

FINRA

2014 JUN -5 PM 12: 23

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

NO. 20110307615 - 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. ("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 AND RELEVANT DISCIPLINARY HISTORY

The firm became a member of FINRA on March 31, 1948 and its registration remains in effect. The firm has no relevant disciplinary history.

SUMMARY

In 20110307615, the staff in the Customer Issues Section of Market Regulation (the "staff") conducted an investigation concerning certain transactions executed on SIGMA-X, which is an alternative trading system ("ATS") owned and operated by the firm, between July 29, 2011 through August 9, 2011. During this period, the staff identified approximately 395,119 transactions executed on SIGMA-X where the execution traded through a protected quotation at a price inferior to the National Best Bid and Offer ("NBBO"). During the eight day trading period, the firm was unaware that it was trading through a protected quotation in more than 395,000 instances. The trade-throughs were caused by market data latencies at SIGMA-X and were undetected in a timely manner. In fact, the firm first became aware that it had traded through a protected quotation when it

was contacted by several customers on August 8 and the New York Stock Exchange on August 9, 2011, regarding certain transactions.¹

From at least November 1, 2008 through August 31, 2011, the firm failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent trade-throughs in accordance with SEC Rule 611 of Regulation NMS -- the Order Protection Rule. The staff's investigation determined that the firm's supervision of its obligation to avoid trade-throughs was based on three methods that were inadequate to detect such problems. First, the firm used an exception report, the GSEC REDI Market Data Accuracy Check Report (the "Market Data Accuracy Report"), to compare a sampling of SIGMA-X's market data with an independent data source at the time of an order event. The Market Data Accuracy Report, however, from the date of its inception, November 3, 2008, through August 31, 2011, only reviewed 20 orders per week. SIGMA-X, however, executed millions of transactions weekly. Because of the limited scope and sampling of the Market Data Accuracy Report, it was inadequate for its intended purpose. The firm did not regularly assess the effectiveness of the Market Data Accuracy Report during the time the report was in use.

Second, the firm monitored the capacity of its market data handling systems on a firm-wide basis, in particular using a report that identified various capacity metrics for its market data servers, including those that processed market data for SIGMA-X. This firm-wide capacity monitoring, however, was an ineffective method to identify market data latencies or potential trade-throughs.

Third, the firm's written supervisory procedures regarding SEC Rule 611 identified a report entitled the SIGMA X NBBO Potential Trade Through Report (the "Trade Through Report"), which was implemented on November 1, 2008 and in use through August 31, 2011. The Trade Through Report compared the execution price of a transaction on SIGMA-X with the NBBO data used by the firm to execute that trade. The firm used the Trade Through Report to confirm that all executions within SIGMA-X occurred at or within the NBBO communicated to SIGMA-X at the time of execution. The Trade Through Report was ineffective and generated very few exceptions because it was designed to detect only transactions that were not executed at or within SIGMA-X's decision-making NBBO and not to detect trade-throughs that occurred as a result of market data latencies. This report was reviewed on a T+1 basis by a supervisor and was mailed electronically to approximately eight firm employees, including several persons who were on the firm's Best Execution Committee. The staff found no evidence that any members of the firm's Best Execution Committee raised concerns about the effectiveness of the Trade Through Report.

¹ There were earlier instances when trade throughs spiked on SIGMA-X. For instance, on March 16, 2011, there were 7,585 trade-throughs on SIGMA-X; and on June 23, 2011, there were 6,359 trade-throughs. These trade-throughs were also undetected by the firm and caused by market data latencies at SIGMA-X.

FACTS AND VIOLATIVE CONDUCT

As a result of the foregoing, the staff determined that from November 1, 2008 through August 31, 2011:

1. The firm failed to establish, maintain, and enforce written policies and procedures that were reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within any applicable exception, and if relying on an exception, are reasonably designed to assure compliance with the terms of the exception. The conduct described in this paragraph constitutes a violation of SEC Rule 611(a)(1) of Regulation NMS, FINRA Rule 2010 (or NASD Rule 2110 for conduct occurring prior to December 15, 2008) and NASD Rule 3010.
2. The firm failed to regularly surveil to ascertain the effectiveness of its policies and procedures designed to prevent trade-throughs of protected quotations in NMS stocks. The conduct described in this paragraph constitutes a violation of SEC Rule 611(a)(2) of Regulation NMS, FINRA Rule 2010 (or NASD Rule 2110 for conduct occurring prior to December 15, 2008) and NASD Rule 3010.

OTHER FACTORS

In resolving this matter, the staff considered the fact that the firm voluntarily paid approximately \$1.67 million in restitution to customers in connection with the conduct cited above.

- B. The firm also consents to the imposition of the following sanctions:
- A censure;
 - A fine of \$800,000; and
 - An undertaking that, within 30 business days of acceptance of this AWC by the 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 supervisory policies and procedures to address the deficiencies described in paragraphs I.A.1 and I.A.2; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 sanction(s) 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 Chief Legal Officer, 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 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.

6/3/2014
Date

Respondent
Goldman Sachs Execution & Clearing, L.P.

By: 

Name: Kyle Czepiel
Managing Director

Title: _____

Reviewed by:


Elizabeth Mitchell, Esq.
Wilmer Cutler Pickering Hale and Dorr
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 663-6000

Accepted by FINRA:

6/30/14
Date

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


Robert A. Marchman
Executive Vice President
Department of Market Regulation