

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140425821 01**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Goldman Sachs & Co. LLC ("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. GSCO 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

GSCO has been a FINRA member and has been registered with the Securities and Exchange Commission ("SEC") since 1936. GSCO conducts a general securities business and is headquartered in New York City. The Firm maintains 19 branch offices and employs approximately 7,460 registered representatives.

Goldman Sachs Execution and Clearing, L.P. (BD No. 3466) ("GSEC") was an affiliate of GSCO. GSEC was a FINRA member from 1948 until August 17, 2017, and was registered with the SEC from 1948 until August 11, 2017. GSEC conducted a general securities business, self-cleared securities transactions for its own customers and cleared securities transactions for customers of introducing brokers. GSEC was headquartered in New York City.

On June 12, 2017, GSEC merged into GSCO, with GSCO assuming any remaining GSEC assets, liabilities and operations and the GSEC clearing business becoming part of GSCO's Prime Services Clearing business.

RELEVANT DISCIPLINARY HISTORY

GSEC has no relevant disciplinary history.

OVERVIEW

Between June 2008 and October 2014 (the “Relevant Period”), GSEC cleared over 100 million ETF purchases for its own customers, primarily institutional market participants, and for customers of over 100 introducing brokers. GSEC designed a system to deliver prospectuses for all first-time ETF purchases regardless of its responsibility to deliver prospectuses or the availability of exemptions. However, due to certain design flaws described below, GSEC’s prospectus delivery system failed to deliver numerous ETF prospectuses. GSEC’s prospectus-delivery system was also inadequately tested and GSEC failed to discover the issue during the Relevant Period.

As a consequence of GSEC’s failure to establish, maintain and enforce a supervisory system and written supervisory procedures in connection with ETF prospectus delivery that were reasonably designed to achieve compliance with Section 5(b)(2) of the Securities Act of 1933 (the “Securities Act”), GSEC violated NASD Rules 3010(a) and (b) and 2110 and FINRA Rule 2010.¹ In addition, as a result of GSEC’s failure to establish, maintain and enforce supervisory control policies and procedures that adequately tested and verified that its supervisory procedures concerning ETF prospectus delivery were reasonably designed to achieve compliance with applicable securities laws and regulations, GSEC violated NASD Rules 3012 and 2110 and FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

Section 5(b)(2) of the Securities Act prohibits the delivery of certain securities, including ETFs, unless such delivery is accompanied or preceded by a copy of the prospectus or an exemption applies.

NASD Rules 3010(a) and (b) require FINRA members to establish, maintain and enforce systems and procedures to supervise its employees that are reasonably designed to achieve compliance with securities laws and regulations and NASD and FINRA rules.

NASD Rule 3012(a)(1) requires FINRA member firms to establish a system of supervisory control policies and procedures to “test and verify that the member’s supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules”

During the Relevant Period, Section 5(b)(2) of the Securities Act required, absent an exemption, delivery of a prospectus in connection with each customer’s initial purchase of an ETF. However, due to three separate flaws in GSEC’s prospectus-delivery system, GSEC failed to deliver numerous ETF prospectuses that GSEC intended to deliver.

¹ NASD Rule 2110 applies to conduct on or before December 14, 2008, and FINRA Rule 2010 applies to conduct on or after December 15, 2008.

The primary system flaw occurred in December 2009. Before December 2009, GSEC used taxpayer ID numbers in its ETF prospectus-delivery system to identify customers who purchased a particular ETF for the first time and thus required a prospectus. To avoid issuing duplicate prospectuses to customers who purchased the same ETF multiple times, GSEC's system selected one of each customer's transactions in each ETF (identified by the ETF's CUSIP number) and analyzed whether the customer had previously purchased that same ETF. If the customer had previously purchased that same ETF, GSEC's system did not send a second prospectus.

In December 2009, to protect customer information, GSEC stopped using taxpayer ID numbers in its trade-processing systems. But because GSEC did not replace taxpayer ID numbers with another unique customer-identifier, the field for taxpayer ID numbers was left blank, causing the system to treat all transactions in the same ETF CUSIP on the same day as involving a single customer, effectively excluding from prospectus-delivery considerations all other customers who purchased that ETF that day. In September 2014, FINRA staff inquired with GSEC about failures with respect to its prospectus delivery. GSEC investigated and only then corrected this flaw by using customers' account numbers as a unique customer identifier in its ETF prospectus-delivery system.

The second flaw in GSEC's prospectus-delivery system occurred between June 2008 and August 2014. For certain institutional accounts, GSEC used a third-party vendor to mail prospectuses to customers. Due to an operational error, however, GSEC repeatedly sent the mailing labels for these customers to the wrong printing queue. As a result, mailing labels were not printed and prospectuses were not delivered. GSEC's system was supposed to issue alerts if print instructions were not successfully delivered to the vendor, but no alerts were generated.

The third flaw in GSEC's prospectus-delivery system occurred between June 2008 and October 2014. GSEC's system did not consider whether there were changes or updates to an ETF prospectus since a customer's first purchase of that ETF. As a result, GSEC's system did not trigger prospectus delivery for subsequent ETF purchases where intervening updates to prospectuses required such deliveries.

During the Relevant Period, GSEC failed to establish, maintain and enforce supervisory control policies and procedures that adequately tested and verified that its supervisory procedures concerning ETF prospectus delivery were reasonably designed to achieve compliance with applicable securities laws and regulations. GSEC tested its prospectus-delivery system by emailing its third-party vendor, typically on a monthly basis, seeking confirmation that prospectuses were mailed for a small sample of trades that occurred the prior business day. However, these emails failed to achieve their purpose because the vendor misinterpreted GSEC's emails as instructing it only to prospectively send prospectuses for the sampled transactions and confirm delivery for them. While GSEC also maintained a daily production log of the number of prospectuses to be delivered, and images of mailing labels for prospectuses to be delivered, it did not compare that data with its vendor's data regarding the prospectuses that actually were mailed. More fundamentally, this procedure tested only whether the vendor had mailed certain prospectuses, it did not provide for any testing of GSEC's overall prospectus-delivery system,

which, as described-above, contained at least three separate flaws that went undetected for nearly five years.

By virtue of the foregoing, GSCO violated NASD Rules 3010(a) and (b), 3012 and 2110 and FINRA Rule 2010.

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

1. a censure;
2. a fine of \$700,000; and
3. the following undertaking:
 - a. Within no later than 90 days of Notice of Acceptance of this AWC, or such additional period as agreed to by a FINRA staff member in writing, a registered principal and executive officer of the Firm, on behalf of the Firm, shall submit a certification to FINRA that the Firm's policies, systems and procedures (including written procedures) and training, in connection with the Firm's Prime Services Clearing business, are reasonably designed to achieve compliance with Section 5(b)(2) of the Securities Act and any applicable regulatory exchange rules in connection with delivery of ETF prospectuses. The certification must identify GSCO and Matter No. 20140425821 and be provided to Gary Chodosh, FINRA – Department of Enforcement, Brookfield Place, 200 Liberty Street, New York, NY 10281, either by letter or by email from a work-related account of a registered principal of the Firm to EnforcementNotice@FINRA.org.

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

GSCO specifically and voluntarily waives any right to claim that the Firm 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

GSCO 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, GSCO 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.

GSCO 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

GSCO 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 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 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.

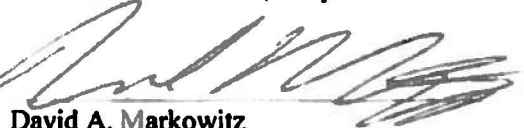
- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of GSCO, 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.

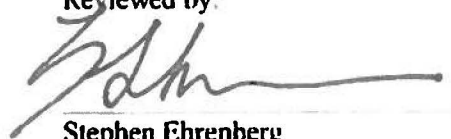
Goldman Sachs & Co. LLC, Respondent

Date: October 31, 2017

By:


David A. Markowitz
Managing Director

Reviewed by:


Stephen Ehrenberg
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125 Broad Street
New York, New York 10004-2498
212-558-3269

Accepted by FINRA:

December 1, 2017

Date

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



Gary A. Chodosh
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