



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

January 17, 2007

Steven W. Stone, Esq.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Re: Status of Service Providers in Goldman, Sachs & Co.'s Research XPRESS<sup>SM</sup> Program

Dear Mr. Stone:

In your letter dated January 17, 2007, on behalf of Goldman, Sachs & Co. ("GS&Co."), you request assurance that the staff of the Division of Market Regulation ("Staff") will not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") against service providers participating in GS&Co.'s Research XPRESS<sup>SM</sup> program ("Service Providers") if those Service Providers receive compensation for products and services that are considered "research services" under the safe harbor set forth in Section 28(e) of the Exchange Act, as recently interpreted by the Commission ("Research Services"),<sup>1</sup> without registering as broker-dealers pursuant to Section 15(b) of the Exchange Act.

Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if a Service Provider receives payment for its Research Services from a commission pool set apart in a commission-sharing arrangement under Section 28(e) of the Exchange Act without registering as a broker-dealer. In reaching this position, we note in particular the following:

- The money manager is responsible for independently determining the value of the Research Services in accordance with its good faith determination under Section 28(e) of the Exchange Act, although the money manager's good faith determination may be based on input from the Service Provider that provides the Research Services;
- GS&Co. is not involved in determining the value of the Research Services to the money manager;

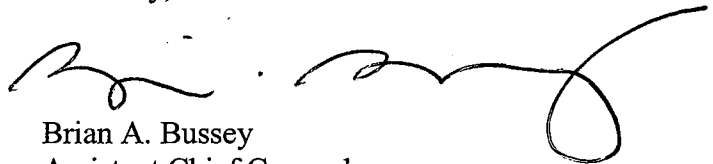
---

<sup>1</sup> See Securities Exchange Act Release No. 54165 (July 18, 2006), 71 FR 41978 at Section III.C (July 24, 2006); see also Sections 28(e)(3)(A)-(B) of the Exchange Act.

- The Service Provider receives payment for Research Services from a pool of commissions that, by agreement between GS&Co. and the money manager, GS&Co. has set aside for obtaining the Research Services;
- Payment to the Service Provider is not conditioned, directly or indirectly, on the execution of any particular transaction or transactions in securities that are described or analyzed in the Research Services; and
- The Service Provider provides the Research Services in return for payment from a pool of commissions, but does not perform other functions that are typically characteristic of broker-dealer activity (*e.g.*, the Service Provider does not solicit brokerage transactions by disseminating quotations, accept or otherwise handle customer orders, introduce or carry customer securities accounts, receive or hold customer funds or securities, execute, clear, or settle securities transactions, or engage in proprietary securities trading).

This position is based on the facts presented and the representations you have made, and any different facts and circumstances may require a different response. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws or self-regulatory organization rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian A. Bussey". The signature is fluid and cursive, with a large loop at the end.

Brian A. Bussey  
Assistant Chief Counsel

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: 202.739.3000  
Fax: 202.739.3001  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

January 17, 2007

**BY HAND DELIVERY**

Catherine McGuire  
Associate Director and Chief Counsel  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Status of Service Providers in Goldman, Sachs & Co.'s Research XPRESS<sup>SM</sup> Program

Dear Ms. McGuire:

On behalf of Goldman, Sachs & Co. ("GS&Co."), we request assurances that the staff of the Division of Market Regulation ("Division") will not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") against service providers participating in GS&Co.'s Research XPRESS<sup>SM</sup> program ("Service Providers") if, as described below, the Service Providers receive compensation for products and services that are considered "research services" under the safe harbor set forth in Section 28(e) of the Exchange Act, as recently interpreted by the Commission ("Research Services")<sup>1</sup> without registering as broker-dealers pursuant to Section 15(b) of the Exchange Act.

Background

GS&Co. is a leading global investment banking and securities firm that provides a broad range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. GS&Co. is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, and is a member of the New York Stock Exchange and NASD, among other self-regulatory organizations.

GS&Co. operates a program, known as Research XPRESS, that facilitates the delivery of research and other products and services from broker-dealers and other providers. Research XPRESS's services include delivering Research Services. Research XPRESS allows money

<sup>1</sup> See Securities Exchange Act Release No. 54165 (July 18, 2006), 71 FR 41978 at Section III.C (July 24, 2006) ("2006 Interpretive Release"); see also Sections 28(e)(3)(A)-(B) of the Exchange Act.

Catherine McGuire, Esquire  
January 17, 2007  
Page 2

managers to consolidate payments for Research Services through one channel using accumulated client commissions from securities transactions executed through GS&Co.

Through the Research XPRESS program, the money manager directs GS&Co. to record client commissions generated from transactions executed through GS&Co. in a separate pool. The money manager periodically directs GS&Co. to pay specified dollar amounts from that pool for Research Services. The money manager is responsible for independently determining the value of the Research Services in accordance with its good faith determination under Section 28(e) of the Exchange Act, although the money manager's determination may be based on input from the Service Provider that provides the Research Services. GS&Co. is not involved in determining the value of the Research Services to the money manager. Payment to the services provider is not conditioned, directly or indirectly, on the execution of any particular transaction or transactions in securities described or analyzed in the Research Services.

#### Analysis and Request

Section 3(a)(4) of the Exchange Act defines the term "broker," in relevant part, as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(5) of the Exchange Act defines the term "dealer," in relevant part, as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise." In interpreting Sections 3(a)(4) and 3(a)(5), the Commission and the Division have considered the receipt of transaction-based compensation as a key factor in considering whether a person is "engaged in the business" of transacting securities, and therefore subject to broker-dealer registration.<sup>2</sup>

We recognize that paying Service Providers for Research Services from a pool of accumulated client commissions could, depending on the circumstances, raise a question of whether the Service Providers are receiving transaction-based compensation. To that end, GS&Co.'s standard master agreement with Service Providers includes a representation and warranty from the provider that it has all required licenses and registrations to conduct business under the contemplated arrangements. This has allowed GS&Co. to form a reasonable belief that the Service Providers are not subject to broker-dealer registration. However, GS&Co. believes it would be worthwhile to gain the clarity of the Division's views on the matter for the benefit of the Service Providers.

<sup>2</sup> See, e.g., Herbruck, Alder & Co., SEC Staff No-Action Letter (May 3, 2002) (stating "[t]he Division previously has noted that the receipt of compensation related to securities transactions is a key factor that may require an entity to register as a broker-dealer. Absent an exemption, an entity that receives securities commissions or other transaction-based compensation in connection with securities-based activities that fall within the definition of "broker" or "dealer" generally is itself is required to register as a broker-dealer."); see also, e.g., Birchtree Financial Services, Inc., SEC Staff No-Action Letter (September 22, 1998); 1st Global, Inc., SEC Staff No-Action Letter (May 7, 2001).

Catherine McGuire, Esquire  
January 17, 2007  
Page 3

Accordingly, we request assurances that the Division will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act against Service Providers participating in the Research XPRESS program if such Service Providers receive compensation for the Research Services out of a pool of commissions established by each money manager and GS&Co. without being registered as broker-dealers pursuant to Section 15(b) of the Exchange Act. In particular, we note the following regarding Research XPRESS:

- The money manager is responsible for independently determining the value of the Research Services in accordance with its good faith determination under Section 28(e) of the Exchange Act, although the money manager's good faith determination may be based on input from the Service Provider that provides the Research Services;
- GS&Co. is not involved in determining the value of the Research Services to the money manager;
- The Service Provider receives payment for Research Services from a pool of commissions that, by agreement between GS&Co. and the money manager, GS&Co. has set aside for obtaining the Research Services;
- Payment to the Service Provider is not conditioned, directly or indirectly, on the execution of any particular transaction or transactions in securities that are described or analyzed in the Research Services; and
- The Service Provider provides the Research Services in return for payment from a pool of commissions, but does not perform other functions that are typically characteristic of broker-dealer activity (*e.g.*, the Service Provider does not solicit brokerage transactions by disseminating quotations, accept or otherwise handle customer orders, introduce or carry customer securities accounts, receive or hold customer funds or securities, execute, clear, or settle securities transactions, or engage in proprietary securities trading).<sup>3</sup>

<sup>3</sup> The Division's staff has outlined a number of activities that may trigger broker-dealer registration requirements. *See, e.g.*, BondGlobe, Inc. SEC Staff No-Action Letter (February 6, 2001); BD Advantage, Inc., SEC Staff No-Action Letter (October 11, 2000); *see also* Division of Market Regulation, Guide to Broker-Dealer Registration (December 2005).

Catherine McGuire, Esquire  
January 17, 2007  
Page 4

\* \* \* \* \*

If you have any questions regarding this request, please call me at 202.739.5453 or T.R. Lazo at 202.739.5250. On behalf of GS&Co., we appreciate your consideration of this request.

Very truly yours,



Steven W. Stone

c:     Brian Bussey, Esq.  
       Matthew Daigler, Esq.  
       Office of the Chief Counsel  
       Division of Market Regulation  
       Securities and Exchange Commission

David T. Rusoff, Esquire  
Goldman, Sachs & Co.