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REGISTRATION & DISCLOSURE

FINANCIAL INDUSTRY REGULATORY AUTHORITY

LETTER OF ACCEPTANCE, WAIVER AND CONSENT

NO. 20060055241-01

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**NASD / REGULATION, INC.
MARKET REGULATION**

Department of Market Regulation

Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Goldman Sachs Execution & Clearing, L.P. (the "firm") 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.

I.

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 FINRA in 1948, and its registration remains in effect. The firm has the following relevant disciplinary history:

- In October 2006, NASD accepted the firm's AWC (20050023633) in which the firm agreed to a censure and a fine of \$28,000, \$12,500 of which was for Order Audit Trail System (OATS) violations and \$8,000 for violations of SEC Rule 605, in October 2005.
- In August 2006, NASD accepted the firm's AWC (20050006507) in which the firm agreed to a censure and a fine of \$15,000 for OATS violations from October 1 to December 31, 2004.
- In August 2006, FINRA accepted the firm's AWC (20050000886) in which the firm agreed to a censure and a fine of \$17,500, \$10,000 of which was for OATS violations in January and February 2005.

FACTS AND VIOLATIVE CONDUCT

This matter is the result of a review conducted by the Department of Market Regulation of the firm's compliance with NASD Rules for the Order Audit Trail System (OATS) and the firm's 2007 Trading and Market Making Surveillance Examination (TMMS).

- Review 20060055241 examined the firm's compliance with OATS rules from May 1 through September 30, 2005; and
- Examination 20070106361 was the firm's 2007 TMMS examination. The on-site portion of the examination took place on November 19 and 20, 2007. Attached as an exhibit is a list of the items the staff reviewed during the on-site examination for trade dates September 5 and 6, 2007.

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1. From May 1 through September 30, 2005, the firm submitted 428,729 Route Reports that OATS was unable to match to the corresponding new order submitted by the firm because of inaccurate data. The 428,729 unmatched Route Reports represented about 31 percent of all match-eligible Route Reports submitted to OATS where the firm was named as the Sent to Firm (1,369,250) during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

20070106361

2. On September 5 and 6, 2007, in 17 instances, the firm incorrectly submitted to OATS a special handling code of "Not Held," and in 13 instances it submitted incorrect "NW," "RT," and "OR" reports. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955.
3. For the month of July 2007, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included three instances in which the firm made available incorrect information as to the average effective spread and average realized spread for executions of covered orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
4. On September 5 and 6, 2007, the firm failed to report to the Trade Reporting Facility the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for 53 transactions in Reportable Securities. The

conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).

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

- A censure and a total fine of \$45,000, comprising fines of:
 - \$20,000 for the OATS violations;
 - \$17,500 for the violations of SEC Rule 605; and
 - \$7,500 for violations of NASD Marketplace Rule 6130.

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.

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 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, denying, 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.

10/28/08

Date

Respondent

Goldman Sachs Execution & Clearing, L.P.

By:

Steven A. Wolf

Name:

STEVEN A. WOLF

Title:

V.P. - SLC LLC (G.P.)

Reviewed by:

Christina A. Hanley
Counsel for Respondent

Accepted by FINRA:

11/21/08
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

Goldman Sachs Execution & Clearing, L.P.
2007 Trading and Market Making Surveillance Examination
Matter No. 20070106361

The staff reviewed the following samples during the examination:

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
50	Customer and proprietary sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements	From trade dates September 5-6, 2007
27	Customer and proprietary short sales, reviewed for compliance with SEC Rule 203(b) security location requirements	From trade dates September 5-6, 2007
118	Customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Marketplace Rules 4632, 6130, and 6620 sale indicator reporting requirements	From trade dates September 5-6, 2007
8	Customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements	From trade dates September 5-6, 2007
5	Cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Marketplace Rules 4632(g), 6130(f), 6420(f), and 6620(f) trade report cancellation requirements	From trade dates September 5-6, 2007
25	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements	From trade dates September 5-6, 2007
4	Datasets published for on the monthly order execution report, for compliance with SEC Rule 605 requirement to publish accurate data (A "dataset" is all required statistical data for a single order category, with each category representing a single unique combination of a security, order type and order size, as described in Rule 605)	July 2007
1	Quarterly order routing report, for compliance with SEC Rule 606 requirements	From the report for 3 rd quarter 2007
50	Orders in securities required to be submitted to OATS, for compliance with NASD Marketplace Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirement to submit OATS information	From trade dates September 5-6, 2007
N/A	ADF orders and/or quotes which were accessed by others, for compliance with NASD Rule 4300A requirements to submit Order and Order Response reports	From trade dates September 5-6, 2007
114	Order/Trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4.	From trade dates September 5-6, 2007

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
195	Trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD trade reporting and ADF rules	From trade dates September 5-6, 2007
29	Customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements	From trade dates September 5-6, 2007
10	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Membership and Registration Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040	List of trading and supervisory personnel for September 2007
All, as provided by the member	The member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Conduct Rule 3010 requirements to establish and implement a system reasonably designed to prevent and detect violations of applicable securities rules	WSPs in effect in September 2007 and documentation of supervisory reviews conducted in September 2007
All, as provided by the member	The member's "regular & rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Conduct Rules 2320 and 3010	Procedures in effect in September 2007