

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060068246-01

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REGISTRATION & DISCLOSURE

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 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 NASD 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 violations of Order Audit Trail (OATS) rules 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 failing to correct or replace OATS Reportable Order Events ("ROE") and for failing to utilize the correct re-submit code from October 1 to December 31, 2004, in violation of Marketplace Rule 6955.

- In August 2006, NASD accepted the firm's AWC (20050000886) in which the firm agreed to a censure and a fine of \$17,500, of which \$10,000 was for failing to report to OATS all required ROEs on behalf of two correspondent firms for a total of 35 trading days in January and February 2005, in violation of Marketplace Rule 6955.

FACTS AND VIOLATIVE CONDUCT

This matter is the result of the Department of Market Regulation's 2006 Trading and Market Making Surveillance Examination in review number 20060068246. The on-site portion of the examination took place on December 13, 2006. Attached as an exhibit is a list of items the staff reviewed during the on-site examination for trade date October 24, 2006.

1. On October 24, 2006, the firm reported to OATS 35 execution reports that contained inaccurate, incomplete, or improperly formatted data. In 17 instances, the firm incorrectly submitted an Account Type of "Proprietary" to OATS. In seven instances, the firm failed to submit a combined order/route (OR") report to OATS for an order routed in full to another market center and incorrectly submitted an Account Type of "Proprietary" to OATS. In seven instances, the firm failed to submit an OR report to OATS for an order routed in full to another market center. In four instances, the firm submitted an incorrect Account Type of "Proprietary" to OATS and failed to submit a Special Handling Code of "MOC" to OATS. These inaccurate or incomplete execution reports represented 70 percent of the sample of match-eligible execution reports reviewed in the TMMS examination that the firm transmitted during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955.

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

A censure and a fine of \$15,000.

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 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, 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.

10/15/07
Date

Respondent
Goldman Sachs Execution & Clearing, L.P.

By: Steven A. Wolf

Name: STEVEN A. WOLF

Title: VICE PRESIDENT -
SLK LLC - G.P.

Reviewed by:

Christina A. Schmitz
Counsel for Respondent

Accepted by FINRA:

11/7/07
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.
2006 Trading and Market Making Surveillance Examination
Matter No. 20060068246

The staff reviewed the following samples during the examination:

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
49	customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and 203(b)	from trade date October 24, 2006
49	customer and proprietary sales, for compliance with Marketplace Rule 6130	from trade date October 24, 2006
4	cancelled trades, for compliance with Marketplace Rules 4632(g), 4642(g), 4652(g), 6130(f), 6420(f) and 6620(f)	from trade date October 24, 2006
30	orders for Nasdaq securities in soft dollar accounts and related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC Section 28(e)	from trade date October 24, 2006.
25	orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605	from trade date October 24, 2006.
4 (29 orders)	security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605	from the month of August 2006
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 606	from the report including October through December 2006
3	customer transactions in OTCBB and OTC equity securities, for compliance with NASD Conduct Rules 3110(b) and 2320	from trade date October 24, 2006
12	persons engaged in the firm's trading and market making activities, for compliance with NASD registration rules	from trading staff in October 2006
50	orders in NNM or SC securities submitted to OATS, for compliance with Marketplace Rule 6955	from trade date October 24, 2006
167	order/trade records prepared and maintained in connection with the above samples, for general compliance with Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4	from trade date October 24, 2006 and various trade dates in August 2006

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
86	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules	from trade date October 24, 2006
24	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10	from trade date October 24, 2006
N/A	the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with Conduct Rules 2320 and 3010	based on WSPs in effect during October 2006
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with Conduct Rule 3010	based on WSPs in effect during October 2006