

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060060880-01**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Goldman Sachs Execution & Clearing, L.P. ("GSEC" 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 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.

RELEVANT DISCIPLINARY HISTORY

In May 2010, the firm agreed to a total fine of \$450,000 in a joint settlement with the New York Stock Exchange and the U.S. Securities and Exchange Commission ("SEC") for violations of Regulation SHO Rule 204T and related supervisory deficiencies during December 2008 and January 2009.

OVERVIEW

In Review No. 20060060880, the Short Sales Group of FINRA's Department of Market Regulation conducted a regulatory investigation regarding compliance by the firm with SEC and FINRA rules and regulations regarding short sale transactions during the time periods April 1, 2006 through October 1, 2007 and October 1, 2008 through September 9, 2013 (the "review period").¹ The Short Sales Group's investigation revealed that, during the review period, the firm's supervisory policies and procedures did not provide for supervision reasonably designed to achieve compliance with the close-out requirements of Regulation SHO Rules 203(b)(3), 204T(a), and 204(a).

FACTS AND VIOLATIVE CONDUCT

1. Rule 203(b)(3), effective since September 7, 2004,² provides that, if a participant of a registered clearing agency has a fail to deliver position in a threshold security for 13 consecutive settlement days, it shall immediately close out the fail to deliver position by purchasing securities of like kind and quantity.
2. Rule 204T(a), effective from October 17, 2008 through July 31, 2009, and subsequently Rule 204(a), effective since July 31, 2009, provide, in relevant part, that if a participant of a registered clearing agency has a fail to deliver position in any equity security, it shall immediately close out the fail to deliver position by purchasing securities of like kind and quantity by no later than the beginning of trading on T+4 (or T+6 for a fail caused by a long sale or bona fide market making).³
3. During the review period, GSEC maintained policies and procedures concerning compliance with Rules 203(b)(3), 204T(a), and 204(a) that provided for GSEC to monitor its fail to deliver positions in the National Securities Clearing Corporation's Continuous Net Settlement System ("CNS") for fails that aged to the applicable close-out date. Pursuant to its policies and procedures, on the morning of the close out date, GSEC generally purchased and/or borrowed shares in an amount at least equal to the amount of the fail to deliver position. GSEC typically passed any shares purchased (and the costs thereof) to clients that had contributed to the firm's fail to deliver to CNS in the relevant security. The firm did not, as a general practice, allocate responsibility for closing out fail to deliver positions to its broker-dealer clients under Rules 203(b)(3)(vi), 204T(d), or 204(d).

¹ This matter includes the following reviews: 20060060895, 20060070376, 20070087288, 20070091971, 20070112012, 20080124747, 20100215827, 20100249873, 20110272731, 20110274693, 20110286805, 20110286906, 20110290266, 20110295776, and 20120344959.

² Market participants were required to comply with the provisions of Regulation SHO beginning on January 3, 2005, and the first date on which a participant could have had a close-out obligation under Rule 203(b)(3) was January 28, 2005.

³ Rule 204(a) also provides that a participant can close out the fail to deliver position by borrowing securities of like kind and quantity within the prescribed time limits.

4. On a number of occasions during the review period, certain of GSEC's options market maker ("OMM") clients short sold a security on the same day following receipt of notification from GSEC that GSEC had purchased shares of the same security in an effort to satisfy GSEC's close-out obligations as required by applicable rules.
5. Specifically, GSEC would purchase shares on a close-out date and then pass those shares to the client or clients that had contributed to the firm's fail to deliver to CNS in the relevant security. Consequently, those clients would receive notice that morning from GSEC that they had been "bought in" in the security to close out a fail to deliver position. GSEC's supervisory policies and procedures failed to address that certain OMM clients of the firm had, on a number of occasions, short sold a security on the same day that they were notified that they were being "bought in" by GSEC in that same security, typically in amounts equal to or greater than their attributed portion of the number of shares purchased by GSEC in an effort to meet its close-out obligations. These short sales would offset, in whole or in part, the effect of GSEC's purchases on the firm's net fail to deliver position in CNS.
6. During the review period, based on the above, GSEC failed to implement adequate supervisory policies and procedures reasonably designed to address the impact of the above-described OMM activity on the close-out date on GSEC's net fail to deliver position to CNS by requiring the firm to allocate responsibility for the close out to its broker-dealer clients or by taking other appropriate steps to determine whether the firm was a net purchaser, or net flat or net long, as applicable, on the close-out date.
7. Accordingly, based on the above, during the review period, the firm's supervisory policies and procedures did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws and regulations, including SEC and FINRA Rules, regarding the close-out of fail to deliver positions as required by Regulation SHO Rules 203(b)(3), 204T(a), and 204(a). The conduct described above constitutes violations of NASD Rules 2110 and 3010 (for conduct prior to December 15, 2008) and FINRA Rule 2010 and NASD Rule 3010 (for conduct on or after December 15, 2008).

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

- A censure;
- a fine of \$325,000; and
- an undertaking to revise the firm's written supervisory procedures, as warranted, with respect to the areas described in Section I.A above. Within 90 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the firm shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has addressed and corrected the deficiencies described in Section I.A above; and (3) the date the deficient procedures were addressed and corrected by the firm. For good cause shown and upon receipt of a timely application from the firm, FINRA staff may extend the deadlines set forth in this undertaking.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm 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 sanctions 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 Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

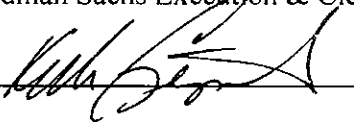
The firm understands that:

- 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 FINRA 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 FINRA Rule 8313; 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: (i) testimonial obligations; or (ii) 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 undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that it has agreed to its 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.

Date: 3/11/14

Respondent
Goldman Sachs Execution & Clearing, L.P.

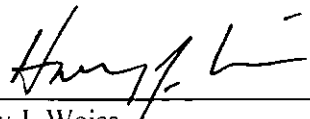
By: 

Name: Kyle Czepiel
Managing Director

Title: _____

Reviewed by:

Counsel for Respondent

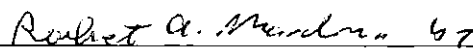


Harry J. Weiss
Beth A. Stekler
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Accepted by FINRA:

March 26, 2014
Date

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


Robert A. Marchman
Executive Vice President
Department of Market Regulation