

Financial Markets Conduct (Goldman Sachs) Exemption Notice 2019

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of the Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Goldman Sachs) Exemption Notice 2019.

2 Commencement

This notice comes into force on 25 April 2019.

3 Revocation

This notice is revoked on the close of 24 April 2024.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

client derivative means a derivative entered into by a client-serving GS entity and an investor

client-serving GS entity means a GS entity that is a derivatives issuer that enters into a derivative with an investor in a client-serving capacity

exempt entity means a GS entity and any related body corporate of a GS entity

Goldman Sachs Group means GSGI and its subsidiaries

GS entity means GSGI and any subsidiary of GSGI

GSGI means The Goldman Sachs Group, Inc, a corporation organised and existing under the laws in the State of Delaware

internal derivative means a derivative entered into by a GS entity with another GS entity for the purpose of hedging a client-serving GS entity's obligations under one or more client derivatives

investor means an investor that enters into a client derivative with a client-serving GS entity

Regulations means the Financial Markets Conduct Regulations 2014.

- (2) A client-serving GS entity acts in a **client-serving capacity** when it deals in derivatives by fulfilling orders received from an investor or responding to an investor's request to trade (rather than dealing on its own behalf).
- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

An exempt entity is exempted from sections 276 to 279 of the Act in respect of a relevant interest in a financial product that the exempt entity has as a result of the application of section 275 of the Act to an internal derivative.

6 Conditions of exemption

The exemption in clause 5 is subject to the conditions that –

- (a) the investor is not an associated person of a GS entity; and
- (b) each client derivative being hedged by the internal derivative is entered into in the ordinary course of the client-serving GS entity's derivatives issuing business; and
- (c) the internal derivative was entered into as part of the Goldman Sachs Group's internal risk management strategy for the purpose of hedging a client-serving GS entity's obligations under one or more client derivatives; and
- (d) the exempt entity's reliance on the exemption in clause 5 would not have the effect of circumventing, evading or defeating any of the purposes specified in section 273 of the Act.

Dated at Wellington this 24th day of April 2019.



Liam Mason
Director of Regulation
Financial Markets Authority

Statement of reasons

This notice comes into force on 25 April 2019, and is revoked on the close of 24 April 2024. This notice exempts exempt entities (being The Goldman Sachs Group, Inc and its subsidiaries (each being a **GS entity** and together the **Goldman Sachs Group**) and any related body corporate of a GS Entity) from sections 276 to 279 of the Financial Markets Conduct Act 2013 (**Act**). The exemption is granted in respect of a relevant interest in a financial product that an exempt entity has as a result of the application of section 275 of the Act to a derivative (**internal derivative**), entered into between GS entities for the purpose of hedging a GS entity's (**client-serving GS Entity**) obligations under one or

more derivatives entered into with an investor or investors (each an **investor**) in a client-serving capacity (**client derivative**).

The Financial Markets Authority (**FMA**), being satisfied of the matters set out in section 557 of that Act, considers it appropriate to grant the exemption in this notice because—

- the way in which the Goldman Sachs Group manages its internal risk for a client derivative for which the underlying is quoted voting products of a listed issuer (by entering into an internal derivative or series of interlinked internal derivatives for the purpose of hedging the client-serving GS entity's obligations under the relevant client derivative), is resulting in double-counting of relevant interests in those products when it comes to determining the Goldman Sachs Group's total relevant interest for the purpose of disclosing any substantial holdings:
- without the exemption, the Goldman Sachs Group may be required to disclose a substantial holding in quoted voting products that does not reflect its true holding and does not further the purposes of the substantial holding disclosure regime. Granting the exemption ensures that substantial holdings disclosed by the Goldman Sachs Group reflect the true positions held and does not mislead the market:
- the exemption is subject to conditions that the investor under the client derivative is not an associated person of a GS entity and an exempt entity's reliance on the exemption would not have the effect of circumventing, evading or defeating any of the purposes of the substantial holding disclosure regime specified in section 273 of the Act:
- the investor will be required to comply with the disclosure regime with respect to any substantial holding in quoted voting products that arises as a result of the application of section 275 of the Act to a client derivative and the Goldman Sachs Group will be required to comply with the disclosure regime with respect to any substantial holding that arises as a result of the physical purchase of those products in connection with the client derivative:
- as such, the FMA is satisfied that the granting of the exemption is desirable to promote the purposes of the Act, specifically, to provide for timely, accurate and understandable information to assist market participants in making decisions and avoid unnecessary compliance costs:
- the exemption is limited to circumstances where an exempt entity has a relevant interest in quoted voting products as a result of an internal derivative entered into as part of the Goldman Sachs Group's internal risk management strategy for the purpose of hedging a client-serving GS entity's obligations under one or more client derivatives. Compliance with the disclosure regime in these circumstances would not provide information that furthers the purposes of the substantial holding disclosure regime and may mislead the market. The FMA is therefore satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.