



Comptroller of the Currency
Administrator of National Banks

Northeastern District Office
340 Madison Avenue, 5th Floor
New York, New York 10017

Licensing Division
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July 23, 2007

**Conditional Approval #812
August 2007**

Alisa G. Lessing
Vice President and Associate General Counsel
Goldman Sachs & Company
1 New York Plaza
New York, New York 10004

Re: Applications by The Goldman Sachs Group, Inc. to establish a new national trust bank, The Goldman Sachs Trust Company (Delaware), National Association, Wilmington, Delaware and to merge The Goldman Sachs Trust Company, National Association, New York, New York into The Goldman Sachs Trust Company (Delaware), National Association, with the resulting bank located in Wilmington, Delaware and surviving under the title and charter of the former

Control Numbers: 2007 NE 01 0002
2007 NE 02 0001

Charter Number: 24173

Dear Ms. Lessing:

This is to inform you that the Office of the Comptroller of the Currency (“OCC”) has reviewed the application by The Goldman Sachs Group, Inc. (“the Parent”) to establish a new limited purpose national trust bank, The Goldman Sachs Trust Company (Delaware), National Association, Wilmington, Delaware (“GSTCDE”), which will engage solely in fiduciary activities. On July 23, 2007, the OCC granted preliminary conditional approval of your charter application after a determination that your proposal met certain regulatory and policy requirements. The OCC also poses no objection to the proposed executive officers and directors of GSTCDE. The OCC has granted preliminary conditional approval only. Final approval and authorization for GSTCDE to open will not be granted until all pre-opening requirements are met.

Also, on July 23, 2007, the OCC conditionally approved your request to merge The Goldman Sachs Trust Company, National Association, New York, New York (“GSTCNA-NY”) with and into GSTCDE, with the resulting limited purpose trust bank located in Wilmington, Delaware under the charter of GSTCNA-NY and with the title of The Goldman Sachs Trust Company, National Association (“GSTCNA”). The OCC reviewed the proposed merger transaction under the criteria of 12 U.S.C. § 215a, and applicable OCC regulations and policies. Among other

matters, we found that the proposed transaction would not have significant anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and their effectiveness in combating money laundering activities. We considered these factors and found them consistent with approval.

These approvals are granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the applications and by the Parent's representatives.

With respect to the Parent's request for a multiple residency waiver under 12 U.S.C. § 72 for the proposed board members of the resulting bank after the merger, the OCC has determined that such a request is not needed as a majority of the proposed board members will live within the state or within 100 miles of the Wilmington, Delaware, main office or New York City trust office.

The approvals outlined above are subject to the following conditions:

1. GSTCNA shall limit its business to the operations of a trust company and activities related or incidental thereto. In no event shall GSTCNA engage in activities that would cause it to be a "bank" as defined in section 2(c) of the Bank Holding Company Act.
2. At all times, GSTCNA shall maintain minimum Tier 1 Capital in an amount at least equal to the greater of (a) \$3 million or (b) such other higher amount as may be required by the OCC pursuant to the exercise of its regulatory authority ("Minimum Tier 1 Capital Requirement").¹ At all times, liquid assets² shall comprise at least 75% of GSTCNA's Minimum Tier 1 Capital Requirement (the "Minimum Liquid Capital Requirement"). (The Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement are collectively the "Minimum Capital Requirement".)
3. If at any time, GSTCNA fails to maintain the Minimum Capital Requirement, GSTCNA shall take such corrective measures as the OCC may direct from among the provisions

¹ For purposes of determining compliance with the Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement (as defined above), GSTCNA shall deduct from its Tier 1 Capital the higher of: (a) the capital that the state regulatory authority requires to be maintained at The Goldman Sachs Trust Company of Delaware ("the subsidiary trust company"), or (b) the aggregate amount of GSTCNA's outstanding equity investment, including retained earnings, in the subsidiary trust company. Any asset used to satisfy the capital requirement of the subsidiary trust company shall not be included in determining compliance with the Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement. The treatment of the subsidiary trust company's equity is for purposes of calculating GSTCNA's compliance with these capital requirements only, and is not intended to affect GSTCNA's financial reporting on its Call Reports.

² The term "liquid assets" means (a) cash and cash equivalents, (b) deposits at insured depository institutions, and (c) investment securities eligible for investment by national banks under 12 C.F.R. Part 1 and valued at the lower of cost or market value. However, liquid assets shall not include any assets encumbered or pledged by lien, right of setoff, preference, or otherwise, or any other asset pledged as security in any transaction with any party.

applicable to undercapitalized depository institutions under 12 U.S.C. §1831o(e) and 12 C.F.R. Part 6. For purposes of this requirement, an action “necessary to carry out the purpose of this section” under section 1831o(e)(5) shall include restoration of GSTCNA’s capital to levels which comply with the Minimum Capital Requirement, and any other action deemed advisable by the OCC to address GSTCNA’s capital deficiency or the safety and soundness of its operations.

4. Within ten (10) business days of consummation of the merger, GSTCNA and the Parent shall execute a Capital Assurance and Liquidity Maintenance Agreement (“CALMA”), the terms and provisions of which must be acceptable to the OCC. Upon execution of the CALMA, a copy shall be forwarded to the appropriate OCC Supervisory Office. GSTCNA shall take all actions to exercise its rights and to enforce the terms of the CALMA, if and when necessary, by making a written demand or request on the Parent. Within one (1) day following GSTCNA’s demand or request to the Parent for compliance with the CALMA, GSTCNA shall provide the OCC with a copy of such written demand or request.
5. Within ten (10) business days of consummation of the merger, GSTCNA and the Parent shall enter into a written binding Capital and Liquidity Support Agreement (“CSA”) with the OCC setting forth the Parent’s obligations to provide capital and liquidity support to GSTCNA, if and when necessary, and GSTCNA and the Parent shall thereafter implement and adhere to the CSA. The terms and provisions of the CSA must be acceptable to the OCC.
6. GSTCNA’s Board shall adopt, implement and maintain a system to analyze and maintain, in conformance with OCC Bulletin 2007-21, Supervision of National Trust Banks – Revised Guidance: Capital and Liquidity (and any subsequent OCC guidance), capital and liquidity commensurate with GSTCNA’s risk profile.
7. GSTCNA shall provide written notification to the OCC within one (1) business day after becoming aware that the subsidiary trust company requires additional capital or liquidity, or that the state regulatory authority is or may be commencing an enforcement action against the subsidiary trust company or any of its officers or directors who also serve as an officer or director of GSTCNA. GSTCNA may provide additional capital and liquidity to the subsidiary trust company only after submitting a written request to the appropriate Assistant Deputy Comptroller for review, and receipt of the OCC’s written determination of no supervisory objection.
8. GSTCNA: (i) shall give the appropriate OCC Supervisory Office at least sixty-days (60) prior written notice of GSTCNA’s intent to significantly deviate or change from the business plan or operations, as reflected in this application, and (ii) shall obtain the OCC’s written determination of no objection before GSTCNA engages in any significant deviation or change from its business plan or operations.

9. GSTCNA, the Parent, and its affiliates, upon request by the OCC, shall provide the OCC access to, permit the OCC to examine, and provide the OCC with copies of all books and records, and electronic records that accurately reflect the information in the books and records of GSTCNA, and any other information of, or concerning GSTCNA.
10. All transactions between GSTCNA and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. §§ 371c, 371c-1, or other applicable Federal law. The Board of Directors of GSTCNA annually shall review and approve the service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

The conditions of these approvals are conditions “imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818. The conditions of these approvals supersede and replace the conditions contained in Conditional Approval #455 dated March 1, 2001, and Conditional Approval #642 dated June 15, 2004.

Prior to the merger between GSTCDE and GSTCNA-NY, the Parent must satisfy all applicable requirements to complete the organization of GSTCDE and submit the following documents for GSTCDE to the Northeastern District Licensing Office:

- Organization Certificate
- Articles of Association
- Capital Stock Payment Certificate
- Oath of Directors
- Joint Oath of Directors

As a reminder, the Northeastern District Licensing Office must be advised in writing in advance of the desired effective date for the merger so that the OCC may issue the necessary certification letter. The OCC will issue a letter certifying consummation of the merger transaction when we receive:

- A Secretary’s Certificate for GSTCDE, certifying that a majority of the board of directors approve of the merger;
- A Secretary’s Certificate for GSTCDE, certifying that the shareholder approvals have been obtained;
- An executed merger agreement with Articles of Association for the resulting bank attached;
- Documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This approval and the activities and communications by OCC employees in connection with the

filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Wai-Fan Chang, Licensing Analyst, at (212) 790-4055. Please include the control numbers on all correspondence related to this application.

Sincerely,

signed

J. Greg Parvin
Director for District Licensing

Enclosures: Survey Letter