



Comptroller of the Currency
Administrator of National Banks

Northeastern District
1114 Avenue of the Americas, Suite 3900
New York, New York 10036

June 15, 2004

**Conditional Approval #642
July 2004**

Mr. Michael J. Civitella
Chief Operating Officer
The Goldman Sachs Trust Company, N.A.
One New York Plaza, New York, NY 10004

Re: Operating Subsidiary Application - The Goldman Sachs Trust Company of Delaware
CAIS Control Number 2003-NE-08-029

Dear Mr. Civitella:

This is in response to your application, filed on behalf of The Goldman Sachs Trust Company, N.A., New York, New York (“Bank”), to acquire The Goldman Sachs Trust Company of Delaware (“TGSTCD”), a Delaware limited purpose trust company, as a wholly-owned operating subsidiary of the Bank.¹ As discussed below, the Office of the Comptroller of the Currency (“OCC”) has concluded that the proposed activity is legally permissible and has conditionally approved your application.

A national bank with OCC-approved trust powers, under 12 U.S.C. § 92a, may engage in fiduciary activities within a department of the bank or through a nonbank trust company subsidiary of the bank. Under OCC regulations, at 12 C.F.R. § 5.34(e), a national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly. Because an uninsured, non-deposit-taking trust company is not a “bank” for purposes of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 *et seq.*), a national bank that holds such a trust company as an operating subsidiary will not become a bank holding company.

¹ The Delaware-chartered trust company is being established under the provisions of Chapter 7 of Title 5 of the Delaware Code and Regulations 701 and 702 of the Office of the State Bank Commissioner, State of Delaware (“OSBC”). By letter dated November 26, 2003, the OSBC approved the formation of TGSTCD.

May 14, 2004

Mr. Michael J. Civitella

Page 2

OCC regulations, at 12 C.F.R. § 5.34(e)(3), also make clear that a national bank's subsidiary is subject to OCC examination and supervision. TGSTCD will be subject to examination by, and the supervision of, OSBC, as primary regulator of the trust company. The OCC will primarily rely, as its has in other similar situations or as with a functionally-regulated insurance or securities subsidiary as mandated by the Gramm-Leach-Bliley Act, on the examination reports and findings of the appropriate regulator to monitor the condition and activities of the subsidiary. In this case, we will coordinate with the OSBC, as necessary and appropriate, to ensure the safety and soundness of the fiduciary operations as they may affect the Bank. The OCC has an information-sharing agreement with the OSBC, executed in November of 1988, which permits the sharing of confidential examination information. In addition, OCC disclosure regulations, at 12 C.F.R. § 4.37(c), permit sharing of confidential supervisory information with state banking regulatory agencies.

In summary, the OCC identified no legal, policy, or supervisory concerns with the application. Accordingly, based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, the OCC has conditionally approved your application.

This operating subsidiary approval is subject to the following conditions:

1. At all times, the Bank shall maintain minimum Tier 1 capital of \$3 million. For purposes of determining compliance with this requirement, the Bank shall: (1) deduct from its Tier 1 capital the higher of: (a) the capital that the OSBC requires be maintained at TGSTCD or (b) the aggregate amount of Bank's outstanding equity investment, including retained earnings, in TGSTCD; and (2) not consolidate the assets and liabilities of TGSTCD with those of the Bank.² In addition, the Bank shall maintain at all times capital that meets or exceeds the levels required under 12 C.F.R. Part 3 for an adequately capitalized bank. This condition supersedes condition #3 in the OCC's March 1, 2001 conditional approval letter. All other conditions detailed in that letter remain in full force and effect.
2. If any time, the Bank's Tier 1 Capital falls below the minimum capital required under Condition #1, then the Bank shall take such corrective measures as the OCC may direct from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. § 1831o(e). For purposes of this paragraph, an action "necessary to carry out the purpose of this section" under 1831o(e)(5) shall include restoration of the Bank's Tier 1 Capital to the levels required in the Conditional Approval, and/or any

² The treatment of the operating subsidiary's equity, assets, and liabilities is for purposes of calculating Tier 1 capital for this condition only, and is not intended to eliminate the requirement that Bank file its Report of Condition ("call report") as required by 12 U.S.C. § 161.

other action deemed advisable by the OCC to address the Bank's Tier 1 Capital deficiency or the safety and soundness of its operations.

3. The Bank shall provide written notification to the OCC within one (1) business day after becoming aware that TGSTCD requires additional capital or liquidity, or that the OSBC is or may be commencing an enforcement action against TGSTCD or any of its officers or directors who also serve as an officer or director of the Bank. The Bank may provide additional capital and liquidity to TGSTCD only after submitting a written request to the Assistant Deputy Comptroller for his review, and receipt of the OCC's written determination of no supervisory objection.
4. The Bank and The Goldman Sachs Group, Inc., a Delaware corporation ("Parent") shall execute a new Capital Assurance and Liquidity Maintenance Agreement ("New CALMA"), which New CALMA shall replace the September 24, 2001 CALMA. The New CALMA shall reflect the new minimum capital requirement and any other changes that may be appropriate. The terms and provisions of the New CALMA must be acceptable to the Bank and OCC. If it becomes necessary for the Bank to secure capital infusions so as to remain in compliance with its Minimum Capital Requirement, or to provide additional capital to TGSTCD, the Bank will promptly notify and first make demand on the Parent for such capital contributions pursuant to CALMA.

These conditions of approval are conditions "imposed in writing by the agency in connection with the granting of any application 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 Bank's acquisition of TGSTCD will not be effective unless and until all other regulatory approvals have been secured.

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 U.S., any agency or entity of the U.S., or any officer or employee of the U.S., 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 agency of the OCC or the U.S.

If you have any questions, please contact Kerry T. Rice, National Bank Examiner at (212) 790-4055.

Sincerely,

/s/ Anthony P. DosSantos

Anthony P. DosSantos
Licensing Manager