IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SERGEY ALEYNIKOV,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 10636-VCL
	)	
THE GOLDMAN SACHS GROUP, INC.,	)	
	)	
Defendant.	)	

POST-TRIAL ORDER AND FINAL JUDGMENT

WHEREAS:

A. Plaintiff Sergey Aleynikov held the title of Vice President in the Equities Division of Goldman, Sachs & Co. ("Goldman LP"), a limited partnership and subsidiary of its corporate parent, The Goldman Sachs Group, Inc. ("Goldman Parent"), a bank holding company.

B. Aleynikov was a computer programmer who was responsible for developing and maintaining computer source code for Goldman LP's high-frequency trading business. He did not have any managerial or supervisory responsibilities.

C. On September 25, 2012, Aleynikov filed a complaint in the United States District Court for the District of New Jersey (the "New Jersey Court"). He asserted that under the bylaws of Goldman Parent (the "Bylaws"), he was entitled to (i) indemnification for his successful defense of a criminal proceeding in federal court, (ii) advancements to defend a criminal proceeding in state court, and (iii) fees on fees.

D. In Section 6.4 of the Bylaws, Goldman Parent committed to provide advancements and indemnification "to the full extent permitted by law" to any "person

made or threatened to be made a party to an action, suit or proceeding . . . by reason of the fact that such person . . . is or was a director of officer of . . . a Subsidiary of the Corporation." Section 6.4 of the Bylaws further stated that "when used with respect to a Subsidiary or other enterprise that is not a corporation . . . , the term 'officer' shall include in addition to any officer of such entity, any person serving in a similar capacity or as the manager of such entity." This order refers to this aspect of the Bylaws as the "Officer Definition."

E. The New Jersey Court granted summary judgment in favor of Aleynikov. *Aleynikov v. The Goldman Sachs Gp., Inc.*, 2013 WL 5739137 (D.N.J. Oct. 16, 2013), *rev'd*, 765 F.3d 350 (3d Cir. 2014).

F. On appeal, the United States Court of Appeals for the Third Circuit (the "Court of Appeals") reversed and vacated the New Jersey Court's ruling. *See Aleynikov v. Goldman Sachs Gp., Inc.*, 765 F.3d 350 (3d Cir. 2014).

G. On February 10, 2015, Aleynikov filed this action. He seeks advancements to defend counterclaims brought against him by Goldman LP and Goldman Parent that remain pending before the New Jersey Court.

H. On April 28, 2016, this court held a one-day trial.

NOW, THEREFORE, IT IS ORDERED:

1. As the party seeking to enforce his advancement rights, Aleynikov had the burden to prove by a preponderance of the evidence that he was an officer within the meaning of the Officer Definition. *See Sassano v. CIBC World Mkts. Corp.*, 948 A.2d 453, 464 (Del. Ch. 2008). This court's analysis of the issues presented is constrained by

the Court of Appeals' decision and the doctrine of issue preclusion. Within that framework, Aleynikov failed to prove that he was an officer within the meaning of the Officer Definition.

2. Issue preclusion "prevents a party who litigated an issue in one forum from later relitigating that issue in another forum." *Carlyle Inv. Mgmt. L.L.C. v. Moonmouth Co. S.A.*, 2015 WL 5278913, at *7 (Del. Ch. Sept. 10, 2015). "The preclusive effect of a foreign judgment is measured by standards of the rendering forum." *Acierno v. New Castle Cty.*, 679 A.2d 455, 459 (Del. 1996) (quotation marks omitted). "For judgments in diversity cases, federal law incorporates the rules of preclusion applied by the State in which the rendering court sits." *Taylor v. Sturgell*, 553 U.S. 880, 891 n.4 (2008). The decision by the Court of Appeals addressed a ruling by the New Jersey Court, so New Jersey law governs the analysis of issue preclusion.

3. Under New Jersey law, issue preclusion has five elements:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

First Union Nat. Bank v. Penn Salem Marina, Inc., 921 A.2d 417, 424 (N.J. 2007).

4. Under the New Jersey standard, two rulings by the Court of Appeals have preclusive effect. The first is the ruling by the Court of Appeals that the Officer Definition is ambiguous. The Court of Appeals held as follows: "[T]he provision of the By–Laws defining 'officers' for the purposes of indemnification and advancement at

non-corporate subsidiaries as 'any officer of such entity, [and] any person serving in a similar capacity or as the manager of such entity' is ambiguous." 765 F.3d at 360-61. For purposes of the elements of issue preclusion, the only disputes are (i) whether this ruling was essential to the Court of Appeals' decision, and (ii) whether it was final for purposes of further proceedings.

a. A ruling is essential under New Jersey law for purposes of issue preclusion if it was "necessary to support the judgment rendered in the prior action." *In re Dawson*, 641 A.2d 1026, 1035 (N.J. 1994). The Court of Appeals' determination that the Officer Definition was ambiguous was necessary to its decision. But for that determination, the Court of Appeals would have construed and applied the plain meaning of the Bylaws.

b. A ruling is final under New Jersey law for purposes of issue preclusion when it is "sufficiently firm to be accorded conclusive effect." *Hills Dev. Co. v. Bernards Twp.*, 510 A.2d 621, 652 (N.J. 1986) (quotation marks omitted). A ruling will be considered "sufficiently firm" if "the parties were fully heard, . . . the court supported its decision with a reasoned opinion, [and] the decision was subject to appeal or was in fact reviewed on appeal." *Comm'r N.J. Dep't of Banking & Ins. v. Budge*, 2009 WL 2245764, at *7 (N.J. Super. Ct. App. Div. July 29, 2009) (quoting Restatement (Second) of Judgments § 13, cmt. g). The Court of Appeals' ruling was "sufficiently firm." The Court of Appeals gave the parties a full opportunity to advance their arguments about the plain meaning of the Officer Definition, and the Court of Appeals considered those arguments in a reasoned opinion. The resulting decision was not merely a trial court's

ruling that was either subject to appeal or had been reviewed on appeal. It was a decision by the Court of Appeals in the appeal itself. It was necessarily binding on remand and final for purposes of further proceedings in the case.

5. The second issue-preclusive ruling by the Court of Appeals is that the doctrine of *contra proferentem* cannot be used to resolve the ambiguity. The Court of Appeals held as follows:

> [W]e conclude that *contra proferentem* has no application in resolving whether a person has rights under the contract at all—here, whether Aleynikov is an officer of [Goldman LP]. Applying the doctrine of *contra proferentem* in this circumstance would put the cart before the horse. It would have us resolve ambiguities in favor of a non-drafting individual in order to determine whether that non-drafting individual was even subject to the agreement.
>
> We therefore decline to apply the doctrine of *contra proferentem* and hold that the District Court erred in doing so.

Id. at 367 (footnote omitted).

a. This ruling was final for the same reasons as the ruling on ambiguity. It was likewise essential because it was necessary to the Court of Appeals' decision to remand for further proceedings. But for the Court of Appeals' ruling on *contra proferentem*, the Court of Appeals would have applied that doctrine and affirmed the New Jersey Court.

b. Aleynikov contends that this court should decline to give preclusive effect to the *contra proferentem* ruling because it would be inequitable. Under New Jersey law, "even where [the issue preclusion] requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so." *Olivieri v. Y.M.F.*

Carpet, Inc., 897 A.2d 1003, 1009-11 (N.J. 2006). One situation where New Jersey law deems it to be inequitable to apply issue preclusion is when "[t]he issue is one of law and . . . a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws." *Id.* at 1009 (quoting Restatement (Second) of Judgments § 28(2)).

c. Aleynikov has cited three Delaware decisions that he contends show that the law on *contra proferentem* has changed. *See Stoms v. Federated Serv. Ins. Co.*, 125 A.3d 1102 (Del. 2015); *Lukk v. State Farm Mutual Ins. Co.*, 2014 WL 4247767 (Del. Super. Aug. 29, 2014); *Kale v. Wellcare Health Plans, Inc.*, C.A. No. 6393-VCS (Del. Ch. June 13, 2011) (ORDER). *Lukk* and *Kale* are trial court decisions that chronologically preceded the Court of Appeals' decision. In *Stoms*, the high court technically did not apply the doctrine of *contra proferentem*. More importantly, *Stoms* did not change the application of the doctrine. The implicit reference to *contra proferentem* that appears in that decision is consistent with how I understood the doctrine to have operated historically.

d. What Aleynikov really believes is that the Court of Appeals erred when applying Delaware law on *contra proferentem.* I am personally inclined to think that this case presents precisely the type of situation where the doctrine of *contra proferentem* should and does apply. My reasons include the following:

i. Goldman Parent drafted its Bylaws unilaterally. Goldman Parent therefore was in the best position to remove any ambiguity as to who qualified for advancements under its Bylaws, and Goldman Parent should be held responsible for the

reasonable expectations created by its Bylaws. *See Stockman v. Heartland Indus. P'rs, L.P.*, 2009 WL 2096213, at *5 (Del. Ch. July 14, 2009) (Strine, V.C.).

ii. An individual with the title "Vice President" could reasonably conclude that he was an "officer" who was entitled to advancement rights under the Bylaws. The Court of Appeals reached this conclusion implicitly by finding that the Officer Definition was ambiguous. *Aleynikov*, 765 F.3d at 353, 357, 367-68. The New Jersey Court openly regarded Aleynikov's reading as the better one. It observed that "[t]he usual and ordinary meaning of vice president, supplemented by [precedent,] ma[de] out a fair case that the By-Law here is unambiguous" such that the category of "officers" included someone with the title of "vice president." *Aleynikov*, 2013 WL 5739137, at *17.

iii. The Bylaws identify the set of "officers" for Goldman Parent as including "vice presidents." Bylaws § 4.1. Reading the provision on officers for non-corporate subsidiaries *in pari materia* with the remainder of Goldman Parent's Bylaws thus suggests that the set of "officers" for non-corporate subsidiaries would include "vice presidents."

iv. A set of "officers" that encompasses "vice presidents" is consistent with the widespread understanding of who typically comprise the officers of an entity. As a general matter, the set of "officers" of an entity or organization historically has encompassed, at a minimum, the following titles: President, Vice President, Secretary, Treasurer. The Delaware General Corporation Law expressly treats the concept of an entity's "officers" as including a "vice president" by identifying a "vice

president" as one of the officers who can execute a stock certificate. 8 *Del. C.* § 158 ("Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation, by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation . . . ").[1]

v. A set of "officers" that encompasses "vice presidents" is consistent with the practice at commercial and investment banks, which historically have included within their set of "officers" numerous "vice presidents" who, by virtue of their authority as officers, could sign documents that would bind the bank. *See Wells Fargo Bank v. Superior Court*, 53 Cal. 3d 1082, 1091 (1991) ("Like other corporate officers, bank officers are the vehicles through which the bank engages in transactions and performs legal acts; in this sense, the officers *are* the bank.").

vi. Evidence of this general understanding can be found at least as far back as the early twentieth century. As of 1929, for example, the Guardian Trust Company listed in its annual statement 61 "Officers," including 23 "Vice Presidents." *Stock Exchange Practices: Hearings Before the Committee on Banking and Currency,*

[1]On June 16, 2016, Governor Markell signed into law a bill amending several provisions of the Delaware General Corporate Law, including Section 158. *See* 80 Del. Laws ch. 265, § 6 (effective Aug. 1, 2016). The amendment to Section 158, which will become effective August 1, 2016, replaces the phrase "the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation" with the phrase "any two authorized officers of the corporation." *Id.* The amendment is consistent with a set of "officers" that includes individuals with the title of "vice president." The amendment expands the pool of possible signatories from the holders of the specified titles to a broader category of "authorized officers," implying that the former titles already fell within the broader category.

United States Senate, 72nd & 73rd Cong. 8419 (1934). The Guardian Detroit Union Group listed 23 "Officers," including 16 "Vice Presidents." *Id.* at 4220-22. Chase National Bank's list of "officers" included at least seven "vice presidents," two of whom had the title of "second vice president." S. Rep. No. 73-1455, at 187 (1934). A 1939 edition of Bankers' Monthly described the typical head of the loan function as having the officer title of Vice President and suggested that his assistants should hold the title of Assistant Vice President. *See* H.N. Stronck, *Internal Bank Management Controls*, Bankers Monthly, Feb. 1939, at 662. As of 1941, a standard banking text listed the "usual bank officers as a president, one or more vice-presidents, a cashier and, 'in large banks, a number of assistant cashiers, and perhaps a comptroller.'" *Wells Fargo*, 53 Cal. 3d at 1090. By the 1980s, "general banking practice favor[ed] large numbers of officers with the title of 'vice-president' who perform[ed] important banking functions under authority ultimately conferred by the bank's board of directors." *Id.* Investment banks used similar officer titles. *See, e.g.*, *United States v. Morgan*, 118 F. Supp. 621, 658-80 (S.D.N.Y. 1953).

vii. A set of "officers" that encompasses "vice presidents" is consistent with how the federal securities laws approach the concept of "officer." The core New Deal legislation that regulated the banking industry and the securities markets (the Banking Act of 1933, the Securities Act of 1933, and the Exchange Act of 1934) imposed disclosure requirements and other obligations on corporate "officers" generally. *See, e.g.*, Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74, Schedule A § 14(b) (requiring disclosure of remuneration paid to an issuer's "officers and other persons,

naming them wherever such remuneration exceeded $25,000 during any such year"); *id.* Schedule A § 25 (requiring disclosure of "any loan in excess of $20,000 to any officer"); Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881, § 16(a)-(b) (imposing disclosure requirements and short-swing profit restrictions on a "director or an officer"). In 1934, the Securities and Exchange Commission promulgated regulations that defined the term "officer" to mean "'a president, vice-president, treasurer, secretary, comptroller, and any other person who performs for an issuer, whether incorporated or unincorporated, functions corresponding to those performed by the foregoing officers.'" *Lockheed Aircraft Corp. v. Rathman*, 106 F. Supp. 810, 812 (S.D. Cal. 1952) (quoting Securities Exchange Commission Rule X-3B-2 (1934)). Under this definition, the set of "officers" included "vice presidents."

viii. The New Deal-era definitions proved too expansive for purposes of reporting short-swing profits, so in 1988, the SEC proposed to reduce the coverage of the short-swing provisions from "officers" to "executive officers." *Ownership Reports and Trading by Officers, Directors and Principal Stockholders*, 53 Fed. Reg. 49,997 (proposed Dec. 13, 1988). The SEC explained that "of particular concern is the inclusion of all vice presidents in the definition" of "officer," because "[m]any businesses give the title of vice president to employees who do not have significant managerial or policymaking duties and are not privy to inside information." *Id.* at 50,000. The SEC sought to narrow the coverage of the short-swing provisions from "officers" in general to those officers "exercising a policy-making function." *Id.* The SEC recognized that other officers were still officers; they were simply "[o]fficers without

policy-making responsibility" and hence "should not be subject to the reporting and automatic liability provisions of Section 16." *Id.*

ix. The new rules were approved and, accordingly, the SEC adopted a new definition of the term "officer" for purposes of Section 16 only, which continues to apply today. *See* 17 C.F.R. § 240.16a-1 ("Terms defined in this rule shall apply solely to section 16 of the Act and the rules thereunder."). Rule 16a-1(f) now provides that "[t]he term officer shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer." For all other purposes, the definition of officer continues to be that found in SEC Rule 3b-2: "The term *officer* means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated." *Id.* § 240.3b-2. A reasonable employee who sought to determine whether the set of "officers" included "vice presidents" and who looked to the federal securities regime would find that it did.

x. Goldman Parent and its subsidiaries created ambiguity about the scope of the officer designation by handing out the title "Vice President" freely to their employees. The evidence presented at trial established that Wall Street firms as a whole, and Goldman Parent in particular, have engaged in a practice of title inflation

whereby impressive sounding titles that historically would have carried real-world responsibilities have been disseminated widely. The evidence supports an inference that these titles have been used in lieu of other employment benefits, such as greater compensation. Goldman Parent and its subsidiaries easily could have clarified whether or not the title of "Vice President" was an officer title for purposes of advancement and indemnification. The doctrine of *contra proferentem* appropriately holds Goldman Parent to the promises it implicitly made "to parties who did not participate in negotiating" the Bylaws. *Stockman*, 2009 WL 2096213, at *5.

xi. A reasonable individual with the title "Vice President" would not think that the existence of a large number of Vice Presidents in an organization meant that he could not possess advancement rights. Delaware corporate law permits advancement rights to be extended to employees and agents. 8 *Del. C.* § 145(e). If an entity wishes to grant advancement rights to all of its employees, it can. If an entity wishes to extend advancement rights further to agents, it can. Whether an entity wishes to grant advancement rights broadly or narrowly is a decision for the entity. A reasonable individual would not infer that he could not have advancement rights simply because many of his peers would as well.

xii. A reasonable individual with the title "Vice President" would not think that he could not be an officer simply because his offer letter did not refer to the board of directors or a similar governing body having taken formal action to appoint him. The Court of Appeals ruled out this consideration, holding that the "election or appointment requirement cannot properly be considered a part of the ordinary, dictionary

definition of officer." 765 A.3d at 361. More pertinently, the Bylaws themselves contemplate that at Goldman Parent, officers can be empowered to appoint other categories of officers, and Section 4.1 of the Bylaws specifically contemplates that officers can be empowered to appoint other vice presidents. Reading the provision on officers for non-corporate subsidiaries *in pari materia* with the remainder of Goldman Parent's Bylaws suggests that the same would be true for Goldman LP. A person like Aleynikov, who received the title of "Vice President" in an offer letter signed by another "Vice President," therefore could reasonably believe that he had been given an officer position. *See Kale v. Wellcare Health Plans, Inc.*, C.A. No. 6393-VCS, at 63 (Del. Ch. June 13, 2011) (TRANSCRIPT) ("The bylaws specifically indicate that there can be more than one vice president. . . . [A]nd when the bylaws of the company let officers, key officers make other officers, I think it's pretty, to me—there's no real rebuttal evidence.").

xiii. A reasonable individual with the title "Vice President" would not think that he could not be an officer simply because he did not have supervisory or managerial functions. For both commercial banks and investment banks, the duties of vice presidents vary considerably. *Wells Fargo*, 53 Cal. 3d at 1090. As noted, the SEC has recognized that although the category of "officers" includes "vice presidents," "[m]any businesses give the title of vice president to employees who do not have significant managerial or policymaking duties and are not privy to inside information." *Ownership Reports and Trading by Officers, Directors and Principal Stockholders*, 53 Fed. Reg. at 50,000. Rather than asserting that vice presidents were not officers, the SEC

created a narrower subcategory of executive officers having managerial or policymaking duties. Implicit in the creation of the narrower category is the recognition that under the broader category, some officers (including vice presidents) do not have managerial or policymaking duties.

xiv. Applying the doctrine of *contra proferentem* in this context is all the more appropriate because of Delaware's policy in favor of advancement and indemnification and the resulting interpretive canon that, where reasonable, bylaws should be read in favor of the existence of advancement and indemnification rights. *See Stockman*, 2009 WL 2096213, at *1 n.2; *accord DeLucca v. KKAT Mgmt., L.L.C.*, 2006 WL 224058, at *7 (Del. Ch. Jan. 23, 2006) (Strine, V.C.).

xv. Not applying the doctrine of *contra proferentem* in this context has the potential to create problems for advancement proceedings, which are supposed to be summary in nature. *See* 8 *Del. C.* § 145(k). As interpreted by the Court of Appeals, a corporation can avoid the doctrine of *contra proferentem* and dispute an individual's entitlement to advancement rights by contending that although the individual had a title that both traditionally denoted officer status and appears in the entity's bylaws as an officer's title, the individual's actual job responsibilities were not sufficiently akin to those captured by an external, common law concept of officer-ship to warrant the individual having advancement rights. In this case, the line between title and responsibilities is stark, because Aleynikov did not have any managerial or supervisory responsibilities. But in the next case it need not be so stark, and the sufficiency of an individual's responsibilities is likely to be a fact issue requiring a trial. Applying the

doctrine of *contra proferentem* and holding an entity to the presumptive implications of the title it chooses to bestow facilitates the summary disposition of advancement proceedings.

xvi. Assuming the Court of Appeals was correct that *contra proferentem* does not extend to the determination of whether an individual is a party to a contract or entitled to rights or benefits under the contract, but only to the question of the scope of the rights or benefits to which the party is entitled, then *contra proferentem* should have applied. Aleynikov was a party to and entitled to benefits under the Bylaws in his capacity as an employee. The question was whether he was *also* entitled to other benefits in his capacity as an officer.

xvii. Nevertheless, "issue preclusion prevent[s] relitigation of wrong decisions just as much as right ones." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1308 (2015) (quotation marks and citation omitted). Whether I agree or disagree with the Court of Appeals is of no moment. Either way, this court cannot apply *contra proferentem* to interpret the Bylaws.

6. Given the Court of Appeals' holdings, this court must look to extrinsic evidence to determine the meaning of the term "officer" as used in the Bylaws. In a non-preclusive aspect of its ruling, the Court of Appeals deemed irrelevant evidence that Aleynikov "believed he was an officer of [Goldman LP] . . . [and] that he had never read the By-Laws or considered his right to indemnification and advancement before his arrest" because Aleynikov had no part in drafting the Bylaws. 765 F.3d at 364 n.7. This

reasoning is persuasive. Accordingly, this court has not considered Aleynikov's subjective beliefs about his status.

7. In a second non-preclusive aspect of its ruling, the Court of Appeals suggested that a fact-finder could consider course-of-dealing evidence. As one source of course-of-dealing evidence, the Court of Appeals cited the written consents by which Goldman LP appointed its officers. The Court of Appeals explained that the written consents would not be persuasive if they "were not widely disseminated, and the [elected] individuals . . . were not held out as officers to the employee population of [Goldman LP]." *Id.* at 364 n.8. The evidence at trial showed that the written consents in fact were not widely disseminated, and although the individuals listed on the consents were held out as the executive officers of Goldman LP, they were not held out as the only officers of Goldman LP. The Court of Appeals' ruling is persuasive. The evidence at trial also indicated that the appointments had a regulatory purpose and therefore were less persuasive as indications of what the term "officer" meant for purposes of advancement and indemnification. The written consents by which Goldman LP appointed its officers are therefore not probative.

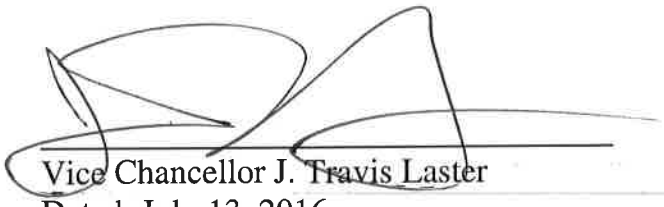
8. In a third non-preclusive aspect of its ruling, the Court of Appeals noted that a fact-finder could consider as course-of-dealing evidence Goldman LP's practices when providing advancements or indemnification. The Court of Appeals anticipated that if Goldman LP never provided advancements or indemnification to vice presidents, then it would tend to support Goldman Parent's position, but that if Goldman LP always provided advancements or indemnification to vice presidents, then that would be

consistent with Aleynikov's position. By contrast, if Goldman LP sometimes provided advancements or indemnification to vice presidents, then the evidence would not be probative. *Id.* at 364 n.8. The evidence at trial showed that Goldman LP made discretionary decisions to provide advancements and indemnification to vice presidents and individuals who held titles below that of vice president. As the Court of Appeals anticipated, this evidence was not persuasive.

9. In a fourth non-preclusive part of its ruling, the Court of Appeals suggested that a fact-finder could consider whether there was a "readily-identifiable, industry-specific common meaning of the term officer" in the investment banking industry "such that its plain meaning would be apparent . . . to 'a reasonable person' in that industry." *Id.* at 361-62. Goldman Parent has disavowed any reliance on a readily identifiable, industry-specific meaning of the term "officer." Dkt. 90 at 29. Aleynikov's expert opined that the concept of an officer in the investment banking industry is the same as in other industries. JX 145 ¶ 11; *accord* Tr. 152, 162, 193 (Jones).

10. Unfortunately, the trial record did not provide a convincing basis on which to construe the term "officer." The evidence, such as it was, stands in equipoise. Because Aleynikov had the burden of proof, he failed to prove that someone who held the bare title of "Vice President," but who otherwise held a position with the responsibilities of an employee, qualified as an officer for purposes of advancement under the Bylaws.

11. Judgment is entered in favor of Goldman Parent. Each side will bear its own costs.



Vice Chancellor J. Travis Laster
Dated: July 13, 2016