk management systems to such asset, and (ii) if such asset is not so recorded, the valuation assigned to such asset by the Bank in the exercise of its reasonable discretion, *multiplied by*, in either case, 1 *minus* the applicable Haircut;

*provided, however*, that if any Collateral is subject to any Permitted Lien and the Valuation of such Collateral has not already been reduced to reflect such Permitted Lien, the Bank may reduce the Value allocated to such Collateral as it deems appropriate to reflect the prior obligation secured by such Permitted Lien.

(b) The Bank shall determine the aggregate Value of the Collateral as of the close of business on each Valuation Date and provide notice of such aggregate Value to the Parent not later than 11:00 a.m., New York time, on the next Business Day.

## **SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **6.1 General.**

(a) **Representations and Warranties.** Each Pledgor represents and warrants that:

(i) it owns the Collateral purported to be owned by it and otherwise has the rights it purports to have in each item of Collateral pledged by it and, as to all such Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of such Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons, except for the (i) security interest created by or in connection with this Agreement, including liens arising as a result of such Pledgor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person and (ii) Permitted Liens;

(ii) other than any financing statements filed in favor of the Bank pursuant to or in connection with this Agreement, no effective UCC financing statement, fixture filing or other Instrument similar in effect under any applicable Law covering all or any part of the Collateral is on file in any filing or recording office except for Permitted Filings;

(iii) except for those that have been obtained or made, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or Person is required for either (x) the pledge or grant by it of the Liens purported to be created in favor of the Bank hereunder or (y) except as set forth in *Schedule 1* or as referred to in Section 8.4 from time to time with respect to any item of Collateral, the exercise by the Bank of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable Law);

(iv) except with regard to cash and cash equivalents, the pledge of and grant of a security interest in the Collateral pursuant to this Agreement together with the delivery of the relevant certificates to the Bank, the filing of the appropriate UCC financing statements in the jurisdictions agreed with the Bank, the entry into appropriate control agreements, compliance with requirements under the laws in which the issuers of any Pledged Equity Interests are formed and compliance with any other requirements set forth in this Section 6.1, will constitute all actions and consents necessary to create and perfect security interests in all of the Collateral,

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and all actions and consents necessary to create and perfect the security interests in all of the Collateral granted under this Agreement have been made or obtained or will, at or prior to the time at which any substitute or additional Collateral is pledged hereunder, be made or obtained, and the security interests granted to the Bank hereunder will constitute valid and perfected security interests in all of the Collateral;

(v) as of the date hereof, the chief place of business of the Parent and the office at which the Parent keeps all records concerning the Collateral pledged by it and all certificates evidencing the Collateral pledged by it is located in the State of New York, and the chief place of business of each other Pledgor and the office at which such other Pledgor keeps all records concerning the Collateral pledged by it and all certificates, if any, evidencing the Collateral pledged by it is specified on *Schedule 1*;

(vi) all information supplied by it with respect to any of the Collateral pledged by it (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects; and

(vii) the pledge of the Collateral by it pursuant to this Agreement does not violate any of the regulations of the Federal Reserve Board.

(b) **Covenants and Agreements.** Each Pledgor hereby covenants and agrees that:

(i) except for the security interests (i) created by or in connection with this Agreement and (ii) Permitted Liens, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral and it shall defend the Collateral against all Persons at any time claiming any interest therein;

(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable Law or any policy of insurance covering the Collateral;

(iii) it shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims against, the Collateral, except to the extent the validity thereof is being contested in good faith in accordance with the rights set forth below. In the event the Parent chooses to contest the validity of any taxes, assessments, governmental charges, levies imposed upon, and any claim against it, it may only do so if, at the time of commencement of any such action or proceeding and during the pendency thereof, adequate reserves with respect thereto, shall have been deposited with the applicable court or other relevant authority or with the Bank or otherwise made in accordance with generally accepted accounting principles;

(iv) upon any of such Pledgor's officers obtaining knowledge thereof, it shall promptly notify the Bank in writing of any levy of any legal process against the Collateral pledged by such Pledgor or any portion thereof;

(v) it shall not take or permit any action that could reasonably be expected to materially impair the Bank's rights in the Collateral;

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(vi) except for Permitted Liens, it shall not directly or through any other Person sell, assign, pledge or otherwise transfer or seek to transfer (by operation of law or otherwise) any Collateral or any interest therein;

(vii) without the prior written consent of the Bank, it shall not become bound under Section 9-203 of the UCC by any other security agreement with any other Person with respect to the Collateral; and

(viii) it shall, at any time and from time to time, give, execute and/or deliver any notice, certificates or other Instruments evidencing any Collateral, powers of assignment, document, agreement or other papers that the Bank shall reasonably deem necessary or advisable to create, preserve, perfect or validate the security interest created hereby or to enable the Bank to exercise and enforce its rights hereunder with respect to such security interest.

## **6.2 Investment Property; Pledged Equity Interests.**

(a) **Representations and Warranties.** Each Pledgor hereby represents and warrants as follows:

(i) it is the record and beneficial owner of all of the Securities and Pledged Equity Interests, free of Liens, rights or claims of other Persons, other than the security interest (i) created by or in connection with this Agreement and (ii) Permitted Liens, and there are no warrants, options or other rights to purchase, or shareholder voting trusts or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(ii) no default by such Pledgor exists under any partnership agreement, limited liability company agreement or similar agreement related to any Pledged Equity Interest to which it is a party and no event has occurred or exists that, with notice or lapse of time or both, would constitute a default by the Parent thereunder; and to its best knowledge, no defaults by any partner or partners other than such Pledgor under any of the partnership agreements exist that, individually or in the aggregate, would be materially adverse to the Bank and no events have occurred or exist that, with the giving of notice or lapse of time or both, would constitute such defaults; each of the partnership or limited liability agreements relating to any Pledged Equity Interests pledged by it, a true and complete copy of which will be furnished to the Bank upon the pledge of any interest in such partnership by such Pledgor, has been duly authorized, executed and delivered by such Pledgor and is in full force and effect and has not been amended or modified except as disclosed in writing to the Bank; and

(iii) it has taken all actions necessary (x) to establish the Bank's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Collateral that constitutes Certificated Securities, Uncertificated Securities, Securities Accounts or Commodities Accounts (each as defined in the UCC) and (y) to deliver all Instruments to the Bank.

(b) **Covenants and Agreements.** Each Pledgor hereby covenants and agrees that:

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(i) without the prior written consent of the Bank, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially and adversely affects the validity, perfection or priority of the Bank's security interest; (b) permit any issuer of any Pledged Equity Interest that is a Subsidiary of such Pledgor and that is not a Fund to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer in any way that materially and adversely affects the validity, perfection or priority of the Bank's security interest; (c) permit any issuer of any Pledged Equity Interest that is a Subsidiary of such Pledgor and that is not a Fund to dispose of all or a material portion of its assets; (d) during the continuance of any breach by the Parent of its obligations under or pursuant to the Guarantee Agreement, waive any material default under or breach of any material terms of any organizational document relating to the issuer of any Pledged Equity Interest; or (e) cause any issuer of any Pledged Equity Interests that is a Subsidiary of such Pledgor that are not securities (for purposes of the UCC) on the date on which such interests are pledged pursuant to this Agreement to elect or otherwise take any action to cause such Pledged Equity Interests to be treated as securities for purposes of the UCC or to cause the issuance of certificates or other evidence of Pledged Equity Interests, respectively, without the consent of the Bank; *provided, however,* that notwithstanding the foregoing, if any issuer of any Pledged Equity Interests takes any such action in violation of the foregoing in this clause (e), such Pledgor shall promptly notify the Bank in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Bank's "control" thereof;

(ii) if such Pledgor receives any dividends, interest or distributions on any Investment Property, or any securities or other property, in each case upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Property, then (x) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (y) such Pledgor shall either (A) within thirty (30) days take all steps, if any, necessary or advisable to ensure the validity, perfection, priority and, if applicable, control of the Bank over such dividends, interest or distributions and securities or other property (including delivery thereof to the Bank), or (B) arrange for replacement Collateral pursuant to Section 4(d) of this Agreement, and pending any such action such Pledgor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Bank and such property shall be segregated from all other property of such Pledgor. Notwithstanding the foregoing, so long as no breach by the Parent of its obligations under or pursuant to the Guarantee Agreement shall have occurred and be continuing, the Bank authorizes such Pledgor to retain all cash dividends and distributions and all payments of interest and principal;

(iii) it shall comply in all material respects with all of its obligations under any partnership agreement, limited liability company agreement or similar agreement related to any Pledged Equity Interest and shall enforce in all material respects all of its rights with respect to any Investment Property;

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(iv) without the prior written consent of the Bank, it shall not permit any issuer of any Pledged Equity Interest which is a Subsidiary to merge or consolidate unless all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent company other than in compliance herewith; and

(v) it shall take all actions necessary to register the pledge of any partnership interest on the books and records of the appropriate partnership.

**(c) Voting and Distributions.**

(i) So long as no breach by the Parent of its obligations under or pursuant to the Guarantee Agreement shall have occurred and be continuing:

(A) except as otherwise provided in Section 6.2(b)(i), such Pledgor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Property or any part thereof, *provided* that such Pledgor shall not exercise or refrain from exercising any such right for any purpose inconsistent with the terms of this Agreement or the Guarantee Agreement; it being understood, however, that for the purpose of this proviso, neither the voting by such Pledgor of any Pledged Equity Interests for, or such Pledgor's consent to, the election of directors (or similar governing body) at any meeting of stockholders (or similar body) or action by written consent in lieu thereof or with respect to incidental matters at any such meeting or in such consent, nor such Pledgor's consent to or approval of any action otherwise permitted under this Agreement and the Guarantee Agreement, shall be deemed inconsistent with the terms of this Agreement or the Guarantee Agreement within the meaning of this Section 6.2(c)(i)(A); and

(B) the Bank shall promptly execute and deliver (or cause to be executed and delivered) to such Pledgor all proxies, and other Instruments as such Pledgor may from time to time reasonably request for the purpose of enabling such Pledgor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above.

(ii) Upon the occurrence and during the continuation of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement:

(A) all rights of such Pledgor to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Bank who shall thereupon have the sole right but not the obligation to exercise such voting and other consensual rights; and

(B) in order to permit the Bank to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (A) such Pledgor shall promptly execute and deliver (or cause to be executed and delivered) to the Bank all proxies, dividend



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payment orders and other Instruments as the Bank may from time to time reasonably request and (B) such Pledgor acknowledges that the Bank may utilize the power of attorney set forth in Section 8.1(a).

### 6.3 General Intangibles.

(a) **Representations and Warranties.** Each Pledgor hereby represents and warrants that the General Intangibles, true and complete copies (including any amendments or supplements thereof) of which will be furnished to the Bank at the time that such General Intangibles are pledged by such Pledgor, have been duly authorized, executed and delivered by such Pledgor and (to the knowledge of such Pledgor) the other parties thereto, are in full force and effect and are binding upon and enforceable against such Pledgor and (to the knowledge of such Pledgor) the other parties thereto, in accordance with their respective terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting rights of creditors generally and general principles of equity.

(b) **Covenants and Agreements.** Each Pledgor hereby covenants and agrees that:

(i) upon the occurrence and during the continuation of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement, the Bank may if it deems reasonably necessary at any time, notify, or require the Parent to so notify, the counterparty on any General Intangible of the security interest of the Bank therein. In addition, after the occurrence and during the continuance of such breach, the Bank may upon written notice to such Pledgor, notify, or require such Pledgor to notify, the counterparty to make all payments under the General Intangibles directly to the Bank;

(ii) after the occurrence and during the continuance of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement, such Pledgor shall deliver promptly to the Bank a copy of each material demand, notice or document received by it relating in any way to any instrument, contract or agreement forming a part of the Collateral;

(iii) it shall perform in all material respects all of its obligations with respect to the General Intangibles except where failure to do so could not reasonably be expected to have a material adverse effect on the value of such Collateral or the validity, perfection or priority of the Bank's security interest;

(iv) it shall in its reasonable business judgment and consistent with its past practice exercise each material right it may have under any General Intangible at its own expense, and in connection with such collections and exercise, such Pledgor shall take such action as such Pledgor or, after the occurrence and during the continuance of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement, the Bank may deem necessary or advisable;

(v) it shall use its commercially reasonable business judgment, consistent with its past practice, in deciding whether or not to keep in full force and effect any General Intangible pledged hereunder.

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## **SECTION 7. FURTHER ASSURANCES**

**7.1 Further Assurances by the Pledgors.** Each Pledgor agrees that, upon request from time to time, at such Pledgor's expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or advisable, or that the Bank may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Bank to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Pledgor agrees that it will:

(a) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or advisable, or as the Bank may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby; and

(b) at the Bank's request, appear in and defend any action or proceeding that may affect such Pledgor's title to or the Bank's security interest in all or any part of the Collateral.

**7.2 Further Filings by the Bank.** Each Pledgor hereby authorizes the Bank to file a Record or Records, including financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Bank may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Bank herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Bank may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Bank herein.

## **SECTION 8. REMEDIES**

### **8.1 Remedies.**

(a) If at any time the Parent has failed to comply with its repurchase or reimbursement obligations under Section 2 of the Guarantee Agreement, which failure has continued without remedy or waiver for more than thirty (30) days following notice from the Bank of such failure, the Bank may exercise in respect of the Collateral, in addition to all other rights and remedies provided herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party under the UCC in effect in the State of New York (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any obligations then owing, and also may pursue any of the following separately, successively or simultaneously:

(i) take possession of the Collateral or any part thereof by directing each Pledgor, in writing, to assemble all or part of the Collateral and deliver the identified Collateral to the Bank at any place or places reasonably designated by the Bank;

(ii) transfer any of the Collateral into the name of the Bank or its nominee(s);

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(iii) upon written notice to each Pledgor, exercise all voting rights attributable to the Collateral (whether or not transferred into the name of the Bank) and give all consents, waivers and ratifications in respect of such Collateral and otherwise act with respect thereto as though it were the outright owner thereof (each Pledgor hereby irrevocably constituting and appointing the Bank the proxy and attorney-in-fact of such Pledgor for such purposes, with full power of substitution to do so);

(iv) sell, lease, assign, license (on an exclusive or nonexclusive basis) or otherwise dispose of all or any part of the Collateral, at such place or places as the Bank deems best, and for cash or for credit or for future delivery (without the Bank thereby assuming any credit risk), at a public or private sale, at any of the Bank's offices or elsewhere, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Bank may deem commercially reasonable. The Bank may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned; and

(v) demand, sue for, collect or receive, in its name or in the name of such Pledgor or otherwise, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so.

(b) Any Person may be the purchaser, lessee, assignee or recipient of any or all of the Collateral disposed of at any public sale (or, to the extent permitted by Law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of such Pledgor, any such demand, notice and right or equity being hereby expressly waived and released.

(c) To the extent the Bank may take remedies under Section 8.1(a), during the continuance of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement (and only during such continuance), the Bank may sell the Collateral without giving any warranties as to the Collateral. The Bank may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) If, during the continuance of a breach by the Parent of its obligations under or pursuant to the Guarantee Agreement (and only during such continuance) and to the extent the Bank may take remedies under Section 8.1(a), any Pledgor receives any dividends, distributions or other payments from Securities or Pledged Equity Interests pledged by such Pledgor as Collateral, such Pledgor shall, without any further demand from the Bank, pay such dividends, distributions or other payments to the Bank immediately upon receipt of such dividends, distributions or other payments.

**8.2 Remedies Cumulative.** Each and every right, power and remedy of the Bank provided for in this Agreement or now or hereafter existing at law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every

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other such right, power or remedy. The exercise or beginning of the exercise by the Bank of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Bank of all such other rights, powers or remedies, and no failure or delay on the part of the Bank to exercise any such right, power or remedy shall impair any such right, power or remedy or operate as a waiver thereof or preclude the further exercise of any such right, power or remedy. No notice to or demand on any Pledgor in any case shall entitle such Pledgor to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Bank to any other or further action in any circumstances without notice or demand.

**8.3 Deficiencies and Excess Proceeds.** The Bank shall transfer or cause to be transferred to applicable Pledgor any Proceeds and Collateral remaining after sale, collection or other realization of all or any part of the Collateral in accordance with Section 8.1 after satisfaction in full of the Guarantee; the Parent in all events will remain liable for any amounts remaining unpaid after any sale, collection or other realization of all or any part of the Collateral in accordance with Section 8.1.

**8.4 Consents Required Prior to Exercise of Remedies.** The Bank acknowledges that the terms and conditions of some or all of the Pledged Equity Interests and certain other Collateral hereunder, or of instruments, contracts, agreements or Laws relating to the issuers of such Pledged Equity Interests or to which such issuers are parties or are subject require or may require that certain consents, authorizations and approvals be obtained from, or notices be made to or filings be made with, such issuers, other holders of interests in such issuers, lenders or other creditors of such issuers, certain Governmental Authorities and certain other Persons. The Bank acknowledges that exercising its rights to foreclose on any such Collateral pursuant to this Section 8 prior to the receipt of any or all of those consents, authorizations or approvals, or the making of such notices or filings, may result in a substantial and precipitous impairment in the Value of such Collateral, which impairment would not occur if the Bank obtained such consents, authorizations or approvals or made such notices or filings. The Bank further acknowledges that the existence of such requirements has been disclosed to it, that it has taken such requirements into account in determining the Value of such Collateral for purposes of this Agreement and the related Haircuts, and that in evaluating whether any proposed disposition of any Collateral is commercially reasonable, within the meaning of the UCC, it must assess the impact that foreclosure without obtaining such consents, authorizations or approvals, or making such notices or filings, would have on the proceeds that the Bank would obtain as a result of such foreclosure.

**8.5 Obligations Relating to Pledged Equity Interests.** For the avoidance of doubt, the parties agree that upon (but only upon, and not in any event prior to) any foreclosure upon any Pledged Equity Interests, the Bank or any other purchaser of such Pledged Equity Interests shall be required to assume any obligations associated with such Pledged Equity Interests.

## **SECTION 9. CONTINUING SECURITY INTEREST**

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect, be binding upon the Pledgors, their respective successors and assigns, and inure, together with the rights and remedies of the Bank hereunder, to the benefit of the Bank and to its respective successors, transferees and assigns until the Termination Date.

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## SECTION 10. TERMINATION

This Agreement shall terminate on the Business Day after the Termination Date of the last Transferred Asset held by the Bank.

## SECTION 11. MISCELLANEOUS

(a) If any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party to this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

(b) If any Person who is not a Pledgor under this Agreement intends to become a Pledgor hereunder, it may do so by executing a joinder agreement with the Bank in form and substance satisfactory to the Bank, and upon such execution by such Person and the Bank, such Person shall become a Pledgor hereunder with all the rights and obligations set forth in this Agreement.

(c) This Agreement shall be binding upon and inure to the benefit of the Bank and the Pledgors and their respective successors and assigns. The Parent and each Pledgor shall not, without the prior written consent of the Bank, assign any right, duty or obligation hereunder and any purported assignment without such consent shall be void, except that Parent shall have the right to assign all of its rights and obligations to any entity that succeeds, directly or indirectly, to substantially all of Parent's assets by merger or otherwise.

(d) This Agreement, together with the Guarantee Agreement, embodies the entire agreement and understanding between the Pledgors and the Bank, and supersedes all prior agreements and understandings between such parties, relating to the subject matter hereof and thereof (other than the Agreement).

(e) This Agreement may be executed in two or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

(f) This Agreement may be amended or modified only by an agreement in writing executed by each of the parties hereto; *provided, however*, that the parties hereto agree that, upon receipt by the Bank of the final written statement of the terms of the Section 23A Exemption, they shall amend this Agreement as necessary to reflect the terms and conditions contained in such statement.

(g) This Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns and nothing in this Agreement, express or implied,

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is intended to or shall confer upon any other person or party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(h) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating this Agreement or the transactions contemplated hereby.

(i) This Agreement and the rights and obligations of the parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the Laws of the State of New York.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Collateral Agreement to be duly executed and delivered personally or by their respective officers thereunto duly authorized, as applicable, as of the date first written above.

**GOLDMAN SACHS BANK USA**

By: /s/ Peter O'Hagan  
Name: Peter O'Hagan  
Title: Chief Executive Officer

**THE GOLDMAN SACHS GROUP, INC.**

By: /s/ Elizabeth E. Beshel  
Name: Elizabeth E. Beshel  
Title: Treasurer

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**GSEM (DEL) HOLDINGS, L.P.**

By: Goldman Sachs Global Holdings L.L.C.

By: /s/ Manda J. D'Agata

Name: Manda J. D'Agata

Title: Assistant Treasurer



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**GOLDMAN SACHS GLOBAL HOLDINGS L.L.C.**

By: /s/ Manda J. D'Agata

Name: Manda J. D'Agata

Title: Assistant Treasurer

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**SITE 26 HOLDINGS INC.**

By: /s/ Dino Fusco

Name: Dino Fusco

Title: Assistant Vice President

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**GSJC LAND L.L.C.**

By: /s/ Dino Fusco

Name: Dino Fusco

Title: Vice President

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**GSIP HOLDCO A LLC**  
**By: THE GOLDMAN SACHS GROUP, INC.**

By: /s/ Manda J. D'Agata

Name: Manda J. D'Agata

Title: Assistant Treasurer

<DOCUMENT>  
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<FILENAME> y74032exv10w62.htm  
<DESCRIPTION> EX-10.62: FORM OF PERFORMANCE-BASED ONE-TIME RSU AWARD AGREEMENT  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ PERFORMANCE-BASED ONE-TIME RSU AWARD**

This Award Agreement sets forth the terms and conditions of this special \_\_\_\_ performance-based 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

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 2, 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 Dates with respect to this Award shall be the dates specified (next to the number or percentage of One-time RSUs) as such on your Award Statement if such date is during a Window Period or, if such 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.

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(ii) Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 5, 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 each date specified as a 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 such 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, as approved or required 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.

(iv) In the discretion of the Committee, delivery of Shares may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your One-time RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(i) and 15), 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding One-time RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by 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(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 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) immediately shall 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;

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(ii) any event that constitutes Cause has occurred;

(iii) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding One-time RSUs.

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. For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v) regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii).

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.

(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, the condition set forth in Paragraph 4(a) shall be waived with



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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 terms and 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 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.”

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement (except Paragraphs 9(i) and 15), 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 relevant record 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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm’s \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

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(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 any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding One-time RSUs would result in an actual or perceived conflict of interest ("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 only, 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 case of Paragraphs 9(g)(i) and 9(g)(ii) above, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of the Shares underlying, your then Outstanding Vested One-time RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

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(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your One-time RSUs, you understand and agree that, if you are or become a “senior executive officer” (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the “EESA”)):

(i) No term or condition will apply to your One-time RSUs to the extent that such term or condition would result in a violation of the Firm’s obligations under the U.S. Treasury’s TARP Capital Purchase Program (the “CPP”), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your One-time RSUs as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any One-time RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your One-time RSUs that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), 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. For the avoidance of doubt, your acceptance of Paragraph 9(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your One-time RSUs contemplated under such Paragraph. 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.

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13. Non-transferability. Except as otherwise may be provided in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of One-time RSUs may transfer some or all of their One-time RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation"), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the case of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(i), Paragraph 9(i) shall govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your One-time RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section ("Reg.") 1.409A-1(b)(4)(i) (D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your One-time RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the

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extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a "specified employee" (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding One-time RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding One-time RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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.

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**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:

<DOCUMENT>  
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<DESCRIPTION> EX-10.63: FORM OF MAKE-WHOLE ONE-TIME RSU AWARD AGREEMENT  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_\_ MAKE-WHOLE ONE-TIME RSU AWARD**

This Award Agreement sets forth the terms and conditions of this special \_\_\_make-whole 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

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 2, 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 Dates with respect to this Award shall be the dates specified (next to the number or percentage of One-time RSUs) as such on your Award Statement if such date is during a Window Period or, if such 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.



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(ii) Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 5, 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 each date specified as a 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 such 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, as approved or required 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.

(iv) In the discretion of the Committee, delivery of Shares may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your One-time RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(i) and 15), 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding One-time RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by 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(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 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) immediately shall 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;

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(ii) any event that constitutes Cause has occurred;

(iii) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding One-time RSUs.

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. For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v) regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii).

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 (as defined below), the condition set forth in

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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 terms and conditions of this Award Agreement shall continue to apply. Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (i) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60 and (ii) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion).

(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 (except Paragraphs 9(i) and 15), 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 relevant record date. Each Dividend Equivalent Right shall be subject to the provisions of Section 2.8.2 of the Plan.

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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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm's \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(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 any U.S. Federal, state or local government, any non-U.S. government, any

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supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding One-time RSUs would result in an actual or perceived conflict of interest (“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 only, 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 case of Paragraphs 9(g)(i) and 9(g)(ii) above, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of the Shares underlying, your then Outstanding Vested One-time RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your One-time RSUs, you understand and agree that, if you are or become a “senior executive officer” (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the “EESA”)):

(i) No term or condition will apply to your One-time RSUs to the extent that such term or condition would result in a violation of the Firm’s obligations under the U.S. Treasury’s TARP Capital Purchase Program (the “CPP”), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your One-time RSUs as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any One-time RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your One-time RSUs that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), 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

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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. For the avoidance of doubt, your acceptance of Paragraph 9(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your One-time RSUs contemplated under such Paragraph. 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 in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of One-time RSUs may transfer some or all of their One-time RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation")), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the case of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(i), Paragraph 9(i) shall govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your One-time RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) and (c) (execution of waiver and

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release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your One-time RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a “specified employee” (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding One-time RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding One-time RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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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:



<DOCUMENT>  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ INCENTIVE ONE-TIME RSU AWARD**

This Award Agreement sets forth the terms and conditions of this special \_\_\_\_ incentive 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

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 2, 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 Dates with respect to this Award shall be the dates specified (next to the number or percentage of One-time RSUs) as such on your Award Statement if such date is during a Window Period or, if such 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.

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(ii) Except as provided in this Paragraph 3 and in Paragraphs 2, 4, 5, 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 each date specified as a 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 such 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, as approved or required 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.

(iv) In the discretion of the Committee, delivery of Shares may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your One-time RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(i) and 15), 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding One-time RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by 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(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 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) immediately shall 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;

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(ii) any event that constitutes Cause has occurred;

(iii) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding One-time RSUs.

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. For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v) regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii).

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 and Retirement.

(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 (as defined below), the condition set forth in

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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 terms and conditions of this Award Agreement shall continue to apply. Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (i) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60 and (ii) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion).

(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."

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement (except Paragraphs 9(i) and 15), 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 relevant record 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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm's \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award (or any other

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Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(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 any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding One-time RSUs would result in an actual or perceived conflict of interest ("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 only, 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 case of Paragraphs 9(g)(i) and 9(g)(ii) above, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of the Shares

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underlying, your then Outstanding Vested One-time RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your One-time RSUs, you understand and agree that, if you are or become a “senior executive officer” (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the “EESA”)):

(i) No term or condition will apply to your One-time RSUs to the extent that such term or condition would result in a violation of the Firm’s obligations under the U.S. Treasury’s TARP Capital Purchase Program (the “CPP”), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your One-time RSUs as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any One-time RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm’s obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your One-time RSUs that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), 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. For the avoidance of doubt, your acceptance of Paragraph 9(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your One-time RSUs contemplated under such Paragraph. 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

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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 in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of One-time RSUs may transfer some or all of their One-time RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation"), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the case of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(i), Paragraph 9(i) shall govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your One-time RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section ("Reg.") 1.409A-1(b)(4)(i) (D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your One-time RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise



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have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a "specified employee" (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding One-time RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding One-time RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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.

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**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:

<DOCUMENT>  
<TYPE> EX-10.65  
<FILENAME> y74032exv10w65.htm  
<DESCRIPTION> EX-10.65: FORM OF YEAR-END SUPPLEMENTAL RSU AWARD AGREEMENT (FRANCE)  
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**THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
\_\_\_\_ YEAR-END SUPPLEMENTAL RSU AWARD**

This Award Agreement sets forth the terms and conditions of the \_\_\_\_ Year-End award (this “Award”) of Supplemental RSUs (“Year-End Supplemental 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. **IN LIGHT OF THE U.S. TAX RULES RELATING TO DEFERRED COMPENSATION IN SECTION 409A OF THE CODE, TO THE EXTENT THAT YOU ARE A UNITED STATES TAXPAYER, CERTAIN PROVISIONS OF THIS AWARD AGREEMENT AND OF THE PLAN SHALL APPLY ONLY AS PROVIDED IN PARAGRAPH 15.**

2. Award. The number of Year-End Supplemental RSUs subject to this Award is set forth (as “\_\_\_\_ Year-End Supplemental RSUs”) 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 2, 4, 6, 7, 9, 10 and 15, on each Vesting Date you shall become Vested in the number or percentage of Year-End Supplemental 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 Year-End Supplemental RSUs that are or become Vested, all other terms and conditions of this Award Agreement shall continue to apply to such Vested Year-End Supplemental 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 Year-End Supplemental RSUs would be delivered).

(b) Delivery.

(i) The Delivery Dates with respect to this Award shall be the dates specified (next to the number or percentage of Year-End Supplemental RSUs) as such on your Award Statement if such date is during a Window Period or, if such date is not during a Window Period, the first Trading Day of

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the first Window Period beginning after that 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, 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 each date specified as a Delivery Date (or any other date delivery of Shares is called for hereunder), Shares underlying the number or percentage of your then Outstanding Year-End Supplemental RSUs with respect to which such 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, as approved or required 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 Year-End Supplemental 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.

(iv) In the discretion of the Committee, delivery of Shares may be made initially into an escrow account meeting such terms and conditions as are determined by the Firm and may be held in that escrow account until such time as the Committee has received such documentation as it may have requested or until the Committee has determined that any other conditions or restrictions on delivery of Shares required by this Award Agreement have been satisfied. By accepting your Year-End Supplemental RSUs, you have agreed on behalf of yourself (and your estate or other permitted beneficiary) that the Firm may establish and maintain an escrow account on such terms and conditions (which may include, without limitation, your executing any documents related to, and your paying for any costs associated with, such escrow account) as the Firm may deem necessary or appropriate. Any such escrow arrangement shall, unless otherwise determined by the Firm, provide that (A) the escrow agent shall have the exclusive authority to vote such Shares while held in escrow and (B) dividends paid on such Shares held in escrow may be accumulated and shall be paid as determined by the Firm in its discretion.

(c) Death. Notwithstanding any other Paragraph of this Award Agreement (except Paragraphs 9(i) and 15), if you die prior to the Delivery Date, the Shares underlying your then Outstanding Year-End Supplemental 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. The Committee may adopt procedures pursuant to which you may be permitted to specifically bequeath some or all of your Outstanding Year-End Supplemental RSUs under your will to an organization described in Sections 501(c)(3) and 2055(a) of the Code (or such other similar charitable organization as may be approved by the Committee).

#### 4. Termination of Year-End Supplemental RSUs and Non-Delivery of Shares.

(a) Unless the Committee determines otherwise, and except as provided in Paragraphs 3(c), 6, 7, and 9(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 Year-End Supplemental RSUs that were Outstanding but that had not yet become Vested immediately prior to your termination of Employment

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immediately shall terminate, such Year-End Supplemental 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 Year-End Supplemental RSUs (whether or not Vested) immediately shall terminate, such Year-End Supplemental 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) (A) you, in any manner, directly or indirectly, (1) Solicit any Client to transact business with a Competitive Enterprise or to reduce or refrain from doing any business with the Firm, (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and any Client, (3) 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 (4) 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, or (B) Selected Firm Personnel are Solicited, hired or accepted into partnership, membership or similar status (1) by a Competitive Enterprise that you form, that bears your name, in which you are a partner, member or have similar status, or in which you possess or control greater than a de minimis equity ownership, voting or profit participation or (2) by any Competitive Enterprise where you have, or are intended to have, direct or indirect managerial or supervisory responsibility for such Selected Firm Personnel;

(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, the Firm's notice period requirement applicable to you, any offer letter, employment agreement or any shareholders' agreement to which other similarly situated employees of the Firm are a party;

(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; or

(vii) your Employment terminates for any reason or you otherwise are no longer actively employed with the Firm and an entity to which you provide services grants you cash, equity or other property (whether vested or unvested) to replace, substitute for or otherwise in respect of any Outstanding Year-End Supplemental RSUs.

For purposes of the foregoing, the term "Selected Firm Personnel" means: (A) any Firm employee or consultant (1) with whom you personally worked while employed by the Firm, or (2) who at any time during the year

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immediately preceding your termination of Employment with the Firm, worked in the same division in which you worked; and (B) any Managing Director of the Firm.

(c) For the avoidance of doubt, failure to pay or reimburse the Firm, upon demand, for any amount you owe to the Firm shall constitute (i) failure to meet an obligation you have under an agreement referred to in Paragraph 4(b)(v), regardless of whether such obligation arises under a written agreement, and/or (ii) a material violation of Firm policy constituting Cause referred to in Paragraph 4(b)(ii).

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, Downsizing and Approved Termination for Program Analysts.

(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 (as defined below), the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End Supplemental RSUs that were Outstanding but that had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End Supplemental RSUs shall become Vested), but all other terms and conditions of this Award Agreement shall continue to apply. Notwithstanding anything to the contrary in the Plan or otherwise, "Retirement" means termination of your Employment (other than for Cause) on or after the Date of Grant at a time when (i) the sum of your age plus years of service with the Firm (as determined by the Committee in its sole discretion) equals or exceeds 60, (ii) you have completed at least ten (10) years of service with the Firm (as determined by the Committee in its sole discretion), and (iii) you have completed one year of service with the Firm following the Date of Grant (as determined by the Committee in its sole discretion).

(b) Without limiting the application of Paragraph 4(b), your rights in respect of your Outstanding Year-End Supplemental RSUs that become Vested in accordance with Paragraph 6(a) immediately shall terminate, such Outstanding Year-End Supplemental 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 Year-End Supplemental 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 Year-End Supplemental RSUs that were Outstanding but that had not yet become Vested immediately prior to such

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termination of Employment (as a result of which such Year-End Supplemental 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.”

(d) Notwithstanding any other provision of this Award Agreement, if you are classified by the Firm as a “program analyst,” and your Employment is terminated without Cause solely by reason of an “approved termination” with respect to your participation in the program prior to any Vesting Date specified on your Award Statement, the condition set forth in Paragraph 4(a) shall be waived with respect to any Year-End Supplemental RSUs that were Outstanding but had not yet become Vested immediately prior to such termination of Employment (as a result of which such Year-End Supplemental RSUs shall become Vested), but all other conditions of this Award Agreement shall continue to apply. Unless otherwise determined by the Committee, for purposes of this Paragraph 6(d), an “approved termination” shall mean a termination of Employment from the analyst program where: (i) you complete your analyst program, (ii) you receive a bonus for completing the analyst program and (iii) you terminate Employment with the Firm immediately after you complete the analyst program, without any “stay-on” or other agreement or understanding to continue Employment with the Firm. If you agree to stay with the Firm as an employee after your analyst program ends and then later terminate Employment, you will not have an “approved termination.”

7. Change in Control. Notwithstanding anything to the contrary in this Award Agreement (except Paragraphs 9(i) and 15), 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 Year-End Supplemental RSUs, whether or not Vested, shall be delivered.

8. Dividend Equivalent Rights. Each Year-End Supplemental RSU shall include a Dividend Equivalent Right. Accordingly, with respect to each of your Outstanding Year-End Supplemental 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 Year-End Supplemental RSU. Payment in respect of a Dividend Equivalent Right shall be made only with respect to Year-End Supplemental RSUs that are Outstanding on the relevant record 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. To the extent permitted by applicable law, the Firm, in its sole discretion, may require you to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on you or the Firm in connection with the grant, vesting or delivery of this Award by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of Shares delivered to you pursuant to this Award. In addition, if you are an individual with separate employment contracts (at any time during and/or after the Firm’s \_\_\_ fiscal year), the Firm may, in its sole discretion, require you to provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to your separate employment contracts by requiring you to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form



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of proceeds from the Firm's executing a sale of Shares delivered to you pursuant to this Award (or any other Outstanding Awards under the Plan). In no event, however, shall any choice you may have under the preceding two sentences determine, or give you any discretion to affect, the timing of the delivery of Shares or the timing of payment of tax obligations.

(b) If you are or become a Managing Director, your rights in respect of the Year-End Supplemental 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 Year-End Supplemental 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 Year-End Supplemental 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 Year-End Supplemental 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 any U.S. Federal, state or local government, any non-U.S. government, any supranational or international organization, any self-regulatory organization or any agency, or instrumentality of any such government or organization, or any other employer determined by the Committee, and as a result of such employment, your continued holding of your Outstanding Year-End Supplemental RSUs would result in an actual or perceived conflict of interest ("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 Year-End Supplemental RSUs;

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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 Year-End Supplemental RSUs you then hold that had not yet become Vested (as a result of which such Year-End Supplemental RSUs shall become Vested) and, in the case of Paragraphs 9(g)(i) and 9(g)(ii) above, at the sole discretion of the Firm, you shall receive either a lump sum cash payment in respect of, or delivery of Shares underlying, your then Outstanding Vested Year-End Supplemental RSUs, in each case as soon as practicable after the Committee has received satisfactory documentation relating to your Conflicted Employment.

(h) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.

(i) Notwithstanding any other provision of this Award Agreement, the Plan or otherwise, by accepting your Year-End Supplemental RSUs, you understand and agree that, if you are or become a "senior executive officer" (as defined in the regulations promulgated under the Emergency Economic Stabilization Act of 2008 (the Act, together with the regulations, the "EESA")):

(i) No term or condition will apply to your Year-End Supplemental RSUs to the extent that such term or condition would result in a violation of the Firm's obligations under the U.S. Treasury's TARP Capital Purchase Program (the "CPP"), as determined by the Firm in its sole discretion;

(ii) The Firm reserves the right to add any terms or conditions to your Year-End Supplemental RSUs as the Firm deems necessary in its sole discretion to satisfy the Firm's obligations under the CPP;

(iii) You will be required to repay any Shares delivered pursuant to any Year-End Supplemental RSUs, in accordance with Paragraph 5 and Section 2.6.3 of the Plan, as the Firm deems necessary in its sole discretion to satisfy the Firm's obligations under the CPP; and

(iv) You agree to waive any claim against the United States or the Firm for any amendments to your Year-End Supplemental RSUs that the Firm deems necessary in its sole discretion to satisfy its obligations under the CPP. This waiver includes all claims you may have under the laws of the United States or any state related to the requirements imposed by the EESA, including without limitation a claim for any compensation or other payments you would otherwise receive, any challenge to the process by which the EESA was adopted and any tort or constitutional claim about the effect of the EESA on your employment relationship.

10. Right of Offset. Except as provided in Paragraph 15(h), 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

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described in Sections 1.3.2(h)(1), (2) and (4) of the Plan. For the avoidance of doubt, your acceptance of Paragraph 9(i) constitutes your consent to any amendments (including amendments which materially adversely affect your rights and obligations) to your Year-End Supplemental RSUs contemplated under such Paragraph. 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 in this Paragraph or 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. The Committee may adopt procedures pursuant to which some or all recipients of Year-End Supplemental RSUs may transfer some or all of their Year-End Supplemental RSUs through a gift for no consideration to any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the recipient's household (other than a tenant or employee), a trust in which these persons have more than 50% of the beneficial interest, and any other entity in which these persons (or the recipient) own more than 50% of the voting interests.

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. Compliance of Award Agreement and Plan With Section 409A. The provisions of this Paragraph 15 apply to you only if you are a United States taxpayer.

(a) References in this Award Agreement to "Section 409A" refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a "deferral of compensation" or "deferred compensation" as those terms are defined in the regulations under Section 409A ("409A deferred compensation"), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern; provided, however, in the case of any conflict or potential inconsistency between this Paragraph 15 and Paragraph 9(i), Paragraph 9(i) shall govern.

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(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your Year-End Supplemental RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) and (c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your Year-End Supplemental RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a “specified employee” (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding Year-End Supplemental RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding Year-End Supplemental RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

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(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

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:

<DOCUMENT>  
<TYPE> EX-10.66  
<FILENAME> y74032exv10w66.htm  
<DESCRIPTION> EX-10.66: FORM OF SIGNATURE CARD FOR EQUITY AWARDS (ASIA EX CHINA)  
<TEXT>

**The Goldman Sachs Group, Inc.**  
SIGNATURE CARD FOR \_\_\_\_ YEAR-END AWARDS (ASIA) AND THE BNY MELLON CUSTODY ACCOUNT  
AND CONSENT TO RECEIVE ELECTRONIC DELIVERY

**IMPORTANT: PLEASE REVIEW, EXECUTE AND RETURN THIS FORM TO: EQUITY COMPENSATION  
(DIVISION OF HCM), 30 HUDSON STREET, 35TH FLOOR, JERSEY CITY, NJ 07302.**

**YOU MUST PROPERLY EXECUTE THIS FORM TO ACKNOWLEDGE ACCEPTANCE OF THE TERMS AND  
CONDITIONS OF YOUR AWARD(S) AND RELATED MATTERS.**

1. I have received and agree to be bound by The Goldman Sachs Amended and Restated Stock Incentive Plan (the "SIP") and the Award Agreement(s) applicable to me in connection with the \_\_\_\_ Year-End Award(s) (the "Award(s)") that I have been granted by the Firm (as defined below). I confirm that I have accepted the Award(s) subject to the terms and conditions contained in the SIP and the Award Agreement(s), including but not limited to, the requirement that disputes relating to the Award(s) and the Award Agreement(s) be decided through arbitration in New York City and be governed by New York law.

As a condition of this grant, I understand that the Award(s) (as well as any other award that the Firm may grant to me under the SIP) is/are subject to other governing law provisions (as outlined in this signature card, in the current or otherwise then current Award Summary (as defined below) or otherwise as may be required under applicable law) and, as a condition to receiving such awards, I agree to be bound thereby. I also understand that the Firm may grant to me other awards under the SIP that also may contain (among other terms and conditions) arbitration and other governing law provisions and, as a condition to receiving such awards, I agree to be bound thereby. As a condition of this grant, I agree to provide upon request an appropriate certification regarding my U.S. tax status on Form W-8BEN, Form W-9, or other appropriate form, and I understand that failure to supply a required form may result in the imposition of backup withholding on certain payments I receive pursuant to this grant.

Further, as a condition of this grant, if I am a person who has worked in the United Kingdom at any time during the earnings period relating to any award under the SIP, as determined by the Firm, when requested and as directed by the Firm, I will agree to a Joint Election under s431 ITEPA 2003 of the laws of the United Kingdom for full or partial disapplication of Chapter 2 Income Tax (Earnings and Pension) Act 2003 under the laws of the United Kingdom and will sign and return such election in respect of all future deliveries of shares underlying the Award (s) and any previous grants made to me under the SIP and understand that the Firm intends to meet its delivery obligations in shares with respect to my Award(s), except as may be prohibited by law or described in the accompanying Award Agreement or supplementary materials.

If I have worked in Switzerland at any time during the earnings period relating to the Award(s) granted to me as determined by the Firm, (i) I acknowledge that my Award(s) are subject to tax in accordance with the rulings and method of calculation of taxable values to be agreed by the Firm with the Federal and/or Zurich/Geneva cantonal/communal tax authorities or as otherwise directed by the Firm, and (ii) I hereby agree to be bound by any rulings agreed by the Firm in respect of any Award(s), which is expected to result in taxation at the time of delivery of shares (or cash or other property in lieu thereof), and (iii) I undertake to declare and make a full and accurate income tax declaration in respect of my Award(s) in accordance with the above ruling or as directed by the Firm.

I understand and acknowledge that any transfer provisions (including, where applicable, escrow and other similar provisions, but specifically excluding any transfer restrictions imposed on any Award(s) in the Award Agreement(s) or the SIP) in the SIP or related documents will not apply to me (i) to the extent that the applicability of those provisions would affect the availability of relevant exemptions or tax favorable treatment, or (ii) otherwise in circumstances determined by the Firm in its sole discretion.

2. I have read and understand the Firm's "Notice Periods for Recipients of Year-End Equity-Based Awards" (the "Notice Policy"), pursuant to which I am required to provide certain specified advance notice of my intent to leave employment with the Firm. I understand that in executing this form, I will be agreeing to provide my employing entity with advance notice of my intention to leave employment with the Firm as follows:

- In the Americas, Japan and Asia Ex-Japan (excluding India): 60 days in advance of my termination date
- In Europe, the Middle East, Africa and India: 90 days in advance of my termination date

and that, where applicable (see the provisions in the Award Summary), the provisions of the Notice Policy constitute a permanent change to my terms and conditions of employment. I agree to this change in consideration of my continued employment with the Firm and my acceptance of the Award(s), and I agree to be bound by the Notice Policy as in effect from time-to-time.

I also understand that the terms and conditions of my employment shall be permanently changed so that, in the event that I resign from the Firm, the Firm may either:

- Unilaterally waive or reduce the notice period otherwise applicable to my employment, or
- Take such other action as shall have that effect.

I acknowledge that the Firm retains its right to bring forward the end of the notice period to such earlier date, and that I will not be entitled to any salary, wages, or benefits after such earlier date. In addition, I understand that I will not receive pay in lieu for any period of notice that has been waived or reduced.

This agreement concerning my notice period is being made for and on behalf of my Goldman Sachs employing entity, and implementation of the Notice Policy does not create an employment relationship between me and The Goldman Sachs Group, Inc.

I understand that unless the notice period is waived by agreement or unilaterally as set out above, or I have exercised a statutory right to make a payment in lieu of my notice period, I will be paid my base salary and will continue to receive all mandatory benefits during the notice period. I understand that during my notice period I may (subject to any local laws to the contrary) be required to remain away from the Firm's offices, and/or be removed from any assigned duties or assigned to other suitable duties during my notice period.

I understand that if I fail to give the full amount of notice as set out above, or to comply in any respect with the Notice Policy, I will have failed to meet an obligation I have under an agreement with the Firm, as a result of which the Firm may have certain rights and I may be subject to certain legal and equitable rights and remedies, including, without limitation, the forfeiture of the Award(s) and any other awards granted to me (whether before or after the Award(s)) under the SIP. The forfeiture of such Award(s) will also apply where I fail to give the full amount of notice by exercising any right I may have under applicable legislation to make a payment in lieu of such notice. I also understand that, if I fail to comply with the Notice Policy, the Firm may be entitled to an injunction from a court restraining me from violating it.

I understand that, for employees of Archon Group, L.P., the Notice Policy applies only to Senior Executives.

3. I have read and understand the Firm's hedging and pledging policies (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 agree to be bound by them (with respect to the Award(s) and any prior awards under the SIP), both during and following my employment with the Firm.

4. If a custody account is required, I request that The Bank of New York Mellon ("BNY Mellon") (successor in interest to Mellon Bank, N.A.) open a custody account for me as described in the enclosed Custody Agreement among BNY Mellon (as successor in interest to Mellon Bank N.A.), The Goldman Sachs Group, Inc., and myself. I have received and agree to be bound by the Custody Agreement (or any other such custody agreement previously entered into by me or on my behalf), including the applicable restrictions on transfers, pledges and withdrawals of Common Stock, the provisions permitting the Firm to monitor my custody account, and the limitations on the liability of BNY Mellon and the Firm. I also agree to open an account with any other custodian or broker selected by the Firm, if the Firm, in its sole discretion, requires me to open an account with such custodian or broker as a condition to delivery of shares (or cash or other property) underlying the Award(s).

5. If the Firm advanced or loaned me funds to pay certain taxes (including income taxes and Social Security, or similar contributions) in connection with the Award(s) (or does so in the future), and if I have not signed a separate loan agreement governing repayment, I authorize the Firm to withhold from my compensation any amounts required to reimburse it for any such advance or loan to the extent permitted by applicable law.

I understand and agree that, if I leave the Firm, I am required immediately to repay any outstanding amount. I further understand and agree that the Firm has the right to offset, to the extent permitted by the Award Agreement and applicable law (including Section 409A of the U.S. Internal Revenue Code of 1986, as amended, which limits the Firm's ability to offset in the case of United States taxpayers under certain circumstances), any outstanding amounts that I then

Year End (Asia)



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owe the Firm against its delivery obligations under the Award(s) or against any other amounts the Firm then owes me. I understand that the delivery of shares pursuant to the Award(s) is conditioned on my satisfaction of any applicable taxes or social security contributions (collectively referred to as “tax” or “taxes” for purposes of the SIP and all related documents) in accordance with the SIP. To the extent permitted by applicable law, the Firm, in its sole discretion, may require me to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on me or the Firm in connection with the grant, vesting or delivery of the Award(s) by requiring me to choose between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of shares delivered to me pursuant to the Award(s). However, in no event shall any such choice or the choice specified in paragraph 6, below, determine, or give me any discretion to affect, the timing of the delivery of shares or payment of tax obligations. I understand and agree that the Firm may reduce any year-end cash bonus that I may receive by an amount equal to the estimated Indian Fringe Benefit Tax applicable to any award (whether or not vested), as determined by the Firm in its sole discretion.

6. If I am an individual with separate employment contracts (at any time during and/or after the Firm’s \_\_\_ fiscal year), I acknowledge and agree that the Firm may, in its sole discretion, require (to the extent permitted by applicable law) that I provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to my separate employment contracts by requiring me to choose between remitting such amount (i) in cash (or through payroll deductions or otherwise) or (ii) in the form of proceeds from the Firm’s executing a sale of shares delivered to me pursuant to the Award(s) (or any other of my awards outstanding under the SIP).

7. In connection with any Award Agreement or other interest I may receive in the SIP or any shares of Common Stock of The Goldman Sachs Group, Inc. that I may receive in connection with the Award(s) or any award I have previously received or may receive, or in connection with any amendment or variation thereof or any documents listed in paragraph 8, I hereby consent to (a) the acceptance by me of the Award(s) electronically, (b) the giving of instructions in electronic form whether by me or the Firm, and (c) the receipt in electronic form at my email address maintained at Goldman Sachs or via Goldman Sachs’ intranet site (or, if I am no longer employed by the Firm, at such other email address as I may specify, or via such other electronic means as the Firm and I may agree) all notices and information that the Firm is required by law to send to me in connection therewith including, without limitation, any document (or part thereof) constituting part of a prospectus covering securities that have been registered under the U.S. Securities Act of 1933, the information contained in any such document and any information required to be delivered to me under Rule 428 of the U.S. Securities Act of 1933, including, for example, the annual report to security holders or the annual report on Form 10-K of The Goldman Sachs Group, Inc. for its latest fiscal year, and that all prior elections that I may have made relating to the delivery of any such document in physical form are hereby revoked and superseded. I agree to check Goldman Sachs’ intranet site (or, if I am no longer employed by the Firm, such other electronic site as the Firm and I may agree) periodically as I deem appropriate for any new notices or information concerning the SIP. I understand that I am not required to consent to the receipt of such documents in electronic form in order to receive the Award(s) and that I may decline to receive such documents in electronic form by contacting Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, which will provide me with hard copies of such documents upon request. I also understand that this consent is voluntary and may be revoked at any time on three business days’ written notice.

8. I hereby acknowledge that I have received in electronic form in accordance with my consent in paragraph 7 the following documents:

- The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Summary of The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Custody Agreement with BNY Mellon;
- The \_\_\_ Annual Report for The Goldman Sachs Group, Inc.;
- The annual report on Form 10-K for The Goldman Sachs Group, Inc. for the fiscal year ended \_\_\_, filed with the Securities Exchange Commission on \_\_\_;
- The Award Agreement(s); and
- Summaries of the Award(s) (“Award Summary”).

9. I expressly authorize any appropriate representative of the Firm to make any notifications, filings or remittances of funds that may be required in connection with the SIP or otherwise on my behalf. Further, if I am an employee who is resident in South Africa at the time of share acquisition, by accepting my Award(s), I expressly authorize any appropriate representative of the Firm to make any required notification on my behalf to the Reserve Bank of South Africa (or its authorized dealer) in relation to any acquisition of shares for no consideration under the SIP or other similar filing that may otherwise be required in South Africa. I acknowledge that any such authorization is effective from the date of acceptance of my Award(s) until such time as I expressly revoke the authorization by written notice to any appropriate representative of the Firm. I understand that this authorization does not create any obligation on the Firm to deal with any such notifications, filings or remittances of funds that I may be required to make in connection with the SIP and I accept full responsibility in this regard.

#### **Consent to Data Collection, Processing and Transfers:**

**I understand and agree that in connection with the SIP and any other Firm benefit plan (the “Programs”), to the extent permitted under the laws of the applicable jurisdiction, the Firm may collect and process various data that is personal to me, including my name, address, work location, hire date, Social Security or Social Insurance or taxpayer identification number (required for tax purposes), type and amount of SIP or other benefit plan award, citizenship or residency (required for tax purposes) and other similar information reasonably necessary for the administration of such Programs (collectively referred to as “Information”) and provide such Information to its affiliates and BNY Mellon (and its affiliates) or any other service provider, whether in the United States or elsewhere, as is reasonably necessary for the administration of the Programs and under the laws of these jurisdictions. I understand that, in certain circumstances, foreign courts, law enforcement agencies or regulatory agencies may be entitled to access the Information. I understand that, unless I explicitly authorize otherwise, the Firm, its affiliates and its service providers (through their respective employees in charge of the relevant electronic and manual processing) will use this Information only for purposes of administering the Programs. I understand that, in the United States and in other countries to which such Information may be transferred for the administration of the Programs, the level of data protection is not equivalent to data protection standards in the member states of the European Union. I understand that, upon request, to Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, to the extent required under the laws of the applicable jurisdiction, I may have access to and obtain communication of the Information and may exercise any of my rights in respect of such Information, including objecting to the processing of the Information and requesting that the Information be corrected (if wrong), completed or clarified (if incomplete or equivocal), or erased (if cannot legally be collected or kept). Upon**

request, to the extent required under the laws of the applicable jurisdiction, Equity Compensation (division of HCM) will also provide me, free of charge, with a list of all the service providers used in connection with the Programs at the time of request. I understand that, if I refuse to authorize the use and transfer of the Information consistent with the above, I may not benefit from the Programs. I authorize the use and transfer of the Information consistent with the above for the period of administration of the Programs. In particular, I authorize (within the limits described above): (i) the data processing by the Firm (which means The Goldman Sachs Group, Inc. and its subsidiaries and affiliates); (ii) the data processing by BNY Mellon and its affiliates; (iii) the data processing by the Firm's other service providers; and (iv) the data transfer to the United States and other countries. I further acknowledge that the Information may be retained by such persons beyond the period of administration of the Programs to the extent permitted under the laws of the applicable jurisdiction and I so authorize.

**Other Legal Notices:**

**FOR HONG KONG EMPLOYEES ONLY**

**WARNING:**

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in doubt about any of the contents of this document, you should obtain independent professional advice.

By accepting the Award(s), you acknowledge and accept that you will not be permitted to transfer awards to persons who fall outside the definition of 'qualifying persons' in the Companies Ordinance (*i.e.*, a person who is not a current or former director, employee, officer, consultant of the Firm or a person other than the offeree's wife, husband, widow, widower, child or step-child under the age of 18 years, or as otherwise defined), even if otherwise permitted under the SIP or any of the related documents.

**FOR INDIA EMPLOYEES ONLY**

This website does not invite offers from the public for subscription or purchase of the securities of any body corporate under any law for the time being in force in India. The website is not a prospectus under the applicable laws for the time being in force in India. Goldman Sachs does not intend to market, promote, invite offers for subscription or purchase of the securities of any body corporate by this website. The information provided on this website is for the record only. Any person who subscribes or purchases securities of any body corporate should consult his own investment advisers before making any investments. Goldman Sachs shall not be liable or responsible for any such investment decision made by any person.

**NON-COMPETITION AND NON-SOLICITATION RESTRICTIONS FOR EMPLOYEES PROVIDING SERVICES**

Year End (Asia)

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## **IN HONG KONG, SINGAPORE, INDIA, TAIWAN, INDONESIA, KOREA AND JAPAN**

In addition to and without limiting any provisions in the SIP or the applicable Award Agreement(s) (including without limitation the Award forfeiture, termination or repayment provisions), I hereby agree to and acknowledge the following:

(a) If I am providing services to the Firm in Hong Kong, Singapore, India, Taiwan, Indonesia, Korea or Japan, in view of my importance to the Firm, I hereby agree that the Firm would likely suffer significant harm from me competing with the Firm for some period of time after my employment ends. Accordingly, I hereby agree that I will not, without the written consent of the Firm, during the Restricted Period in the Geographic Area:

- (i) form, or acquire a 5% or greater equity ownership, voting or profit participation interest in, any Covered Competitive Enterprise; or
- (ii) associate (including, but not limited to, association as an officer, employee, partner, director, consultant, agent or advisor) with any Covered Competitive Enterprise and in connection with such association engage in, or directly or indirectly manage or supervise personnel engaged in, any activity:
  - i. which is similar or substantially related to any activity in which I was engaged, in whole or in part, at the Firm,
  - ii. for which I had direct or indirect managerial or supervisory responsibility at the Firm, or
  - iii. which calls for the application of the same or similar specialized knowledge or skills as those utilized by me in my activities with the Firm,

at any time during the one-year period immediately prior to termination of my employment, and, in any such case, irrespective of the purpose of the activity or whether the activity is or was in furtherance of advisory, agency, proprietary or fiduciary business of either the Firm or the Covered Competitive Enterprise.

(By way of example only, this provision precludes an “advisory” investment banker from joining a leveraged-buyout firm, a research analyst from becoming a proprietary trader or joining a hedge fund, or an information systems professional from joining a management or other consulting firm and providing information technology consulting services or advice to any Covered Competitive Enterprise, in each case without the written consent of the Firm.)

(b) I hereby agree that during the Restricted Period, I will not, in any manner, directly or indirectly, (1) Solicit a Covered Client to transact business with a Covered Competitive Enterprise or to reduce or refrain from doing any business with the Firm, or (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm and a Covered Client.

(c) I hereby agree that during the Restricted Period, I will not, in any manner, directly or indirectly:

- (i) Solicit any Covered Personnel to resign from the Firm or to apply for or accept employment, consultancy, partnership, membership or similar status with a Covered Competitive Enterprise;
- (ii) hire or participate in the hiring of any Covered Personnel (whether as an employee, consultant, or otherwise) by a Covered Competitive Enterprise;
- (iii) participate in the decision to offer Covered Personnel employment, consultancy, admission into partnership, membership or similar status with a Covered Competitive Enterprise; or
- (iv) participate in the identification of Covered Personnel for potential hiring, consultancy or admission into partnership, membership or similar status with a Covered Competitive Enterprise.

(d) I acknowledge that I will have violated this provision if, during the Restricted Period, any Covered Personnel are Solicited, hired, made a consultant or are accepted into partnership, membership or similar status:

- (i) by any Covered Competitive Enterprise which I form, which bears my name, or in which I am an owner, a partner, a member or have similar status; or
- (ii) by any Covered Competitive Enterprise, and I have, or are intended to have, managerial or supervisory responsibility for such Covered Personnel.

(e) Prior to accepting employment with any other person or entity during the Restricted Period, I will provide any prospective employer with written notice of these Restrictions with a copy delivered simultaneously to the Firm.

(f) I understand that the Restrictions may limit my ability to earn a livelihood in a business similar to the business of the Firm. I acknowledge that a violation on my part of any of the Restrictions would cause immeasurable and irreparable damage to the Firm. Accordingly, I agree that the Firm will be entitled to injunctive relief in any court of competent jurisdiction for any actual or threatened violation of any of Restrictions in addition to any other remedies it may have. I also acknowledge that a violation of any of the Restrictions would constitute my failure to meet an obligation I have under an agreement between me and the Firm that was entered into in connection with my employment with the Firm, and may constitute “Cause” for purposes of any equity-based awards granted to me by the Firm and will result in my forfeiting such equity-based awards.

(g) If any provision (or part of a provision) of the Restrictions is held by a court of competent jurisdiction to be invalid, illegal or unenforceable (whether in whole or in part), such provision will be deemed modified or severed to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining such provisions will not be affected thereby; provided, however, that if any of the Restrictions are held by a court of competent jurisdiction to be invalid, illegal or unenforceable because it exceeds the maximum time period such court determines is acceptable to permit such provision to be enforceable, such Restrictions will be deemed to be modified to the minimum extent necessary to modify such time period in order to make such provision enforceable hereunder.

(h) Any benefit that I give or am deemed to have given by virtue of the Restrictions is received jointly and severally by The Goldman Sachs Group Inc. and its subsidiaries and affiliates (including any Firm entity to which I provide services from time to time).

(i) Any benefit that The Goldman Sachs Group, Inc. gives or is deemed to have given to me by virtue of the SIP and Award Agreement(s) is rendered jointly on its own behalf and on behalf of its subsidiaries and affiliates (including any Firm entity to which I provide services from time to time).

(j) I acknowledge that the Restrictions set out in this clause are reasonable and necessary for the protection of the legitimate interests of the Firm, and that, having regard to those interests, such restrictions do not impose an unreasonable burden on me.

(k) The Restrictions shall remain in full force and effect and survive the termination of my employment for any reason whatsoever.

(l) If I am a Managing Director subject to a Managing Director Agreement, the Restrictions shall not apply to me.

(m) If I am a Private Wealth Management employee subject to an Employee Agreement Regarding Confidential and Proprietary Information and Materials and Non-Solicitation, I will not be subject to the restrictions contained in clause (b) of the Restrictions.

(n) For the purposes of these Restrictions only, the following terms have the following meanings:

“**Asia**” means the PRC, Hong Kong SAR, Taiwan, Japan, Korea, India, Singapore, Indonesia, Malaysia, Thailand, Philippines, Brunei and Vietnam.

“**Covered Client**” means any client or prospective client of the Firm (i) to whom I provided services in the 12 months prior to the Notice Date, or (ii) for whom I transacted business in the 12 months prior to the Notice Date, or (iii) whose identity became known to me in connection with my relationship with or employment by the Firm in the 12 months prior to the Notice Date and with respect to whom I had access to confidential information.

“**Covered Competitive Enterprise**” means a business enterprise that (i) engages in any activity, or (ii) owns or controls a significant interest in any entity that engages in any activity that, in either case, competes anywhere with any activity in which the Firm is engaged. The activities covered by the previous sentence include, without limitation, financial services such as investment banking, public or private finance, lending, financial advisory services, private investing (for anyone other than me and members of my family), merchant banking, asset or hedge fund management, insurance or reinsurance underwriting or brokerage, property management, or securities, futures, commodities, energy, derivatives or currency brokerage, sales, lending, custody, clearance, settlement or trading.

“**Employment Period**” means the period from the commencement of my employment with, or transfer, assignment or secondment to, any member of the Firm in Hong Kong SAR, Singapore, India, Taiwan, Indonesia, Korea or Japan (“GS Asia excluding PRC”) and ending with the date of termination of my employment with, or transfer, assignment or secondment to, any such member of the Firm in GS Asia excluding PRC. The Employment Period does not terminate when I commence employment with, or am transferred, assigned or seconded to, another member of the Firm in GS Asia excluding PRC.

“**Covered Extended Absence**” means my absence from active employment for at least 180 days in any 12-month period as a result of my incapacity due to mental or physical illness, as determined by the Firm.

“**Firm**” means The Goldman Sachs Group, Inc., its subsidiaries and affiliates and its and their respective successors.

“**Geographic Area**” means (i) the jurisdiction in Asia in which I am located as of the date of execution of this signature card; and/or (ii) any other jurisdiction in Asia in relation to which I have substantial product and/or

Year End (Asia)

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geographical market responsibilities; and/or (iii) any other jurisdiction in Asia in relation to which I have substantial employee managerial responsibilities as of the date of execution of this signature card.

**“Notice Date”** means the date on which either I or the Firm gives notice of (i) the conclusion of my transfer, assignment or secondment to any member of the Firm in GS Asia excluding PRC, or (ii) the termination of my employment with any member of the Firm in GS Asia excluding PRC or, if the termination is for cause or Covered Extended Absence, the date on which such termination occurs.

**“PRC”** means, for the purpose of the Restrictions, the People’s Republic of China, excluding Hong Kong SAR, Macau SAR and Taiwan.

**“Restricted Period”** means (i) during the Employment Period; and (ii) for the period of notice in my employment contract or the period stated in this signature card commencing from the Notice Date (whichever is longer), irrespective of whether the termination is for cause or Covered Extended Absence or whether I receive a payment in lieu of all or part of that notice period.

**“Restrictions”** means the non-competition and non-solicitation restrictions for employees providing services in Hong Kong, Singapore, India, Taiwan, Indonesia, Korea and Japan as set out in (a) to (n) of this section of this signature card.

**“Covered Personnel”** means any Firm employee, consultant or Managing Director with whom I had material contact or dealings in the last 12 months of my employment or in relation to whom I had access to confidential information.

**“Solicit”** means any direct or indirect communication of any kind whatsoever, regardless of by whom initiated, inviting, advising, encouraging or requesting any person or entity, in any manner, to take or refrain from taking any action.

(n) These Restrictions shall be governed by and construed in accordance with the laws of the jurisdiction in which I am located and providing services to the Firm at the date of execution of this signature card.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Employee ID #: \_\_\_\_\_

Year End (Asia)

<DOCUMENT>  
<TYPE> EX-10.67  
<FILENAME> y74032exv10w67.htm  
<DESCRIPTION> EX-10.67: FORM OF SIGNATURE CARD FOR EQUITY AWARDS (CHINA)  
<TEXT>

**The Goldman Sachs Group, Inc.**  
SIGNATURE CARD FOR \_\_\_\_ YEAR-END AWARDS (CHINA) AND THE BNY MELLON CUSTODY ACCOUNT  
AND CONSENT TO RECEIVE ELECTRONIC DELIVERY

**IMPORTANT: PLEASE REVIEW, EXECUTE AND RETURN THIS FORM TO: EQUITY COMPENSATION  
(DIVISION OF HCM), 30 HUDSON STREET, 35TH FLOOR, JERSEY CITY, NJ 07302.**

**YOU MUST PROPERLY EXECUTE THIS FORM TO ACKNOWLEDGE ACCEPTANCE OF THE TERMS AND  
CONDITIONS OF YOUR AWARD(S) AND RELATED MATTERS.**

1. I have received and agree to be bound by The Goldman Sachs Amended and Restated Stock Incentive Plan (the "SIP") and the Award Agreement(s) applicable to me in connection with the \_\_\_\_ Year-End Award(s) (the "Award(s)") that I have been granted by the Firm (as defined below). I confirm that I have accepted the Award(s) subject to the terms and conditions contained in the SIP and the Award Agreement(s), including but not limited to, the requirement that disputes relating to the Award(s) and the Award Agreement(s) be decided through arbitration in New York City and be governed by New York law.

As a condition of this grant, I understand that the Award(s) (as well as any other award that the Firm may grant to me under the SIP) is/are subject to other governing law provisions (as outlined in this signature card, in the current or otherwise then current Award Summary (as defined below) or otherwise as may be required under applicable law) and, as a condition to receiving such awards, I agree to be bound thereby. I also understand that the Firm may grant to me other awards under the SIP that also may contain (among other terms and conditions) arbitration and other governing law provisions and, as a condition to receiving such awards, I agree to be bound thereby. As a condition of this grant, I agree to provide upon request an appropriate certification regarding my U.S. tax status on Form W-8BEN, Form W-9, or other appropriate form, and I understand that failure to supply a required form may result in the imposition of backup withholding on certain payments I receive pursuant to this grant.

Further, as a condition of this grant, if I am a person who has worked in the United Kingdom at any time during the earnings period relating to any award under the SIP, as determined by the Firm, when requested and as directed by the Firm, I will agree to a Joint Election under s431 ITEPA 2003 of the laws of the United Kingdom for full or partial disapplication of Chapter 2 Income Tax (Earnings and Pension) Act 2003 under the laws of the United Kingdom and will sign and return such election in respect of all future deliveries of shares underlying the Award(s) and any previous grants made to me under the SIP and understand that the Firm intends to meet its delivery obligations in shares with respect to my Award(s), except as may be prohibited by law or described in the accompanying Award Agreement or supplementary materials.

If I have worked in Switzerland at any time during the earnings period relating to the Award(s) granted to me as determined by the Firm, (i) I acknowledge that my Award(s) are subject to tax in accordance with the rulings and method of calculation of taxable values to be agreed by the Firm with the Federal and/or Zurich/Geneva cantonal/communal tax authorities or as otherwise directed by the Firm, and (ii) I hereby agree to be bound by any rulings agreed by the Firm in respect of any Award(s), which is expected to result in taxation at the time of delivery of shares (or cash or other property in lieu thereof), and (iii) I undertake to declare and make a full and accurate income tax declaration in respect of my Award(s) in accordance with the above ruling or as directed by the Firm.

I understand and acknowledge that any transfer provisions (including, where applicable, escrow and other similar provisions, but specifically excluding any transfer restrictions imposed on any Award(s) in the Award Agreement(s) or the SIP) in the SIP or related documents will not apply to me (i) to the extent that the applicability of those provisions would affect the availability of relevant exemptions or tax favorable treatment, or (ii) otherwise in circumstances determined by the Firm in its sole discretion.

2. I have read and understand the Firm's "Notice Periods for Recipients of Year-End Equity-Based Awards" (the "Notice Policy"), pursuant to which I am required to provide certain specified advance notice of my intent to leave employment with the Firm. I understand that in executing this form, I will be agreeing to provide my employing entity with advance notice of my intention to leave employment with the Firm as follows:

- In the Americas, Japan and Asia Ex-Japan (excluding India): 60 days in advance of my termination date
- In Europe, the Middle East, Africa and India: 90 days in advance of my termination date

and that, where applicable (see the provisions in the Award Summary), the provisions of the Notice Policy constitute a permanent change to my terms and conditions of employment. I agree to this change in consideration of my continued employment with the Firm and my acceptance of the Award(s), and I agree to be bound by the Notice Policy as in effect from time-to-time.

I also understand that the terms and conditions of my employment shall be permanently changed so that, in the event that I resign from the Firm, the Firm may either:

- Unilaterally waive or reduce the notice period otherwise applicable to my employment, or
- Take such other action as shall have that effect.

I acknowledge that the Firm retains its right to bring forward the end of the notice period to such earlier date, and that I will not be entitled to any salary, wages, or benefits after such earlier date. In addition, I understand that I will not receive pay in lieu for any period of notice that has been waived or reduced.

This agreement concerning my notice period is being made for and on behalf of my Goldman Sachs employing entity, and implementation of the Notice Policy does not create an employment relationship between me and The Goldman Sachs Group, Inc.

I understand that unless the notice period is waived by agreement or unilaterally as set out above, or I have exercised a statutory right to make a payment in lieu of my notice period, I will be paid my base salary and will continue to receive all mandatory benefits during the notice period. I understand that during my notice period I may (subject to any applicable laws to the contrary) be required to remain away from the Firm's offices, and/or be removed from any assigned duties or assigned to other suitable duties during my notice period.

I understand that if I fail to give the full amount of notice as set out above, or to comply in any respect with the Notice Policy, I will have failed to meet an obligation I have under an agreement with the Firm, as a result of which the Firm may have certain rights and I may be subject to certain legal and equitable rights and remedies, including, without limitation, the forfeiture of the Award(s) and any other awards granted to me (whether before or after the Award(s)) under the SIP. The forfeiture of such Award(s) will also apply where I fail to give the full amount of notice by exercising any right I may have under applicable legislation to make a payment in lieu of such notice. I also understand that, if I fail to comply with the Notice Policy, the Firm may be entitled to an injunction from a court restraining me from violating it.

I understand that, for employees of Archon Group, L.P., the Notice Policy applies only to Senior Executives.

3. I have read and understand the Firm's hedging and pledging policies (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 agree to be bound by them (with respect to the Award(s) and any prior awards under the SIP), both during and following my employment with the Firm.

4. If a custody account is required, I request that The Bank of New York Mellon ("BNY Mellon") (successor in interest to Mellon Bank, N.A.) open a custody account for me as described in the enclosed Custody Agreement among BNY Mellon (as successor in interest to Mellon Bank N.A.), The Goldman Sachs Group, Inc., and myself. I have received and agree to be bound by the Custody Agreement (or any other such custody agreement previously entered into by me or on my behalf), including the applicable restrictions on transfers, pledges and withdrawals of Common Stock, the provisions permitting the Firm to monitor my custody account, and the limitations on the liability of BNY Mellon and the Firm. I also agree to open an account with any other custodian or broker selected by the Firm, if the Firm, in its sole discretion, requires me to open an account with such custodian or broker as a condition to delivery of shares (or cash or other property) underlying the Award(s).

5. If the Firm advanced or loaned me funds to pay certain taxes (including income taxes and Social Security, or similar contributions) in connection with the Award(s) (or does so in the future), and if I have not signed a separate loan agreement governing repayment, I authorize the Firm to withhold from my compensation any amounts required to reimburse it for any such advance or loan to the extent permitted by applicable law.

I understand and agree that, if I leave the Firm, I am required immediately to repay any outstanding amount. I further understand and agree that the Firm has the right to offset, to the extent permitted by the Award Agreement and applicable law (including Section 409A of the U.S. Internal Revenue Code of 1986, as amended, which limits the Firm's ability to offset in the case of United States taxpayers under certain circumstances), any outstanding amounts that I then owe the Firm against its delivery obligations under the Award(s) or against any other amounts the Firm then owes me. I understand that the delivery of shares pursuant to the Award(s) is conditioned on my satisfaction of any applicable taxes or social security contributions (collectively referred to as "tax" or "taxes" for purposes of the SIP and all related documents) in accordance with the SIP. To the extent permitted by applicable law, the Firm, in its sole discretion, may require me to provide amounts equal to all or a portion of any Federal, State, local, foreign or other tax obligations imposed on me or the Firm in connection with the grant, vesting or delivery of the Award(s) by requiring me to choose

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between remitting such amount (i) in cash (or through payroll deduction or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of shares delivered to me pursuant to the Award(s). However, in no event shall any such choice or the choice specified in paragraph 6, below, determine, or give me any discretion to affect, the timing of the delivery of shares or payment of tax obligations. I understand and agree that the Firm may reduce any year-end cash bonus that I may receive by an amount equal to the estimated Indian Fringe Benefit Tax applicable to any award (whether or not vested), as determined by the Firm in its sole discretion.

6. If I am an individual with separate employment contracts (at any time during and/or after the Firm's \_\_\_ fiscal year), I acknowledge and agree that the Firm may, in its sole discretion, require (to the extent permitted by applicable law) that I provide for a reserve in an amount the Firm determines is advisable or necessary in connection with any actual, anticipated or potential tax consequences related to my separate employment contracts by requiring me to choose between remitting such amount (i) in cash (or through payroll deductions or otherwise) or (ii) in the form of proceeds from the Firm's executing a sale of shares delivered to me pursuant to the Award(s) (or any other of my awards outstanding under the SIP).

7. In connection with any Award Agreement or other interest I may receive in the SIP or any shares of Common Stock of The Goldman Sachs Group, Inc. that I may receive in connection with the Award(s) or any award I have previously received or may receive, or in connection with any amendment or variation thereof or any documents listed in paragraph 8, I hereby consent to (a) the acceptance by me of the Award(s) electronically, (b) the giving of instructions in electronic form whether by me or the Firm, and (c) the receipt in electronic form at my email address maintained at Goldman Sachs or via Goldman Sachs' intranet site (or, if I am no longer employed by the Firm, at such other email address as I may specify, or via such other electronic means as the Firm and I may agree) all notices and information that the Firm is required by law to send to me in connection therewith including, without limitation, any document (or part thereof) constituting part of a prospectus covering securities that have been registered under the U.S. Securities Act of 1933, the information contained in any such document and any information required to be delivered to me under Rule 428 of the U.S. Securities Act of 1933, including, for example, the annual report to security holders or the annual report on Form 10-K of The Goldman Sachs Group, Inc. for its latest fiscal year, and that all prior elections that I may have made relating to the delivery of any such document in physical form are hereby revoked and superseded. I agree to check Goldman Sachs' intranet site (or, if I am no longer employed by the Firm, such other electronic site as the Firm and I may agree) periodically as I deem appropriate for any new notices or information concerning the SIP. I understand that I am not required to consent to the receipt of such documents in electronic form in order to receive the Award(s) and that I may decline to receive such documents in electronic form by contacting Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, which will provide me with hard copies of such documents upon request. I also understand that this consent is voluntary and may be revoked at any time on three business days' written notice.

8. I hereby acknowledge that I have received in electronic form in accordance with my consent in paragraph 7 the following documents:

- The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Summary of The Goldman Sachs Amended and Restated Stock Incentive Plan;
- Custody Agreement with BNY Mellon;
- The \_\_\_ Annual Report for The Goldman Sachs Group, Inc.;
- The annual report on Form 10-K for The Goldman Sachs Group, Inc. for the fiscal year ended \_\_\_, filed with the Securities Exchange Commission on \_\_\_;
- The Award Agreement(s); and
- Summaries of the Award(s) ("Award Summary").

9. I expressly authorize any appropriate representative of the Firm to make any notifications, filings or remittances of funds that may be required in connection with the SIP or otherwise on my behalf. Further, if I am an employee who is resident in South Africa at the time of share acquisition, by accepting my Award(s), I expressly authorize any appropriate representative of the Firm to make any required notification on my behalf to the Reserve Bank of South Africa (or its authorized dealer) in relation to any acquisition of shares for no consideration under the SIP or other similar filing that may otherwise be required in South Africa. I acknowledge that any such authorization is effective from the date of acceptance of my Award(s) until such time as I expressly revoke the authorization by written notice to any appropriate representative of the Firm. I understand that this authorization does not create any obligation on the Firm to deal with any such notifications, filings or remittances of funds that I may be required to make in connection with the SIP and I accept full responsibility in this regard.

#### **Consent to Data Collection, Processing and Transfers:**

**I understand and agree that in connection with the SIP and any other Firm benefit plan (the "Programs"), to the extent permitted under the laws of the applicable jurisdiction, the Firm may collect and process various data that is personal to me, including my name, address, work location, hire date, Social Security or Social Insurance or taxpayer identification number (required for tax purposes), type and amount of SIP or other benefit plan award, citizenship or residency (required for tax purposes) and other similar information reasonably necessary for the administration of such Programs (collectively referred to as "Information") and provide such Information to its affiliates and BNY Mellon (and its affiliates) or any other service provider, whether in the United States or elsewhere, as is reasonably necessary for the administration of the Programs and under the laws of these jurisdictions. I understand that, in certain circumstances, foreign courts, law enforcement agencies or regulatory agencies may be entitled to access the Information. I understand that, unless I explicitly authorize otherwise, the Firm, its affiliates and its service providers (through their respective employees in charge of the relevant electronic and manual processing) will use this Information only for purposes of administering the Programs. I understand that, in the United States and in other countries to which such Information may be transferred for the administration of the Programs, the level of data protection is not equivalent to data protection standards in the member states of the European Union. I understand that, upon request, to Equity Compensation (division of HCM), 30 Hudson Street, 35th Floor, Jersey City, NJ 07302, telephone (212) 357-1444, to the extent required under the laws of the applicable jurisdiction, I may have access to and obtain communication of the Information and may exercise any of my rights in respect of such Information, including objecting to the processing of the Information and requesting that the Information be corrected (if wrong), completed or clarified (if incomplete or equivocal), or erased (if cannot legally be collected or kept). Upon request, to the extent required under the laws of the applicable jurisdiction, Equity Compensation (division of HCM) will also provide me, free of charge, with a list of all the service providers used in connection with the Programs at the time of request. I understand that, if I refuse to authorize the use and transfer of the Information consistent with the above, I may not benefit from the Programs. I authorize the use and transfer of the Information consistent with the above for the period of administration of the Programs. In particular, I authorize (within the limits described above): (i) the data processing by the Firm (which means The**

Goldman Sachs Group, Inc. and its subsidiaries and affiliates); (ii) the data processing by BNY Mellon and its affiliates; (iii) the data processing by the Firm's other service providers; and (iv) the data transfer to the United States and other countries. I further acknowledge that the Information may be retained by such persons beyond the period of administration of the Programs to the extent permitted under the laws of the applicable jurisdiction and I so authorize.

**Other Legal Notices:**

**FOR THE EMPLOYEES ASSIGNED TO A REPRESENTATIVE OFFICE IN THE PEOPLE'S REPUBLIC OF CHINA**

All documentation in relation to the Award(s) is intended for your personal use and in your capacity as an employee of the Firm (and/or its affiliate) and is being given to you solely for the purpose of providing you with information concerning the Award(s) which the Firm may grant to you as an employee of the Firm (and/or its affiliate) in accordance with the terms of the SIP, this documentation and the applicable Award Agreement(s). The grant of the Award(s) has not been and will not be registered with the China Securities Regulatory Commission of the People's Republic of China pursuant to relevant securities laws and regulations, and the Award(s) may not be offered or sold within the mainland of the People's Republic of China by means of any of the documentation in relation to the Award(s) through a public offering or in circumstances which require a registration or approval of the China Securities Regulatory Commission of the People's Republic of China in accordance with the relevant securities laws and regulations.

**NON-COMPETITION AND NON-SOLICITATION RESTRICTIONS FOR EMPLOYEES PROVIDING SERVICES IN THE PEOPLE'S REPUBLIC OF CHINA**

In addition to and without limiting any provisions in the SIP or the applicable Award Agreement(s) (including without limitation the Award forfeiture, termination or repayment provisions), I hereby agree to and acknowledge the following:

(a) If I am providing services to the Firm in Asia, in view of my importance to the Firm and BGH, I hereby agree that the Firm or BGH would likely suffer significant harm from me competing with the Firm or BGH for some period of time after my employment ends. Accordingly, I hereby agree that I will not, without the written consent of the Firm or BGH, during the Restricted Period in the Geographic Area:

(i) form, or acquire a 5% or greater equity ownership, voting or profit participation interest in, any Covered Competitive Enterprise; or

(ii) associate (including, but not limited to, association as an officer, employee, partner, director, consultant, agent or advisor) with any Covered Competitive Enterprise and in connection with such association engage in, or directly or indirectly manage or supervise personnel engaged in, any activity:

i. which is similar or substantially related to any activity in which I was engaged, in whole or in part, at the Firm,

ii. for which I had direct or indirect managerial or supervisory responsibility at the Firm, or

Year End (China)

iii. which calls for the application of the same or similar specialized knowledge or skills as those utilized by me in my activities with the Firm,

at any time during the one-year period immediately prior to termination of my employment, and, in any such case, irrespective of the purpose of the activity or whether the activity is or was in furtherance of advisory, agency, proprietary or fiduciary business of either the Firm or BGH or the Covered Competitive Enterprise.

(By way of example only, this provision precludes an “advisory” investment banker from joining a leveraged-buyout firm, a research analyst from becoming a proprietary trader or joining a hedge fund, or an information systems professional from joining a management or other consulting firm and providing information technology consulting services or advice to any Covered Competitive Enterprise, in each case without the written consent of the Firm or BGH.)

(b) (i) I hereby agree that during the Restricted Period, I will not, in any manner, directly or indirectly, in Asia (1) Solicit a Covered Client to transact business with a Covered Competitive Enterprise or to reduce or refrain from doing any business with the Firm or BGH, or (2) interfere with or damage (or attempt to interfere with or damage) any relationship between the Firm or BGH and a Covered Client.

(ii) To the extent that separate financial consideration may be necessary in order to enforce the restrictive covenants set forth in Section (a) or Section (b) (1) above, the Firm will pay you up to 50% of your base salary for the period in which these provisions are in effect after termination of your employment.

(c) I hereby agree that during the Restricted Period, I will not, in any manner, directly or indirectly in Asia:

(i) Solicit any Covered Personnel to resign from the Firm or BGH or to apply for or accept employment, consultancy, partnership, membership or similar status with a Covered Competitive Enterprise;

(ii) hire or participate in the hiring of any Covered Personnel (whether as an employee, consultant, or otherwise) by a Covered Competitive Enterprise;

(iii) participate in the decision to offer Covered Personnel employment, consultancy, admission into partnership, membership or similar status with a Covered Competitive Enterprise; or

(iv) participate in the identification of Covered Personnel for potential hiring or admission into partnership, membership or similar status with a Covered Competitive Enterprise.

(d) I acknowledge that I will have violated this provision if, during the Restricted Period, any Covered Personnel are Solicited, hired, made a consultant or are accepted into partnership, membership or similar status:

(i) by any Covered Competitive Enterprise which I form, which bears my name, or in which I am an owner, a partner, a member or have similar status; or

(ii) by any Covered Competitive Enterprise, and I have, or are intended to have, managerial or supervisory responsibility for such Covered Personnel.

(e) I understand that the Restrictions may limit my ability to earn a livelihood in a business similar to the business of the Firm or BGH. I acknowledge that a violation on my part of any of the Restrictions would cause immeasurable and irreparable damage to the Firm or BGH. Accordingly, I agree that the Firm and/or BGH will be entitled to injunctive relief in any court of competent jurisdiction for any actual or threatened violation of any of the Restrictions in addition to any other remedies it or they may have.

I also acknowledge that a violation of any of the Restrictions would constitute my failure to meet an obligation I have under an agreement between me and the Firm that was entered into in connection with my employment with the Firm, and may constitute “Cause” for purposes of any equity-based awards granted to me by the Firm and/or BGH and will result in my forfeiting such equity-based awards.

(f) If any provision (or part of a provision) of the Restrictions is held by a court of competent jurisdiction to be invalid, illegal or unenforceable (whether in whole or in part), such provision will be deemed modified or severed to the extent, but only to the extent, of such invalidity, illegality or unenforceability and the remaining such provisions will not be affected thereby; provided, however, that if any of the Restrictions are held by a court of competent jurisdiction to be invalid, illegal or unenforceable because it exceeds the maximum time period such court determines is acceptable to permit such provision to be enforceable, such Restriction will be deemed to be modified to the minimum extent necessary to modify such time period in order to make such provision enforceable hereunder.

(g) Any benefit that I give or am deemed to have given by virtue of the Restrictions is received jointly and severally by the Firm (including any entity of the Firm to which I provide services from time to time) or BGH.

(h) Any benefit that the Firm gives or is deemed to have given to me by virtue of the SIP and Award Agreement(s) is rendered jointly on its own behalf and on behalf of the Firm (including any entity of the Firm to which I provide services from time to time) and BGH.

(i) I acknowledge that the Restrictions set out in this clause are reasonable and necessary for the protection of the legitimate interests of the Firm and BGH, and that, having regard to those interests, such restrictions do not impose an unreasonable burden on me.

(j) The Restrictions shall remain in full force and effect and survive the termination of my employment for any reason whatsoever.

(k) If I am a Managing Director subject to a Managing Director Agreement, the Restrictions shall not apply to me.

(l) If I am a Private Wealth Management employee subject to an Employee Agreement Regarding Confidential and Proprietary Information and Materials and Non-Solicitation, I will not be subject to the restrictions contained in clause (b) of the Restrictions.

(m) For the purposes of the Restrictions only, the following terms have the following meanings:

“**Asia**” means the PRC, Hong Kong SAR, Taiwan, Japan, Korea, India, Singapore, Indonesia, Malaysia, Thailand, Philippines, Brunei and Vietnam.

“**BGH**” means Beijing Gao Hua Securities Company Limited, its subsidiaries and affiliates, and its respective successors.

“**Covered Client**” means any client or prospective client of the Firm or BGH (i) to whom I provided services in the 12 months prior to the Notice Date, or (ii) for whom I transacted business in the 12 months prior to the Notice Date, or (iii) whose identity became known to me in connection with my relationship with or employment by the Firm or BGH in the 12 months prior to the Notice Date and with respect to whom I had access to confidential information.

“**Covered Competitive Enterprise**” means a business enterprise that (i) engages in any activity, or (ii) owns or controls a significant interest in any entity that engages in any activity that, in either case, competes anywhere with any activity in which the Firm or BGH is engaged. The activities covered by the previous sentence include, without limitation, financial services such as investment banking, public or private finance,

lending, financial advisory services, private investing (for anyone other than me and members of my family), merchant banking, asset or hedge fund management, insurance or reinsurance underwriting or brokerage, property management, or securities, futures, commodities, energy, derivatives or currency brokerage, sales, lending, custody, clearance, settlement or trading.

“**Covered Personnel**” means any Firm or BGH employee, consultant or Managing Director with whom I had material contact or dealings within the last 12 months of my employment with the Firm or in relation to whom I had access to confidential information.

“**Employment Period**” means the period from the commencement of my employment with, or transfer, assignment or secondment to the Firm and ending with the date of termination of my employment with, or transfer, assignment or secondment to the Firm.

“**Covered Extended Absence**” means my absence from active employment for at least 180 days in any 12-month period as a result of my incapacity due to mental or physical illness, as determined by the Firm.

“**Geographic Area**” means (i) the PRC, including Hong Kong, Macao and Taiwan; and/or (ii) any other country in Asia in relation to which I have substantial product and/or geographical market responsibilities; and/or (iii) any other country in Asia in relation to which I have substantial employee managerial responsibilities as of the date of execution of this signature card.

“**Notice Date**” means the date on which either I or the Firm gives notice of (i) the conclusion of my transfer, assignment or secondment to any member of the Firm, or (ii) the termination of my employment with the Firm, or if the termination is for cause or Covered Extended Absence, the date on which such termination occurs.

“**PRC**” means the People’s Republic of China.

“**Restricted Period**” means (i) during the Employment Period; and (ii) for the period of notice in my employment contract or the period stated in this signature card commencing from the Notice Date (whichever is longer), irrespective of whether the termination is for cause or Covered Extended Absence or whether I receive a payment in lieu of all or part of that notice period.

“**Restrictions**” means the non-competition and non-solicitation restrictions for employees providing services in the PRC as set out in (a) to (n) of this section of this signature card.

“**Solicit**” means any direct or indirect communication of any kind whatsoever, regardless of by whom initiated, inviting, advising, encouraging or requesting any person or entity, in any manner, to take or refrain from taking any action.

(n) The Restrictions shall be governed by and construed in accordance with the laws of the jurisdiction in which my employment relationship governed.

Year End (China)

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Signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Employee ID #: \_\_\_\_\_

Year End (China)

<DOCUMENT>  
<TYPE> EX-10.68  
<FILENAME> y74032exv10w68.htm  
<DESCRIPTION> EX-10.68: AMENDMENTS TO CERTAIN EQUITY AWARD AGREEMENTS  
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**AMENDMENTS TO  
EQUITY AWARD AGREEMENTS UNDER  
THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
(Effective December 31, 2008)**

Each of the “Award Agreements” is hereby amended, as set forth below, effective December 31, 2008. The “Award Agreements” are the agreements specified in List 1 and List 2 below. The provisions of these Amendments apply only to United States taxpayers.

Capitalized terms used but not defined in these Amendments have the meanings ascribed thereto in the applicable Award Agreement or in The Goldman Sachs Amended and Restated Stock Incentive Plan (the “SIP” or “Plan”). References to “RSUs” shall mean “One-time RSUs”, “Broad-Based RSUs,” “Year-End RSUs,” “French Alternative Year-End RSUs,” or “DSP RSUs,” as may be applicable to any particular Award Agreement.

The Award Agreements specified in List 1 below are those to which these Amendments apply without modification. The Award Agreements specified in List 2 below are those to which these Amendments apply with the modifications specified in List 2. In the case of the Award Agreements specified in List 2 below, references in Paragraph 15 of these Amendments to provisions of the Award Agreement shall refer to the corresponding provisions specified in List 2 below (“Corresponding Provisions”). If and to the extent that an Award Agreement does not include a provision (including any Corresponding Provision) referred to in Paragraph 15 of these Amendments, the specific portion of these Amendments that refers to that provision shall not apply to that Award Agreement.

**Text of Amendments:**

The Award Agreements are amended as follows: Paragraph 15, as set forth below, shall replace in its entirety the existing Paragraph 15 of each Award Agreement specified in List 1 or the Corresponding Provision (if any) of each Award Agreement specified in List 2, and shall be added to each Award Agreement specified in List 2 that has no Corresponding Provision that corresponds to Paragraph 15.

“15. Compliance of Award Agreement and Plan with Section 409A. To comply with “Section 409A” (as defined in Paragraph 15(a), below), including exemptions thereunder, if you are a U.S. taxpayer, certain provisions of this Award Agreement and of the Plan shall apply only as modified as provided in this Paragraph 15.

(a) References in this Award Agreement to “Section 409A” refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative

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guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a “deferral of compensation” or “deferred compensation” as those terms are defined in the regulations under Section 409A (“409A deferred compensation”), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 15 and the other provisions of this Award Agreement, this Paragraph 15 shall govern.

(b) The Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 3(b) and (c), 6(b) and (c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 of this Award Agreement and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by March 15 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date within the same calendar year or to such later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(b)(iii) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

(d) Notwithstanding the timing provisions of Paragraph 3(c), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) The delivery of Shares referred to in Paragraph 7 shall occur on the earlier of (i) the Delivery Date or (ii) within the calendar year in which the termination of Employment occurs; provided, however, that, if you are a “specified



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employee” (as defined by the Firm in accordance with Section 409A(a)(2)(i)(B) of the Code), delivery shall occur on the earlier of the Delivery Date or (to the extent required to avoid the imposition of additional tax under Section 409A) the date that is six months after your termination of Employment (or, if the latter date is not during a Window Period, the first trading day of the next Window Period). For purposes of Paragraph 7, references in this Award Agreement to termination of Employment mean separation from service (as defined by the Firm in accordance with Section 409A).

(f) Notwithstanding any provision of Paragraph 8 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding RSUs.

(g) The timing of delivery or payment referred to in Paragraph 9(g) shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(h) Paragraph 10 and Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(i) Delivery of Shares in respect of any Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).

(j) In addition to and without limiting the generality of the provisions of Section 1.3.5 of the Plan, neither the Firm nor any Covered Person shall have any liability to you or any other person for any action taken or omitted in respect of this or any other Award.”

**List 1: Award Agreements to which these Amendments apply without modification:**

- The Goldman Sachs Amended and Restated Stock Incentive Plan 2008 One-Time RSU Award Agreements
- The Goldman Sachs Amended and Restated Stock Incentive Plan 2008 Broad Based Equity Program Award Agreement
- The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreement (from 2007)

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- The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Broad Based Equity Program Award Agreement
  - The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Year End RSU Award Agreement
  - The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreements (from 2006)
  - The Goldman Sachs Amended and Restated Stock Incentive Plan 2006 Year-End RSU Award Agreement
  - The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreement (from 2005, includes prior 409A language)

**List 2: Award Agreements to which these Amendments apply with the following modifications:**

**I** The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Year-End RSU Award Agreement (fully vested)

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 6(b) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 of this Award Agreement...”.

**II** The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Year-End French Alternative RSU Award Agreement; and

The Goldman Sachs Amended and Restated Stock Incentive Plan 2006 Year-End French Alternative RSU Award Agreement

- (1) Paragraph 15(c) shall not apply; and
- (2) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 9(h).

**III** The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Year-End French Alternative RSU Award Agreement

- (1) Paragraph 15(c) shall not apply;
- (2) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 9(h); and
- (3) There is no Corresponding Provision to Paragraph 15. This amendment therefore adds a new Paragraph 15, rather than amending an existing Paragraph 15.

**IV** The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Discount Stock Program Award Agreement (pre-tax); and

The Goldman Sachs Amended and Restated Stock Incentive Plan 2006 Discount Stock Program Award Agreement (pre-tax)

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- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 6(c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 of this Award Agreement...”.

**V The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Discount Stock Program Award Agreement (*pre-tax*)**

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 6(c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 of this Award Agreement...”; and
- (2) In Paragraph 15(g), the words “delivery or” shall be deleted both times those words appear together.

**VI The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Discount Stock Program Award Agreement (*French alternative, pre-tax*)**

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 6(c) (execution of waiver and release of claims and agreement to pay associated tax liability) and 9 of this Award Agreement...”; and
- (2) Paragraph 15(c) shall not apply; and
- (3) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 9(h).

**VII The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Discount Stock Program Award Agreement (*after-tax*); and  
The Goldman Sachs Amended and Restated Stock Incentive Plan 2006 Discount Stock Program Award Agreement (*after-tax*)**

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”; and
- (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(iv);
- (3) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;
- (4) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
- (5) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(g);
- (6) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
- (7) All references to paragraph 15 shall instead refer to Paragraph 16.

**VIII The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Discount Stock Program Award Agreement (*after-tax*)**

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- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”;
  - (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(iv);
  - (3) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;
  - (4) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
  - (5) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(g) and, because Paragraph 10(g) does not provide for “delivery of Shares,” Paragraph 15(g) shall be read to only apply to “payments;”
  - (6) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
  - (7) All references to paragraph 15 shall instead refer to Paragraph 16.

**IX The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Discount Stock Program Award Agreement (French alternative, after-tax)**

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b) and (c), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”;
- (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(iv)(A);
- (3) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;
- (4) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
- (5) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(h);
- (6) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
- (7) All references to paragraph 15 shall instead refer to Paragraph 16.

**X The Goldman Sachs Amended and Restated Stock Incentive Plan 2007 Discount Stock Program Award Agreement for Certain Persons Participating in the Goldman Sachs 2007 Employee Benefits Trust; and**

**The Goldman Sachs Amended and Restated Stock Incentive Plan 2006 Discount Stock Program Award Agreement (Japan — SRP)**

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b), (d) and (e), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”;
- (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(v);

- 
- (3) References in Paragraph 15(d) to Paragraph 3(c) shall instead refer to Paragraph 3(e);
  - (4) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;
  - (5) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
  - (6) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(g);
  - (7) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
  - (8) All references to paragraph 15 shall instead refer to Paragraph 16.

**XI** The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Discount Stock Program Award Agreement (*Japan – SRP*)

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b), (d) and (e), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”;
- (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(v);
- (3) References in Paragraph 15(d) to Paragraph 3(c) shall instead refer to Paragraph 3(e);
- (4) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;
- (5) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
- (6) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(g) and, because Paragraph 10(g) does not provide for “delivery of Shares,” Paragraph 15(g) shall be read to only apply to “payments;”
- (7) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
- (8) All references to paragraph 15 shall instead refer to Paragraph 16.

**XII** The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Discount Stock Program Award Agreement (*Germany and Italy*)

- (1) The references in Paragraph 15(b) shall read “Paragraphs 3(b), (d) and (e), 7(b)(i) (execution of waiver and release of claims and agreement to pay associated tax liability) and 10 of this Award Agreement...”;
- (2) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b)(iv);
- (3) References in Paragraph 15(d) to Paragraph 3(c) shall instead refer to Paragraph 3(e);
- (4) References in Paragraph 15(e) to Paragraph 7 shall instead refer to Paragraph 8;

- 
- (5) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 9;
  - (6) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 10(g) and, in Paragraph 15(g), the words “delivery or” shall be deleted both times those words appear together;
  - (7) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 11; and
  - (8) All references to paragraph 15 shall instead refer to Paragraph 16.

**XIII The Goldman Sachs Amended and Restated Stock Incentive Plan One-Time RSU Award Agreement (Hope Team)**

- (1) References in Paragraph 15(b) shall read “Paragraphs 3(b), (c) and (d), and 7 of this Award Agreement...”;
- (2) Paragraph 15(e) shall not apply;
- (3) References in Paragraph 15(f) to Paragraph 8 shall instead refer to Paragraph 6;
- (4) References in Paragraph 15(g) to Paragraph 9(g) shall instead refer to Paragraph 7(g);
- (5) References in Paragraph 15(h) to Paragraph 10 shall instead refer to Paragraph 8; and
- (6) All references to Paragraph 15 shall instead refer to Paragraph 13.

**XIV The Goldman Sachs Amended and Restated Stock Incentive Plan 2005 Year-End RSU Award Agreement**

- (1) In Paragraph 15(g), the words “delivery or” shall be deleted both times those words appear together.

**XV The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreements (from 2005, no prior 409A language);**

The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreement (from 2004); and

The Goldman Sachs Amended and Restated Stock Incentive Plan 2004 Year-End RSU Award Agreement

- (1) Paragraph 15(g) shall not apply; and
- (2) There is no Corresponding Provision to Paragraph 15. This Amendment therefore adds a new Paragraph 15, rather than amending an existing Paragraph 15.

**XVI The Goldman Sachs Amended and Restated Stock Incentive Plan One Time RSU Award Agreement (from 2003)**

- (1) References in Paragraph 15(c) to Paragraph 3(b)(iii) shall instead refer to Paragraph 3(b);
- (2) Paragraph 15(g) shall not apply; and

- 
- (3) There is no Corresponding Provision to Paragraph 15. This amendment therefore adds a new Paragraph 15, rather than amending an existing Paragraph 15.

<DOCUMENT>  
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<DESCRIPTION> EX-10.69: AMENDMENTS TO CERTAIN NON-EMPLOYEE DIRECTOR EQUITY AWARD AGREEMENTS  
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**AMENDMENTS TO  
DIRECTOR AWARD AGREEMENTS UNDER  
THE GOLDMAN SACHS AMENDED AND RESTATED  
STOCK INCENTIVE PLAN  
(Effective December 31, 2008)**

Each of the “Director Award Agreements” (as defined below) for awards of restricted stock units granted under The Goldman Sachs Amended and Restated Stock Incentive Plan is hereby amended, as set forth below, effective December 31, 2008. These Amendments apply only to United States taxpayers.

Capitalized terms used but not defined in these Amendments have the meanings ascribed thereto in the applicable Director Award Agreement or in The Goldman Sachs Amended and Restated Stock Incentive Plan. The “Director Award Agreements” to which these Amendments apply are as follows:

1. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2007 Annual Grant Award Agreement;
2. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2007 Annual Retainer Fee Award Agreement;
3. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2007 Annual Retainer and Committee Chair Fee Award Agreement;
4. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2006 Annual Grant Award Agreement;
5. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2006 Annual Retainer Fee Award Agreement;
6. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2006 Annual Retainer and Committee Chair Fee Award Agreement;
7. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director Fiscal 2005 Annual Grant Award Agreement;
8. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2005 Annual Retainer and Committee Chair Fee Award Agreement; and
9. The Goldman Sachs Amended and Restated Stock Incentive Plan Outside Director 2005 Annual Retainer Fee Award Agreement.

**Text of Amendments:**

Each Director Award Agreement is amended by adding to each a new Paragraph 12, to read as provided below, except in the case of the Outside Director Fiscal 2005 Annual Grant Award Agreement. In the case of the Outside Director Fiscal 2005 Annual Grant Award Agreement, this new Paragraph shall be number 11 instead of 12, all references therein to Paragraph 12 shall refer instead to Paragraph 11, the references in subparagraph (b) of the new Paragraph 11 to Paragraphs 7(a) and (b) shall refer instead

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to Paragraphs 6(a) and (b), and the new Paragraph 11 shall not include a subparagraph (f) corresponding to Paragraph 12(f) below.

“12. Compliance of Award Agreement and Plan with Section 409A. To comply with “Section 409A” (as defined in Paragraph 12(a), below), including exemptions thereunder, if you are a U.S. taxpayer, certain provisions of this Award Agreement and of the Plan shall apply only as modified as provided in this Paragraph 12.

(a) References in this Award Agreement to “Section 409A” refer to Section 409A of the Code, including any amendments or successor provisions to that Section and any regulations and other administrative guidance thereunder, in each case as they, from time to time, may be amended or interpreted through further administrative guidance. This Award Agreement and the Plan provisions that apply to this Award are intended and shall be construed to comply with Section 409A (including the requirements applicable to, or the conditions for exemption from treatment as, a “deferral of compensation” or “deferred compensation” as those terms are defined in the regulations under Section 409A (“409A deferred compensation”), whether by reason of short-term deferral treatment or other exceptions or provisions). The Committee shall have full authority to give effect to this intent. To the extent necessary to give effect to this intent, in the case of any conflict or potential inconsistency between the provisions of the Plan (including, without limitation, Sections 1.3.2 and 2.1 thereof) and this Award Agreement, the provisions of this Award Agreement shall govern, and in the case of any conflict or potential inconsistency between this Paragraph 12 and the other provisions of this Award Agreement, this Paragraph 12 shall govern.

(b) Delivery of Shares shall not be delayed beyond the date on which all applicable conditions or restrictions on delivery of Shares in respect of your RSUs required by this Agreement (including, without limitation, those specified in Paragraphs 7(a) and (b) and the consents and other items specified in Section 3.3 of the Plan) are satisfied, and shall occur by December 31 of the calendar year in which the Delivery Date occurs unless, in order to permit such conditions or restrictions to be satisfied, the Committee elects, pursuant to Treasury Regulations section (“Reg.”) 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted in accordance with Section 409A, to delay delivery of Shares to a later date as may be permitted under Section 409A, including, without limitation, Regs. 1.409A-2(b)(7) (in conjunction with Section 3.21.3 of the Plan pertaining to Code Section 162(m)) and 1.409A-3(d).

(c) Notwithstanding the provisions of Paragraph 3(a) and Section 1.3.2(i) of the Plan, to the extent necessary to comply with Section 409A, any securities, other Awards or other property that the Firm may deliver in respect of your RSUs shall not have the effect of deferring delivery or payment, income inclusion, or a substantial risk of forfeiture, beyond the date on which such delivery, payment or inclusion would occur or such risk of forfeiture would lapse, with respect to the Shares that would otherwise have been deliverable (unless the Committee elects a later date for this purpose pursuant to Reg. 1.409A-1(b)(4)(i)(D) or otherwise as may be permitted under Section 409A, including, without limitation and to the extent applicable, the subsequent election provisions of Section 409A(a)(4)(C) of the Code and Reg. 1.409A-2(b)).

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(d) Notwithstanding the timing provisions of Paragraph 3(b), the delivery of Shares referred to therein shall be made after the date of death and during the calendar year that includes the date of death (or on such later date as may be permitted under Section 409A).

(e) Notwithstanding any provision of Paragraph 4 or Section 2.8.2 of the Plan to the contrary, the Dividend Equivalent Rights with respect to each of your Outstanding RSUs shall be paid to you within the calendar year that includes the date of distribution of any corresponding regular cash dividends paid by GS Inc. in respect of a Share the record date for which occurs on or after the Date of Grant. The payment shall be in an amount (less applicable withholding) equal to such regular dividend payment as would have been made in respect of the Shares underlying such Outstanding RSUs.

(f) The timing of delivery or payment referred to in Paragraph 6 shall be the earlier of (i) the Delivery Date or (ii) within the calendar year in which the Committee receives satisfactory documentation relating to your Conflicted Employment, provided that such delivery or payment shall be made only at such time as, and if and to the extent that it, as reasonably determined by the Firm, would not result in the imposition of any additional tax to you under Section 409A.

(g) Section 3.4 of the Plan shall not apply to Awards that are 409A deferred compensation.

(h) Delivery of Shares in respect of this Award may be made, if and to the extent elected by the Committee, later than the Delivery Date or other date or period specified hereinabove (but, in the case of any Award that constitutes 409A deferred compensation, only to the extent that the later delivery is permitted under Section 409A).”

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## 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

	Year Ended November				
	2008	2007	2006	2005	2004
	(\$ in millions)				
Net earnings	\$ 2,322	\$11,599	\$ 9,537	\$ 5,626	\$ 4,553
Add:					
Provision for taxes	14	6,005	5,023	2,647	2,123
Portion of rents representative of an interest factor	146	137	135	119	118
Interest expense on all indebtedness	<u>31,357</u>	<u>41,981</u>	<u>31,688</u>	<u>18,153</u>	<u>8,888</u>
Pre-tax earnings, as adjusted	<u>\$33,839</u>	<u>\$59,722</u>	<u>\$46,383</u>	<u>\$26,545</u>	<u>\$15,682</u>
Fixed charges <sup>(1)</sup> :					
Portion of rents representative of an interest factor	\$ 146	\$ 137	\$ 135	\$ 119	\$ 118
Interest expense on all indebtedness	<u>31,444</u>	<u>42,051</u>	<u>31,755</u>	<u>18,161</u>	<u>8,893</u>
Fixed charges	<u>\$31,590</u>	<u>\$42,188</u>	<u>\$31,890</u>	<u>\$18,280</u>	<u>\$ 9,011</u>
Preferred stock dividend requirements	283	291	212	25	—
Total combined fixed charges and preferred stock dividends	<u>\$31,873</u>	<u>\$42,479</u>	<u>\$32,102</u>	<u>\$18,305</u>	<u>\$ 9,011</u>
Ratio of earnings to fixed charges	<u>1.07x</u>	<u>1.42x</u>	<u>1.45x</u>	<u>1.45x</u>	<u>1.74x</u>
Ratio of earnings to combined fixed charges and preferred stock dividends	<u>1.06x</u>	<u>1.41x</u>	<u>1.44x</u>	<u>1.45x</u>	<u>—</u>

<sup>(1)</sup> Fixed charges include capitalized interest of \$87 million, \$70 million, \$67 million, \$8 million and \$5 million as of November 2008, November 2007, November 2006, November 2005 and November 2004, respectively.

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### Significant Subsidiaries of the Registrant

The following are significant subsidiaries of The Goldman Sachs Group, Inc. as of November 28, 2008 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 (Asia) Finance Holdings L.L.C.	Delaware
Goldman Sachs Paris Inc. ET CIE	France
Goldman Sachs Services Limited	British Virgin Islands
GS Power Holdings LLC	Delaware
Goldman Sachs (UK) L.L.C.	Delaware
Goldman Sachs Group Holdings (U.K.)	United Kingdom
Scadbury UK Limited	United Kingdom
Scadbury Funding Limited	Cayman Islands
Scadbury II Assets Limited	Cayman Islands
Killingholme Generation Limited	United Kingdom
KPL Acquisitions Limited	United Kingdom
GS Killingholme Cayman Investments Ltd.	Cayman Islands
GS Killingholme Cayman Investments II Ltd	Cayman Islands
GS Killingholme Cayman Investments III	Cayman Islands
GS Killingholme Cayman Investments IV, L.P.	Cayman Islands
KPL Finance Limited	Cayman Islands
Goldman Sachs Holdings (U.K.)	United Kingdom
Goldman Sachs International	United Kingdom
Goldman Sachs Asset Management International	United Kingdom
Forres LLC	Delaware
Shire UK Limited	United Kingdom
GS Funding Investments Limited	Cayman Islands
GS Liquid Trading Platform II Limited	Isle of Jersey
GS Capital Funding (Cayman) II Limited	Cayman Islands
MLQ Investors, L.P.	Delaware
Goldman Sachs Realty Japan Ltd.	Japan
Nephrite Equity Co., Ltd.	Japan
GK Blue Square <sup>(1)</sup>	Japan
GK Frangipani <sup>(1)</sup>	Japan
K.K. Minato Saiken Kaishu	Japan
GS Financial Services L.P. (Del)	Delaware
Chiltern Trust	Isle of Jersey
Laffitte Participation 10	France
Laffitte Participation 12	France
GS Longport Investment Corporation	Delaware

GSFS Investments I Corp	Delaware
GS Leasing (KCSR 2007-1) LLC	Delaware
GS Global Investments, Co.	Delaware
GS Global Investments UK, Inc.	Delaware
County UK Limited	Cayman Islands
County Funding Limited	United Kingdom
County Assets Limited	Cayman Islands
Goldman Sachs Global Holdings L.L.C.	Delaware
GS Asian Venture (Delaware) L.L.C.	Delaware
Brasilia Cayman Investments Limited	Cayman Islands
Goldman Sachs (Japan) Ltd.	British Virgin Islands
Goldman Sachs Japan Co., Ltd.	Japan
J. Aron Holdings, L.P.	Delaware
J. Aron & Company	New York
Prop — GS Fundo de Investimento Multimercado Credito Privado - Investimento No Exterior	Brazil
Goldman Sachs Asset Management, L.P.	Delaware
Goldman Sachs Asset Management Co., Ltd.	Japan
Goldman Sachs Hedge Fund Strategies LLC	Delaware
Goldman Sachs (Cayman) Holding Company	Cayman Islands
Goldman, Sachs & Co. oHG	Germany
Goldman Sachs (Cayman) Trust, Limited	Cayman Islands
Goldman Sachs Global Services II Limited	Cayman Islands
Goldman Sachs Services (B.V.I.) Limited	British Virgin Islands
Goldman Sachs (Asia) Corporate Holdings L.P.	Delaware
Goldman Sachs Holdings (Hong Kong) Limited	Hong Kong
Goldman Sachs Foreign Exchange (Singapore) Pte.	Singapore
J Aron & Company (Singapore) Pte.	Singapore
Goldman Sachs (Asia) Securities Limited	Hong Kong
Goldman Sachs (Asia) Finance	Mauritius
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
Matterhorn Acquisitions Ltd.	United Kingdom
NEG (TPL) Limited	United Kingdom
South Wales TPL Investments Limited	United Kingdom
Western Power Investments Limited	United Kingdom
Poseidon Acquisitions Ltd	United Kingdom
Goldman Sachs Lending Partners LLC	Delaware
Liquidity Assets Holding Limited	Cayman Islands
Liquidity Assets Limited	Cayman Islands
GS Macro Investments LLC	Delaware
GS Macro Investments II, LLC	Delaware
GS Mehetia LLC	Delaware
Mehetia Holdings Inc.	Delaware
Mehetia Inc.	Delaware
Goldman Sachs Bank USA	New York



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Goldman Sachs Mortgage Company	New York
William Street Equity LLC	Delaware
William Street Funding Corporation	Delaware
GSCP (DEL) Inc.	Delaware
Goldman Sachs Credit Partners L.P.	Bermuda
Litton Mortgage Servicing, LLC	Utah
Litton Loan Servicing, L.P.	Delaware
Goldman Sachs Holdings (Netherlands) B.V.	Netherlands
Goldman Sachs Mitsui Marine Derivative Products, L.P. <sup>(1)</sup>	Delaware
GSSM Holding II LLC	Delaware
GSSM Holding II Corp.	Delaware
GSTM LLC	Delaware
SLK LLC	New York
Goldman Sachs Execution & Clearing, L.P.	New York
GS Financial Services II, LLC	Delaware
GS Funding Europe Limited	United Kingdom
Amagansett II Assets Limited	Cayman Islands
GS European Funding I LTD.	Cayman Islands
GS Funding Europe II Ltd.	Cayman Islands
Commonwealth Annuity and Life Insurance Company	Massachusetts
GS Diversified Funding LLC	Delaware
GS Diversified Investments Limited	Delaware
GS Capital Funding (UK) 1 Limited	United Kingdom
Reserve Liquid Performance Money Market Fund	New York
GS Ayco Holding LLC	Delaware
The Ayco Company, L.P.	Delaware
Rothesay Pensions Management Limited	United Kingdom
Eastport Capital Corp.	Delaware
EPF Financial, LLC	Delaware
GS Investment Strategies, LLC	Delaware
GS Mezzanine Partners 2006, L.P.	Delaware
Goldman Sachs Canada Credit Partners Co.	Canada

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<sup>(1)</sup> These entities are partially owned by third-party investors.

<DOCUMENT>  
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<DESCRIPTION> EX-23.1: CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
<TEXT>

**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, 333-101093, 333-110371, 333-112367, 333-122977, 333-128461, 333-130074, 333-135453 and 333-154173) 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 January 22, 2009 relating to the financial statements 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 January 22, 2009 relating to Selected Financial Data, which appears in Exhibit 99.1 of this Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

New York, New York  
January 22, 2009

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<TYPE> EX-31.1  
<FILENAME> y74032exv31w1.htm  
<DESCRIPTION> EX-31.1: RULE 13A-14 (A) CERTIFICATIONS  
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**CERTIFICATIONS**

I, Lloyd C. Blankfein, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended November 28, 2008 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/ LLOYD C. BLANKFEIN

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Name: Lloyd C. Blankfein

Title: Chief Executive Officer

Date: January 26, 2009

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## CERTIFICATIONS

I, David A. Viniar, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended November 28, 2008 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: January 26, 2009

<DOCUMENT>  
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<FILENAME> y74032exv32w1.htm  
<DESCRIPTION> EX-32.1: SECTION 1350 CERTIFICATIONS  
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**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 28, 2008 (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: January 26, 2009

/s/ LLOYD C. BLANKFEIN

\_\_\_\_\_  
Lloyd C. Blankfein  
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.



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### 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 28, 2008 (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: January 26, 2009

/s/ DAVID A. VINIAR

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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.

<DOCUMENT>  
<TYPE> EX-99.1  
<FILENAME> y74032exv99w1.htm  
<DESCRIPTION> EX-99.1: REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
<TEXT>

**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 28, 2008 and November 30, 2007, and for each of the three fiscal years in the period ended November 28, 2008 and the effectiveness of the Company's internal control over financial reporting as of November 28, 2008, and in our report dated January 22, 2009, 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 24, 2006, November 25, 2005 and November 26, 2004, and the related consolidated statements of earnings, changes in shareholders' equity, cash flows and comprehensive income for the years ended November 25, 2005 and November 26, 2004 (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 fiscal years in the period ended November 28, 2008, appearing on page 211 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  
January 22, 2009