

operating on the basis of 24-month refueling cycles, with core designs and fuel management schemes optimized accordingly. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff also considered denial of the proposed action, (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Nine Mile Point Nuclear Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on April 7, 1999, the NRC staff consulted with the New York State official, Jack Spath of the New York State Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 15, 1998, as supplemented by letters dated September 25, October 13, December 9 (two letters), 1998; January 11 and April 1, 1999. These letters are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 7th day of April 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-9172 Filed 4-12-99; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23772; 812-11540]

The Goldman Sachs Group, Inc., et al.; Notice of Application

April 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(3) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to amend a prior order ("Prior Order") relating to certain registered investment companies advised by the Goldman Advisers, as defined below, and one or more other investment advisers ("Unaffiliated Advisers").¹ The Prior Order permits the portion of the portfolio of these registered investment companies advised by an Unaffiliated Adviser ("Unaffiliated Portion") to engage in certain principal and brokerage transactions with and to purchase certain securities from Goldman, Sachs & Co. ("Goldman Sachs") or a member of an underwriting syndicate in which Goldman Sachs is a principal underwriter. The requested order would permit the Unaffiliated Portion to purchase equity or debt securities issued by The Goldman Sachs Group, Inc. ("Goldman Sachs, Inc.") or an affiliated person of Goldman Sachs, Inc. ("Goldman Securities"), subject to the limits in rule 12d3-1 under the Act. **APPLICANTS:** Goldman Sachs, Inc., Goldman Sachs, Goldman Sachs Asset Management ("GSAM"), Liberty Investment Management ("Liberty"), Goldman Sachs Asset Management International ("GSAMI"), and Goldman Sachs Funds Management, L.P. ("GSFM"); The Diversified Investors Funds Group, Diversified Investors Portfolios, the Managers Funds, the Hirtle Callaghan Trust, EAI Select Managers Equity Fund, and the Seasons Series Trust (collectively, the "Funds").

¹ *Goldman Sachs & Co., et al., Investment Company Act Release Nos. 22858 (Oct. 17, 1997) (notice) and 22887 (Nov. 13, 1997) (order).*

GSAM, Liberty, GSAMI, GSFM, and any other entities controlling, controlled by, or under common control with Goldman Sachs that serve as investment advisers to the Funds are collectively referred to as the "Goldman Advisers."

FILING DATES: The application was filed on April 6, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 28, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, 85 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. Goldman Sachs, Inc. is a newly created entity that owns The Goldman Sachs Group, L.P. ("Goldman Sachs Group"), the parent holding company of Goldman Sachs. Goldman Sachs is registered as a broker-dealer under the Securities Exchange Act of 1934 and an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). GSAMI and GSFM are under common control with Goldman Sachs and are investment advisers registered under the Advisers Act. GSAM is an operating division of Goldman Sachs, and Liberty is an operating division of GSFM.

2. The Funds, open-end management investment companies registered under the Act, are organized as Massachusetts business trusts, or in the case of The Hirtle Callaghan Trust, as a Delaware

business trust.² GSAM and Liberty serve as an investment adviser to series of the Funds that have more than one investment adviser ("Multi-Managed Portfolios"). Each Multi-Managed Portfolio is advised by one or more Unaffiliated Advisers registered under the Advisers Act. The Unaffiliated Advisers are not affiliated persons of Goldman Sachs or affiliated persons of Goldman Sachs or any Goldman Adviser ("Unaffiliated Advisers," together with the Goldman Advisers, the "Subadvisers").³ Each Subadviser is responsible for managing only the investments of a discrete portion of the Multi-Managed Portfolio's assets.

3. Applicants state that in managing a portion of a Multi-Managed Portfolio, each Subadviser acts as if it were managing a separate investment company. The Subadvisers do not collaborate, and each is responsible for making independent investment and brokerage allocation decisions for its portion of the Multi-Managed Portfolio based on its own research and analysis. The Subadvisers do not receive information about investment or brokerage allocation decisions of another portion of the Multi-Managed Portfolio before they are implemented. Each Subadviser is compensated for advisory services based only on a percentage of the value of the assets of the portion of the Multi-Managed Portfolio allocated to that Subadviser. Applicants state that Goldman Sachs does not and will not control the Multi-Managed Portfolio for which a Goldman Adviser acts as Subadviser or otherwise influence the investment decisions of the Unaffiliated Portion.

4. The Goldman Sachs Group publicly announced on March 8, 1999 that it will sell approximately 12.8% of its equity in an initial public offering scheduled to take place during the Spring of 1999. Applicants request relief to permit the Unaffiliated Portions to purchase Goldman Securities in the initial public offering, in any subsequent offering, or in the secondary market.

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act generally prohibits a registered

investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Applicants state that because the issuer of the Goldman Securities is engaged in securities-related activities, an Unaffiliated Portion would be prohibited by section 12(d)(3) from purchasing the Goldman Securities.

2. Rule 12d3-1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3-1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

3. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

4. Applicants state that the issuer of the Goldman Securities would be an affiliated person of a Goldman Adviser. As an investment adviser to a portion of a Multi-Managed Portfolio, a Goldman Adviser is deemed to be an investment adviser to the entire Multi-Managed Portfolio. Thus, applicants state that a purchase by an Unaffiliated Portion of Goldman Securities would not meet rule 12d3-1(c) and that applicants are therefore unable to rely on the rule.

5. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit the Unaffiliated Portions to purchase Goldman Securities, provided that all of the requirements of rule 12d3-1, except rule 12d3-1(c), are met. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3-1(c) was designed to address because of the nature of the affiliation between a Goldman Adviser and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment and brokerage allocation decisions for the assets allocated to its portion of the Multi-Managed Portfolio.

Applicants state that Goldman Securities will not be purchased by any portion advised by a Goldman Adviser. Applicants assert that prohibiting the Unaffiliated Portions from purchasing Goldman Securities may cause Unaffiliated Advisers to forego investment opportunities that would be in the best interests of the Funds' shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief and amending the Prior Order will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by a Goldman Adviser and at least one Unaffiliated Adviser and will be operated consistent with the manner described in the application. No Goldman Adviser will serve as a Primary Adviser to a Multi-Managed Portfolio.

2. No Goldman Adviser or any future investment adviser that is an affiliated person of a Goldman Adviser or an affiliated person of an affiliated person of a Goldman Adviser will purchase for its portion of a Multi-Managed Portfolio any Goldman Securities.

3. Each Multi-Managed Portfolio will abide by the restrictions imposed by rule 12d3-1, except paragraph (c) of that rule with respect to purchases of Goldman Securities by Unaffiliated Portions.

4. No Subadviser will directly or indirectly consult with any other Subadviser concerning any investment management decisions, including those relating to the Goldman Securities. Subadvisers may only consult with a Primary Adviser about Goldman Securities in order to monitor compliance with the limits in rule 12d3-1.

5. No Subadviser will participate in an arrangement whereby the amount of its compensation will be affected by the investment performance of any other Subadviser.

6. Neither a Goldman Adviser (except by virtue of serving as Subadviser) nor Goldman Sachs will be an affiliated person or an affiliated person of an affiliated person of any Unaffiliated Adviser or any officer, trustee or employee of the registered investment company relying on this order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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¹ All registered investment companies that currently intend to rely on the order are named as applicants. Any other existing or future registered investment company that relies on the order will comply with the terms and conditions of the application.

² The term "Subadvisers" includes a primary adviser ("Primary Adviser") to the extent the Primary Adviser is responsible for managing a portion of a Multi-Managed Portfolio. No Goldman Adviser will serve as a Primary Adviser to a Multi-Managed Portfolio.