

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070078333-01**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Goldman, Sachs & Co. ("GSCO" 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 1936, and its registration remains in effect. The firm has the following relevant disciplinary history.

- In July 2007, FINRA accepted the firm's AWC (20050027552), in which the firm agreed to a censure and a fine of \$40,000, which included fines of \$5,000 for violations of Rule 6130(b) from May 1 to August 31, 2006 and \$15,000 for violations NASD Rule 5430 from October 10, 2005 to January 4, 2006.
- In September 2006, FINRA accepted the firm'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 to April 30, 2005 in violation of NASD Rule 2110.

- In July 2006, FINRA accepted the firm's AWC (20050025742) in which it agreed to a censure and a total fine of \$50,000, an unspecified portion of which was for failing to maintain adequate written supervisory procedures for 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.
- In May 2006, FINRA accepted the firm's AWC (20041000178) in which it agreed to a censure and a total fine of \$20,000, which included a \$12,500 fine for violations of NASD Rule 3370 from November 1, 2003 to January 15, 2004.
- In October 2005, FINRA accepted the firm's AWC (20050002343) in which it agreed to a censure and a total fine of \$15,000, which included fines of \$5,000 for violations of NASD Rule 3370 and \$5,000 for failing to maintain adequate written supervisory procedures in August 2004 in violation of NASD Rule 3010.
- In July 2005, FINRA accepted the firm's AWC (20042000105), in which it agreed to a censure and a total fine of \$25,000, which included a \$5,000 fine for violations of NASD Rule 3370 and \$5,000 for failing to maintain adequate written supervisory procedures in July 2003 in violation of NASD Rule 3010.

SUMMARY

This matter is the result of four reviews conducted by the Department of Market Regulation. Matter Nos. 20070078333 and 20080147610 reviewed the firm's reporting of short interest positions from April 2006 to January 2007 and from July 31 to August 29, 2008, respectively. Matter No. 20070105109 was a review of certain of the firm's short sale transactions from June 15 to December 31, 2007. Matter No. 20080140657 reviewed the firm's compliance with NASD Rule 6130(b) from January 1 to April 30, 2008.

FACTS AND VIOLATIVE CONDUCT

20070078333

1. In January 2007, the firm failed to report short interest positions for approximately 841 foreign securities and 459,712,107 shares. From July to December 2006, the firm failed to report short interest positions each month for approximately the same number of foreign securities and approximately the same total number of shares as it failed to report in January 2007.

From July to November 2006, the firm failed to report its short interest position in 2Themart.com, Inc. (TMRT) when the actual short interest position in TMRT was 1,191,429 shares each month.

In November 2006, the firm failed to report its short interest position in BSML, Inc. (BSML) when the actual short interest position in BSML was 475,660 shares.

In August 2006, the firm failed to report its short interest position in Oncology Med, Inc. (ONCM) when the actual short interest position in ONCM was 86,773 shares.

In April 2006, the firm failed to report its short interest position in Somera Communications, Inc. (SMRAD) when the actual short interest position in SMRAD was 102,303 shares.

In September and October 2006, the firm failed to report its short interest positions in O.N.E. World Distribution, Inc. (ONWD) when the actual short interest positions in ONWD were 12,200 and 100 shares, respectively.

20080147610

2. For settlement date July 31, 2008, the firm reported short interest positions in 13 securities totaling 2,381,068 shares when the actual short interest position in the 13 securities was zero shares. For settlement date August 15, 2008, the firm reported short interest positions in 75 securities totaling 24,103,449 shares when the actual short interest position in the 75 securities was zero shares. For settlement date August 29, 2008, the firm reported short interest positions in 29 securities totaling 5,125,322 shares when the actual short interest position in the 29 securities was zero shares.

The conduct described in paragraphs one and two constitutes separate and distinct violations of NASD Rule 3360.

20070105109

3. From June 15 to December 31, 2007, the firm inadvertently failed to remove its "excused withdrawal" status as a Nasdaq market maker in three securities and, consequently, on 691 occasions involving such securities, accepted a short sale order in an equity security from another person, or effected a short sale in an equity security for its own account, in mistaken reliance on the market maker exemption contained in SEC Rule 203(b)(2)(iii) and thus without: (a) borrowing the security, or entering into a *bona fide* arrangement to borrow the security; or (b) having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and (c) documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 203(b)(1) of Regulation SHO.

4. From June 15 to December 31, 2007, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain aspects of the applicable securities laws and regulations, and the Rules of FINRA, specifically concerning SEC Rule 203(b)(3) in the following respects. The firm's supervisory system did not include written supervisory procedures providing for: (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 firm also failed to provide adequate documentary evidence that during the period June 15 to December 31, 2007, it performed the supervisory reviews set forth in its written supervisory procedures concerning SEC Rules 200(g) and NASD Rule 6130(d)(6). The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

20080140657

5. From January 1 to April 30, 2008, the firm failed to accept or decline in the FINRA/Nasdaq Trade Reporting Facility 1,771 transactions in Reportable Securities within 20 minutes after execution, representing approximately 2.7 percent of all transactions (65,813) that the firm had an obligation to accept or decline as the OBID during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(b).

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

A censure, a total fine of \$120,000 (comprising fines of \$80,000 for the short interest reporting violations, \$20,000 for the violations of SEC Rule 203(b)(1), \$15,000 for violations of NASD Rule 6130(b), and \$5,000 for the supervision violations), and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.4 above. Within 30 days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent 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 revised its written supervisory procedures to address the deficiencies described in paragraph I.A.4; and

- (3) the date the revised procedures were implemented.

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:

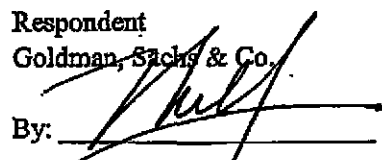
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will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

May 13, 2010
Date

Respondent

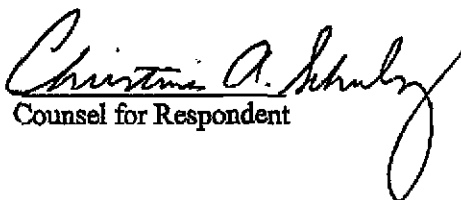
Goldman, Sachs & Co.

By: 

Name: Norman Feit

Title: Managing Director

Reviewed by:


Christina A. Schulz
Counsel for Respondent

Accepted by FINRA:

5/28/10
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