

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. [REDACTED] E9B2004036701

**TO: Department of Enforcement
NASD**

**RE: Goldman Sachs Execution & Clearing, L.P., Respondent
BD No. 3466**

Pursuant to Rule 9216 of the NASD Code of Procedure, Goldman Sachs Execution & Clearing, L.P. ("Goldman Sachs Clearing") 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 Sachs Clearing, formerly known as Spear, Leeds & Kellogg, LP, has been a member of NASD since 1948. During all periods mentioned herein, Goldman Sachs Clearing was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD, whose registration and membership remain currently in effect. During the last five years, Goldman Sachs has been the subject of several NASD disciplinary actions for trade reporting violations involving equities, some of which are listed below:

On or about December 2, 2004, Goldman Sachs Clearing agreed to an AWC under which it was fined \$8,000 for trade reporting violations involving equities. See CMS040181.

On or about February 5, 2003, Goldman Sachs Clearing agreed to an AWC under which it was fined \$4,000 for trade reporting violations involving equities and failing to make an affirmative determination for short sales. See CMS030059.

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.

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Further, we specifically and voluntarily waive any right to claim bias or prejudice 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, 2004, through on or about September 30, 2004, Goldman Sachs Clearing failed to report the yield on 2,781 of 2,871 municipal securities transactions it reported to the MSRB involving customer trades.

During the period from on or about January 1, 2004, through on or about September 30, 2004, Goldman Sachs Clearing failed to timely report 45 municipal securities transactions to the MSRB.

During the period from on or about January 1, 2004, through on or about July 1, 2004, Goldman Sachs Clearing failed to adequately monitor its trade reporting to ensure compliance with MSRB Rule G-14.

Background

Timely and accurate reporting of municipal securities transaction data to the Municipal Securities Rulemaking Board ("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

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.

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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 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 Sachs Clearing

1. During the period from on or about January 1, 2004, through on or about September 30, 2004, Goldman Sachs Clearing failed to report the yield on 2,781 of 2,871 municipal securities transactions it reported to the MSRB involving customer trades.

As a result of this conduct, Goldman Sachs Clearing violated MSRB Rule G-14.

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 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.

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2. During the period from on or about January 1, 2004, through on or about September 30, 2004, Goldman Sachs Clearing failed to timely report 45 municipal securities transactions to the MSRB.

As a result of this conduct, Goldman Sachs Clearing violated MSRB Rule G-14.

3. During the period from on or about January 1, 2004, through on or about July 1, 2004, Goldman Sachs Clearing failed to adequately monitor its trade reporting to ensure compliance with MSRB Rule G-14.

As a result of this conduct, Goldman Sachs Clearing violated MSRB Rule G-27.

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

A censure and a monetary fine in the amount of \$100,000 to be assessed against Goldman Sachs Clearing.

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.

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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.

For: Goldman Sachs
Execution & Clearing, L.P.

11/9/05
Date

Steve Wolf
Steve Wolf
Vice President

Accepted by NASD:

11/21/05
Date

Signed on behalf of the
Director of ODA by delegated authority

Michael J. Newman
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