

identifies any months in which the applicant did not perform substantial service. One response is requested of each respondent. Completion is voluntary. However, failure to complete the forms could result in the nonpayment of benefits.

The RRB proposes to revise Form AA-4 to add language required by the Paperwork Reduction Act of 1995. Minor nonburden impacting changes are also proposed. The completion time for the AA-4 is estimated at between 40 and 70 minutes. The RRB estimates that approximately 1,500 AA-4's are completed annually.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 97-28066 Filed 10-22-97; 8:45 am]

BILLING CODE 7905-01-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

- (1) *Collection title:* Lag Service Reports.
- (2) *Form(s) submitted:* AA-12, G-88A.
- (3) *OMB Number:* 3220-0005.
- (4) *Expiration date of current OMB clearance:* 12/31/97.
- (5) *Type of request:* Extension of a currently approved collection.
- (6) *Respondents:* Business or other for profit.
- (7) *Estimated annual number of respondents:* 1,200.
- (8) *Total annual responses:* 1,200.
- (9) *Total annual reporting hours:* 120.
- (10) *Collection description:* The report obtains the current service and compensation of an employee not yet reported to the Railroad Retirement Board. This lag information is used to

determine eligibility for and amount of annuity applied for and to pay benefits due on a deceased employee's earnings.

#### Additional Information or Comments

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 97-28064 Filed 10-22-97; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 30d-1, SEC File No. 270-21, OMB Control No. 3235-0025

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 30d-1, under the Investment Company Act of 1940, "Reports to Stockholders of Management Companies" prescribes the minimum content of reports to shareholders that every registered investment company must send at least semi-annually, containing the information specified by the statute or its equivalent as the Commission may determine to be in the interest of the investors. The reports are required in order to inform current shareholders of the status of the company. The rule requires approximately 602 hours annually for each of the 3,850 respondents equalling 2,317,700 total annual burden hours.

Rule 30d-1 does not involve any recordkeeping requirements. Providing the information required by rule 30d-1 is mandatory and the information provided will not be kept confidential.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 14, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-28031 Filed 10-22-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22858; 812-10700]

### Goldman Sachs & Co., et al.; Notice of Application

October 17, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application under (a) sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 17(a) of the Act; (b) section 6(c) of the Act requesting an exemption from section 17(e) of the Act and rule 17e-1 under the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) and rule 10f-3 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit registered investment companies that have one or more investment advisers, and for which Goldman, Sachs & Co. or an affiliate ("Goldman") acts as an investment adviser, to engage in certain principal and brokerage transactions and to purchase securities in certain underwritings. The transactions would be between the investment companies, or the portions of the investment companies' portfolios, that are not advised by Goldman, and Goldman or a member of an underwriting syndicate in which Goldman is a participant.

**APPLICANTS:** Goldman, Sachs & Co., Goldman Sachs Asset Management International ("GSAMI"), and Goldman Sachs Fund Management, L.P. ("GSFM"); and The Diversified Investors Fund Group, Diversified Investors Portfolios, EAI Select Managers Equity Fund, The Managers Funds, and The Hirtle Callaghan Trust (collectively, the "Funds").

**FILING DATE:** The application was filed on June 10, 1997. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 12, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Goldman Sachs & Co., 85 Broad Street, New York, New York, 10004.

**FOR FURTHER INFORMATION CONTACT:** Joseph B. McDonald, Jr. Senior Counsel, at (202) 942-0533, or Mercer E. Bullard, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. Goldman, Sachs & Co., is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Goldman, Sachs & Co. and entities controlling, controlled by or under common control with Goldman, Sachs & Co. (collectively, "Goldman Sachs") constitute one of the largest dealers in fixed income, money market and equity securities.

2. GSAMI and GSFM are under common control with Goldman, Sachs & Co. and are registered as investment advisers under the Advisers Act. Goldman Sachs Asset Management ("GSAM") is an operating division of Goldman, Sachs & Co., and Liberty Investment Management ("Liberty") is an operating division of GSAM. GSAMI, GSFM, GSAM, and Liberty are and act as investment advisers to one or more registered investment companies or series of registered investment companies ("Portfolios"). GSAMI, GSFM, GSAM and Liberty, and any other entities controlling, controlled by, or under common control with a Goldman Sachs entity and that are engaged in providing advisory services are collectively referred to as the "Goldman Advisers."

3. Applicants request that the relief apply to any registered investment company or Portfolio for which a Goldman Adviser currently or in the future acts as investment adviser.<sup>1</sup> Applicants also request relief for any broker-dealer controlling, controlled by, or under common control with Goldman, Sachs & Co. (collectively with Goldman, Sachs & Co., "Affiliated Broker-Dealers").

4. The EAI Select Managers Equity Fund, The Managers Funds, The Diversified Investors Fund Group, and The Hirtle Callaghan Trust are registered open-end management investment companies organized as Massachusetts business trusts or, in the case of The Hirtle Callaghan Trust, as a Delaware business trust. Evaluation Associates Capital Markets, Inc. serves as the investment adviser to the only Portfolio of the EAI Select Managers Equity Fund. The Managers Funds, L.P. serves as investment adviser to each of the ten Portfolios of The Managers Funds. The Diversified Investors Fund Group has thirteen Portfolios, all of the assets of which are invested in a corresponding series of the Diversified Investors Portfolios, a registered investment company. Diversified Investment Advisors, Inc. is the investment adviser of each of the Portfolios of Diversified Investors Portfolios. The Hirtle Callaghan Trust currently consists of five portfolios each of which is advised by one or more independent investment advisers.

5. Liberty or GSAM acts as investment adviser to a portion of one or more Portfolios of the EAI Select Managers

<sup>1</sup> Any registered investment company that currently intends to rely on the order is named as an applicant. Any other existing or future registered investment company that relies on the order will comply with the terms and conditions of the application.

Equity Fund, The Manager Funds, the Diversified Investors Portfolios, and The Hirtle Callaghan Trust. In each case, the other portions are advised by investment advisers that are not affiliated persons, or affiliated persons of an affiliated person, of Goldman Sachs (each, an "Unaffiliated Adviser," and each portion, an "Unaffiliated Portion").<sup>2</sup> No Goldman Sachs entity (other than a Goldman Adviser) is an affiliated person, or an affiliated person of an affiliated person, of an investment adviser to a Portfolio of an unaffiliated Fund.

6. Certain investment companies use a multi-manager structure ("Multi-Managed Portfolios")<sup>3</sup> in which separate investment advisers ("Subadvisers") are used to manage discrete portions of the Portfolio.<sup>4</sup> Each Subadviser acts as if it were managing a separate investment company. The Subadvisers do not collaborate, and each is responsible for making independent investment and brokerage allocation decisions for its portion based on its own research and analysis. The Subadvisers do not receive information about investment or brokerage allocation decisions of another portion of the Portfolio before they are implemented. Each Subadviser is compensated for advisory services based only on a percentage of the value of assets allocated to it. GSAM, Liberty or other Goldman Advisers act or may act as Subadvisers to registered investment companies. Applicants state that Goldman Sachs does not and will not control the Portfolio for which a Goldman Adviser acts as Subadviser.

7. Applicants request relief to permit (1) Unaffiliated Portions to engage in principal transactions with Affiliated Broker-Dealers and to purchase securities in an underwriting in which an Affiliated Broker-Dealer acts as a principal underwriter, (2) Unaffiliated Portfolios to engage in brokerage transactions with Goldman, Sachs & Co., and Unaffiliated Portions to engage in

<sup>2</sup> Portfolios for which no Goldman Adviser serves as investment adviser are referred to as "Unaffiliated Portfolios," and Funds whose only affiliation with Goldman Sachs is that a Goldman Adviser serves as investment adviser are referred to as "Unaffiliated Funds."

<sup>3</sup> For purposes of this notice, a Multi-Managed Portfolio is a registered investment company or a Portfolio advised by a Goldman Adviser and at least one Unaffiliated Adviser.

<sup>4</sup> The term "Subadvisers" includes investment advisers that manage discrete portions of Multi-Managed Portfolios whether or not the Portfolios have a primary adviser that is responsible for the overall investment performance of the fund and monitoring the Subadvisers. In addition, the term "Subadvisers" includes a primary adviser to the extent the primary adviser is responsible for a portion of a Multi-Managed Portfolio.

brokerage transactions with Affiliated Broker-Dealers, when Goldman, Sachs & Co. or the Affiliated Broker-Dealer acts as broker in the ordinary course of business without complying with subsections (b) and (c) of rule 17e-1, and (3) portions of Portfolios advised by a Goldman Adviser ("Affiliated Portions") to purchase securities in an underwriting without aggregating that portion's purchase with purchases of Unaffiliated Portions as required by rule 10f-3(b)(7).

### Applicants' Legal Analysis

#### A. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person, or an affiliated person of an affiliated person, of the company. Sections 2(a)(3) (C) and (E) of the Act define an "affiliated person" of another person to be any person controlling, controlled by, or under control with the person, and any investment adviser of an investment company, respectively. Applicants believe that any Goldman Adviser acting as a Subadviser of a Multi-Managed Portfolio would be an affiliated person of that Portfolio, and each Affiliated Broker-Dealer would be an affiliated person of the Goldman Adviser. As a result, applicants believe that any principal transaction between an Unaffiliated Portion and an Affiliated Broker-Dealer would be prohibited by section 17(a).

2. Applicants request relief from section 17(a) to exempt principal transactions entered into in the ordinary course of business between the Unaffiliated Portion and an Affiliated Broker-Dealer. Applicants state that the relief would apply only to transactions prohibited by section 17(a) solely because a Goldman Adviser is an affiliated person of the Portfolio under section 2(a)(3)(E).

3. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. For

the reasons stated below, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to influence an investment company from using that influence to the person's own pecuniary advantage. Applicants assert that Unaffiliated Advisers will be solely responsible for making investment decisions, and that they therefore will have no incentive to cause Unaffiliated Portions to engage in transactions with Affiliated Broker-Dealers. Applicants state that, because the Unaffiliated Adviser will have no conflict of interest in deciding whether to execute a principal transaction with an Affiliated Broker-Dealer on behalf of an Unaffiliated Portion, there will be no danger of overreaching on the part of any person concerned with the transaction. Applicants argue that the pecuniary interests of the particular Unaffiliated Adviser are directly aligned with those of the Unaffiliated Portion it manages. Applicants contend that the Unaffiliated Adviser's interests are served only to the extent that the assets of the Unaffiliated Portion are increased as a result of the transaction, which also benefits the Fund.

5. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolio, inasmuch as each Unaffiliated Adviser is required to manage the Unaffiliated Portion of the Multi-Managed Portfolio in accordance with the investment objectives and related investment policies of the Portfolio as described in its registration statement. Applicants also argue that permitting the transactions will be consistent with the general purposes of the Act and in the public interest, because the ability to engage in the transactions will increase the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions while giving rise to none of the abuses that section 17(a) was designed to prevent.

#### B. Section 17(e) and Rule 17e-1

1. Section 17(e)(2) of the Act prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e-1 under the Act. Rule 17e-1(a) provides that brokerage compensation paid

pursuant to the rule must be reasonable and fair compared with compensation paid in comparable transactions. Rule 17e-1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt procedures regarding brokerage compensation paid pursuant to the rule and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e-1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e-1.

2. Applicants believe that Affiliated Broker-Dealers are affiliated persons of an affiliated person of the Unaffiliated Portions for the reasons discussed above. Applicants also believe that Goldman, Sachs & Co. is an affiliated person of an affiliated person of the Unaffiliated Portions because (a) the Affiliated Portfolios are affiliated persons of Unaffiliated Portions because they are under common control, and (b) Goldman, Sachs & Co., is an investment adviser to the Affiliated Portfolios because GSAM and Liberty are divisions of Goldman, Sachs & Co. and not separate legal entities.

3. Applicants request relief under section 6(c) for an exemption from the provisions of section 17(e) Act and rule 17e-1 to the extent necessary to permit Unaffiliated Portions to pay brokerage compensation to Goldman, Sachs & Co., and Unaffiliated Portions to pay brokerage compensation to Affiliated Broker-Dealers, when Goldman, Sachs & Co. or the Affiliated Broker-Dealer, respectively, acts as broker in the ordinary course of business without complying with the requirements of rule 17e-1(b) and (c). Applicants state that the relief would apply only to transactions prohibited by section 17(e) solely because a Goldman Adviser is an affiliated person of the Portfolio under section 2(a)(3)(E).

4. Applicants believe that the proposed brokerage transactions meet the standards of section 6(c) of the Act for the same reasons that the proposed principal transactions satisfy the standards. In addition, applicants state the brokerage transactions will comply with the rule 17e-1(a) requirement that the brokerage compensation be fair and reasonable compared with comparable transactions. Applicants also note that the Unaffiliated Advisers will be subject to a fiduciary duty to obtain best execution for the Fund. Applicants believe that compliance with the procedural and recordkeeping requirements of rule 17e-1(b) and (c)

would be unduly burdensome and unnecessary in view of the lack of any conflict of interest.

### C. Section 10(f) and Rule 10f-3

1. Section 10(f) of the Act prohibits a registered investment company from purchasing securities in an underwriting in which certain affiliates, including the company's investment adviser, act as principal underwriter. Section 10(f) also provides that the SEC may exempt by rule or order any transaction from section 10(f) to the extent that the exemption is consistent with the protection of investors.

2. Applicants state that a Goldman Adviser that acts as a Subadviser to a Portfolio is an investment adviser to the entire Portfolio. Applicant therefore believes that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Broker-Dealer would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit Unaffiliated Portions to purchase securities in the ordinary course of business during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer. Applicants request relief only to the extent that section 10(f) applies because a Goldman Adviser is an investment adviser to the Portfolio.

4. Applicants believe that the proposed transactions meet the standards set forth in section 10(f). Applicants state that section 10(f) was adopted in response to concerns about investment bankers "dumping" otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate itself, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of Multi-Managed Portfolios because, as discussed above, the Unaffiliated Advisers will not have an incentive to purchase the securities to benefit an Affiliated Broker-Dealer. While the Funds could effect the relevant underwriting purchases by complying with rule 10f-3, applicants assert that to do so would be impracticable. Applicants believe that, to comply with rule 10f-3, the Subadvisers would have to coordinate purchases in underwritings, thus undermining their independence and interfering with the operation of the Funds.

5. Rule 10f-3 exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Rule 10f-3(b)(7) generally requires that the amount of securities of any class of an issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, not exceed 25% of the principal amount of the offering.

6. Applicants believe rule 10f-3(b)(7) requires aggregation of the purchases of all Affiliated and Unaffiliated Portions of a Multi-Managed Portfolio. Applicants request an exemption under section 10(f) to the extent necessary to permit Affiliated Portions to purchase securities in an underwriting without aggregating that Portion's purchase with purchases of Unaffiliated Portions. Applicants request relief only to the extent that section 10(f) applies because a Goldman Adviser is an investment adviser to the Portfolio.

7. The aggregation requirement of rule 10f-3(b)(7) is intended to ensure that a significant portion of an underwriting is purchased by persons other than a single fund complex under common management. Applicants contend that aggregating the purchases would serve no purpose because any common purchases would be mere coincidence, and not the result of a decision by a single Subadviser, because there is no collaboration among Subadvisers.

### Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions;

1. Each Multi-Managed Portfolio will be advised by a Goldman Adviser and at least one Unaffiliated Adviser and will be operated consistent with the manner described in Section I.G. of the application.

2. Neither the Goldman Adviser (except of virtue of serving as Subadviser) nor the Affiliated Broker-Dealer will be an affiliated person or a second-tier affiliated or any Unaffiliated Adviser or any officer, trustee or employee of the Unaffiliated Fund engaging in the transaction.

3. No Goldman Adviser will directly or indirectly consult with any Unaffiliated Adviser concerning allocation of principal or brokerage transactions.

4. No Goldman Adviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-28124 Filed 10-22-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Tower Tech, Inc., Common Stock, \$.001 Par Value) Filer No. 1-12556

October 17, 1997.

Tower Tech Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has maintained listing of its Security on the BSE and on the Nasdaq Small Cap System since the Company became subject to the reporting requirements of the Act on November 30, 1993. Substantially all of the trading volume in the Security takes place on Nasdaq and the benefits to Security holders of dual-listing and qualification are outweighed by the costs of maintaining the dual-listing and qualification.

The Company has complied with the BSE's delisting requirements by notifying the BSE of its intent to delist the Security and providing all requested supporting documentation. By letter dated October 8, 1997, the BSE has informed the Company that it has no objection to the withdrawal of the Security from listing on the Exchange.

The Security will continue to be qualified for trading on the Nasdaq Small Cap Market following its delisting from the BSE.

Any interested person may, on or before November 7, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the