

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C 10050037

TO: Department of Enforcement
NASD

RE: Goldman, Sachs & Co., Respondent
[BD No. 361]

Pursuant to Rule 9216 of the NASD Code of Procedure, Goldman, Sachs & Co. ("Goldman") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against us alleging violations based on the same factual findings.

We understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. We 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects our testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

We also understand that our experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Goldman has been a member of NASD since October 26, 1936. During all periods mentioned herein, Goldman was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD, which registration and membership remain currently in effect. Goldman has not been the subject of any relevant formal disciplinary actions within the last five years.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- B. To be notified of the Formal 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, we specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, 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.

We further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding in which NASD 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 NASD:

Summary

During the period from on or about January 1, 2003, through on or about May 31, 2004, Goldman failed to timely report 10% of its municipal securities inter-dealer transactions to the Municipal Securities Rulemaking Board ("MSRB"). Additionally, during the above-referenced period, Goldman failed to report 48% of its municipal securities inter-dealer transactions to MSRB with the time of trade execution and/or reported invalid time of trades.

Background

Timely and accurate reporting of municipal securities transaction data to the MSRB is vital to investor protection and market integrity because it helps ensure a level playing field for all municipal market participants, including dealers, retail investors, and institutional investors. During the relevant time period, MSRB Rule G-14 required all brokers, dealers and municipal securities dealers (collectively "dealers") to report trades to MSRB by midnight of the trade date and the MSRB published data about all reported municipal securities transactions, including, but not limited to, price and volume information, on the day after the trade date.¹

If municipal trade data is unavailable or incorrect because trades were not reported in a timely manner or included erroneous data, dealers and investors alike experience harm because they cannot obtain an accurate picture of market activity and prices. Late or inaccurate transaction data may hinder a dealer's ability to price municipal securities accurately for customers and, in turn, interferes with an investor's decision-making process.²

¹ Since January 31, 2005, MSRB Rule G-14 requires dealers to report trades to MSRB within 15 minutes after trade execution and MSRB publishes data about all reported municipal securities transactions within minutes after trade execution.

² Since 1994, NASD and the MSRB have repeatedly advised dealers of their responsibility to report transactions accurately. See "Enforcement Initiative," *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35; *NASD Regulatory and Compliance Alert*: "Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms" (Winter 2000); NASD

Additionally, accurate and timely municipal trade reporting forms the primary audit trail for regulators to conduct surveillance for potentially manipulative practices, as well as detect sales practice violations and other violations of the federal securities laws and MSRB rules.

Pursuant to MSRB Rule G-27, each dealer engaging in municipal securities transactions is obligated to have a supervisory system and procedures in place reasonably designed to achieve compliance with the federal securities laws and MSRB Rules, including G-14. Ultimate responsibility for transaction reporting rests with the dealer that effected the trade. Clearing firms that submit transactions for their correspondent firms also have responsibility for those aspects of the reporting process under their control.³

Violations by Goldman

1. a. During the period from on or about January 1, 2003, through on or about May 31, 2004, Goldman failed to timely report 10% of its municipal securities inter-dealer transactions to the MSRB.
- b. Additionally, during the above-referenced period, Goldman failed to report 48% of its municipal securities inter-dealer transactions to MSRB with the time of trade execution and/or reported invalid time of trades. Moreover, during the period February through October 2003, Goldman failed to report to MSRB the time of trade execution with respect to municipal securities inter-dealer transactions at a rate of 79%, and during the months of May through October 2003, the firm's non-compliance rate regarding the reporting of time of trades was approximately 100%.

Such acts, practices, and conduct constitute separate and distinct

Regulatory and Compliance Alert: "Municipal Securities Transaction Reporting Compliance Information" (Spring 2001); and NASD Notice to Members 03-13: "MSRB Rules G-12 and G-14," jointly issued with the MSRB in March 2003 as MSRB Notice 2003-7. The MSRB has also advised dealers of their responsibility to ascertain the market value of municipal securities they trade so their customers receive prices that are reasonably related to the market value of the securities (see MSRB Notice 2004-3: "Review of Dealer Pricing Responsibilities," January 26, 2004).

³ Information regarding each dealer's compliance with MSRB Rule G-14 and how it is performing in relation to other reporting dealers is available for review through the MSRB's Dealer Feedback System, which allows dealers to self-monitor their trade reporting performance, including, but not limited to, the accuracy of information reported concerning transactions the dealer submitted through a clearing firm or service bureau and/or transactions the dealer submitted for other dealers, and take appropriate steps to ensure compliance with the requirements of MSRB Rule G-14.

violations of MSRB Rule G-14 by Goldman.

2. During the period from on or about January 1, 2003, through on or about May 31, 2004, Goldman failed to monitor its trade reporting to ensure compliance with MSRB Rule G-14, in violation of MSRB Rule G-27.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-27 by Goldman.

- B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine in the amount of \$140,000.00 to be assessed against Goldman.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 NASD, nor does it reflect the views of NASD or its staff.
- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat,

05/08/2005 11:01 FAX 212 558 3360
05/03/2005 18:15 FAX

S&C LLP 125 BD 29FL
ENFORCEMENT

008/010

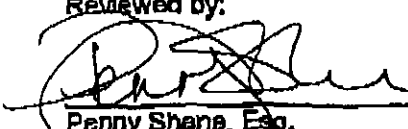
006

Letter of Acceptance, Waiver,
and Consent
Goldman, Sachs & Co.
Case No. C10050037
Page No. 6

inducement, or promise of any kind, other than the terms set forth herein, has been
made to induce us to submit it.

5/6/05
Date

Reviewed by:

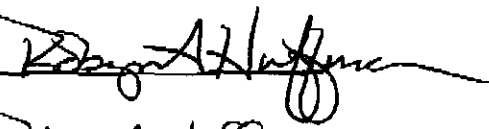

Penny Shane, Esq.
Sullivan & Cromwell LLP
Counsel for Respondent

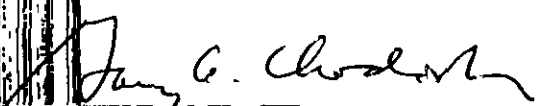
Accepted by NASD:

May 13, 2005
Date

Goldman, Sachs & Co.

By:


Robyn A. Hoffman
[Name and title] Managing Director,
Assoc. Gen. Counsel


Gary A. Chodos
Regional Counsel
Department of Enforcement

Signed on behalf of the Director of
CDA by delegated authority