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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):**

**September 23, 2008**

**THE GOLDMAN SACHS GROUP, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**No. 001-14965**

(Commission  
File Number)

**No. 13-4019460**

(IRS Employer  
Identification No.)

**85 Broad Street  
New York, New York**

(Address of principal executive offices)

**10004**

(Zip Code)

Registrant's telephone number, including area code: **(212) 902-1000**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **Item 3.02 Unregistered Sales of Equity Securities.**

#### **Item 3.03 Material Modification of the Rights of Security Holders.**

The Goldman Sachs Group, Inc. (the “Company”) has agreed to issue and sell, and Berkshire Hathaway Inc. and certain affiliates (the “Investor”) have agreed to purchase, (1) 50,000 shares of the Company’s 10% Cumulative Perpetual Preferred Stock, Series G, having a liquidation value of \$100,000 per share (“Preferred Stock”), and (2) a Warrant (the “Warrant”) to purchase 43,478,260 shares of the Company’s voting common stock, par value \$0.01 per share (“Common Stock”), for an aggregate purchase price of \$5.0 billion in cash.

Dividends on the Preferred Stock will accrue on the liquidation value at a rate per annum of 10% but will be paid only when, as and if declared by the Company’s Board of Directors out of legally available funds. At any time when such dividends have not been paid in full, the unpaid amounts will accrue dividends at the same 10% rate and the Company will not be permitted to pay dividends or other distributions on, or to repurchase, any of the outstanding Common Stock or any of the Company’s outstanding preferred stock of any series. Subject to the approval of the Board of Governors of the Federal Reserve System, the Preferred Stock may be redeemed by the Company at any time, in whole or in part, at a redemption price of 110% of the liquidation value to be redeemed plus any accrued, unpaid dividends. The Preferred Stock has no maturity date and will rank senior to the outstanding Common Stock (and pari passu with the Company’s other outstanding series of preferred stock) with respect to the payment of dividends and distributions in liquidation.

As long as at least 10,000 shares of the Preferred Stock remain outstanding, the Preferred Stock, voting as a separate class, will have the right to approve any future issuance of preferred stock ranking senior to the Preferred Stock, and any amendment of the certificate of incorporation or future merger, reclassification or similar event in which the rights and other terms of the Preferred Stock (or successor securities) are substantially modified. Subject to certain limited exceptions, the Preferred Stock and the Warrant are not transferrable for five years, and the shares of Common Stock issuable on exercise of the Warrant may be transferred at any time but only in public offerings and other public market sales, or in private transactions, that do not involve the transfer to any single purchaser or group of more than 3.5% of the outstanding Common Stock. So long as the Investor owns at least 10,000 shares of Preferred Stock, in the event of a spin-off of a business by the Company, a portion of the Preferred Stock owned by the Investor will be exchanged for preferred stock in the spun-off business, based on the relative value of the Company and the spun-off business.

The Warrant is exercisable at the holder’s option at any time and from time to time, in whole or in part, for five years at an exercise price of \$115 per share of the Common Stock. The exercise price and the number of shares issuable on exercise of the Warrant are subject to antidilution adjustments for stock splits, reclassifications, noncash distributions, extraordinary cash dividends, pro rata repurchases of Common Stock, business combination transactions, and certain issuances of Common Stock (or securities convertible into or exercisable for Common Stock) at a price (or having a conversion or exercise price) that is less than 95% of the market price of the Common Stock at the pricing of the securities issuance. The Investor has agreed that it will not increase its beneficial ownership of the outstanding Common Stock above 14.9%. (At the date of issuance, the Warrant will be exercisable for approximately 9.0% of the post-exercise outstanding Common Stock.)

These securities have not been registered under the Securities Act of 1933 and are being issued and sold in a private placement pursuant to Section 4(2) thereof. The Company has agreed to enter into a registration rights agreement affording the Investor certain registration rights.

The transaction is expected to close on or about October 1, 2008.

#### **Item 7.01 Regulation FD Disclosure.**

Copies of the Company’s press releases announcing the transactions described in this Report on Form 8-K are included as an exhibit to this Report on Form 8-K and are incorporated by reference into this Item 7.01.

#### **Item 8.01 Other Events.**

In addition, the Company priced a registered public offering of 40,650,407 shares of Common Stock at an initial public offering price of \$123 per share for total gross proceeds of \$5,000,000,061 pursuant to a Registration Statement on Form S-3 (File No. 333-130074). The offering was underwritten by Goldman, Sachs & Co. The Company granted Goldman, Sachs & Co. an option to purchase up to an additional 6,097,561 shares from the Company which the underwriter exercised in full on September 25, 2008, increasing the total gross proceeds of the offering by an additional \$750,000,003. The offering closed on September 29, 2008.

A copy of the opinion of Sullivan & Cromwell LLP with respect to the registration of the offering of Common Stock is included as an exhibit to this Report on Form 8-K.

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### **Cautionary Note Regarding Forward-Looking Statements**

This Report on Form 8-K contains “forward-looking statements” within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements are not historical facts but instead represent only the Company’s beliefs regarding future events, many of which, by their nature, are inherently uncertain and outside of the Company’s control. For a discussion of some of the risks and important factors that could affect the Company’s future results and financial condition, see “Risk Factors” in Part I, Item 1A of the Company’s Annual Report on Form 10-K for the fiscal year ended November 30, 2007 and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Part II, Item 7 of the Company’s Annual Report on Form 10-K for the fiscal year ended November 30, 2007.

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### **Item 9.01 Financial Statements and Exhibits.**

#### **(d) Exhibits.**

The following exhibits are being furnished or filed as part of this Report on Form 8-K:

- 3.1 Furnished — Press releases of the Company, dated September 23, 2008 and September 24, 2008, announcing the private placement of preferred stock and a warrant to purchase common stock and the public offering of common stock.
- 5.1 Filed — Opinion of Sullivan & Cromwell LLP

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE GOLDMAN SACHS GROUP, INC.  
(Registrant)

Date: September 29, 2008

By: /s/ Kenneth L. Josselyn

Name: Kenneth L. Josselyn

Title: Associate General Counsel and  
Assistant Secretary

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**Berkshire Hathaway to Invest \$5 Billion in Goldman Sachs**

September 23, 2008

New York, NY — September 23, 2008 — The Goldman Sachs Group, Inc. (NYSE: GS) announced today that it has reached an agreement to sell \$5 billion of perpetual preferred stock to Berkshire Hathaway, Inc. in a private offering. The preferred stock has a dividend of 10 percent and is callable at any time at a 10 percent premium. In conjunction with this offering, Berkshire Hathaway will also receive warrants to purchase \$5 billion of common stock with a strike price of \$115 per share, which are exercisable at any time for a five year term.

In addition, Goldman Sachs is raising at least \$2.5 billion in common equity in a public offering.

“We are pleased that given our longstanding relationship, Warren Buffett, arguably the world’s most admired and successful investor, has decided to make such a significant investment in Goldman Sachs. We view it as a strong validation of our client franchise and future prospects,” said Lloyd C. Blankfein, Chairman and CEO of The Goldman Sachs Group, Inc. “This investment will further bolster our strong capitalization and liquidity position.”

“Goldman Sachs is an exceptional institution,” said Warren Buffett, Chairman and CEO of Berkshire Hathaway, Inc. “It has an unrivaled global franchise, a proven and deep management team and the intellectual and financial capital to continue its track record of outperformance.”

The Goldman Sachs Group is a bank holding company and a leading global investment banking, securities and investment management firm. Goldman Sachs provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high net worth individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in London, Frankfurt, Tokyo, Hong Kong and other major financial centers around the world.

Media Contact: Lucas van Praag  
Tel: 212-902-5400

Investor Contact: Dane Holmes  
Tel: 212-902-0300





**Goldman Sachs Prices \$5 Billion Public Offering of Common Equity**  
September 24, 2008

**Berkshire Hathaway Invests \$5 Billion, Receives Warrants for Further \$5 Billion**

New York, September 24, 2008 — The Goldman Sachs Group, Inc. (NYSE: GS) announced today that it has priced a public offering of 40.65 million common shares at \$123 per share for total gross proceeds of approximately \$5 billion. In addition, Goldman, Sachs & Co. has an over-allotment option of 6.10 million common shares.

This offering, combined with the recently announced \$5 billion strategic investment by Berkshire Hathaway Inc. in the form of perpetual preferred stock, brings total capital raised to \$10 billion. In addition, Berkshire Hathaway Inc. will receive warrants to purchase \$5 billion of common stock with a strike price of \$115 per share, which are exercisable at any time for a five year term.

The Goldman Sachs Group, Inc. is a bank holding company and a leading global investment banking, securities and investment management firm. Goldman Sachs provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high net worth individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in London, Frankfurt, Tokyo, Hong Kong and other major financial centers around the world.

Media Contact: Lucas van Praag  
Tel: 212-902-5400

Investor Contact: Dane Holmes  
Tel: 212-902-0300

<DOCUMENT>  
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[Letterhead of Sullivan & Cromwell LLP]

September 29, 2008

The Goldman Sachs Group, Inc.,  
85 Broad Street,  
New York, New York 10004.

Ladies and Gentlemen:

We have acted as counsel to The Goldman Sachs Group, Inc., a Delaware corporation (the "Company"), in connection with the prior registration of an indeterminate amount of the Company's voting common stock, par value \$0.01 per share (the "Common Stock"), and related stock purchase rights (the "Rights") issued pursuant to the Stockholder Protection Rights Agreement, dated as of April 5, 1999 (the "Rights Agreement"), between the Company and ChaseMellon Shareholder Services, L.L.C., the predecessor of Mellon Investor Services LLC, as Rights Agent (the "Rights Agent"). The Company has issued and sold 46,747,968 shares of Common Stock (the "Shares"), together with 46,747,968 associated Rights, in an underwritten offering, which closed on the date hereof. The Shares and the associated Rights are registered under the Registration Statement on Form S-3, File No. 333-130074 (as amended, the "Registration Statement"), under the Securities Act of 1933 (the "Act").

In connection with the registration of the Shares, we, as your counsel, have examined such corporate records, certificates and other documents, and such

questions of law, as we have considered necessary or appropriate for the purposes of this opinion. Upon the basis of such examination, we advise you that, in our opinion:

(1) The Shares have been validly issued and are fully paid and nonassessable.

(2) Assuming that the Rights Agreement has been duly authorized, executed and delivered by the Rights Agent, the Rights attributable to the Shares have been validly issued.

In connection with the opinion set forth in paragraph (2) above, we note that the question whether the Board of Directors of the Company might be required to redeem the Rights at some future time will depend upon the facts and circumstances existing at that time and, accordingly, is beyond the scope of such opinion.

The foregoing opinion is limited to the Federal laws of the United States and the laws of the State of New York and the State of Delaware, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

We have relied as to certain matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible. We have assumed, without independent verification, that the certificates (if any) for the Shares conform to the specimen thereof examined by us and have been duly countersigned by a transfer agent and duly registered by a registrar of the Shares (and that, if the Shares have been issued in uncertificated form, they have been duly recorded by a registrar and duly registered by a transfer agent of the Common Stock) and that the signatures on documents examined by us are genuine.

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**The Goldman Sachs Group, Inc.**

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We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading “Validity of the Shares” in the prospectus relating to the Shares contained therein. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ SULLIVAN & CROMWELL LLP