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NATIONAL ADJUDICATORY COUNCIL

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20050000886-01

TO: Department of Market Regulation
NASD

RE: Goldman Sachs Execution & Clearing, L.P.
Broker-Dealer
CRD No. 3466

Pursuant to Rule 9216 of the NASD Code of Procedure, Goldman Sachs Execution & Clearing, L.P. (the "firm" or "SILK") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and the National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by the NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. the firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which the NASD is not a party.

The firm also understands that its experience in the securities industry and its disciplinary history may be factors that will be considered in deciding whether to accept this AWC.

SILK became a member of the Association in 1948, and its registration remains in effect. SILK has the following relevant disciplinary history:

- In March 2005, NASD accepted SILK's AWC (CLG050017) in which the firm agreed to a censure and a fine of \$10,000 for failing to timely report to OATS Reportable Order Events (ROEs) and for transmitting inaccurate or incomplete data from January 1, 2002, to March 31, 2002, in violation of Marketplace Rule 6955(a).
- In September 2004, NASD accepted SILK's AWC (CMS040136) in which the firm agreed to a censure and a fine of \$75,000 for failing to timely report to OATS ROEs and failing to correct or replace ROEs, from October 1, 2002, to March 31, 2003, in violation of Conduct Rule 6955(a).
- In December 2004, NASD accepted SILK's AWC (CMS040191) in which the firm agreed to a censure and a fine of \$8,000 for violations of Marketplace Rule 6130(b) from April 1 to June 30, 2003.
- In March 2003, NASD accepted SILK's AWC (CMS030042) in which the firm agreed to a censure and a total fine of \$67,500, \$52,500 of which was for failing to timely report to OATS reportable order events and for transmitting inaccurate or incomplete data to OATS from August 1999 through March 2001, in violation of Marketplace Rule 6955(a).
- In March 2003, NASD accepted SILK's AWC (CMS030059) in which the firm agreed to a total fine of \$4,000, \$2,000 of which was for violations of Marketplace Rule 4632 in December 2001.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under the NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance, or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

This matter is the result of the Department of Market Regulation's review 20050000886 (formerly MRD200448394) of SILK's trade reporting obligations from May 1 to August 31, 2004, and review 20050012777 of SILK's compliance with its OATS reporting obligations from January 1 to March 31, 2005.

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:
1. From May 1, 2004, to August 31, 2004, SILK failed within 90 seconds after execution, to transmit through ACT 2,069 last sale reports in NNM and SC securities. All but approximately 86 of the 2,069 reports were for transactions prior to the review period that were inadvertently not reported. The firm reported the transactions on an "as/of" basis during the review period when it realized that the transactions had not been reported.
 2. The conduct described in paragraph one constitutes a pattern or practice of late trade reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 3. From January 1, 2005, to March 31, 2005, SILK failed to report to OATS all required Reportable Order Events ("ROE") on behalf of two corresponding member firms for whom it had an obligation to report ROEs. Specifically, for 13 trading days, from January 3 to January 19, 2005, SILK failed to report ROE's on behalf of Access Securities, Inc.

For 22 trading days, from February 18 to March 23, 2005, SILK failed to report ROE's on behalf of Imperial Investments Ltd.

4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

- B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure and a total fine of \$17,500, comprised of a \$7,500 fine for the pattern and practice of late trade reporting and a \$10,000 fine for the OATS violations.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC, which is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and has attached the Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.

Respondent,
Goldman Sachs Execution & Clearing, L.P.

6/30/06
Date

By: Steven Wolf
Name: Steven Wolf
Title: General Counsel

Reviewed by:

David Dravin
Counsel for Goldman Sachs Execution & Clearing, L.P.

Accepted by NASD:

8/10/06
Date

Thomas R. Gira / RGA
Thomas R. Gira
Executive Vice President and Deputy
Department of Market Regulation

Signed on behalf of the Director of ODA,
by delegated authority

Attachment:

Standard Election of Payment Form