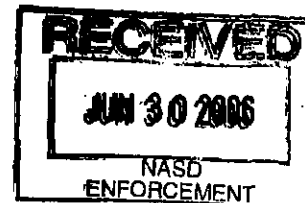


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005002574201

TO: Department of Enforcement
NASD

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



Pursuant to Rule 9216 of NASD Code of Procedure, Respondent Goldman, Sachs & Co. ("Goldman" or "the firm") 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.

Respondent 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 Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), 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 it; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent'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

Goldman, Sachs & Co. has been an NASD member since October 26, 1936. The Firm is based in New York, New York and has 26 active branches and approximately 6,600 registered personnel. The Firm has no relevant disciplinary history.

1.

WAIVER OF PROCEDURAL RIGHTS

- A. To have a Formal Complaint Issued specifying the allegations against it;**
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudice 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.

Respondent 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

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding in 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:

Minimum Denominations in the Purchase and Sale of Municipal Bonds

Issuers set minimum denominations for the purchase and sale of municipal bonds and disclose those minimum denominations in official statements. Minimum denominations generally range from \$5,000 to \$100,000. An issuer might set a minimum denomination at \$100,000 or higher to qualify for one of several exemptions from Securities Exchange Act Rule 15c2-12, which is designed to ensure production of certain disclosure documents in the primary and secondary markets.¹ In addition, an issuer may set high minimum denominations because of a concern that the securities may not be appropriate for retail investors who are likely to purchase securities in relatively small amounts.² The MSRB adopted rules in this area to ensure that dealers observe the minimum denominations stated in the official statements of municipal securities issues.³

¹ Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations ("Notice of Filing"), Exchange Act Release No. 45174, 66 Fed. Reg. 67,342, 67,343 (Dec. 28, 2001). Rule 15c2-12, with certain exceptions, prohibits brokers, dealers, and municipal securities dealers from purchasing or selling municipal securities unless the issuer or another obligated person agrees to provide certain annual financial information and notices of events to information repositories. See Municipal Securities Disclosures, Exchange Act Release No. 34981, 59 Fed. Reg. 59590 (Nov. 17, 1994). The Rule contains exemptions for municipal securities in authorized denominations of \$100,000 or more if additional prerequisites are met.

² Order Granting Approval of Proposed Rule Change Relating to Minimum Denominations ("Order Granting Approval"), Exchange Act Release No. 45338, 67 Fed. Reg. 6960 (Feb. 14, 2002).

³ Id. at 6960.

**With Certain Limited Exceptions, Dealers are Prohibited
From Executing Trades Below Minimum Denomination and Must
Provide Disclosures to Customers When Sales Below Minimum
Denomination are Permitted**

MSRB Rule G-15(f) prohibits dealers from effecting customer transactions in municipal securities issued after June 1, 2002 in amounts lower than the minimum denominations of the issues. The MSRB promulgated this rule to prevent dealers from breaking up securities for purchase or sale into amounts below what the issuers deemed appropriate.⁴

Rule G-15(f) contains two limited exceptions to the general prohibition against trades below the minimum denomination. Both exceptions were created to protect the liquidity of positions that are smaller than the minimum denomination as a result of events other than a dealer effecting a trade below minimum denomination.⁵ Such events include a division in an estate resulting from death or divorce and a calling of bonds in amounts less than the minimum denomination.⁶

Under the first exception to the general prohibition, dealers may purchase municipal securities from a customer below the minimum denomination as long as the customer is liquidating his or her entire position in the transaction. Rule G-15(f)(ii). Under the second exception, dealers may sell municipal securities to customers in amounts below the applicable minimum denomination if: (a) the securities purchased by the customer are obtained from a person liquidating an entire position in the securities and (b) the purchasing customer receives a written statement disclosing that the quantity purchased is below the minimum denomination for the issue and that the liquidity of the position may be adversely affected. Rule G-15(f)(iii).⁷ The written statement provided to the customer in accordance with the exception in G-15(f)(iii) must be retained for at least three years. Rule G-8(a)(ix).⁸

Rule G-15(f) does not contain any other exceptions to the prohibition against trading below minimum denomination. For example, the rule does not allow a dealer to sell an amount of securities below the minimum denomination

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁷ Failure to disclose to customers that they are purchasing municipal securities below the minimum denomination and to explain how holding an amount below the minimum denomination could affect liquidity may also constitute a violation of MSRB Rule G-17, which mandates that dealers "shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." See Notice of Interpretation of Rule G-17 Concerning Minimum Denominations, January 30, 2002. Unlike Rule G-15(f), Rule G-17 applies to sales to customers of all municipal securities, including those issued before June 1, 2002. Id.

⁸ See also Order Granting Approval at 6960.

outside the above-described exceptions even if the customer is already holding an amount at or above the minimum denomination at the time of sale.⁹ Nor does the rule contain an exception permitting a dealer to purchase an amount of municipal securities below the minimum denomination from a customer who holds an amount at or above the minimum denomination and who will continue to hold an amount at or above the minimum denomination after the dealer's purchase.

Supervisory Requirements to Ensure Compliance with MSRB Rules

MSRB Rule G-27(a) requires brokers, dealers, and municipal securities dealers to supervise the conduct of municipal securities activities to ensure compliance with MSRB rules, including G-15(f). Rule G-27(c) imposes an obligation on each dealer to adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with the supervisory obligations in the rule.

MSRB Rule Violations by Goldman, Sachs & Co.

During the period from June 1, 2004 through June 30, 2005, Goldman executed 178 trades in municipal securities below the minimum denomination in violation of Rule G-15(f). Some of these trades were sales to customers who were not provided the written disclosures required under Rule G-15 that they were buying bonds below the minimum denomination and that liquidity may be adversely affected.

Goldman's supervisory systems and procedures were not reasonably designed to ensure compliance with the minimum denomination restrictions in Rule G-15(f), including the disclosure requirements in Rule G-15(f)(iii). During the review period, certain of the firm's systems for municipal securities permitted trades below minimum denomination. Certain of the systems used by traders for both purchases and sales did not have an automatic stop or warning function for the execution of orders in amounts below minimum denomination, and the firm did not have adequate written policies or

⁹ The Notice of Filing of Propose Rule Change for Rule G-15(f) makes clear that the MSRB did not intend to permit a customer to purchase municipal bonds below the minimum denomination even if the customer already held an amount at or above the minimum denomination. In discussing possible remediation for sales below the minimum denomination, the Notice of Filing remarked:

[A] dealer may unintentionally sell an unauthorized amount of securities to a customer already holding an authorized amount. The transaction would be a violation of the rule, albeit an unintentional one.

Notice of Filing at 67,346 n. 12 (emphasis added).

procedures requiring traders to check the minimum denomination of a bond before executing a trade. The firm lacked adequate written policies and procedures requiring traders to determine whether a sale by a customer would constitute a liquidation of the customer's entire position as permitted by Rule G-15(f)(ii). The firm also did not have adequate written supervisory procedures addressing the minimum denomination restrictions in Rule G-15(f) or the disclosure requirements in Rule G-15(f)(iii).

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rules G-15(f) and G-27 by Goldman.

B. Respondent also consents to the imposition of the following sanctions:

1. a censure;
2. a fine of \$50,000; and
3. Respondent further agrees to adopt and implement policies and procedures reasonably designed to ensure compliance with MSRB Rules G-15(f) and G-27 concerning minimum denominations and to inform the NASD staff in writing no later than sixty (60) days after Notice of Acceptance of this AWC that such policies and procedures have been implemented. Upon written request showing good cause, the NASD staff may extend the procedural date in this paragraph.

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

III.

OTHER MATTERS

- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that 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. Respondent 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 have attached an Election of Payment form showing the method by which Respondent proposes

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to pay any fine imposed.

- C. Respondent 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.

Respondent 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 it to submit it.

6/27/06
Date

Goldman, Sachs & Co.

By: [Signature]

Name: ROBYN A. HUFFMAN

Title: MANAGING DIRECTOR,
ASSOC. GEN. COUNSEL

Reviewed by:

[Signature]
Norman Felt, Esq.
Counsel for Respondent

Accepted by NASD:

July 28, 2006
Date

[Signature]
Frank Kulbaski
Senior Attorney

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