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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: Goldman Sachs & Co. LLC, Respondent.	CFTC Docket No. 23-39

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from at least March 2020 to November 2020 ("Relevant Period"), Goldman Sachs & Co. LLC ("Goldman" or "Respondent") violated, as set forth below, Section 4s(f)(1)(C) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6s(f)(1)(C), and Commission Regulations ("Regulations") 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022), and also violated the cease-and-desist provision of a prior Commission order. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

II. FINDINGS

The Commission finds the following:

A. SUMMARY

The Act and Regulations impose recordkeeping requirements on Commission registrants to ensure that they responsibly discharge their crucial role in our markets. Compliance with these requirements is essential to the Commission's efforts to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. During the Relevant Period, Goldman used recording systems from two vendors to record certain phone calls. Due to failures in those systems, Goldman—in its capacity as a swap dealer—failed to make and retain thousands of audio files during the Relevant Period. In doing so, Goldman also violated an order that the Commission had previously issued on November 26, 2019, which, among other things, ordered Goldman to cease and desist from violating Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2018).

In accepting Goldman's Offer, the Commission recognizes the cooperation of Goldman with the Division of Enforcement's ("Division") investigation of this matter. The Commission also acknowledges Goldman's representations concerning its remediation in connection with this matter.

B. RESPONDENT

Goldman Sachs & Co. LLC is a limited liability company with its main office in New York, New York. It is registered with the Commission as a futures commission merchant, commodity trading advisor, and commodity pool operator, and has been provisionally registered with the Commission as a swap dealer since December 31, 2012.

C. FACTS

1. The November 26, 2019 Order

During a previous investigation, the Division requested that Goldman produce certain audio recordings on dates in January 2014—recordings that Goldman, as a swap dealer, was required to make and keep. Goldman was unable to produce many of the recordings requested by the Division due to a recording error caused by a malfunction during the course of a system upgrade that affected recordings of the phone lines of a trading and sales desk in one of Goldman's offices for twenty calendar days in January and February 2014.

On November 26, 2019, the Commission entered an order against Goldman settling charges that, from January 2014 to February 2014, Goldman failed to discharge its recordkeeping obligations as a swap dealer under Part 23 of the Regulations, 17 C.F.R. pt. 23, and in particular its obligations to make and keep recordings of certain oral communications. *In*

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consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

re Goldman Sachs & Co. LLC, CFTC No. 20-10, 2019 WL 8014251 (Nov. 26, 2019) (consent order) ("2019 Order"). The 2019 Order imposed a civil monetary penalty of one million dollars ($1,000,000) and required Goldman to cease and desist from violating Regulations 23.202(a)(1) and (b)(1), as well as Regulation 1.31(b)(2). *See id.* at *4.

2. Goldman's Additional Recordkeeping Failures During the Relevant Period

To comply with its recordkeeping obligations as a swap dealer under Part 23 of the Regulations, 17 C.F.R. pt. 23 (2022), and in particular its obligations to make and keep recordings of certain oral communications concerning trading in swaps and related cash and forward transactions pursuant to Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022), Goldman records the phone calls of individuals who may be expected to engage in such communications. This includes recording phone calls made on mobile devices.

Since February 2018, Goldman has recorded calls made on mobile devices by using the services of a vendor. The vendor's service worked by allowing calls made on a mobile device to be recorded using the same recording hardware that Goldman used for recording calls made in its offices.

The version of the vendor's system that Goldman used relied on recording architecture which compromised the ability of the vendor's system to reliably record mobile audio. While there were audio recording failures prior to March 2020, there was an increase in audio failures starting in March 2020 as a result of increased use of the vendor's recording infrastructure during the pandemic.[2] From at least March 2020 to September 2020, the vendor's service failed to fully record certain Goldman mobile phone calls. This recording failure affected mobile calls on a random basis. A sample analysis done by Goldman indicated that the recording failures impacted approximately 2.2% of mobile phone calls from March 2020 to September 2020. Because Goldman had used the vendor's services with the same recording architecture prior to the spring of 2020, it is possible that the flaw in the vendor's architecture led to the same failure to record calls prior to that period. During the Relevant Period, Goldman failed to make and retain thousands of audio files because of this recording architecture failure.

Goldman discovered there was a recording issue in March 2020 when investigating reports from employees that call quality was poor when using the vendor's system. After discovering there was an issue, Goldman worked to understand the cause and scope of the issue, and once it understood the issue, Goldman sought to remediate the issue by, among other things, working with the vendor to reconfigure the unreliable system architecture. An initial, interim fix of the system was completed in May 2020, and the vendor hardware was replaced with an alternative system in September 2020.

[2] During the month of March 2020, Goldman's daily mobile-device call volume increased substantially.

Although Goldman became aware there was an issue with recordings in March 2020, Goldman did not create any alternative written records of the phone calls which were required to be, but which were not in fact, recorded.

Separate and apart from the above failure to record mobile audio communications, in March 2020, Goldman also began using software from another vendor that was designed to replicate the experience of a hard-wired trading turret—a specialized phone setup used to facilitate trading—via a computer, sometimes referred to as a "soft turret." The soft turret allowed Goldman employees to make both handset and speaker calls via their computer. Goldman began using this vendor software application in March 2020. In late May 2020, Goldman discovered an issue where the system sometimes failed to properly record audio due to a software issue. Goldman implemented an interim fix of sending an alert to users when the issue occurred, which asked the users to log off and back on to the recording application. Goldman devised a way to run the interim fix automatically, instead of manually, as of November 2020, and implemented a permanent fix, in the form of a software update, by the end of June 2022.

A sample analysis done by Goldman indicated that approximately 2% of handset calls using the soft turret system were not retained during the Relevant Period, meaning that there were approximately 1,700 handset calls that were not recorded. Calls placed using the vendor's soft turret speaker functionality were similarly affected by the software issue and number in the thousands.

Goldman provided assistance in the Division's investigation. In particular, after Goldman became aware of the investigation, Goldman conducted impact analyses for both of the vendor issues discussed above and voluntarily shared the results of those analyses with Division staff.

III. LEGAL DISCUSSION

A. Violation of Cease-and-Desist Provision of Prior Commission Order

On November 26, 2019, the Commission issued the 2019 Order filing and settling charges against Goldman for failing to maintain audio records. Section VI.A of the 2019 Order required Goldman to cease and desist from further violating Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2018). The Commission has authority to bring an action for a violation of the 2019 Order pursuant to Section 6(c)(4) of the Act, 7 U.S.C. § 9(4).

As discussed above, following the entry of the 2019 Order, Goldman violated Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1) as described herein. Thus, Goldman violated the 2019 Order.

B. Violation of Recordkeeping Section 4s(f)(1)(C) of the Act and Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1)

Section 4s(f)(1)(C) of the Act obligates swap dealers to keep "books and records of all activities related to its business as a swap dealer . . . in such form and manner and for such period as may be prescribed by the Commission by rule or regulation" and those books and records must be kept "open to inspection and examination by any representative of the Commission." 7 U.S.C. § 6s(f)(1)(C). These statutes are implemented, among other places, at Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1).

Regulations 23.202(a)(1) and (b)(1) require, in relevant part, every swap dealer to keep daily trading records of all swaps and related cash and forward transactions it executes, including, specifically a record of all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that led to the execution of a swap transaction or the conclusion of a related cash or forward transaction. During the Relevant Period, Regulation 23.203(b)(1), 17 C.F.R. § 23.203(b)(1) (2022), specified that such recordings must be kept in accordance with Regulation 1.31(b)(2), which specified that such recordings must be kept for a period of one year. Goldman, due to flaws in its recording systems, did not make and keep required recordings of the phone calls of traders and sales personnel that contained the oral communications that led to the execution of swaps and related cash and forward transactions during the Relevant Period. These failures violated Section 4s(f)(1)(C) of the Act and Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Goldman violated Section 4s(f)(1)(C) of the Act, 7 U.S.C. § 6s(f)(1)(C), and Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it:

A. Acknowledges service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waives:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding;

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Goldman violated Section 4s(f)(1)(C) of the Act, 7 U.S.C. § 6s(f)(1)(C), and Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022), and also violated the cease-and-desist provision of a prior Commission order;

2. Orders Respondent to cease and desist from violating Section 4s(f)(1)(C) of the Act, and Regulations 1.31(b)(2) and 23.202(a)(1) and (b)(1);

3. Orders Respondent to pay a civil monetary penalty in the amount of five million five hundred thousand dollars ($5,500,000), plus post-judgment interest within ten days of the date of entry of this Order;

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order; and

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent and its successors and assigns shall cease and desist from violating Section 4s(f)(1)(C) of the Act, 7 U.S.C. § 6s(f)(1)(C), and Regulations 1.31(b)(2), 23.202(a)(1) and (b)(1), 17 C.F.R. §§ 1.31(b)(2), 23.202(a)(1), (b)(1) (2022);

B. Respondent shall pay a civil monetary penalty in the amount of five million five hundred thousand dollars ($5,500,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within fourteen days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
Room 266
Oklahoma City, OK 73169
9-AMZ-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (1) testimonial obligations; or (2) right to take legal positions in other

proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone numbers and mailing address within ten calendar days of the change.

5. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

    Secretary of the Commission
    Office of the General Counsel
    Commodity Futures Trading Commission
    Three Lafayette Centre
    1155 21st Street N.W.
    Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 29, 2023