

134 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

The Goldman Sachs Group, Inc.

Docket No. EC10-103-000

ORDER GRANTING BLANKET AUTHORIZATION

(Issued March 25, 2011)

1. On September 28, 2010, The Goldman Sachs Group, Inc. (Goldman Sachs), together with and on behalf of its non-utility affiliates (Applicants) filed a request pursuant to section 203(a)(2) of the Federal Power Act (FPA)¹ for reauthorization and extension of the blanket authorization granted to Applicants on October 18, 2007 in Docket Nos. EC07-39-000, EC07-39-001, and EC07-39-002² (the Blanket Reauthorization). Granting this request would extend the 2007 Blanket Authorization for an additional three years and permit Applicants to acquire, in the ordinary course of business, the voting securities of public utilities, subject to the same conditions and limitations set forth in the 2007 Blanket Authorization order.

2. The Commission has reviewed the application under the Commission's Merger Policy Statement.³ In this order, we will modify the 2007 Blanket Authorization and extend it for an additional three years, and find it consistent with the public interest.

¹ 16 U.S.C. § 824b (2006).

² *The Goldman Sachs Group, Inc.*, 121 FERC ¶ 61,059 (2007), *order granting clarification*, 122 FERC ¶ 61,005 (2008) (2007 Blanket Authorization).

³ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing*

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I. Background

A. Description of the Applicants

1. Goldman Sachs

3. Goldman Sachs is a bank holding company under the Bank Holding Company Act (BHC Act)⁴ that holds interests in energy-related activities. Goldman Sachs is a holding company within the meaning of FPA section 203(a)(2). It also owns certain Non-Utility Subsidiaries, discussed below, that regularly acquire securities in their capacities as broker-dealers and underwriters, as fiduciaries in connection with asset management operations, and for hedging purposes. For purposes of this Application, however, Goldman Sachs is seeking reauthorization only in connection with its investment banking, securities, and investment management lines of business that provide financial services to corporations, financial institutions, governments and high-net-worth individuals. Its three core businesses for which approval is sought are: (1) Investment Banking, which includes financial advisory services with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings and spin-offs, and underwritings of public offerings and private placements of equity, equity-related and debt securities; (2) Trading and Principal Investments, which includes market-making in, and trading of, fixed income and equity securities and related products, currencies, commodities (including electric energy) and derivatives on those products; providing execution and clearing services in relation to a range of securities and derivative products; providing various financing arrangements and products and taking proprietary positions in public and private companies, either through subsidiaries or through funds that Goldman Sachs subsidiaries manage; and (3) Asset Management and Securities Services, which include providing investment advisory, management and financial services to institutions and individuals, and prime brokerage, financing planning services and securities-lending services to mutual funds, pension funds, hedge funds, foundations, and high-net-worth individuals.

Requirements Under Part 33 of the Commission's Regulations, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁴ 12 U.S.C. § 1841.

2. Non-Utility Subsidiaries

4. Goldman Sachs is the parent company of various Non-Utility Subsidiaries that are Applicants in this proceeding and that provide a range of financial services. The current Non-Utility Subsidiaries listed in the Application include the following:

(1) Goldman, Sachs & Co. (GS&Co.) is a broker-dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (1934 Act)⁵ and an investment adviser under the Investment Advisers Act of 1940 (Advisers Act).⁶ GS&Co. conducts a variety of business functions including underwriting, proprietary trading and investment activity, and advisory services. Within GS&Co, the Quantitative Volatility Desk, a segregated business unit, but not a separate legal entity, operates as a market-maker on the International Securities Exchange and Boston Options Exchange and the Global Securities Services, another segregated business unit, makes loans to customers that are secured by securities owned by the customers and GS&Co., and makes commercial loans on both a secured and unsecured basis.

(2) Goldman Sachs Asset Management, L.P. and Goldman Sachs Asset Management International (GSAM), serve as investment advisers to various mutual funds, private investment funds, and to institutional and individual clients.

(3) GS Investment Strategies, LLC (GSIS) is an investment adviser to certain new private investment funds and institutional clients.

(4) The Specialist Entities are registered broker-dealers under the 1934 Act, and are required to maintain a fair and orderly market in their designated securities by, at a minimum, maintaining continuous two-sided quotes in relation to the securities for which they are designated specialists. Goldman Sachs is seeking authorization under section 203(a)(2) for: Spear, Leeds & Kellogg Specialists LLC, a designated market maker in certain New York Stock Exchange (NYSE) listed securities and The Quantitative Volatility Desk, discussed above.

(5) Goldman Sachs Credit Partners LP, Goldman Sachs Bank USA, and Goldman Sachs International are indirect subsidiaries of Goldman engaged in arranging loans and making loans to a range of borrowers.

⁵ Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.* (2006) (1934 Act).

⁶ Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq.* (2006) (Advisers Act).

5. Goldman Sachs also requests authorization on behalf of other unnamed current or future Non-Utility Subsidiaries that are engaged in the same or similar business or businesses as the named applicants and which, from time to time, may acquire utility securities in the ordinary course of business in transactions like those described in the Application.

B. Request for Extension of Blanket Authorization

6. Applicants seek an extension of the 2007 Blanket Authorization under section 203(a)(2) to acquire and hold an unlimited amount of utility voting securities, subject to certain conditions.

7. Specifically, Applicants seek blanket authorization for an additional period of three years to acquire an unlimited amount of utility voting securities in the following circumstances:

- In connection with providing investment advisory services to institutional clients and high net worth individuals under separate account arrangements;
- Through mutual funds and private investment funds that are managed by certain Non-Utility Subsidiaries;
- In connection with specialist functions performed by the Specialist Entities; and
- As collateral for a loan or for purposes of liquidation in connection with a loan previously contracted.⁷

8. Additionally, Applicants state that they seek authorization subject to the following conditions placed on acquisitions of securities in the 2007 Blanket Authorization:

- (1) Applicants shall file with the Commission contemporaneous with filing at the SEC the Schedule 13D and 13G⁸ filings that are relevant to the authorizations

⁷ Application at 8.

⁸ Schedules 13D and 13G provide information concerning the acquiring person's intention and purposes with respect to the issuer of the security. The SEC requires the person acquiring a security to report investments undertaken with the intention of exerting control or with the effect of exerting control on Schedule 13D. However, in order to file a Schedule 13G, an investor must certify that the securities were not acquired for the purpose or with the effect of changing or influencing control over the issuer.

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granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Applicants shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(2) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions, and requirements upon which the authorizations are herein granted and with applicable Commission rules, regulations, and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(3) Applicants shall file with the Commission on a quarterly basis, three separate reports as follows: (1) a report of holdings arising from investment advisory services and management of mutual funds and private investment funds; (2) a report of holdings by Specialist Entity; and (3) a report of holdings arising from securities held as collateral or from liquidation of previous loans. Each report should list the holdings of the utility voting securities, stated in terms of the number of shares held and as a percentage of the outstanding shares. The reports are due within 45 days of the close of the quarter. The reports for holdings arising from investment advisory services and management of mutual funds and private investment funds are subject to a *de minimis* threshold of one percent.

(4) If a new entity is to be covered by this blanket authorization, the entity must file notice providing the name of the entity, the new entity's activities and functions, and the regulatory safeguards applicable to that entity, as well as a reiteration of Goldman's commitment to not acquire securities that will confer control to Goldman. The notice should be filed along with the reports due within 45 days of the close of the quarter. The reports for holdings arising from investment advisory services and management of mutual funds and private investment funds are subject to a *de minimis* threshold of one percent.

(5) Applicants must inform the Commission, within 30 days, of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request.

(6) Applicants shall retain the records of their transactions concerning public utility securities as required under the Advisors Act and 1940 Act for five years.

9. Applicants commit to continue to comply with all the terms, conditions, and requirements of the 2007 Blanket Authorization including that they will not acquire control over the public utilities whose securities they acquire as a result of the Blanket Reauthorization.

C. Notice of Filing and Responsive Pleadings

10. Notice of the application was published in the *Federal Register*, 75 Fed. Reg. 62,374 (2010), with interventions and comments due on or before October 19, 2010. None was filed.

II. Discussion

A. Standard of Review Under Section 203

11. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.⁹ Section 203 also requires the Commission to find that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹⁰ The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹¹

⁹ See Merger Policy Statement, FERC Stats. & Regs. at 30,111.

¹⁰ 16 U.S.C. § 824b(a)(4) (2006).

¹¹ 18 C.F.R. § 33.2(j) (2010).

B. Analysis Under Section 203**1. Effect on Competition, Rates & Regulation****a. Applicants' Analysis**

12. Applicants state that the Commission previously determined that the 2007 Blanket Authorization would have no adverse effect on competition, rates, or regulation and that there have been no changes in the material facts and circumstances that would alter or affect the Commission analysis. As a result, they assert that the Blanket Reauthorization would have no adverse effect on competition, rates or regulation.

b. Commission Determination

13. We will extend the 2007 Blanket Authorization with modification, as discussed below, for an additional three-year period. We note, however, that since the Commission issued the 2007 Blanket Authorization, Goldman Sachs has become a bank holding company.¹² Thus, Goldman Sachs and its subsidiaries are able to acquire securities under the blanket authorization set forth in section 33.1(c)(9) of the Commission's regulations to the extent they meet the qualifying requirements and conform to the conditions contained in the blanket authorization.¹³

14. The Commission will modify the 2007 Blanket Authorization with respect to Applicants' investment advisory and management functions. Since the Commission issued the 2007 Blanket Authorization, the Commission has determined that investment managers acting as fiduciaries may acquire less than 20 percent of a public utility per Schedule 13 reporting group and less than 10 percent of the outstanding voting securities per individual investment fund or individually managed account subject to restrictions under the Investment Advisers Act,¹⁴ the Investment Company Act,¹⁵ and the 1934 Act.¹⁶ In granting this more limited authorization, the Commission has found that investment managers have sufficient ability to conduct business and deploy capital in a timely

¹² Application at 2.

¹³ 18 C.F.R. § 33.1(c)(9).

¹⁴ 15 U.S.C. § 80b-2, *et seq* (2006).

¹⁵ 15 U.S.C. § 80a-1, *et seq* (2006).

¹⁶ 15 U.S.C. § 78a, *et seq* (2006).

fashion while providing the Commission greater assurance that there will not be a change of control over a public utility.¹⁷

15. Applicants have not reported acquisitions of greater than 20 percent of the voting securities of any public utility in any of the filed quarterly reports submitted to the Commission. Additionally, Applicants have not demonstrated their need to acquire greater than 20 percent of the voting securities of a public utility for the purposes of advising and managing client investment accounts. Consistent with conditions set forth for other investment managers,¹⁸ we will limit the percentage of voting securities that Goldman Sachs may acquire in any public utility to less than 20 percent of the outstanding voting securities of any public utility per reporting group within GSAM and GSIS and a limit of less than 10 percent of the outstanding voting securities of a public utility in any single investment fund or any single individually managed account.

16. Applicants state they seek reauthorization to continue to make acquisitions of utility securities for investment purposes only and not for purposes of obtaining or exercising control over the issuers of those securities. Applicants commit to continue to comply with all the terms, conditions, and requirements of the 2007 Blanket Authorization, including the overall condition that Applicants must not acquire control over issuers whose securities they acquire as a result of the Blanket Authorization. The Commission has found that when a purchaser of a minority interest in a public utility lacks the ability to influence control over that acquired public utility, the Commission will not consider the purchase a consolidation of utility assets and therefore the acquisition will not adversely impact competition in any market.¹⁹ Additionally, the Commission has determined that a purchase of securities in a public utility that does not convey the ability to control that public utility will not impact existing rates or

¹⁷ *Franklin Resource, Inc.*, 126 FERC ¶ 61,250, at P 39-43, *order on reh'g*, 127 FERC ¶ 61,224 (2009) (*Franklin Resources*).

¹⁸ *Franklin Resources*, 126 FERC ¶ 61,250, *order on reh'g*, 127 FERC ¶ 61,224; *Horizon Asset Management, Inc.*, 125 FERC ¶ 61,209 (2008) (*Horizon*); *Legg Mason, Inc.*, 121 FERC ¶ 61,061 (2007) (*Legg Mason*); *Capital Research and Management Co.*, 116 FERC ¶ 61,267 (2006).

¹⁹ *Entegra Power Group LLC*, 125 FERC ¶ 61,143, at P 43 (2008) (*Entegra Power*).

regulation.²⁰ Therefore, based on the Applicants' commitments, we find renewal of the 2007 Blanket Authorization, as modified, will not have an adverse effect on competition, rates, or regulation.

2. Cross-Subsidization

a. Applicants' Analysis

17. Applicants assert that the Blanket Reauthorization will not result in any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company. Applicants also state that the Blanket Reauthorization will not result in any new issuances of securities by a traditional public utility associate company that has captive customers, or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company. Further Applicants make assurances that the Blanket Reauthorization will not involve any new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company. Finally, Applicants state that the Blanket Reauthorization will not involve any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under section 205²¹ and 206²² of the FPA.²³

b. Commission Determination

18. Based on the facts as presented in the applications, we find that authorizing the Blanket Reauthorization will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company.

²⁰ *Franklin Resources*, 126 FERC ¶ 61,250 at P 46, 48; *Horizon*, 125 FERC ¶ 61,209 at P 52, 54; *Entegra Power*, 125 FERC ¶ 61,143 at P 48; *Legg Mason*, 121 FERC ¶ 61,061, at P 34, 36.

²¹ 16 U.S.C. § 824d (2006).

²² 16 U.S.C. § 824e (2006).

²³ Application at 23-25.

C. Other Considerations

19. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, the North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

20. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this transaction is based on such examination ability.

The Commission orders:

(A) The 2007 Blanket Authorization is renewed for a period of three years, subject to a 20 percent limit on the acquisition by any one reporting group in GSAM, or GSIS and a limit of less than 10 percent of the outstanding voting securities of a public utility in any single investment fund or any single individually managed account.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(D) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions and requirements upon which the authorizations are herein granted and with applicable Commission rules, regulations and policies. In the

event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall file with the Commission contemporaneous with filing at the SEC the Schedule 13D and 13G filings that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Applicant shall file with the Commission any comment letter or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(G) Goldman Sachs shall file with the Commission on a quarterly basis, within 45 days of the end of the quarter, the three separate reports as follows: (1) a report of holdings as a result of liquidations; (2) a report of holdings by specialist entity; and (3) a report of holdings as a fiduciary. Each report should list the holdings of the utility voting securities, stated in terms of the number of shares held and as a percentage of the outstanding shares.

(H) If a new entity is to be covered by this Blanket Authorization, Goldman Sachs must provide notice in a report with the name, functions, and regulatory safeguards applicable to that entity, as well as a reiteration of Goldman Sachs' commitment not to acquire securities that will result in a transfer of control of a public utility, on a quarterly basis, within 45 days of the end of the quarter.

(I) Applicants must inform the Commission, within 30 days, of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request and specifying the terms and conditions under which the blanket authorization is set forth in section 33.1(c)(5) of the Commission's regulations will be available to them.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.