

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018059146502**

TO: The Nasdaq Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: Goldman Sachs & Co. LLC, Respondent
Broker-Dealer
CRD No. 361

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure Goldman Sachs & Co. LLC (“Goldman” or the “firm”) 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, Nasdaq will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

Goldman has been a Nasdaq member since July 2006. 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. Goldman does not have any relevant disciplinary history.

SUMMARY

From October 2015 through April 2018, Goldman, through the operation of an automated hedging logic for its Synthetic Product Group (“SPG”), 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 maintain inaccurate books and records.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from a FINRA examination.

Goldman erroneously marked and routed certain sell orders.

2. Rule 200(g) of Regulation SHO of the Securities Exchange Act of 1934 (“Exchange Act”) 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 Nasdaq Rule 2010A.
3. Nasdaq Rule 4702(a) provides that “[p]articipants may express their trading interest in the Nasdaq Market Center by entering Orders. The Nasdaq Market Center offers a range of Order Types that behave in the manner specified for each particular Order Type. Each Order Type may be assigned certain Order Attributes that further define its behavior. All Order Types and Order Attributes operate in a manner that is reasonably designed to comply with the requirements of Rules 610 and 611 under Regulation NMS. Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.”¹
4. Nasdaq Rule 2010A provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”²
5. From October 2015 through April 2018, Goldman mismarked 59,981,252 short sell orders as long, of which 7,859,120 were sent to Nasdaq. 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 SPG’s 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.

¹ As of November 23, 2020, Nasdaq Rule 4702(a) was renumbered to Nasdaq Rule Equity 4, Section 4702.

² As of December 6, 2019, Nasdaq Rule 2010A was renumbered to Nasdaq Rule General 9, Section 1(a).

6. 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 and sent to various market centers with the incorrect short sale indicator, including 2,328 sent to Nasdaq, resulting in 26,377 executions.³ Goldman corrected this error after being notified by FINRA in October 2019.
7. By marking short sell orders as long, Goldman violated Regulation SHO Rule 200(g) and Nasdaq Rules 4702(a) and 2010A.
8. By marking short sell orders as long, Goldman also violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, and Nasdaq Rule 4511A(a) relating to maintaining accurate order memoranda.⁴
9. 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.
10. Nasdaq Rule 4511A(a) provides that “Nasdaq members and persons associated with a member shall comply with FINRA Rule 4511 as if such Rule were part of the Nasdaq rules.” 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.”
11. Goldman mismarked and routed 59,981,252 short sale orders as long; 7,859,120 of the orders were sent to Nasdaq. Of those 59,981,252 orders, 7,866,996 were executed, including 1,175,494 executed on Nasdaq. The firm maintained inaccurate memoranda with respect to the correct short sale order marking for each of the 7,866,996 sales.
12. As a result, Goldman violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(7)(i) thereunder, and Nasdaq Rules 4511A(a) and 2010A.

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

16. Nasdaq Rule 3010 provides that “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”⁵

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

⁴ As of December 6, 2019, Nasdaq Rule 4511A(a) was renumbered to Nasdaq Rule General 9, Section 30.

⁵ As of December 6, 2019, Nasdaq Rule 3010 was renumbered to Nasdaq Rule General 9, Section 20.

17. Goldman failed to establish and maintain a supervisory system reasonably designed to achieve compliance with Rule 200(g) and rules relating to accurate 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, 7,859,120 of which were routed to Nasdaq, 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 creating and maintaining over seven million inaccurate order memoranda.
18. 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).
19. By failing to have supervisory reviews reasonably designed to ensure the mismarked orders were appropriately marked long or short consistent with Regulation SHO and order marking and books and records requirements, Goldman violated Nasdaq Rules 3010 and 2010A.

B. The firm also consents to the imposition of the following sanctions:

Censure and a \$381,400 fine (resolved simultaneously with similar matters for a total fine of \$3,000,000).⁶

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted a Payment Information form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under Nasdaq's Code

⁶ The balance of the fine will be allocated to Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Investors Exchange LLC, Nasdaq BX, Inc., Nasdaq Phlx LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, and FINRA.

of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

The firm further specifically and voluntarily waives 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.

III.

OTHER MATTERS

The firm 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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq

Rule 8310 and IM-8310-3;⁷ and

3. The firm 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. The firm may not take any position in any proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

⁷ On December 6, 2019, Nasdaq Rules 8310 and IM-8310-3 were renumbered to Nasdaq Rule General 5 Sections 8310 and IM-8310-3.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

April 3, 2023

Date

Goldman Sachs & Co. LLC,
Respondent

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

Reviewed by:

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Accepted by Nasdaq:

April 4, 2023

Date

Steven M. Tanner
Steven M. Tanner
Senior Counsel
Department of Enforcement

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