

**THE SECURITIES ACT**

)

**Order No. 4563**

)

**Section 20(1)**

)

**September 8, 2004**

**GOLDMAN, SACHS & CO.**

**WHEREAS:**

(A) Goldman, Sachs & Co. (the "Applicant") has applied to the Manitoba Securities Commission (the "Commission") for an order under subsection 20(1) of The Securities Act, R.S.M. 1988, c.S50 (the "Act") exempting certain portfolio managers (the "Managers") from the requirement in subsection 6(5) of the Act to be registered as an investment counsel (the "Adviser Registration Requirement").

(B) The Applicant has represented to the Commission that:

1. The Applicant is a limited partnership formed under the laws of the State of New York with its head office in New York, New York.
2. The Applicant is registered under the Act as an investment counsel (international adviser) in Manitoba and is registered in a similar capacity under applicable securities laws in British Columbia, Alberta, Saskatchewan, Ontario, and Prince Edward Island.
3. The Applicant is also registered as a broker-dealer and as an investment adviser with the United States Securities and Exchange Commission.
4. Most of the Managers will not be affiliates of the Applicant.
5. Each Manager is, or will be, registered or otherwise qualified under applicable laws in the foreign jurisdiction in which its head office is located to provide investment counselling and portfolio management services.
6. The Applicant intends to offer its Global Manager Strategies Separate Accounts program (the "Program") to clients resident in Manitoba (the "Participating Clients").
7. Participating Clients will be limited to individuals with a net worth of at least \$5 million (excluding the value of an individual's principal residence) (collectively, the "High Net Worth Individuals") or institutional clients for which the Applicant is authorized to provide advice under the conditions of its registration as an investment counsel (international adviser) in Manitoba (the "Permitted Institutional Clients").

8. Under the Program, each Participating Client will enter into a customer agreement (the "Customer Agreement") with the Applicant pursuant to which the Applicant will, among other things, agree to:

(a) obtain information about the Participating Client's investment objectives, risk tolerance, and financial circumstances;

(b) assist each Participating Client in identifying, evaluating, and selecting one or more Managers, suited to the Participating Client's particular investment needs and objectives, to manage a portion of the Participating Client's assets on a discretionary basis; and

(c) no less frequently than quarterly, send directly to each Participating Client a statement of his or her account and a performance report.

9. As a sub-adviser to the Applicant, each Manager will exercise discretionary authority over a portion of the assets of Participating Clients who wish to have exposure to particular jurisdictions, industries or types of securities in which the Manager has experience and expertise.

10. The Applicant will agree under the Customer Agreement to be responsible for any loss that arises out of the failure of a Manager:

(a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Applicant and the Participating Client for whose benefit the investment advice is, or portfolio management services are, to be provided, and

(b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (collectively, the "Assumed Obligations").

11. The Applicant will not be relieved by Participating Clients from the Assumed Obligations.

12. The Applicant will enter into an agreement with each Manager which will set out the obligations and duties of each party in connection with the investment counselling and portfolio management services provided to Participating Clients and pursuant to which the Manager will agree to act as a sub-adviser to the Applicant for the benefit of Participating Clients.

13. If there is any direct contact between Participating Clients and the Managers, a representative of the Applicant will at all times be present, either in person or by telephone.

14. The Managers who provide investment counselling and portfolio management services with respect to the assets of Participating Clients by exercising discretionary authority to purchase and sell securities on behalf of such clients in the circumstances described above would be considered to be acting as an "adviser" within the meaning of the Act with respect to such clients, and would be required to be registered, or otherwise exempt from registration, as an adviser under the Act.

15. The Managers for whom relief is sought are not registered under the Act to provide advice to Participating Clients and are not otherwise registered in any other jurisdiction of Canada.

16. There are no adviser registration exemptions that these Managers can rely on to provide investment counselling and portfolio management services to Participating Clients.

(C) The Commission is of the opinion that to grant this Order would not be prejudicial to the public interest.

**IT IS ORDERED:**

**1. THAT** under subsection 20(1) of the Act, the Managers are exempt from the Adviser Registration Requirement for investment counselling and portfolio management services provided to Participating Clients in connection with the Program, provided that:

(a) each of the Participating Clients will be a High Net Worth Individual or a Permitted Institutional Client;

(b) the obligations and duties of the Managers are set out in a written agreement with the Applicant;

(c) the Applicant contractually agrees with each Participating Client that the Applicant will be responsible for the Assumed Obligations;

(d) the Applicant cannot be relieved of the Assumed Obligations by Participating Clients;

(e) the Applicant is registered under the Act as an investment counsel (international adviser); and

(f) the relief is available only to Managers who are not registered in any Canadian jurisdiction.

**2. THAT** the fee for this order shall be \$750.00.

**BY ORDER OF THE COMMISSION**

Deputy Director - Legal