

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

The Goldman Sachs Group, Inc.

Docket No. EC07-39-000

ORDER GRANTING INTERIM EXTENSION OF CURRENT AUTHORIZATION

(Issued February 6, 2007)

1. On December 20, 2006, The Goldman Sachs Group, Inc. (Goldman) filed an application under section 203(a)(2) of the Federal Power Act (FPA)<sup>1</sup> seeking renewed blanket authorization for the acquisition, directly or indirectly, of securities<sup>2</sup> of electric utility companies, transmitting utilities or of any holding company over any electric utility company or transmitting utility, subject to certain proposed limitations. Goldman states that it seeks renewal, for three years, of those aspects of the temporary blanket authorization granted by the Commission (Current Authorization)<sup>3</sup> that have not been superseded by the Order No. 669 series.<sup>4</sup>

2. As discussed below, the Commission needs additional information to comprehensively analyze Goldman's request for a three-year blanket authorization under FPA section 203(a)(2). Accordingly, Commission Staff will send a deficiency letter to

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<sup>1</sup> 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> For purposes of this order, the term "securities" is used consistent with the meanings and limitations given it in EPAAct 2005.

<sup>3</sup> *The Goldman Sachs Group, Inc.*, 114 FERC ¶ 61,118 (2006), *reh'g denied*, 115 FERC ¶ 61,303 (2006).

<sup>4</sup> *Transactions Subject to FPA Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006); *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006) (collectively, Order No. 669).

Goldman under section 33.10 of the Commission's Rules of Practice and Procedure<sup>5</sup> requesting additional information. Goldman must file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter. The Commission will grant an interim extension of Goldman's Current Authorization pending Commission review of the additional information and a further order of the Commission. However, if Goldman fails to file the additional information by the required date, the interim authorization may be revoked.

### **Background**

3. Goldman is an investment banking, securities and investment management firm that provides a range of financial services to corporations, financial institutions, governments and high-net-worth individuals. Its three core businesses 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 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. Goldman indirectly owns several subsidiaries that engage in the generation and sale of electricity; accordingly, for purposes of FPA section 203(a)(2), Goldman is a holding company. It also owns certain "Nonutility Subsidiaries"<sup>6</sup> that regularly acquire securities in their capacities as broker-dealers and underwriters, as fiduciaries in connection with asset management operations, and for hedging purposes.

4. Under the Current Authorization, which will expire on February 7, 2007, Goldman may acquire and own not more than 10 percent of the outstanding voting securities of any one utility or holding company as principal for its own account (the "10 percent

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<sup>5</sup> 18 C.F.R. § 33.10 (2006).

<sup>6</sup> Goldman identified as "Nonutility Subsidiaries" Goldman Sachs & Co., a broker-dealer registered with the Securities and Exchange Commission (SEC), Goldman Sachs Asset Management Co., and various unnamed subsidiaries identified as "proprietary trading and merchant banking subsidiaries."

limitation”).<sup>7</sup> Excluded from the 10 percent limitation are voting securities acquired and held in connection with dealer/trader activities, fiduciary holdings, voting securities acquired in connection with underwriting activities (subject to certain limitations), and securities acquired for hedging purposes (subject to a commitment not to vote in excess of 10 percent of such shares). Goldman reports, on a quarterly basis to the Commission, its holdings of voting securities acquired under the Current Authorization that serve as principal for its own account and total holdings of voting securities in the same entities, irrespective of the capacity in which such securities are held, subject to a 1 percent *de minimis* threshold. Goldman’s acquisition of the securities of any utility operating outside the United States, securities of any existing subsidiary of Goldman, and securities of any entity formed to engage in passive leasing activities are exempted from the 10 percent limitation and the quarterly reporting requirement.

### **Goldman’s Request for Continued Authorization**

5. Goldman states that many aspects of the Current Authorization have been superseded by the blanket authorization granted in Order No. 669. Specifically, under Order No. 669-A, a holding company may, without obtaining separate authorization under section 203(a)(2), acquire not more than 10 percent of the outstanding voting securities of any one utility or holding company,<sup>8</sup> subject to conditions set forth in sections 33.1(c)(3) and (4) of the Commission regulations.<sup>9</sup> Order No. 669-A also grants blanket authorization under section 203(a)(2) for a holding company to acquire any securities in connection with underwriting activities, subject to certain conditions,<sup>10</sup> and to acquire securities for purposes of engaging in hedging activities, subject to certain limitations.<sup>11</sup> Further, Order No. 669-A grants a blanket authorization under FPA section 203(a)(2) for a holding company, whose only electric utility company subsidiaries are exempt wholesale generators, foreign utility companies or qualifying facilities, to acquire

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<sup>7</sup> Specifically, Goldman may acquire, directly or indirectly, debt or equity securities of any electric utility company, transmitting utility or holding company over any electric utility company or transmitting utility in a fiduciary capacity in connection with its asset management business; in the ordinary course of its business as an underwriter and dealer; in connection with trading activities; in connection with its lending and lease financing activities; and in the course of the routine dealing and trading as principal for its own account, provided that Goldman does not obtain control of the operation or management of the issuer.

<sup>8</sup> 18 C.F.R. § 33.1(c)(2)(ii) (2006).

<sup>9</sup> 18 C.F.R. § 33.1(c)(3)-(4) (2006).

<sup>10</sup> 18 C.F.R. § 33.1(c)(10)(i) (2006).

<sup>11</sup> 18 C.F.R. § 33.1(c)(10)(ii) (2006).

any amount of securities of any additional companies falling in those same categories.<sup>12</sup> Hence, Goldman states that because Goldman may rely on the blanket authorizations granted under Order No. 669-A for such acquisitions, the application in this proceeding does not cover those kinds of transactions.

6. Goldman states, however, that Order No. 669-A does not grant blanket authorization for a company to acquire securities in the ordinary course of business as a fiduciary in connection with its asset management business or as collateral for a loan. As a result, fiduciary acquisitions of securities and acquisitions of such securities for collateral purposes have to be counted against the 10 percent limit under § 33.1(c)(2)(ii), absent a separate authorization. Likewise, since there is no blanket authorization under Order No. 669-A for acquisitions in connection with routine dealer/trader activities, securities acquired and held in such capacities for the account of, or for delivery to, customers also have to be counted against the 10 percent limit under § 33.1(c)(2)(ii), absent a separate authorization. Goldman states that it engages in those types of transactions, and therefore seeks a renewal of those aspects of the Current Authorization.

7. Specifically, Goldman requests a renewal of its blanket authorization under section 203(a)(2) to acquire, directly or indirectly, in the ordinary course of business during a three-year period beginning February 8, 2007, an unlimited amount of securities having a value in excess of \$10 million: (1) as a fiduciary for the account of individual, corporate and institutional customers; (2) in connection with routine broker/dealer and trading activities, including market making/specialist activities and other trade execution services for customers; and (3) as collateral for a loan or for purposes of liquidation in connection with an antecedent debt. Such transactions would be subject, in each case, to the overriding principle that the securities so acquired must confer no control over the issuer to Goldman. Further, Goldman requests that, consistent with the Current Authorization (as well as Order No. 669-A), any securities acquired and held in accordance with the authorization requested in this application shall be excluded from the amount of voting securities that Goldman may acquire under § 33.1(c)(2)(ii) of the Commission's regulations.<sup>13</sup>

### **Notices of Filings, Interventions, and Protests**

8. Notice of Goldman's filing was published in *Federal Register*, 72 Fed. Reg. 774 (2007), with interventions and protests due on or before January 10, 2007. None was filed.

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<sup>12</sup> 18 C.F.R. § 33.1(c)(8) (2006).

<sup>13</sup> 18 C.F.R. § 33.1(c)(2)(ii) (2006).

### **Commission Determination**

9. As noted in the Current Authorization, at that time the authorization was granted, the Commission was in the early stages of implementing EAct 2005. An important part of the Commission's rationale for the Current Authorization was maintaining the status quo of Goldman's activities, which Goldman claimed were permitted by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, as amended.<sup>14</sup> Therefore, the Commission granted the Current Authorization on a temporary and conditional basis.<sup>15</sup> Goldman now seeks to extend the Current Authorization for an additional three-year period. The Commission needs additional information to comprehensively evaluate Goldman's request. Therefore, Commission Staff will issue a deficiency letter to Goldman requiring additional information. Goldman must file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter. Pending evaluation of that information and further order of the Commission,<sup>16</sup> we will grant an interim extension of Goldman's Current Authorization. However, if Goldman fails to file the additional information by the required date, the interim authorization may be revoked.

#### The Commission orders:

(A) Commission staff is hereby directed to request additional information from Goldman by means of a deficiency letter under section 33.10 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 33.10 (2006).

(B) Goldman is hereby ordered to file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter.

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<sup>14</sup> 15 U.S.C. §§ 79a *et seq.* (2000)(repealed 2005).

<sup>15</sup> Current Authorization at P 11.

<sup>16</sup> Section 203 requires the Commission to grant or deny an application for approval of a transaction within 180 days after the application is filed. The statutory 180-day period for Commission action will start on the date on which the Commission receives the additional information. 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 § 1289 (a)(5), Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005).

(C) Goldman's Current Authorization is hereby extended pending Commission review of the additional information and further order of the Commission, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.