

filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Covered Persons from the disqualification provisions of section 9(a) of the Act.

2. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

3. The Applicants state that the alleged violations giving rise to the Injunction did not involve any of the Applicants or any Fund. The Applicants also state that no current or former officer or employee of any of the Applicants participated in any way in the conduct giving rise to the Injunction. Additionally, Applicants state that the personnel at CIBC Mellon who were involved in the conduct that forms the basis for the Injunction have had no involvement in providing advisory, sub-advisory or principal underwriting services to the Funds. Applicants state that CIBC Mellon does not serve, nor has it served, as transfer agent to any Fund or as trustee to any registered unit investment trust.

4. Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunction, any impact on the Funds, and this application. Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

5. Applicants state that the inability to continue providing advisory and sub-advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and underwriting Funds.

6. A predecessor to Covered Persons, The Boston Company Advisors, Inc., previously was subject to an injunction

that triggered section 9(a) and received an exemption under section 9(c).<sup>2</sup>

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered*, pursuant to section 9(c) of the Act, that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.  
Margaret H. McFarland,  
Deputy Secretary.  
[FR Doc. E5-827 Filed 3-1-05; 8:45 am]  
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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26764; 812-13159]

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

February 23, 2005.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. ("Goldman Sachs") on February 8, 2005 by the United States District Court for the Southern District of New York (the

"Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* Goldman Sachs, Goldman Sachs Asset Management, L.P., Goldman Sachs Asset Management International, and Goldman Sachs Princeton LLC (together, the "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on January 25, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2005, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Howard Surloff, Esq., Goldman, Sachs & Co., 37th Floor, One New York Plaza, New York, NY 10004.

**FOR FURTHER INFORMATION, CONTACT:** Courtney S. Thornton, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

#### Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act 1940 (the "Advisers Act"). Goldman Sachs, a New York limited partnership, is a global investment banking and securities firm. Goldman

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which Goldman Sachs is or hereafter becomes an affiliated person in the future (together with Applicants, "Covered Persons").

<sup>2</sup> E.F. Hutton & Company Inc., et al., Investment Company Act Release Nos. 16401 (May 16, 1988)(notice) and 17036 (Jun. 30, 1989)(order).

Sachs is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). Goldman Sachs acts as principal underwriter of certain registered investment companies ("Funds") and, at the time of the violations alleged in the Complaint (as defined below), served as an adviser and subadviser of certain of the Funds. Each of the other Applicants currently serves as investment adviser or subadviser to one or more of the Funds or expects to serve as investment adviser or subadviser to an investment company whose registration statement has not yet been declared effective.

2. On February 8, 2005, the United States District Court for the Southern District of New York entered the Injunction against Goldman Sachs in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that Goldman Sachs violated Rule 101 of Regulation M under the Exchange Act by attempting to induce, or inducing, certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings ("IPOs") it underwrote during the restricted period of such IPOs. The alleged violations occurred in connection with certain IPOs underwritten by Goldman Sachs during 1999 and 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Goldman Sachs consented to the entry of the Injunction as well as the payment of a civil penalty of \$40 million.

#### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Goldman Sachs is

an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act because they are under the common control of The Goldman Sachs Group, Inc. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that, to the best of their knowledge, none of their officers or employees who are engaged in the provision of investment advisory or underwriting services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds (and, with respect to GS Princeton, the investment company for which it anticipates that it will begin to provide investment advisory services when its registration statement is declared effective by the Commission) and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel, as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on

the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in underwriting, advising and subadvising Funds. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.<sup>3</sup> In addition, Goldman Sachs previously sought and received exemptions under section 9(c) of the Act on two occasions.<sup>4</sup>

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, it is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the Injunction, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

<sup>3</sup> Goldman, Sachs & Co., Investment Company Act Release Nos. 26242 (Oct. 31, 2003) (notice and temporary order) and 26603 (Sept. 20, 2004) (permanent order).

<sup>4</sup> Goldman, Sachs & Co., Investment Company Act Release Nos. 8342 (May 2, 1974) (notice and temporary order) and 8553 (Oct. 22, 1974) (permanent order); and Goldman, Sachs & Co., Investment Company Act Release Nos. 6189 (Sept. 15, 1970) (notice and temporary order) and 6200 (Sept. 30, 1970) (permanent order).

<sup>2</sup> *Securities and Exchange Commission v. Goldman, Sachs & Co.*, 05 CV 853 (S.D.N.Y. Feb. 8, 2005).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51242; File No. SR-PCX-2004-131]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to FOCD Forms Due Date

February 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2004, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (“PCXE”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend the PCXE rules to change the due date of Financial and Operational Compliance Department (“FOCD”) Forms relating to SEC Rule X-17A-5. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

#### Rules of the Pacific Exchange, Inc.

##### Rule 4—Capital Requirements, Financial Reports, Margins

\* \* \* \* \*

#### Part II Quarterly Reports

Rule 4.5 (c) Two manually signed copies of Part II of SEC Form X-17A-5 shall be filed for each calendar quarter by any OTP Holder or OTP Firm which carries or clears accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

#### Part IIA Quarterly Reports

Rule 4.5 (d) Two manually signed copies of Part IIA of SEC Form X-17A-5 shall be filed for each calendar quarter by any OTP Holder or OTP Firm which does not carry or clear accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

#### Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5 (e) An OTP Holder or OTP Firm shall file an additional Part II or Part IIA of SEC Form X-17A-5, as appropriate, within *seventeen* [fifteen] *business* [calendar] days after the date selected for the annual audited financial statements of the OTP Holder or OTP Firm, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

\* \* \* \* \*

#### Rules of PCX Equities, Inc.

##### Rule 4—Capital Requirements, Financial Reports, Margins

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#### Part II Quarterly Reports

Rule 4.5 (b) Two manually signed copies of Part II of SEC Form X-17A-5 shall be filed for each calendar quarter by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

#### Part IIA Quarterly Reports

Rule 4.5 (c) Two manually signed copies of Part IIA of SEC Form X-17A-5 shall be filed for each calendar quarter by any ETP Holder which does not carry or clear accounts for customers. Such report shall be due by the *seventeenth* [fifteenth] *business* [calendar] day following the end of the calendar quarter being reported upon.

#### Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5 (e) An ETP Holder shall file an additional Part II or Part IIA of SEC Form X-17A-5, as appropriate, within *seventeen* [fifteen] *business* [calendar] days after the date selected for the annual audited financial statements of the ETP Holder, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### Purpose

The Exchange proposes to amend PCX Rules 4.5(c)–(e) and PCXE Rules 4.5(b)–(d) to update the due date of Quarterly Reports (SEC Form X-17A-5). The PCX proposes to amend the PCXE rules to adopt new fees for late Financial and Operational Compliance Department (“FOCD”) required forms. The Exchange currently requires that SEC Form X-17A-5 be filed the fifteenth calendar day following the end of the quarter being reported upon. The Exchange proposes to amend the date to the seventeenth business day following the end of the calendar quarter being reported upon. This modification is an administrative change to make the Exchange rule due dates consistent with the filing requirements for such forms set forth in SEC Rule 17a-5.<sup>3</sup>

##### Basis

The Exchange believes that the proposal is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and Section 6(b)(4)<sup>5</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its OTP Holders, OTP Firms, ETP Holders, issuers, and other persons using its facilities.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>3</sup> 17 CFR 240.17a-5.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.