

FEDERAL RESERVE SYSTEM

The Goldman Sachs Group, Inc.  
New York, New York

Order Approving Retention of Shares of a Bank

The Goldman Sachs Group, Inc. (“Goldman”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act<sup>1</sup> to retain 9.8 percent of the outstanding common stock of Avenue Financial Holdings, Inc. (“Avenue”) and thereby indirectly retain voting shares of Avenue Bank, both of Nashville, Tennessee.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (74 Federal Register 48,970 (2009)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.<sup>3</sup>

Goldman, with total consolidated assets of approximately \$911 billion, engages in investment and commercial banking, securities underwriting and dealing, asset management, trading, and other activities both in the United States and overseas. Goldman controls Goldman Sachs Bank USA (“GS Bank”), New York, New York, a state member bank that operates branches in New York and Salt Lake City, Utah.

---

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> Avenue Bank’s predecessor was Planters Bank of Tennessee, Maury City, Tennessee. Avenue was formed in 2006, acquired the bank in 2007, changed its name to Avenue Bank, and moved its headquarters to Nashville. Goldman holds the shares of Avenue through an indirect subsidiary, Goldman Sachs Investment Partners Master Fund, L.P., a Cayman Islands limited partnership. The fund acquired the shares in Avenue’s private equity offering as a passive investment.

<sup>3</sup> A commenter noted that the Board waived public notice of Goldman’s application to become a bank holding company in September 2008. The Board’s order approving the application explains the basis for this waiver. The Goldman Sachs Group, Inc., 94 Federal Reserve Bulletin C101 (2008) (“Goldman Order”).

GS Bank has total assets of approximately \$89 billion and controls deposits of approximately \$32 billion.<sup>4</sup> Avenue Bank, with total assets of approximately \$589 million, controls deposits of \$480 million and operates only in Tennessee.<sup>5</sup>

#### Noncontrolling Investment

Goldman has stated that it does not propose to control or exercise a controlling influence over Avenue and that its investment in Avenue is passive.<sup>6</sup> In this light, Goldman has agreed to abide by certain commitments substantially similar to those on which the Board has previously relied in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act (“Passivity Commitments”).<sup>7</sup> For example, Goldman has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Avenue or any of its subsidiaries; not to seek or accept more than one representative on the board of directors of Avenue or any

---

<sup>4</sup> Asset and deposit data are as of December 31, 2010.

<sup>5</sup> In acting on Goldman’s application to become a bank holding company, the Board determined that emergency conditions existed that justified the Board’s expeditious action. Goldman Order, C101. In light of those emergency conditions and Goldman’s status as a minority investor in Avenue, Goldman was permitted to file a retroactive application to retain the Avenue shares.

<sup>6</sup> Although the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company, the requirement in section 3(a)(3) of the BHC Act that the Board’s approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. See, e.g., Penn Bancshares, Inc., 92 Federal Reserve Bulletin C37 (2006) (acquisition of up to 24.89 percent of the voting shares of a bank holding company); S&T Bancorp Inc., 91 Federal Reserve Bulletin 74 (2005) (acquisition of up to 24.9 percent of the voting shares of a bank holding company); Brookline Bancorp, MHC, 86 Federal Reserve Bulletin 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company).

<sup>7</sup> These commitments are set forth in the appendix.

of its subsidiaries; and not to have any officer, employee, or agent interlocks with Avenue or any of its subsidiaries. The Passivity Commitments also include certain restrictions on the business relationships of Goldman with Avenue.

Based on these considerations and all the other facts of record, the Board has concluded that Goldman would not acquire control of, or have the ability to exercise a controlling influence over, Avenue through the proposed retention of Avenue voting shares. The Board notes that the BHC Act requires Goldman to file an application and receive the Board's approval before the company could directly or indirectly acquire additional shares of Avenue or attempt to exercise a controlling influence over Avenue.<sup>8</sup>

#### Competitive Considerations

The Board has considered carefully the competitive effects of the proposal in light of all the facts of the record. Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>9</sup>

Goldman and Avenue do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

---

<sup>8</sup> 12 U.S.C. § 1842. See, e.g., Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996).

<sup>9</sup> 12 U.S.C. § 1842(c)(1).

### Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information received from the relevant federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Goldman, and public comments received on the proposal.

In evaluating the financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the applicant, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.

The Board has carefully considered the financial factors of the proposal. Goldman, GS Bank, Avenue, and Avenue Bank are well capitalized. Goldman acquired its ownership interest in Avenue before becoming a bank holding company and used existing cash resources to effect the acquisition.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Goldman, Avenue, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law and with anti-money laundering laws.

On April 16, 2010, the Securities and Exchange Commission (“SEC”) brought a civil action against Goldman and one of its vice presidents for allegedly defrauding investors by misstating and omitting key facts about a collateralized debt obligation (“CDO”) transaction it marketed in 2007, before becoming a bank holding company in September 2008. The CDO transaction involved subprime mortgages, and the marketing occurred as the U.S. housing market was beginning to decline. On July 14, 2010, Goldman settled the action with the SEC. As part of the settlement, Goldman acknowledged that its CDO marketing materials contained incomplete information. Goldman agreed to a settlement penalty of \$550 million and to certain undertakings with respect to its business practices for the offering of residential mortgage-backed securities that were designed to ensure that written marketing materials for such offerings are not misleading and do not contain any material misstatement.<sup>10</sup>

The Board has reviewed the SEC action and settlement and actions taken by Goldman to improve its risk-management processes. In May 2010, Goldman announced the creation of a “Business Standards Committee” to conduct an overall review of the firm's business standards. In January 2011, the committee concluded an eight-month review of Goldman’s business standards and issued a report of its findings and recommended reforms, including reforms designed to improve the transparency of communication and disclosure with regard to Goldman’s risk-management structure, culture, and processes. As part of its ongoing supervision of Goldman’s implementation of risk-management and regulatory compliance systems since becoming a bank holding company, the Board will continue to assess Goldman’s implementation and maintenance of the committee’s recommendations and its business standards and risk-management practices.<sup>11</sup> In addition, the Board will continue to review Goldman’s risk-management

---

<sup>10</sup> Sec. and Exch. Comm’n v. Goldman, Sachs & Co., 10-CV-3229 (BSJ) (S.D.N.Y. 2010). The total penalty included \$250 million in restitution to investors and \$300 million in penalties to the SEC.

<sup>11</sup> In connection with the continuous supervision of Goldman’s regulatory compliance systems, Board staff is also monitoring all new developments in certain ongoing

controls and processes for monitoring investments in other banking organizations and for complying with all regulatory requirements associated with such investments.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and future prospects of Goldman, Avenue, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>12</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating banking proposals.<sup>13</sup>

The Board has considered carefully all the facts of record, including the reports of examination of the CRA performance records of Goldman’s subsidiary insured depository institution and Avenue Bank, data reported by Goldman and Avenue Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>14</sup> as well as other information provided by Goldman, confidential supervisory information, and public comment received on the proposal. A commenter expressed concern about Goldman’s involvement in subprime lending, including the activities of Litton Loan

---

investigations by several state authorities regarding Goldman’s participation in municipal bond markets.

<sup>12</sup> 12 U.S.C. §§ 2901-2908; 12 U.S.C. § 1842(c)(2).

<sup>13</sup> 12 U.S.C. § 2903.

<sup>14</sup> 12 U.S.C. §§ 2801-2810.

Servicing L.P. (“Litton”), a loan servicing subsidiary of GS Bank. The commenter also alleged, based on HMDA data, that Avenue Bank had engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance record of Goldman’s insured depository institution. An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.<sup>15</sup>

GS Bank was formed in November 2008 through the merger of Goldman’s existing Utah industrial bank into its New York limited-purpose trust company, with the surviving organization doing business as Goldman Sachs Bank USA. GS Bank has not been evaluated under the CRA by the Federal Reserve Bank of New York; however, its industrial bank predecessor with the same name received a CRA composite rating of “satisfactory” at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of June 16, 2008. Avenue Bank received an “outstanding” rating at its most recent CRA performance evaluation by the FDIC, as of June 29, 2010.

B. HMDA and Compliance with Fair Lending and Other Consumer Protection Laws

The Board has carefully considered the fair lending records and HMDA data of Goldman and Avenue in light of public comments received on the proposal. The commenter alleged, based on 2008 HMDA data, that Avenue Bank in the Nashville Metropolitan Statistical Area (“MSA”) made a disproportionately small number of prime-rate loans to African American borrowers seeking home mortgage refinancing loans. The Board’s analysis of the lending-related allegations included a review of

---

<sup>15</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

2008 and 2009 HMDA data reported by Avenue Bank, which originates prime residential mortgage loans, and of the bank's 2008 and 2009 HMDA lending data in its combined CRA assessment areas.<sup>16</sup>

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Avenue Bank is excluding or imposing higher costs on any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.<sup>17</sup> HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates should conduct mortgage lending operations that are free of abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports

---

<sup>16</sup> The bank's 2008 combined CRA assessment areas consisted of portions of the Davidson and Williamson Counties in the Nashville MSA, Chester County in the Jackson, Tennessee MSA, and Crockett County, a non-MSA Tennessee county.

<sup>17</sup> The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.



that provide on-site evaluations of compliance by Avenue's subsidiary insured depository institution with fair lending laws. The Board also has consulted with the FDIC, Avenue Bank's primary federal supervisor. In addition, the Board has considered information provided by Avenue about its compliance risk-management systems.

The record of this application, including confidential supervisory information, indicates that Avenue Bank has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. Avenue Bank's loan policies include a comprehensive fair lending policy that prohibits Avenue Bank and its employees from engaging in discriminatory lending practices. The bank's lending employees are required to participate in training that includes compliance with fair lending laws and other applicable laws and regulations for accepting, underwriting, and processing consumer credit applications. Avenue Bank's credit committee reviews monthly a summary of every consumer loan application for adherence to fair lending requirements. Additionally, Avenue Bank hires an independent party to perform fair lending compliance reviews.

The commenter also expressed concern about the subprime lending practices of Goldman and Litton.<sup>18</sup> Litton services subprime loans originated by third parties but does not originate or purchase any residential mortgage loans. It also has no role in the lending practices of the residential mortgage originators.<sup>19</sup> Goldman has represented that Litton conducts quality control testing to ensure compliance with its internal policies and procedures, as well as the applicable consumer protection laws and

---

<sup>18</sup> The commenter also expressed concern about Goldman's involvement in residential mortgage securitization. Goldman has represented that it does not currently make warehouse loans to originators of nontraditional mortgages, originate nontraditional mortgages, or purchase them from originators for purposes of securitization. Goldman also represented that it does not refer customers to any subprime mortgage lender.

<sup>19</sup> The commenter expressed concern about subprime loans originated by Fremont Investment and Loan ("Fremont") that the commenter has alleged were acquired by Litton. Fremont was a subprime lender whose parent, Fremont General, filed for bankruptcy in 2008. Litton acquired the servicing rights for loans originated by Fremont but did not acquire ownership of the loans and was not involved in originating them.

regulations, and reports the results to Goldman monthly. In addition, Goldman's internal audit function monitors compliance by Litton and other subsidiaries with applicable consumer protection laws.

The Federal Reserve is conducting an in-depth review of practices at Litton and other large mortgage servicers, including a review of internal controls and processes related to all aspects of servicer operations. The Federal Reserve has supervisory authority over bank holding companies and their nonbank subsidiaries and may take supervisory or other actions in connection with those reviews, as the Board determines to be appropriate. In addition, as part of its supervisory process, the Board will continue to monitor the operations of Litton as well as other Goldman subsidiaries to ensure that their processes and procedures comply with applicable consumer protection laws and regulations.

#### C. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including evaluations of the CRA performance records of GS Bank and Avenue Bank, information provided by Goldman and Avenue Bank, comments received on the proposal, and confidential supervisory information. Based on a review of the entire record, including the noncontrolling nature of the investment, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval.

#### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Goldman with the conditions imposed in this order and the commitments made to the Board in connection with the

application.<sup>20</sup> For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors,<sup>21</sup> effective March 11, 2011.

*(signed)*

---

Robert deV. Frierson  
Deputy Secretary of the Board

---

<sup>20</sup> The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from those authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify material factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e), 262.25(d). The Board has considered carefully the commenter's request in light of all the facts of record. As noted, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

<sup>21</sup> Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, and Raskin. Absent and not voting: Governor Warsh.

## Appendix

### Passivity Commitments

The Goldman Sachs Group, Inc. (“Goldman Sachs”), New York, New York, and its subsidiaries and affiliates (collectively, the “Goldman Sachs Group”), will not, without the prior approval of the Board or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Avenue Financial Holdings Inc. (“Avenue Financial”), Nashville, Tennessee, or any of its subsidiaries;
2. Have or seek to have more than one representative of the Goldman Sachs Group serve on the board of directors of Avenue Financial or any of its subsidiaries;
3. Permit any representative of the Goldman Sachs Group who serves on the board of directors of Avenue Financial or any of its subsidiaries to serve (i) as the chairman of the board of directors of Avenue Financial or any of its subsidiaries, (ii) as the chairman of any committee of the board of directors of Avenue Financial or any of its subsidiaries, (iii) as a member of any committee of the board of directors of Avenue Financial or any of its subsidiaries if the Goldman Sachs Group representative occupies more than 25 percent of the seats on the committee, or (iv) as a member of any committee of the board of directors of Avenue Financial or any of its subsidiaries with the authority to act on behalf of the full board of directors between formal meetings;
4. Have or seek to have any employee or representative of the Goldman Sachs Group serve as an officer, agent, or employee of Avenue Financial or any of its subsidiaries;
5. Take any action that would cause Avenue Financial or any of its subsidiaries to become a subsidiary of Goldman Sachs;
6. Own, control, or hold with power to vote securities that (when aggregated with securities that the officers and directors of the Goldman Sachs Group own, control, or hold with power to vote) represent 25 percent or more of any class of voting securities of Avenue Financial or any of its subsidiaries;
7. Own or control equity interests that would result in the combined voting and nonvoting equity interests of the Goldman Sachs Group and its officers and directors to equal or exceed 25 percent of the total equity capital of Avenue Financial or any of its subsidiaries, except that, if the Goldman Sachs Group and its officers and directors

own, hold, or have the power to vote less than 15 percent of the outstanding shares of any class of voting securities of Avenue Financial, the Goldman Sachs Group and its officers and directors may own or control equity interests greater than 25 percent, but in no case more than 33.3 percent, of the total equity capital of Avenue Financial or any of its subsidiaries;

8. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Avenue Financial or any of its subsidiaries;

9. Enter into any agreement with Avenue Financial or any of its subsidiaries that substantially limits the discretion of Avenue Financial's management over major policies and decisions, including, but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;

10. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Avenue Financial or any of its subsidiaries;

11. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of Avenue Financial or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Avenue Financial or any of its subsidiaries; or

12. Enter into any other banking or nonbanking transactions with Avenue Financial or any of its subsidiaries, except that the Goldman Sachs Group may establish and maintain deposit accounts with Avenue Financial, provided that the aggregate balance of all such deposit accounts does not exceed \$500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Avenue Financial.

The terms used in these commitments have the same meanings as set forth in the Bank Holding Company Act of 1956 ("BHC Act"), as amended, and the Board's Regulation Y.

Goldman Sachs understands that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions in Goldman Sachs's application to retain 9.8 percent of the outstanding common stock of Avenue Financial, pursuant to section 3(a)(3) of the BHC Act, and, as such, may be enforced in proceedings under applicable law. Goldman Sachs further understands that it generally must file an application and receive prior approval of the Board, pursuant to section 3(a)(3) of the

BHC Act, for any subsequent acquisition of control of voting shares of Avenue Financial that would result in Goldman Sachs, directly or indirectly, owning or controlling additional voting shares in excess of 9.8 percent of the outstanding common shares of Avenue Financial.