

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018059146501**

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

RE: Goldman Sachs & Co. LLC (Respondent)
Member Firm
CRD No. 361

Pursuant to FINRA Rule 9216, Respondent Goldman Sachs & Co. LLC 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Goldman has been a FINRA member since October 1936. It is a full-service broker-dealer engaged in market making, execution services, and underwriting. The firm is headquartered in New York, New York and has approximately 8,500 registered individuals among its headquarters and approximately 70 branches.¹

OVERVIEW

From October 2015 to April 2018, Goldman mismarked as “long” approximately 60 million short sale orders totaling more than 14 billion shares. Nearly eight million of those orders, totaling more than a billion shares, were executed. Due to the inaccurate “long” mark, 12,335 of the executed orders were executed at or below the national best bid while a short sale circuit breaker was in effect. These mismarked orders also caused the firm to submit inaccurate trade reports to FINRA and maintain inaccurate books and records. As a result, Goldman violated Rules 200(g) of Regulation SHO, Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-3, and FINRA Rules 4511, 6182, 6624, and 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

During the relevant period, the firm further violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with Regulation SHO and rules relating to accurate trade reporting and order memoranda.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination.

Goldman erroneously marked and routed certain sell orders.

Rule 200(g) of Regulation SHO requires broker-dealers to “mark all sell orders of any equity security as ‘long,’ ‘short,’ or ‘short exempt.’” The broker-dealer selling an equity security may mark an order as “long” only if it is deemed to own the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. A violation of Rule 200(g) also constitutes a violation of FINRA Rule 2010.²

From October 2015 to April 2018, Goldman mismarked 59,981,252 short sell orders as long, of which 26,944,700 were sent to an alternative trading system (ATS). These orders represented less than one percent of Goldman’s total principal sell orders during this time period. The orders were auto-generated to promptly hedge the Synthetic Product Group’s (SPG) synthetic risk exposure resulting from its execution of equity swap transactions with clients. The mismarked orders were caused by Goldman’s implementation of an upgrade to the relevant automated trading software that was intended to simplify this order flow. Goldman inadvertently failed to include a single line of code that was designed to copy the long or short mark from a parent sell order and affix it to the instantaneously created child sell order(s) that were routed to the market. While the parent orders were accurately marked as short sales and a locate was obtained for each, the child orders did not receive the short sale order mark of the parent order due to the missing line of code. The firm immediately fixed this coding error after being notified by FINRA in April 2018.

Separately, Goldman misapplied order marking logic to sell orders routed to the firm by a foreign affiliate in a manner that resulted in certain of those orders being inaccurately marked short. A sample of six months of data revealed that approximately 670 orders of that foreign affiliate were broken up into child orders with the incorrect short sale indicator and sent to various market centers resulting in 26,377 executions, including 6,176 sent to an ATS.³ Goldman corrected this error after being notified by FINRA in October 2019.

² FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of the Exchange Act, an Exchange Act rule, or of any other FINRA rule constitutes a violation of FINRA Rule 2010.

³ The sample data set was drawn from the time period January 2018 through June 2019.

By incorrectly marking short sale orders as long, Goldman violated Regulation SHO Rule 200(g) and FINRA Rule 2010.

By marking short sell orders as long, Goldman also violated FINRA rules relating to filing accurate trade reports and maintaining accurate order memoranda.

FINRA Rule 6182 requires member firms to indicate on trade reports submitted to FINRA whether a transaction in an NMS stock is a short sale or a short sale exempt transaction. FINRA Rule 6624 contains the same requirement with respect to transactions in OTC Equity Securities.

FINRA Rule 4511(a) provides that “[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Section 17(a) of the Exchange Act and Rule 17a-3(a)(7)(i) thereunder require broker-dealers to make and keep current memoranda for trade executions that include the terms and conditions of the order. Implicit in these provisions is the requirement that such memoranda be accurate.

Goldman mismarked and routed 59,981,252 short sale orders as long. Of those 59,981,252 orders, 7,866,996 were executed. The firm maintained inaccurate memoranda for each of those sales. Also, 26,944,700 of the erroneously marked orders were routed to an ATS for execution—resulting in the execution of 2,117,624 orders on an ATS in NMS and OTC securities. The firm submitted inaccurate trade reports to FINRA with respect to those 2,117,624 orders.

As a result, Goldman violated Exchange Act § 17(a) and Exchange Act Rule 17a-3(a)(7)(i), and FINRA Rules 4511, 6182, 6624, and 2010.

Goldman failed to establish and maintain a supervisory system reasonably designed to comply with Rule 200(g) and FINRA rules relating to accurate trade reporting and order memoranda.

FINRA Rule 3110(a) provides that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

Goldman failed to establish and maintain a supervisory system reasonably designed to achieve compliance with Rule 200(g) and rules relating to accurate trade reporting and order memoranda. Although Goldman had a report that was designed to surveil for order marking accuracy, that report reviewed the accuracy of the order marks of parent orders, but did not confirm that the proper marking of the parent order carried over to the child orders. This deficiency resulted in Goldman’s failure to detect that it had mismarked approximately 60 million short sale orders as long during an approximately 29-month period and the execution of 12,355 short sale transactions for 1,596,375 shares at or below the national best bid while a short sale circuit breaker was in effect. It also resulted

in Goldman submitting over two million inaccurate trade reports to FINRA and creating and maintaining over seven million inaccurate order memoranda.

In May 2019, Goldman enhanced its order marking surveillance report to capture child orders as well as parent orders. In September 2019, the firm also added an additional control designed to detect and prevent the routing of inaccurately marked short sale orders (i.e., orders marked long that should be marked short).

By failing to have supervisory reviews reasonably designed to ensure the mismarked orders were appropriately marked long or short consistent with Regulation SHO, order marking, and books and records requirements, Goldman violated FINRA Rules 3110 and 2010.

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

- a censure, and
- a total fine of \$3,000,000, of which \$1,147,500 is payable to FINRA.⁴

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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 it;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;

⁴ The remainder of the fine shall be allocated to Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Investors Exchange LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq Phlx LLC, The New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. for similar violations.

- 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 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 its acceptance or rejection.

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, its 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 action brought by FINRA or any other regulator against Respondent;
 - 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 its subject matter 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. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

March 20, 2023

Date

David Markowitz

Goldman Sachs & Co. LLC
Respondent

Name: David Markowitz
Title: Global Co-Head of Litigation and Regulatory
Proceedings

Reviewed by:

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Kevin J. Campion

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Accepted by FINRA:

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

April 4, 2023

Date

Steven M. Tanner

Steven M. Tanner
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