DEALS & DEAL MAKERS

Goldman Limits Facebook Offering

By LIZ RAPPAPORT, AARON LUCCHETTI And GEOFFREY A. FOWLER

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Goldman Sachs Group Inc. GS -0.84% slammed the door on U.S. clients hoping to inv in a private offering of shares in Facebook Inc., because it said the intense media spotl left the deal in danger of violating U.S. securities laws.

Goldman's decision to allow only non-U.S. investors to buy shares in the social-networ site is a black eye for the Wall Street firm, which sent jealous rivals scurrying for look-a deals when the Facebook agreement surfaced two weeks ago.

Enlarge Image

The change could damage Goldman's ti to some of its most lucrative clients, left empty-handed just as they were decidin whether to invest in Facebook, clients sa

Facebook executives were frustrated by headache of restructuring the deal at the last minute, according to people familiar with the situation. But the private offering as much as $1.5 billion in Facebook sha as the deal is offered to individuals and institutions that qualify as "professional investors." Goldman l kely won't come under fire in foreign markets for the hype that has accompanied the offering.

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Goldman was extraordinarily tight-lipped about the Facebook offering. Handpicked clients approached about investing were repeatedly warned not to publicly disclose details about the deal. But some details leaked out anyway, including the disclosure in one offering document that Facebook intends to go public or start reporting financial results by April 2012.

Executives at Goldman were especially rattled by speculation that the firm itself could hedge its investment or conduct other financial transactions around the deal that its clients couldn't, said a person familiar with the situation.

That wasn't allowed under terms of the deal, this person said. But Goldman officials worried that the rumors left the securities firm potentially vulnerable to lawsuits or a regulatory crackdown unless U.S. investors were blocked from investing.

Goldman also barred the firm's partners around the world from investing in Facebook. Company officials decided that partners shouldn't be allowed to take advantage of the offer since some of the firm's clients were excluded, said a person familiar with the matter.

An SEC spokesman declined to comment Monday. SEC officials are examining whether the deal should be deemed a public offering, according to people familiar with the discussions, though the agency doesn't explicitly approve or reject private placements while they are being pitched to potential investors.

In the worst-case scenario, if the SEC deemed the private placement improper, it could try to force Goldman to buy back all the shares it sold, after the deal is completed. If the investment lost value, angry Goldman clients could claim that the swirl of attention meant that the way the shares were sold—in a so-called special-purpose vehicle—essentially amounted to a public offering, exposing the firm to losses from lawsuits, people familiar with the matter said.

If the SEC found the deal inappropriate, it could also require Facebook to begin reporting financial results in public filings immediately, a step that Facebook has indicated it would do by April 2012.

Goldman has been leery of attracting the SEC's scrutiny ever since the agency last year accused the Wall Street firm of fraud for creating and marketing a particular financial instrument. In July, Goldman settled the suit for $550 million, conceding it made mistakes in handling the deal, and executives have been toiling to repair the company's reputation.

"In the post-crisis world, Wall Street firms don't want to get too close to the line," said Clayton Rose, a professor of management practice at Harvard Business School.

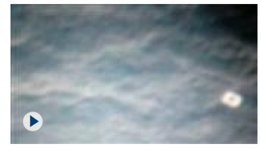
So Goldman Sachs first gets bad PR for the private placement deal because it pushed the envelope of regulatory compliance. Now they get more bad PR for the unpatriotic perceptions from this attempt to be in compliance. For such smart people they sure do step in it often...

—Carl Castrogiovanni

A Facebook spokesman directed questions about the deal to Goldman. The social-networking site's executives blame Goldman for the mess but decided to proceed with the deal anyway, according to people familiar with the matter. The infusion will give non-U.S. investors about a 10% combined stake in Facebook, including 8% held by DST.

After wrestling over what do, causing a delay in completion of the offering, Goldman officials began alerting clients of its decision Sunday at about 11 p.m., calling potential investors in Asia, and then clients in the Middle East and Europe. Most U.S. clients clamoring for a piece of the Facebook deal were told Monday, according to people familiar with the situation.

"They're still committed to doing the deal at the original size," said one Goldman client in the U.S. who was contacted by the firm Monday morning. "It's a very hot deal," and now many investors feel "left out." Goldman sales officials each called dozens of U.S. clients



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that expressed interest in Facebook.

In its statement, Goldman said it "regrets the consequences of this decision, but we believe this is the most prudent path to take." A person familiar with the offering said non-U.S. clients are being told how many Facebook shares they will get—and to pony up their money by the end of this week.

Other terms of the deal remain unchanged, including the minimum investment of $2 million and a requirement that the Facebook shares be held until 2013.

—Anupreeta Das contr buted to this article.

Write to Liz Rappaport at liz.rappaport@wsj.com, Aaron Lucchetti at aaron.lucchetti@wsj.com and Geoffrey A. Fowler at geoffrey.fowler@wsj.com

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