

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E1020050169-01

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.

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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.

In May 13, 2005, NASD issued AWC No. E10032047, which censured and fined Goldman \$140,000 for violating Rules G-14 and G-27 of the Municipal Securities Rulemaking Board ("MSRB") in connection with the Firm's failure to (i) timely report 10% of its municipal securities inter-dealer transactions from approximately January 1, 2003 through May 31, 2004, (ii) report 48% of its municipal securities inter-dealer transactions to MSRB with the time of trade execution and/or reported invalid time of trades during that time period, and (iii) monitor its trade reporting to ensure compliance with MSRB Rule G-14 during that time period.

Goldman has not been the subject of any other 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

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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 findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to 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

From on or about June 14, 2004 through April 24, 2005, Goldman failed to report and/or incorrectly reported 1,761 (8.5%) of 20,818 inter-dealer transactions in Periodic Auction Reset Securities ("PARS") to the MSRB. The dollar amount of the unreported and incorrectly reported transactions totaled approximately \$4.9 Billion. Additionally, from June 14, 2004 and at least through April 24, 2005, Goldman's supervisory system and procedures were not reasonably designed, in connection with reporting inter-dealer transactions in PARS, to achieve compliance with MSRB rules. Furthermore, during that time, Goldman failed to adequately monitor its reporting of those transactions for compliance with MSRB rules.

Background

Timely and accurate reporting of municipal securities transaction data to the MSRB is vital to public reporting of market activity and prices for transparency purposes and to the compilation of an audit trail for regulatory purposes.

At all relevant times prior to January 31, 2005, 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

Effective January 31, 2005, MSRB Rule G-14 Real Time Reporting System ("RTRS") Procedures specifically require that dealers effecting transactions in short-term instruments under nine months in effective maturity, including auction rate products (which includes PARS transactions), report such transactions by 6:30 p.m., Eastern Time, on the day on which the trades were executed.

¹ Since January 31, 2005, MSRB Rule G-14 generally 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.

At all relevant times, MSRB Rule G-12(f)(i) has required dealers to submit inter-dealer transactions eligible for automated trade comparison through a registered clearing agency, including all information and instructions required to allow for automated comparison of the transaction. Since June 14, 2004, inter-dealer transactions settling on the next day, including inter-dealer PARS transactions, are eligible for automated comparison and are required to be reported to allow for automated trade comparison.² In the event that a transaction fails to compare, the dealer submitting the transaction must correct the situation so that the transaction is compared unless it receives from the contra-party final notification of a failure to compare the transaction.

Where municipal trade data is unavailable or incorrect because trades were not reported in a timely manner or included erroneous data, dealers and investors alike 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 and, in turn, interfere with an investor's decision-making process.³

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 Rules G-12 and G-14. Ultimate responsibility for transaction reporting rests with the dealer that effected the trade.⁴

² See MSRB Notice 2004-15: Reminder Notice Concerning RTTM Implementation Date and Requirement for Comparison of Cash and Next-Day Trades: Rule G-12(f)," June 4, 2004.

³ 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 *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.

⁴ 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 by Goldman

1. From on or about June 14, 2004 through April 24, 2005, Goldman failed to report and/or incorrectly reported 1,761 (8.5%) of 20,818 inter-dealer transactions in Periodic Auction Reset Securities ("PARS") to the MSRB. Specifically:
 - a. Goldman failed to report 776 (3.7%) of the firm's inter-dealer transactions in PARS to the MSRB. The dollar value of the unreported transactions totaled approximately \$2,029,035,000.
 - b. Additionally, Goldman Incorrectly reported 985 (4.7%) of the inter-dealer transactions in PARS to the MSRB as "customer" transactions. The dollar value of the misreported transactions totaled approximately \$2,852,575,000.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-14 by Goldman.

2. From on or about June 14, 2004 through April 24, 2005, Goldman failed to submit to a registered clearing agency information and/or instructions required to allow for automated comparison of the 776 transactions referenced in paragraph 1.a.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-12(f)(i) by Goldman.

3. From June 14, 2004 and at least through April 24, 2005, Goldman's supervisory system and procedures were not reasonably designed to achieve compliance with MSRB Rules G-12(f)(i) and G-14 in connection with reporting inter-dealer PARS transactions. Furthermore, during that time period, Goldman failed to adequately monitor its inter-dealer PARS trade reporting to ensure compliance with these MSRB rules. Although the firm received daily trade reports from the National Securities Clearing Corporation, the firm did not have a process or procedure designed to review the reports for gaps or inaccuracies in the firm's reporting of PARS trades.

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:

1. A censure;
2. A fine of \$85,000.00;

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3. An undertaking that Goldman shall:

- a. Within ninety (90) calendar days after notice of acceptance of this AWC:**
 - i. Complete its review and assessment of the adequacy of its supervisory system and procedures concerning the Firm's compliance with MSRB Rules G-12(f)(i) and G-14 in respect to the reporting issues identified above.**
 - ii. Have a registered principal of Goldman submit to NASD's Department of Enforcement in New York, a signed, dated letter, providing the following information: (1) specific reference to this AWC; (2) a representation that Goldman has reviewed and revised its written supervisory procedures to address the supervisory deficiencies leading to the reporting violations identified in this AWC (and the date the revised procedures were implemented); (3) a detailed description of any other corrective action Goldman has completed following the reporting violations identified in this AWC (and the date of implementation of such corrective action); and (4) a description of any on-going corrective action, including changes to Goldman's policies, procedures, systems and employee training, that Goldman is in the process of completing, with an estimated timetable by which the ongoing corrective action will be implemented. The submission shall include a copy of Goldman's revised procedures.**
- b. Six months after the above-referenced letter submission, have a registered principal of Goldman submit to NASD's Department of Enforcement in New York, a signed, dated letter, reporting on the progress of any ongoing corrective action.**
- c. Although NASD staff may review the revised procedures, said review shall in no way constitute an approval of the revised procedures. The failure of NASD staff to alert Goldman to any deficiencies in the revised procedures shall not preclude NASD from instituting a subsequent disciplinary action as a result of deficiencies in the revised procedures.**

Upon written request showing good cause, the NASD staff may extend any of the procedural dates set forth above relating to the undertaking.

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

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

December 22, 2006

Goldman, Sachs & Co.

By: Robyn A. Huffman

Robyn A. Huffman
[Name and title]

Managing Director
Assoc. Gen. Counsel

Reviewed by:

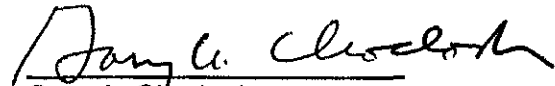
Counsel for Respondent

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Accepted by NASD:

December 29, 2006
Date

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



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