

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2009019301201**

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

RE: Goldman, Sachs & Co., Respondent  
CRD No. 0361

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Goldman, Sachs & Co. ("Goldman", "Respondent" 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 Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, without admitting or denying the findings<sup>1</sup>, 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**

Goldman has been a member of FINRA since 1936 and its principal place of business is New York, New York. The Firm currently has 7,709 registered personnel and provides a full range of financial services including investment banking, underwriting debt and equity securities and financial advice to corporate and institutional clients. It is also a full-service broker-dealer and trades securities for institutional and retail customers and proprietary accounts.

**RELEVANT DISCIPLINARY HISTORY**

On June 9, 2011, Goldman entered into an Offer of Settlement and Consent Order with the Commonwealth of Massachusetts Securities Division concerning Trading Huddles (without

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<sup>1</sup> For purposes of this AWC, Respondent admits to all findings to the extent also contained in Section V of the Offer of Settlement and Consent Order with the Commonwealth of Massachusetts Securities Division, Case No. E-2009-0079.

admitting or denying the Legal Conclusions and Violations set out in Sections VI and VII of the Order). Commonwealth of Massachusetts Securities Division (Case No. E-2009-0079). The Massachusetts Securities Division found that between January 1, 2006 through June 9, 2011, Goldman failed in the respects described in the Order (1) to establish adequate policies and procedures relating to potential conflicts of interest with respect to its research services; (2) to establish adequate procedures relating to the dissemination of certain unpublished short-term trading ideas to certain priority clients; (3) to reasonably supervise equity analysts' communications relating to the dissemination of certain unpublished short term trading ideas; (4) to prevent the use and dissemination by equity analysts of certain unpublished short term trading ideas; and (5) to deal fairly and objectively with all clients in connection with the dissemination of certain unpublished short term trading ideas by its equity research analysts.

Pursuant to the Offer of Settlement and Consent Order, the Firm agreed to a civil penalty in the amount of \$10,000,000 and to an undertaking to (1) permanently discontinue the Firm's Asymmetric Service Initiative (as defined in the Order); (2) permanently discontinue its Trading Huddles (as defined in the Order); and (3) review and modify (as needed) its written supervisory policies and procedures with respect to certain research activities.

The Firm has no other relevant disciplinary history.

## **OVERVIEW**

Pursuant to a formalized business process at the Firm known as "Trading Huddles" as well its "Asymmetric Service Initiative," the Firm's equity research analysts typically met on a weekly basis with traders who interfaced with clients, and sometimes with equity salespersons, to discuss the analysts' views, including, among other things, actionable trading ideas, on covered companies and industries in their sector. After such meetings, the research analysts made telephone calls to a select group of the Firm's high priority clients to cover the topics discussed at Trading Huddles, including among other things, the actionable trading ideas shared during the Trading Huddles. In certain instances, an analyst participated in a Trading Huddle while in the process of considering changing the published research rating or Conviction List status of a stock discussed during the Trading Huddle. The Trading Huddle process created the significant risk that material non-public information concerning the analyst's published research could be disclosed to certain priority clients.

Between January 2007 and August 2009 (the relevant period), the Firm did not have adequate policies and procedures relating to Trading Huddles despite the substantial risk that the Trading Huddle process could lead to the dissemination of material non-public information concerning the analysts' published research to the Firm's clients.

In addition to the deficiencies with respect to its supervision of Trading Huddles, the Firm lacked adequate systems and procedures to prevent and detect information breaches by its research analysts or to monitor for possible trading in advance of published ratings changes and Conviction List changes. Without a reasonable supervisory system to monitor trading, the Firm failed to identify and/or investigate certain questionable trades executed prior to changes to its published ratings or changes to its Conviction List. Based on the foregoing, the Firm violated

NASD Rules 3010 and 2110 and FINRA Rule 2010.

Goldman also failed to establish and maintain policies and procedures reasonably designed to prevent trading ahead of research reports, in violation of FINRA Rules 5280 and 2010.

## **FACTS**

### **1. Goldman's Equity Research Division**

Goldman research analysts responsible for covering equity securities in the United States, Canada, and Latin America are part of the Firm's Americas Equity Research Group, which is within the Global Investment Research division ("GIR"). The Americas Equity Research group is divided into six (previously seven) subject-matter sectors. The Firm publishes coverage-relative investment ratings (Buy, Neutral, or Sell), and target share prices (generally for a 6-12 month time horizon), as well as earnings estimates with respect to all covered stocks within each of the sectors. Changes to the Firm's published investment ratings of covered stocks are considered material information and cannot be made without the review and approval of GIR's Investment Review Committee ("IRC").

During the relevant period, the Firm also published an Americas Conviction List ("Conviction List"), a "focused list of [Goldman's] best ideas" of its equity research analysts that designates as Conviction Buy and Sell a subset of equity securities that the Firm has rated Buy or Sell. As with ratings changes, additions to, or removals from, the Firm's Conviction List are considered material information and require IRC review and approval.

Throughout the time it conducted Trading Huddles, the Firm considered analysts' commercial impact (in addition to other performance measures such as accuracy and quality of research and internal as well as client evaluations) as an important factor in its performance evaluation process. Goldman evaluates research analysts using an Analyst Scorecard ("Scorecard"), which reflects overall analyst performance and is used to determine the bonuses paid to analysts. The Scorecard incorporates various components of performance including the accuracy and quality of research, evaluations from internal Goldman personnel (including sales persons and traders), as well as feedback received directly from Goldman institutional investor clients through a process known as "broker votes." The Firm made clear to analysts the importance of Trading Huddles and the Asymmetric Service Initiative to their performance evaluations which could in turn affect their compensation.

### **2. Goldman's Trading Huddles and Asymmetric Service Initiative**

Goldman implemented a formalized business process known as "Trading Huddles" in 2006. Trading Huddles were internal meetings, organized by industry sector, among equity research analysts from GIR and traders from Goldman's Securities Division who interfaced with clients (including market-making and client facilitation traders). Access to the Trading Huddles was not restricted to those individuals, however, and may have included clients on certain occasions.

Trading Huddles were a wide ranging activity for the Firm, and the Firm devoted a significant amount of resources to them. From 2006 to 2011, Trading Huddles typically occurred on a

weekly basis for each of the six to seven industry sectors during which numerous analysts discussed thousands of stocks in varying detail.

During Trading Huddles, equity research analysts provided their views, including, among other things, trading ideas, on covered companies and industries in their sector. In fact, analysts were encouraged to discuss their “highest conviction ideas in that sector” with a focus on “commercially oriented trading ideas” during Trading Huddles and thereafter during calls with clients.

To enhance the usefulness of its Trading Huddles Goldman implemented a program in January 2007 known as the Asymmetric Service Initiative (“ASI”), through which it provided the information shared in a structured format in Trading Huddles to approximately 180 high priority clients selected by the Firm’s institutional sales group (“ASI clients”). ASI clients were typically large hedge funds and other institutional investors. As part of ASI, research analysts often prepared “huddle scripts” regarding the topics discussed at Trading Huddles and were instructed to work from the scripts when speaking to ASI clients. When making ASI calls, analysts were told to “lead with trading color . . . and with the most interesting and actionable ideas.” The Firm intended ASI, among other things, to generate increased trading commissions from ASI clients. The Firm did not disclose to its other clients that it was providing the ASI service to its priority clients, but analysts were also permitted to discuss the ideas from Trading Huddles with non-ASI clients.

In certain instances, equity research analysts would discuss a stock during a Trading Huddle at a time when the analyst was in the process of considering changing the published research rating or the Conviction List status of that stock. Under the Firm’s procedures, equity research analysts were not prevented from seeking approval for research rating and Conviction List changes prior to or immediately following the discussion of such stock at a Trading Huddle. The Firm sometimes approved changes to the analyst’s published rating on a particular stock shortly following a Trading Huddle in which such stock was discussed.

Analysts sometimes shared with ASI clients their views about the potential price reactions of a stock in response to specific anticipated events. In certain instances, an analyst would opine to priority clients that the price of a security would move in a direction contrary to the published rating of the stock in response to such an event.

The formalized Trading Huddle and ASI process created a significant risk that material non-public information concerning analysts’ published research, including previews of rating changes or changes to Conviction List status, could be disclosed to certain priority clients.

Both the Trading Huddles and the ASI programs were discontinued in 2011.

### **3. Goldman’s Inadequate Systems and Procedures to Supervise Trading Huddles and ASI**

After creating the Trading Huddles and ASI programs, Goldman failed to adequately address the increased risks resulting from these programs. Between January 2007 and August 2009, the Firm did not have policies relating specifically to Trading Huddles despite a serious risk and

opportunity that material non-public information concerning analysts' published research could be disclosed to the Firm's clients.

#### The Firm Lacked Adequate Systems and Procedures to Monitor Communications in Trading Huddles

During the relevant period, the Firm failed to establish controls reasonably designed to monitor communications in the Trading Huddles. GIR Compliance personnel regularly participated in the Trading Huddles from January 1, 2007 through July 31, 2008, but attended less frequently thereafter. Compliance personnel were typically not informed ahead of time of the stocks that were to be discussed in an upcoming Trading Huddle, nor were Compliance personnel made aware of proposed or approved research changes for stocks that might be discussed in Trading Huddles. Such information would have assisted Compliance personnel in determining whether an analyst had previewed material non-public changes to the analyst's published research during the Trading Huddle.

The Firm also did not adequately review discussions in the Trading Huddles to determine whether there was a possible preview of an upcoming research change by an equity research analyst during a Trading Huddle regardless of whether there was such a preview.

- In late 2008, the day before a Trading Huddle, a research analyst received authorization to add Company A to the Firm's Conviction Buy List. The next day, the analyst stated in a Trading Huddle that Company A "remains our analyst's favorite idea given a favorable strategic position for the evolving shift of certain CDS products from the OTC market to a cleared exchange." The Firm published a report adding the stock to the Firm's Conviction Buy List the day following the Trading Huddle.
- A research analyst discussed Company B in a Trading Huddle in mid-2008, stating that "we expect companies with consumer and small business exposure to be under pressure in the current environment, including [Company B]." The next day, the analyst sought and received approval to downgrade Company B from Neutral to Sell and to add the stock to its Conviction Sell List. Goldman published a report making these changes that same day.
- During a Trading Huddle in the fall of 2008, a research analyst stated that "For longer term investors, [Company C] looks very attractive at this level." The next day, the analyst sought and received authorization to upgrade Company C from Neutral to Buy and to add the stock to the Firm's Conviction Buy list. Goldman published a report making these changes the following day.

#### The Firm Lacked Procedures to Ensure Adequate Records Were Maintained of Huddle Discussions

The Firm failed to establish a reliable system to memorialize the discussions during the Trading Huddles. In January 2008, the Firm made "Huddle Champions" (the equity research analysts

primarily responsible for organizing a Trading Huddle) responsible for maintaining a record of the ideas discussed in the Trading Huddle. However, the Firm failed to establish controls to ensure that the designated person was in fact creating such a record. In certain instances the Huddle Champions failed to maintain a record of the ideas discussed in the Trading Huddles and, consequently, the Firm had no complete record of what companies were discussed or the subject matter of the Trading Huddle discussions. Additionally, the Firm failed to maintain a complete record of dates the Trading Huddles actually took place. Although such records were not required to be created or maintained in the abstract by applicable regulations, the absence of such documentation compromised Goldman's ability to monitor effectively the potential previewing of material nonpublic changes to an analyst's published research in connection with Trading Huddles and ASI.

#### **4. Goldman's Inadequate Supervision of Research Analyst Communications**

In addition to the deficiencies in the systems and procedures to supervise Trading Huddles, the Firm failed to establish, maintain and enforce adequate supervisory systems and written procedures designed to detect and prevent information breaches by its equity research analysts with respect to published research changes.

The Firm failed to establish an adequate system to monitor for possible trading in advance of research rating changes or Conviction List changes. For example, between January 1, 2007 and November 3, 2008, the Firm utilized a manual, paper-based system to review trading in employee and certain proprietary accounts in advance of published research changes. The manual review process was inefficient and significantly flawed for that purpose. The Firm, however, lacked controls needed to ensure that reviews were conducted and, when they were conducted, that such reviews were adequate.

Between November 3, 2008 and July 31, 2009, the Firm utilized an automated system called the Surveillance Architecture to review the trading in employee and certain proprietary accounts (and institutional client accounts as of March 13, 2009). The system was designed to capture all trading activity in securities listed on the Research Restricted List for a predetermined number of days prior to the rating change. However, the system filtered out the Firm's market-making and client-facilitation accounts before any substantive review was conducted. The Surveillance Architecture also filtered out trading activity that resulted in profits below certain thresholds, which were too high in the context of the Trading Huddles and ASI.

Therefore, the Firm lacked critical systems and procedures to monitor trading in a number of different accounts over various time periods:

- Between January 1, 2007 and September 10, 2008, the Firm failed to establish a supervisory system and written procedures to monitor trading in employee and proprietary trading accounts in advance of Conviction List changes that were not accompanied by rating changes.
- Between January 1, 2007 and March 12, 2009, when using the manual, paper-based system, the Firm had no system or procedures to monitor for possible trading by its

institutional customers in advance of changes in published research ratings or Conviction List status.

- Between January 1, 2007 and August 31, 2009, the Firm had no system or procedures in place to monitor for possible trading by its market-making and client-facilitation traders in advance of changes in published research ratings or Conviction List status.

Without a reasonable supervisory system and procedures to monitor trading, the Firm failed to identify and/or adequately investigate a significant number of questionable trades executed prior to published research ratings changes or Conviction List changes that warranted additional review in light of the facts and circumstances, regardless of whether there was a connection between the ratings changes and the trading. Notably:

- Prior to September 10, 2008, the Firm failed to identify and investigate certain increased trading in proprietary accounts for stocks in advance of their addition to the Firm's Conviction Lists.
- The Firm failed to identify and/or adequately investigate certain transactions effected in an account in advance of changes in published research that warranted review based on their size or profitability and/or atypical trading for that account.
- The Firm failed to identify and investigate certain spikes in trading volume that immediately preceded the addition of stocks to the Firm's Conviction List.

## **5. Goldman's Inadequate Supervisory Systems to Prevent Trading Ahead of Research Reports**

The Firm's equity research analysts had significant interaction with its traders, including through the Trading Huddle process. During the time period from April 20, 2009 (when FINRA Rule 5280 became effective) to July 30, 2009, the Firm used the Surveillance Architecture to monitor for potential information barrier breaches. While the Surveillance Architecture captured all transactions executed through Goldman, the tool was designed to filter out market-making and client-facilitation trading accounts. Accordingly, these accounts were not reviewed to ensure that trading department personnel did not act on knowledge of upcoming changes in the Firm's published research. Goldman should have reviewed trading in these accounts to address the increased risk of previewing material non-public changes to the analyst's published research resulting from these programs.

## **VIOLATIONS**

### **The Firm Violated NASD Rule 3010 With Respect to Trading Huddles and ASI**

The Trading Huddle process created a substantial risk that material non-public information concerning research analysts' published research could be disclosed to certain priority clients. By institutionalizing Trading Huddles and ASI without establishing adequate policies, procedures and controls as described herein, the Firm violated NASD Rules 3010 and 2110 and

FINRA Rule 2010.

The Firm Violated NASD Rule 3010 With Respect to Research Analyst Communications

As described herein, the Firm failed to establish, maintain and enforce reasonable systems and procedures to supervise research analyst communications to prevent and detect the previewing of material non-public changes to an analyst's published research by equity research analysts and to monitor for possible trading in advance of published research or Conviction List changes. Based on the foregoing, Goldman violated NASD Rules 3010 and 2110 and FINRA Rule 2010.

The Firm Violated FINRA Rules 5280 and 2010

As described herein, Goldman failed to establish and maintain policies and procedures reasonably designed to prevent trading ahead of research reports. Based on the foregoing, Goldman violated FINRA Rules 5280 and 2010.

- B. Respondent also consents to the imposition of the following sanctions:
1. A censure; and
  2. A fine in the amount of \$22 million (\$22,000,000), of which \$11 million (\$11,000,000) will be paid according to an Administrative Order issued by the U.S. Securities and Exchange Commission relating to its investigation of Goldman's Trading Huddles.

Respondent further consents to undertake a comprehensive review of its supervisory and compliance policies and procedures concerning the violative conduct addressed in this AWC, including its (i) research policies and procedures to prevent and detect information breaches by its U.S. equity research analysts relating to previewing material non-public changes to such analysts' published research; (ii) Firm policies and procedures monitoring for possible trading in advance of published research rating changes or Conviction List changes; and (iii) Firm policies and procedures identifying and investigating questionable trades executed prior to published research rating changes or Conviction List changes. In addition, within 90 days of Notice of Acceptance of this AWC, a Director of Americas Equity Research for GIR shall certify in writing to the staff that (i) the Firm has engaged in the comprehensive review described above; and (ii) as of the date of the certification, Respondent has in place policies and procedures sufficient to address the matters identified in this AWC.

For good cause shown, and upon receipt of a timely application, FINRA staff may extend the certification deadline set forth above.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent 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**

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against Respondent;
- 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 National Adjudicatory Council ("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 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.

Respondent 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**

Respondent understands that:

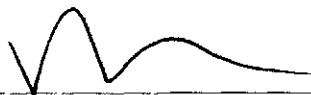
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, Respondent’s submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
  - 1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
  - 2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about Respondent’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. Respondent 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. Respondent 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 Respondent’s right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent 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 Respondent 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 the Firm 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.

3/14/12  
Date

Goldman, Sachs & Co.  
Goldman, Sachs & Co., Respondent

By:   
Gregory K. Palm  
Managing Director

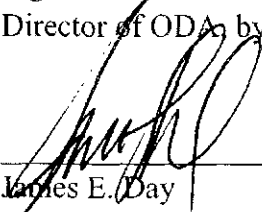
Reviewed by:

  
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Accepted by FINRA:

4/12/12  
Date

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

  
James E. Day  
Associate Vice President and Chief Counsel  
FINRA Department of Enforcement  
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