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**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20050001219-01**

REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Goldman, Sachs & Co., Respondent
Broker-Dealer
CRD No. 361

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

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ACCEPTANCE AND CONSENT

- 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm became a member of NASD (FINRA's predecessor) in 1936, and its registration remains in effect. The firm has multiple violations of Rules pertaining to trade reporting, ACT reporting, and supervision. Specifically, the firm has the following relevant disciplinary history:

- In September 2008, FINRA accepted GSCO's AWC (20070102251), in which the firm agreed to a censure and a total fine of \$17,500, which included fines of \$5,000 each for violations of Marketplace Rule 4632 and Nasdaq Rule 4755 in July 2007.
- In July 2007, FINRA accepted GSCO's AWC (20050027552), in which the firm agreed to a censure and a fine of \$40,000, which included fines for violations of Marketplace Rule 5430 from October 10, 2005 through January 4, 2006, and violations of Marketplace Rule 6130 from May 1 through August 31, 2006.

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- In September 2006, FINRA accepted GSCO's AWC (20050017975), in which the firm agreed to a censure and a fine of \$6,500 for a pattern and practice of late reporting transactions in CQS securities to the Nasdaq National Market Center, from January 1 through April 30, 2005, in violation of Conduct Rule 2110.
- In July 2006, FINRA accepted GSCO's AWC (20050025742) in which the firm agreed to a censure and a total fine of \$50,000, an unspecified portion of which was for failing to have in place reasonable supervisory procedures to ensure compliance with the minimum denomination restrictions contained in MSRB Rule G-15(f), from July 2004 to June 2005, in violation of MSRB Rule G-27. The firm also undertook to revise its procedures.
- In July 2006, FINRA accepted GSCO's AWC (20050023340) in which the firm agreed to a censure and a total fine of \$20,000, of which \$5,000 was for violations of Marketplace Rule 6130 and \$5,000 for violations of SEC Rule 200(g) (Reg SHO) during October 2005.
- In May 2006, FINRA accepted GSCO's AWC (20041000178) in which the firm agreed to a censure and a total fine of \$20,000, \$7,500 of which was for violations of Marketplace Rule 6130, from November 2003 to January 2004.
- In October 2005, FINRA accepted GSCO's AWC (20050002343) in which the firm agreed to a censure and a fine of \$15,000, of which \$5,000 was for violations of Marketplace Rule 6130 and \$5,000 for deficient written supervisory procedures, in violation of Conduct Rules 2110 and 3010, during August 2004.
- In October 2005, FINRA accepted GSCO's AWC (20050000606) in which the firm agreed to a censure and a fine of \$7,500 for violations of Marketplace Rule 5332(a)(2), from January 1 to April 30, 2004.
- In July 2005, FINRA accepted GSCO's AWC (20042000105), in which the firm agreed to a censure and a fine of \$25,000, of which \$5,000 was for violations of Marketplace Rules 4632 and 6130 and \$5,000 for deficient written supervisory procedures, in violation of Conduct Rules 2110 and 3010, during July 2003.
- In December 2004, FINRA accepted GSCO's AWC (CMS040209) in which the firm agreed to a fine of \$5,000 for supervisory deficiencies, in violation of Conduct Rules 2110 and 3010.
- In July 2004, FINRA accepted GSCO's AWC (CMS040106) in which the firm agreed to a censure and a fine totaling \$5,000,000 for violations of Conduct Rules 2110, 2440, IM-2440, 3010, and 3110, Marketplace Rule 6240, and Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder that took place between July 2000 and August 2001. The amount included \$343,575 in restitution and fines of \$1,656,425 for markup/markdown and Fixed Income

Pricing System reporting violations, \$1,500,000 for books and records violations, and \$1,500,000 for supervision deficiencies in the area of high yield and distressed bond trading.

- In November 2002 (CAF020064), as part of a global settlement also involving the Securities and Exchange Commission and the New York Stock Exchange, FINRA censured and fined the firm for violations of the recordkeeping provisions of Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4, and Conduct Rules 2110, 3010 and 3110 that took place from 1999 to at least 2001. The total fine of \$1,650,000 was equally divided among NASD, the NYSE, and the SEC, and the firm undertook to revise its written supervisory procedures.

SUMMARY

This matter is the result of the Department of Market Regulation's investigation in matter 20050001219 (formerly MRD200448536) into the New York trading desk of the firm's Equity Finance Group's ("EFG") compliance with rules relating to trade reporting, short sales, maintenance of proper books and records, and supervisory obligations, from September 1, 2003, to September 30, 2004 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. The EFG develops and executes complex investment strategies for institutional clients and for the firm's own accounts. EFG has maintained operations in New York, London, and Hong Kong. Some of the EFG's trading strategies called for GSCO to execute transactions in connection with hedging positions taken by GSCO's non-member affiliate, Goldman Sachs International.
2. Most of EFG's transactions are routed away from the desk for execution elsewhere by GSCO. During the review period, however, the desk had trade reporting and other related responsibilities for about 2,336 orders, most of which were handled manually. Many EFG transactions during the review period involved large blocks of securities – in one instance, for example, involving 29 million shares. Other trades involved many hundreds of thousands of shares or millions of shares.
3. The staff examined a random, representative sample of 100 trades taken from the 2,336 transactions executed by EFG during the review period as to which EFG had direct trade reporting responsibility. As a result of the review of these 100 trades, the staff found the following:
 - a. During the review period, the firm failed, within 90 seconds after execution, to transmit to Nasdaq 34 last sale reports of transactions in eligible securities. The firm failed to report to Nasdaq nine last sale reports of transactions in eligible securities. The conduct

described in this paragraph constitutes separate and distinct violations of Marketplace Rules 6420(a) and 6420(b).

- b. The firm failed, within 90 seconds after execution, to transmit through the Nasdaq Market Center or TRACS 11 last sale reports of transactions in Nasdaq securities. The firm failed to report to the Nasdaq Market Center three last sale reports of transactions in Nasdaq securities. The conduct described in this paragraph constitutes separate and distinct violations of Marketplace Rule 5430(a).
 - c. The firm failed to report to the Nasdaq Market Center the correct symbol indicating that the transaction was a short sale for two transactions in reportable securities. The conduct described in this paragraph constitutes separate and distinct violations of Marketplace Rule 6130(d)(6).
 - d. The firm failed to show the time of entry or the time of execution on the memorandum of 23 brokerage orders. The firm failed to ~~notate a short sale indicator on the order ticket.~~ The firm failed to notate a capacity of agent or principal on 28 order tickets. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and Conduct Rule 3110.
 - e. ~~The firm was unable to produce order tickets for five transactions.~~ The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-4 and Conduct Rule 3110.
4. During the review period, GSCO failed to establish and maintain a supervisory system for the EFG reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD Rules.
- a. GSCO did not have in place a system reasonably designed to monitor and review the EFG's proprietary dividend yield enhancement transactions to ensure compliance with securities laws and regulations, NASD Rules, and the firm's guidelines. The firm failed to establish procedures reasonably designed to detect potentially improper proprietary yield enhancement transactions executed by EFG's New York trading desk for approximately seven months and thereby failed to adequately supervise the business activities of EFG's New York trading desk.
 - b. The firm failed to establish written supervisory procedures reasonably designed to achieve compliance with NASD Conduct Rule 3110, NASD Marketplace Rules 5430, 6130, and 6420, and

SEC Rules 17a-3 and 17a-4 that included: (1) the identification of the persons responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory steps to be taken by the identified persons; (3) a statement as to how often such persons should take such steps; and (4) a statement as to how the completion of the steps included in the written supervisory procedures should be documented.

The conduct described in this paragraph constitutes violations by GSCO of Conduct Rules 2110, 3010(a) and 3010(b).

Respondent's Discovery of the Violations

The sanctions below reflect substantial credit that the firm has been given for discovering and reporting to the staff many of the violations giving rise to this AWC in approximately September 2004 and that the firm thereafter conducted an internal review of EFG's trading activities.

B. The firm also comments to the imposition of the following sanctions:

- (i) a censure; and
- (ii) a fine of \$600,000 to be paid jointly to FINRA and the New York Stock Exchange.¹

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

¹ The New York Stock Exchange investigated similar misconduct by the firm during approximately the same review period in its matter number 20070101761.

II.**WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under FINRA'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 National Adjudicatory Council ("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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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.

III.**OTHER MATTERS**

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and

C. If accepted:

1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, deaying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

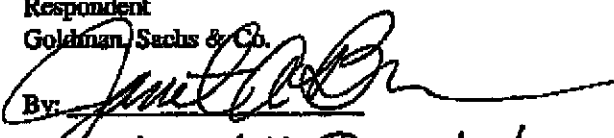
D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

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; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11/19/08
Date

Respondent

Goldman Sachs & Co.

By: 

Names: Janet A. Broeckel

Title: Managing Director

Reviewed by:


Counsel for Respondent

Accepted by FINRA:

12/1/08
Date

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

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation