

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020068197401**

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, sales and trading, execution, and underwriting services. The firm is headquartered in New York City and has almost 8,000 registered representatives among its 76 branches.¹

In July 2017, FINRA, Bats BZX Exchange, Inc., NASDAQ ISE, LLC, and NASDAQ PHLX LLC censured and fined Goldman \$2,500,000 for failing to report and inaccurately reporting both over-the-counter (OTC) and listed options positions to the Large Options Positions Reporting (LOPR) system in over 22 million instances between January 2010 and July 2016, and imposed an undertaking requiring the firm to correct supervisory deficiencies.

In November 2012, FINRA censured and fined Goldman \$50,000 for failing to report and/or inaccurately reporting the contraparty for reportable options positions to the LOPR between January 2010 and March 2011.

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

OVERVIEW

Between July 2018 and September 2021, Goldman failed to report, or inaccurately reported, OTC options positions to the LOPR in approximately 1,035,000 instances, in violation of FINRA Rule 2360(b)(5). During the same period, the firm also failed to maintain and enforce a supervisory system reasonably designed to achieve compliance with FINRA Rule 2360(b)(5), in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's surveillance of OTC position limits.

A. Goldman failed to report, and inaccurately reported, OTC options positions to the LOPR.

1. Background – LOPR Reporting

FINRA requires member firms to report large options positions to the LOPR.² FINRA uses LOPR information to identify holders of large options positions and to surveil for potentially manipulative behavior, including attempts to corner the market in the underlying equity, leverage an option position to affect the price, or move the underlying equity to change the value of a large option position. The accuracy of LOPR reporting is essential to FINRA's surveillance. It is particularly important with respect to the OTC options market because there is no independent source of data for regulators to review OTC options.

FINRA Rule 2360(b)(5) requires member firms to report to the LOPR each customer or firm account that, acting alone or in concert, has established an aggregate position of 200 or more option contracts on the same side of the market covering the same underlying security or index. The report must identify the account holder and the total number of option contracts for each options class comprising the reportable position and must include other information as prescribed by FINRA.

A violation of FINRA Rule 2360(b) also is a violation of FINRA Rule 2010, which requires "[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade."

2. Goldman's LOPR Reporting Violations

Between July 2018 and September 2021, the firm's systems for reporting OTC options positions to the LOPR failed to recognize that the accounts of certain customers were under common control or acting in concert. As a result, Goldman failed to report approximately 9,000 OTC options positions to the LOPR in approximately 35,000

² The Options Clearing Corporation hosts the LOPR system and collects and disseminates all LOPR data for the U.S. options exchanges and FINRA.

instances³ and misreported positions by failing to identify accounts acting in concert with an In Concert ID for approximately 32,000 OTC options positions in approximately 1,000,000 instances. Therefore, Goldman violated FINRA Rules 2360(b)(5) and 2010.

B. Goldman failed to reasonably supervise LOPR reporting.

FINRA Rule 3110(a) requires a member firm to 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. FINRA Rule 3110(b) requires a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

From July 2018 through September 2021, Goldman failed to maintain and enforce a supervisory system reasonably designed to achieve compliance with FINRA Rule 2360. Goldman's system for identifying and aggregating accounts for LOPR reporting included both an automated and a manual component. The firm's automated system, which identified acting-in-concert accounts that shared certain characteristics, such as the same beneficial owner or investment advisor, was too restrictive to be effective on its own. The manual review was designed to complement the automated review by identifying acting-in-concert accounts that were not identified by the automated system but evidenced signs of being under common control or acting in concert. However, the firm failed to conduct the manual review for institutional investors accounts as a result of an oversight during a transfer of LOPR reporting responsibilities from one department to another within the firm in July 2018. As a result of a FINRA inquiry, the firm identified the process gap and implemented revised manual and automated review processes in September 2021.

Therefore, Goldman violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$425,000 fine.

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.

³ An "instance" is a single failure to report or to accurately report a reportable option position. The number of instances is determined by multiplying a reportable position by the number of trade dates the position was not reported or was not reported accurately.

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;
- 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;

- [REDACTED]
- 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.

August 8, 2023

Date

David Markowitz

Goldman Sachs & Co. LLC

Respondent

David Markowitz

Print Name: _____

Title: Global Co-Head of Litigation

Reviewed by:

Stephanie Nicolas

Stephanie Nicolas
Counsel for Respondent
WilmerHale
2100 Pennsylvania Avenue NW
Washington, DC 20037

Accepted by FINRA:

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

August 16, 2023

Date

Sathish Dhandayutham

Sathish Dhandayutham
Principal Counsel
FINRA
Department of Enforcement
Gira Building, 9509 Key West Avenue
Rockville, MD 20850
Phone: (301) 258-8505
sathish.dhandayutham@finra.org