

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND
CONSENT NO. 2019063499505**

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 1936. 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 7,700 registered persons and more than 75 branch offices.¹

OVERVIEW

From February 2009 until mid-April 2023, Goldman failed to include warrants, rights, units, and certain over the counter (OTC) equity securities in nine of its automated surveillance reports designed to identify potentially manipulative proprietary and customer trading activity. As a result, Goldman's supervisory system was not reasonably designed to identify potentially manipulative trading activity. Therefore, the firm violated NASD Rule 3010 and FINRA Rules 3110 and 2010.²

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

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

FACTS AND VIOLATIVE CONDUCT

This matter originated from cross-market surveillance conducted by FINRA.

FINRA Rule 3110(a) and its predecessor, NASD Rule 3010(a), require 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) and its predecessor, NASD Rule 3010(b), require 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 or NASD Rule 3010 is also a violation of FINRA Rule 2010, which requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

Between February 2009 and mid-April 2023, Goldman failed to include warrants, rights, units, and certain OTC equity securities in nine surveillance reports designed to identify potentially manipulative proprietary and customer trading. These securities were excluded for extended periods ranging from approximately two years to more than 12 years. For example, a Goldman surveillance report designed to identify potential wash trades excluded warrants from October 2010 through March 2021 and excluded rights and units from October 2010 through April 2022. Additionally, Goldman's surveillance reports designed to identify potential marking the open and marking the close excluded warrants, rights, units, and certain OTC equity securities from the inception of the reports in February 2009 until April 2018.

As a result of the gaps in its surveillance reports, Goldman could not perform reasonable supervisory reviews of trading activity in warrants, rights, units, and certain OTC equity securities for potential manipulation. The nine affected reports would have identified approximately 5,000 alerts (based on extrapolations from available data) for potentially manipulative trading activity in those securities from February 2009 through mid-April 2023. Goldman added the missing securities to the surveillance reports either in response to FINRA's investigation or through the firm's adoption of new surveillance reports. Goldman completed remediation for all surveillance reports by April 2023.

Goldman's supervisory system, including its written procedures, also did not require a review of its automated surveillance reports to ensure they included all relevant securities traded as part of the firm's business. As a result, the firm failed to detect that nine surveillance reports for potentially manipulative trading excluded warrants, rights, units, and certain OTC equity securities. In February 2021, Goldman implemented reviews to identify if any security has been inadvertently excluded from new or modified surveillance reports.

By failing to have a reasonably designed supervisory system, Goldman violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure; and
- a \$512,500 fine, of which \$37,000 shall be paid to FINRA.³

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.

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.

³ The remainder will be paid to Cboe BYX Exchange, Inc. (BYX); Cboe BZX Exchange, Inc. (BZX); Cboe EDGA Exchange, Inc. (EDGA); Cboe EDGX Exchange, Inc. (EDGX); Investors Exchange LLC (IEX); The Nasdaq Stock Market LLC (Nasdaq); Nasdaq BX, Inc. (BX); Nasdaq Phlx LLC (Phlx); The New York Stock Exchange LLC (NYSE); NYSE American LLC (NYSE American); NYSE Arca, Inc. (NYSE Arca); NYSE Chicago, Inc. (NYSE Chicago); and NYSE National, Inc. (NYSE National).

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;
- 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.

January 24, 2024

Date

Colleen M. O'Brien

Goldman Sachs & Co. LLC
Respondent

Print Name: Colleen M. O'Brien

Title: Managing Director & Senior Counsel

Accepted by FINRA:

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

February 6, 2024

Date

Gerald O'Hara

Gerald O'Hara
Senior Counsel
FINRA
Department of Enforcement
9509 Key West Avenue
Gira Building
Rockville, MD 20850