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BY FAX AND OVERNIGHT MAIL

June 23, 2006

Sen. Charles Grassley  
Chairman  
Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Sen. Max Baucus  
Ranking Member  
Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Re: Submission for the Record; Confirmation hearing for Treasury Secretary nominee Henry M. Paulson, Jr.

Dear Sens. Grassley and Baucus,

We are submitting the attached document to be part of the record of the confirmation hearing for Treasury Secretary nominee Henry M. Paulson, Jr.

The document is a complaint we filed with the U.S. Securities and Exchange Commission on June 5, 2006 that involves Mr. Paulson.

We hope the Committee will carefully consider the issues raised in the complaint.

Please contact us for further information.

Sincerely,

Thomas J. Borelli, PhD  
Steven J. Milloy, MHS, JD, LLM  
Managing Partners

Attachment

afm

BY FAX AND OVERNIGHT MAIL

June 5, 2006

Ms. Linda Chatman Thomsen  
Director  
Division of Enforcement  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Request for investigation into potentially false and misleading statements by the Goldman Sachs Group, its officers and directors

Dear Director Thomsen,

We are writing on behalf of the Free Enterprise Action Fund ("FEAF" or the "Fund"), a shareholder in the Goldman Sachs Group ("Goldman"), to request an investigation by the Division of Enforcement into potentially false and misleading statements of material facts made by Goldman and its senior management relating to Goldman's acquisition and disposition of certain real property located in Tierra del Fuego, Chile.

Action Fund Management, LLC ("AFM") is a registered investment adviser and the investment adviser to the FEAF.

**I. Summary**

Since at least December 2003, Goldman and its officers, directors and employees may have knowingly made false and misleading statements concerning Goldman's acquisition and disposition of certain real property located in Tierra del Fuego, Chile ("Chilean Land").

Goldman CEO Henry M. Paulson, Jr. ("Paulson") oversaw the expenditure of Goldman shareholder assets to acquire the Chilean Land in order to create a nature preserve rather than exercise its fiduciary duty to increase shareholder value in the conduct of Goldman's customary business. Goldman's acquisition of the Chilean Land involved The Nature Conservancy ("TNC"), an organization for which Paulson has served in leadership positions since at least 1994 and for which he currently serves as chairman. Shortly after announcing the disposition of the Chilean Land, Paulson was elevated from vice chairman to chairman of the TNC. Goldman donated the Chilean Land to the Wildlife Conservation Society ("WCS"), a group with direct ties to TNC and for which Paulson's son acts as an advisor/trustee.

The potentially false and misleading statements by Goldman and its officers and directors include statements made: (1) by Goldman's board of directors at its 2006 annual general meeting on March 31, 2006; and (2) by Goldman's officers, directors and employees in communications with the public and the media since December 2003.

The presumed purposes of the potentially false and misleading statements may include concealment from Goldman shareholders and the public of: (1) the actual motivation underlying Goldman's acquisition of the Chilean Land; (2) Paulson's personal ties to the two environmental groups involved in the Chilean Land transactions; (3) the full extent of TNC's, WCS' and Paulson's involvement in the Chilean Land transactions; (4) the personal benefits gained by Paulson from the Chilean Land transactions; (5) the possibility that Goldman may have significantly undervalued the Chilean Land in order to minimize

apparent impact upon Goldman shareholders and potential external scrutiny of the transactions; (6) the possible exaggeration of the alleged environmental benefits resulting from the Chilean Land transactions, especially in light of the fact that Goldman's actions actually helped bring to a halt one of the most potentially significant sustainable forestry projects ever proposed.

The potentially false and misleading statements may also have been intended to enhance the public images of Goldman and its officers and directors, and to deflect attention from the possibility that the Chilean Land transactions may have been in violation of Goldman's own Code of Business Ethics and Conduct.

The potentially false and misleading statements made by Goldman and its officers and directors may be material to, and in violation of, the Securities Exchange Act of 1934 and the regulations thereunder.

## **II. Background**

In 1993, Bellingham, Washington-based Trillium Corporation ("Trillium") purchased a 630,000-acre tract of forest land located on the Chilean side of Tierra del Fuego (the "Chilean Land") from Cetec-Sel, a Vancouver-based logging company that had previously planned to aggressively harvest the timber and produce woodchips for the export market.

As early as 1994, Trillium possessed Chilean government permits that would have allowed the company to harvest the land using traditional forestry practices. Trillium instead opted to design a "sustainable" forestry plan (the "Rio Condor Project") regarded by many experts as highly innovative, pro-environment, and unprecedented in terms of scale and promise. Trillium voluntarily sought the input of local environmental groups for the Rio Condor Project which involved sustainable re-growth practices and technologies as well as conservation strategies which had been lauded by an independent team of scientists. In its final form, the Rio Condor Project would have set aside 70 percent of the Chilean land for conservation under the guidance of independent monitors.

Despite the strongly conservation-oriented, and sustainable-forestry nature of the Rio Condor Project, it was opposed by environmental activist groups which, ironically, had for decades been clamoring for such sustainable development projects. During the ensuing legal battle, Trillium made refinements to the Rio Condor Project in an effort to satisfy the objections raised by the environmental activists. Trillium, however, could not placate the activists, whose efforts to block the Project resulted in a 9-year delay that placed financial stress on the Rio Condor Project and, ultimately, made Trillium's property vulnerable to takeover.

Opponents were so determined to prevent Trillium from implementing the Rio Condo Project that, as their legal options were exhausted, they formed a coalition of over 200 North and South American environmental groups that launched an "adopt-a-forest" campaign to raise money to buy the land from Trillium. Around the time this campaign began, a key Trillium lender, called Capital Consultants collapsed.

When a Capital Consultants' portfolio of distressed debt – including a \$30 million note from Trillium secured by the Chilean Land – became available by auction in January 2002, MTGLQ Investors ("MTGLQ"), a Goldman Sachs affiliate, placed the winning bid on the debt portfolio. MTGLQ's bid was roughly one-third the face value of the portfolio of loans (i.e. \$0.33 cents on the dollar.)

In November 2002, Goldman sued Trillium to collect on the \$30 million note. On or about December 5, 2002, in settlement of the lawsuit, Goldman accepted title to the Chilean Land from Trillium.

In December 2003, Goldman publicly announced that it would donate the Chilean Land for the purpose of creating a nature preserve and that Goldman would commence an exhaustive search for the right non-governmental organization ("NGO") beneficiary to receive and manage the Chilean land.

One month later, in January 2004, Goldman CEO Paulson was elevated to the position of chairman of TNC, an environmental group that is in the business of acquiring private lands and rendering them

permanently off-limits to commercial and residential development. Prior to his elevation to the post of chairman, Paulson served as TNC's vice chairman and in other leadership roles since at least 1994.

In September 2004, Goldman officially donated the land to the WCS, a group for which Paulson's son acts as an advisor/trustee and that TNC describes on its web site as an "organizational partner."

In January 2006, concerned that the roles of Paulson and other Goldman officers and directors in the acquisition and disposition of the Chilean land may have violated Goldman's Code of Business Conduct and Ethics, the FEAF requested that Goldman's board of directors review the transaction. Goldman did not respond to the FEAF's January 2006 request

Subsequent to the FEAF request, a shareowner proposal (the "Proposal") was filed by the National Legal and Policy Center (the "NLPC") requesting that Goldman's board review the Chilean land deal under applicable Goldman corporate governance standards.

Immediately following the presentation of the Proposal by the NLPC at Goldman's annual general meeting of shareowners on March 31, 2006, Goldman board member John H. Bryan ("Bryan") read Goldman's prepared response to the Proposal. Mr. Bryan's statement – made in the immediate presence of Paulson – expressly denied that TNC had any role in the Chilean Land transactions.

Immediately following Bryan's statement, Steven J. Milloy of AFM ("Milloy") commented to the meeting that Bryan's statement was contradicted by TNC's tax records which indicate that Goldman paid TNC more than \$144,000 in consulting fees related to the Chilean land transactions. Neither Bryan, Paulson or any other Goldman board member responded to Milloy's comment.

### **III. Key Facts Underlying the Request for an Investigation**

#### **1. Goldman's Denial of Involvement of the Nature Conservancy**

##### **a. Statement at 2006 Annual Shareholder Meeting**

Goldman board member Bryan, speaking on behalf of the entire board, expressly denied any involvement of TNC in Goldman's acquisition and disposition of the Chilean Lands.

This statement is directly contradicted by a disclosure on TNC's 2004 tax return that states,

Mr. Henry J. Paulson, Jr., is the Chairman and Chief Executive Officer of Goldman Sachs & Company.

Working through the Goldman Sachs Charitable Fund as the owner of HWY, LLC, a Delaware limited liability company, Goldman Sachs acquired certain properties in Chile and Argentina. HWY, LLC, as the new owner, then contracted with The Nature Conservancy for conservation-related consulting services and advice on the land management, oversight and ecological monitoring of these properties, in order to assist in the preservation, protection and maintenance of their natural features and ecological values. During the fiscal year ended June 30, 2004, TNC performed and was paid for the consulting services \$144,895 over an eleven-month period, based on the approximate market value of such services. Mr. Paulson is not a director or an officer of either Goldman Sachs Charitable Fund or of HWY, LLC, and he did not participate in this transaction.

The plain language of this disclosure indicates that Goldman worked with TNC on the land deal through organizations that are affiliated with Goldman (i.e., Goldman Sachs Charitable Fund and HWY, LLC).

##### **b. The Possibility of TNC's Broader Role in the Chilean Land Deal**

The fate of the Rio Condor Project is strikingly similar to another environmentalist-opposed and subsequently failed forestry project in Chile, where TNC acquired lands owned by Bosque S.A. through the bankruptcy process after closely monitoring the Project's deteriorating financial position resulting, in part, from activist opposition.

Paulson has been in a leadership role at TNC since at least 1994. Documents and records from Paulson, TNC and Goldman may reveal that the TNC played a greater and earlier role than the consulting work reported on its 2004 tax returns. If TNC played such a role with respect to the Rio Condor Project, this may also be relevant to the board's statement made at Goldman's 2006 annual general meeting.

An entire chapter of William Ginn's book, *Investing in Nature*, details two case histories involving two different tracts of Chilean forest land owned by two different timber companies – Bosque S.A. and Trillium. Although Ginn's does not focus on how environmentalists intentionally created the financial distress for both companies that subsequently made their assets vulnerable to takeover, he does elaborate on how closely TNC monitored the financial status of such projects.

According to Ginn, TNC had a "point person" in Chile whose close monitoring of the financing of the Bosque S.A. forestry project in 2003 led to TNC springing into action via strategic intervention using its ties with Bosque S.A. creditor, FleetBoston, and various environmental groups to acquire the company's land.

Not only had Trillium's financial troubles due to delays caused by environmental activists been reported in the news as early as April of 2001, but according to a September 1996 Inter Press Service article, Trillium CEO David Syre had already approached TNC seeking its approval of the Rio Condor Project – but TNC rebuffed him. Paulson was both employed by Goldman and in a leadership position with TNC at this time.

TNC's interest in financial troubles of companies holding Chilean lands and the organization's direct contacts with Trillium could possibly explain how Paulson became "aware that a private equity firm had amassed a large parcel on Tierra del Fuego that included a rare hardwood forest slated for logging" as he admitted in the 2005 *Pensions & Investments* article [see *infra*].

## **2. Goldman's Public Statements About The Chilean Land Deal**

Various accounts of the events leading up to Goldman Sachs' takeover of the Chilean Land feature statements by Goldman executives portraying their acquisition of the land as an *unintended* outcome and their decision to donate the tract as stemming, more or less, from Goldman's alleged realization that the land had little commercial potential but tremendous ecological potential if used solely as a nature preserve.

A December 12, 2003 media release from Goldman states,

Goldman Sachs did not originally intend to acquire this land. But having acquired the notes secured by the properties, it explored a number of options to monetize both the notes and the properties secured by the notes including the sale of the land. But on further analysis, given the unspoiled nature of the tract of land, the Firm determined that this was a unique opportunity to permit the ecologically important features of the land to be conserved for the future, reflecting the viewpoint of the Firm's senior management.

A December 13, 2003 report in *La Tercera* quotes Goldman spokesman Peter Rose re-emphasizing the above themes:

In November of 2002, Trillium's arrears forced the bank to foreclose, receiving the land instead of money. 'December 5th of last year the title was transferred to our name', said Rose. He admits that they looked for buyers all over the world to take it off their hands. 'We work with money, not trees and animals' he said....'So we decided to donate it. Not to the Chilean state, this was never a theme. Besides this lets us deduct the land's value from taxes.'

Moreover, Goldman's 2004 annual report refers to the decision to create the nature preserve as:

...the result of a creative approach to what initially appeared to be a routine transaction...

In direct contrast to the above statements, Paulson later admitted in a video posted on Goldman's own website, entitled, "Partners in Conservation," that Goldman knew precisely what it was going after prior to the actual bidding on the distressed debt. Paulson admits that Goldman executives were already clear on their intent to seize the land and to have the acreage turned into a nature preserve. In the taped interview for the video, Paulson recounts the how Goldman specifically pursued the Chilean Lands all along:

We have a unit in the mortgage finance department that seeks to buy distressed debt to turn a profit for Goldman Sachs. They had been examining bidding on a pool of eight or nine secured notes which were delinquent and they had come across the fact that one of these notes was secured by 800,000 acres in Tierra del Fuego which was really a very unique tract of land. If we were successful in winning this pool of mortgages, we could work to turn this 800,000 acres into a nature preserve."

Not only did management know precisely what it was after before the actual bidding took place, they apparently pursued it with determination. According to a report in *The Oregonian* (January 25, 2002), eight companies sent representatives to Capital Consultants' Portland offices to conduct due diligence on the portfolio prior to the auction but only four companies later engaged in the final bidding process. Bidding began at \$46.6 million and increased in \$500,000 increments. Over the course of 90 minutes, "after repeated breaks while bidders plotted strategy and conferred with their home offices, MTGLQ (a division of Goldman) entered the winning \$60 million bid."

But acquiring Trillium's note secured by the Chilean Land was only the first step. Goldman needed to ensure that it obtained the Chilean Land in settlement for the debt. A December 22, 2003, article in *The Oregonian* described the next steps:

Unlike [Capital Consultants], Goldman wasted no time taking collection actions [against Trillium]. In November 2002, lawyers at the Ball Janik law firm in Portland filed a complaint on behalf of a Goldman affiliate in U.S. District Court in Portland seeking the \$30 million from Trillium, [Trillium CEO David] Syre and a host of Trillium subsidiaries. Trillium initially fought back, claiming it was not bound by the terms of the Capital Consultants loan because [Capital Consultants' CEO] had breached the deal by not advancing additional millions to Trillium.

This fall, Trillium agreed to settle. On Dec. 5, the company agreed to transfer ownership of more than 850,000 acres in Chile and Argentina to Goldman in exchange for cancellation of the debt. Goldman considered a number of alternatives for the land, including leasing it to another timber company or selling it off.

In a December 2005 article in *Pensions & Investments* profiling CEO Paulson and his wife on a birding trip to the donated Tierra del Fuego lands, Paulson admitted to having had his eye on the status of Rio Condor's financing *before* the auction was even announced but continues to maintain the acquisition was, more or less, happenstance:

[Paulson] said that he was aware that a private equity firm had amassed a large parcel on Tierra del Fuego that included a rare hardwood forest slated for logging. Goldman Sachs distressed debt team came to him in 2002 with a loan portfolio that just happened to contain a loan that was secured by 680,000 acres of this very forest. "I kissed them on both cheeks!" he exclaimed. Goldman purchased the land in 2003 to donate it for conservation and preservation.

Presumably, if Goldman truly believed that the tract had little commercial value then Goldman should have, after performing due diligence on the portfolio, at least considered a less aggressive bidding strategy or, at settlement phase, focused on acquiring a more desirable form of reimbursement from "Trillium, [Trillium CEO] David Syre and a host of Trillium subsidiaries" as named in their lawsuit.

But as Paulson's own words make clear, his strategy all along was to acquire these very lands in order to create a nature preserve. In light of that intention, the question arises as to whether Goldman's claim that the land was of little commercial value was true or whether the claim may have simply been used as a rationale to justify giving away a newly acquired \$30 million shareholder asset in exchange for a mere tax deduction.

It should be noted that, in contrast to Goldman's claimed \$35 million valuation of the Chilean land that is listed on tax forms, the Chilean Office of Environmental Affairs (CONAMA) had valued the same land at \$100 million, according to the December 2003 article in *La Tercera*. When the reporter asked Goldman spokesperson Peter Rose to clarify the land's valuation, Rose simply claimed not to know for sure.

Goldman's recouping the value of the Chilean Land – worth at least \$35 million and likely much more – only as a tax deduction appears to have significantly shortchanged Goldman's shareholders. Goldman could have continued with Trillium's Rio Condor Project which had already been given the go ahead by Chilean authorities. By doing so, Goldman could have made a strong conservation statement *and* possibly delivered a significant profit to the company and its shareholders. The Chilean Land also has other natural resources in addition to timber that could have added to its valuation further.

Both news accounts at the time of the land acquisition and materials currently posted on Goldman's web site materials touting the land donation claim that Goldman intended to conduct an exhaustive search for the right organizational partner to help convert the Chilean Lands into a nature preserve.

Goldman selected the WCS to be the beneficiary. The Goldman website video narration states:

We discovered a lot of affinities between WCS and Goldman Sachs – a respect for technical excellence and innovation and a high degree of proactivity.

But one material "affinity" omitted from the video is that Henry Merritt Paulson, III, Paulson's son, is a member of WCS' Board of Advisors and a WCS trustee.

Contrary to the assertion of Goldman's board at the 2006 annual general meeting, TNC was involved in the Chilean Land transaction at least to the extent of receiving a \$144,000 consulting fee in 2003-2004, may also have had an earlier but so far undisclosed role in the transaction.

Paulson has a long history of association with TNC. His wife, Wendy, is a former board member. Paulson first became involved in a leadership role with the TNC during the 1990s. At the time of the Chilean Land acquisition, he served as a vice chair of TNC's board, but one month after Goldman's announcement that the Chilean Land would be given away to create a nature preserve, Paulson was elevated to chairman of the TNC.

Links between TNC and WCS are also extensive. WCS is listed as serving in at least two different capacities described as "Multilateral-Bilateral Partnerships" with TNC.

The WCS web site description of its partnership with Goldman highlights their joint intention to pursue "sustainable" solutions, including ecotourism, as key features of the nature preserve. On Goldman's web site, there are numerous references to the Chilean Lands as "unspoiled" and a quote from WCS President and CEO, Steven Sanderson, describing the significance of the land as follows:

This could be one of the great conservation gifts of our lifetime. It will stand with the establishment of the great protected areas of the world. This will be a tremendous legacy for the people of our generation to offer to the next.

These various statements provide the public with the distinct impression that the Chilean Lands are pristine and bear no mark of human impact and, as such, would provide a powerful lure for a sustainable ecotourism venture.

Yet a research study published in 2005 by a joint Colgate University/California State University team comes to different conclusions about the land's ecological status, its suitability as an ecotourism destination, and the sobering possibility that a realization of Trillium's Rio Condor Project may have actually proved to be a greater conservation gift.

The Colgate/CSU study – which noted that the original environmental opposition groups had perpetuated “mischaracterizations” as a “tactical strategy to kill support for [Trillium's sustainable forestry] project” – concluded that the ultimate fate of the land, as determined by Goldman's gift to WCS for the purpose of creating a nature preserve, was likely a less desirable outcome compared to Trillium's Rio Condor Project because it deprived the world of a pioneering and desperately needed example of large-scale sustainable development and because the Rio Condor project was already on track to preserve 70 percent of the acreage in question while also providing considerable benefits to depressed economy of the surrounding area.

The Colgate/CSU research team also notes that the Goldman/WCS nature preserve scenario was at least partially based on a faulty, if not false, rationale – long touted by opponents of the Rio Condor Project – that ecotourism was a suitable sustainable development option for the land and for the surrounding communities.

The researchers describe the landscape as “beautiful but not of national-park caliber,” as “too remote, too cold, and above all, too ordinary,” and as having “low species richness” and a lack of “world-class vistas” necessary to sustain an ecotourism venture benefiting Chile and its people. They also note that Chilean side of Tierra del Fuego lacks the economic diversity that has brought tourism to the Argentinean side. The researchers point out that claims about ecotourism as a sustainable development option are often used by environmental groups (who, in many instances, are also vying for control of targeted lands) but that very few such projects – even ones far better suited to ecotourism ventures than the former Rio Condor tract – manage to live up to the activists' inflated projections.

They also note that one half of Chile's southernmost Region XII, where the Rio Condor land is located, is already under protection; that the Patagonia steppe is a far more urgent conservation priority than the “lenga” forests which characterize the Rio Condor tract; and that the Rio Condor tract is far from “pristine” due to logging and burning that has gone on for decades, severe alteration of grasslands, road-building, mining of peat bogs for fertilizer, and extensive damage by pest species like beaver which were introduced by humans in the first half of the 20<sup>th</sup>-century and had colonized 100 percent of the tract by the 1970s.

Finally and contrary to Goldman's earlier statements, Goldman did not donate the Chilean Land directly to the WCS. Goldman, in fact, funneled the Chilean Land through the Goldman Sachs Charitable Fund (the “Charitable Fund”) in 2004.

Separate from the much larger and far more visible Goldman Sachs Foundation, the Charitable Fund is an inconspicuous arm of the company – apparently set up for the purpose of awarding modest academic scholarships (ranging from \$2,500 to \$7,500.) From 2001 to 2004, the only years for which tax documents were available, the Fund handed out several dozen small awards to students. The Fund's total annual disbursements were in the low six-figure range each year from 2001 to 2003. In 2004, however, the Charitable Fund's disbursements increased to \$35,725,250, representing the flow through of the Chilean Land to the WCS.

It is not known why Goldman Sachs chose this particular route for the transfer of the asset and since Goldman has not responded to inquiries regarding the Chilean Land transactions, but sections of Goldman Sachs own ethics code (*see* below) may provide clues.

Additionally, the TNC's 2004 tax form contains fairly conspicuous language attempting to distance Paulson from TNC involvement in the Chilean Land deal:

Mr. Henry J. Paulson, Jr., is the Chairman and Chief Executive Officer of Goldman Sachs & Company.

Working through the Goldman Sachs Charitable Fund as the owner of HWY, LLC, a Delaware limited liability company, Goldman Sachs acquired certain properties in Chile and Argentina. HWY, LLC, as the new owner, then contracted with The Nature Conservancy for conservation-related consulting services and advice on the land management, oversight and ecological monitoring of these properties, in order to assist in the preservation, protection and maintenance of their natural features and ecological values. During the fiscal year ended June 30, 2004, TNC performed and was paid for the consulting services \$144,895 over an eleven-month period, based on the approximate market value of such services. Mr. Paulson is not a director or an officer of either Goldman Sachs Charitable Fund or of HWY, LLC, and he did not participate in this transaction.

Paulson is, however, chairman of Goldman, Goldman is sole contributor to the Charitable Fund, and all four officers and directors of the Charitable Fund are employees of Goldman, according to the Charitable Fund's 2004 tax return, and subordinate to Paulson.

### **3. Goldman Corporate Governance Statements**

Goldman has a Code of Business Ethics and Conduct (the "Code") that is published on its web site. The Code has at least four provisions that would appear to require independent review with respect to this unusual transaction:

1. The Code states,

It is the firm's policy that the information in its public communications, including SEC filings, be full, fair, accurate, timely and understandable.

The company appears to have violated the above tenet with their December 12, 2003 press release by stating,

Goldman Sachs did not originally intend to acquire this land. But having acquired the notes secured by the properties, it explored a number of options to monetize both the notes and the properties secured by the notes including the sale of the land. But on further analysis, given the unspoiled nature of the tract of land, the Firm determined that this was a unique opportunity to permit the ecologically important features of the land to be conserved for the future, reflecting the viewpoint of the Firm's senior management.

The facts and circumstances appear to indicate that Goldman intended to acquire the Chilean Land all along in order to convert it into a nature preserve.

2. The Code states,

A "personal conflict of interest" occurs when an individual's private interest improperly interferes with the interests of the firm.

Hank Paulson's personal interest in conservation, his personal ties to both of the environmental organizations benefiting from this transaction, and his promotion to chair of TNC's board immediately following the announcement of the land gift would seem to call into question whether his actions might constitute a "personal conflict of interest."

3. The Code states,

All firm assets should be used for legitimate business purposes only.

Giving away an asset does not seem to fulfill the traditional definition of "legitimate business purpose."

4. The Code states,

Waivers (of the code of business conduct and ethics) for executive officers (including Senior Financial Officers) or directors of the firm may be made only by the Board of Directors or a committee of the Board.

Goldman Sachs has not responded to inquiries or provided documentation as to whether the board or one of its committee's waived any or all of these potential violations of the Code.

It may be considered false and misleading for Goldman to publicly maintain that it operates by the Code when, in fact, it does not appear to have done so in the case of the Chilean Land transactions.

#### **IV. Request for Investigation by the Division of Enforcement**

It appears that Goldman's publicly touted version of Chilean Land transaction may be false and misleading in material ways. The Chilean Land deal has been, and continues to be, a significant part of Goldman's effort to market itself to the public. Goldman's actions, therefore, may be in violation of various provisions of the Securities and Exchange Act of 1934. Accordingly, we hereby request that the Division investigate the facts and circumstances surrounding the Chilean Land deal as soon as possible.

We have, or can readily obtain the documents and records used as the basis of this request. Please feel free to contact me at 301-258-2852 to if you need any assistance with this materials or this request.

Sincerely,

Steven J. Milloy  
Thomas J. Borelli  
Portfolio Managers, Free Enterprise Action Fund