

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120317433-01**

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

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Goldman, Sachs & Co. ("GSCO") and Goldman Sachs Execution & Clearing, L.P. (including its predecessor Spear Leeds & Kellogg, L.P., "GSEC") (collectively the "Firms") submit 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 Firms alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firms hereby accept and consent, 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

GSCO has been a member of FINRA since October 26, 1936, and its registration remains in effect. The Firm has no relevant disciplinary history.

GSEC has been a member of FINRA since March 31, 1948, and its registration remains in effect. The Firm has no relevant disciplinary history.

SUMMARY

This matter stems from a referral from the Options Regulation Section ("Staff") of FINRA's Department of Market Regulation and involves GSCO and GSEC. During the period of August 2003 through December 2011 (the "Review Period"), for the reasons described below, the Firms failed to establish, maintain and enforce written supervisory

procedures reasonably designed to: (1) identify material changes in access to certain accounts that were granted an exemption from aggregating options positions by the Intermarket Surveillance Group ("ISG"); and (2) provide notice of any such changes.

FACTS AND VIOLATIVE CONDUCT

1. In 2000, The Goldman Sachs Group, Inc. acquired Spear Leeds & Kellogg, L.P., which was later renamed Goldman Sachs Execution & Clearing L.P. After the acquisition, GSCO and GSEC sought an exemption from ISG from aggregating its option positions for the purposes of position and exercise limit compliance. Upon demonstrating that GSCO and GSEC did not share control or influence decisions made with respect to trading in each Firm's accounts, ISG granted the exemption request (the "aggregation exemption"). The aggregation exemption granted on behalf of the options exchanges (the "Exchanges") was memorialized in a letter to the Firms dated October 31, 2000, which stated that the Firms must notify the Exchanges of any changes made to the structure of the accounts so that the aggregation exemption determination could be re-examined if circumstances changed.
2. In August 2003, certain GSCO personnel were granted access to the GSEC accounts that were subject to the aggregation exemption. The access was granted in connection with the integration of the stock loan services offered by GSEC and GSCO. This was done pursuant to approval from the New York Stock Exchange and the American Stock Exchange because such access required relief from Rules 98 and 193, respectively. The Firms did not provide the Exchanges with notice of this change as required by the terms of the aggregation exemption.
3. During the Review Period, the Firms failed to have adequate procedures, including written supervisory procedures, reasonably designed to identify material changes in access and management of accounts that were the subject of the aggregation exemption in order to assure that proper notice was given to the Exchanges, and proper notice to the Exchanges was not provided. The conduct described in this paragraph constitutes separate and distinct violations by both GSCO and GSEC of NASD Rule 3010 and NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on and after December 15, 2008).

OTHER FACTORS

In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction,¹ Market Regulation took into consideration the following: (i) the Firms self-reported the violations at issue and promptly took action to correct the violative activity; (ii) on their own accord, the Firms performed a look-back review of option position and exercise limits for the time period of between August 2004 (the first date such accounts held option positions) and December 2011 (when it began aggregating positions) and identified no violations stemming from a failure to aggregate its option positions occurred; and (iii) the Firms reviewed a significant number of e-mails

¹ See Principal Consideration 12 of the FINRA Sanction Guidelines and Notice to Members 08-70.

to determine if any inappropriate communications occurred during the Review Period and found no evidence that underlying violations occurred.

B. GSCO consents to the imposition of the following sanctions:

- a. a censure; and
- b. a fine totaling \$18,750.

GSEC consents to the imposition of the following sanctions:

- a. a censure; and
- b. a fine totaling \$18,750.

The Firms agree to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firms have submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

The Firms specifically and voluntarily waive any right to claim that they are 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 Firms specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firms;
- 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 Firms specifically and voluntarily waive 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 Firms further specifically and voluntarily waive 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 Firms understand that:

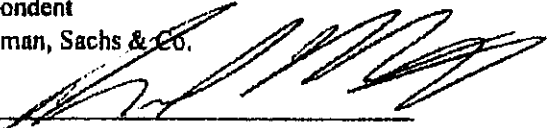
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firms; and
- C. If accepted:
 - 1. this AWC will become part of the Firms' 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 accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The Firms 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 Firms 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 Firms' (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 Firms may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firms understand that they 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 Firms, certify that a person duly authorized to act on their 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 Firms to submit it.

12/04/2014
Date

Respondent
Goldman, Sachs & Co.

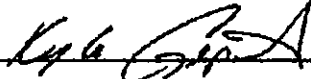
By: 

Name: David A. McLaughlin

Title: Managing Director

The undersigned, on behalf of the Firms, certify that a person duly authorized to act on their 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 Firms to submit it.

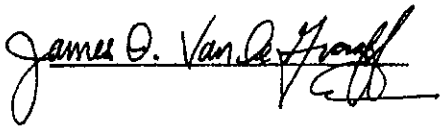
Respondent
Goldman Sachs Execution & Clearing, L.P.

By: 

Name: Kyle Czepiel
Managing Director

Title: _____

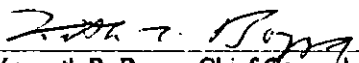
Reviewed by:



Accepted by FINRA:

12/23/14
Date

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


Kenneth R. Bozza, Chief Counsel
Legal Section
Department of Market Regulation