

NEW YORK STOCK EXCHANGE LLC

and

NYSE AMEX LLC

NEW YORK STOCK EXCHANGE LLC

HEARING BOARD DECISION 09-NYSE-5

March 20, 2009

**GOLDMAN, SACHS & CO.
MEMBER ORGANIZATION**

*** * ***

Violated NYSE Rule 476(a)(10) by failing to accurately file with NYSE certain Form SS20 reports, Form 121 reports, Daily Program Trade Reports, and reports of short interest positions in securities listed on NYSE; violated NYSE Rule 410B by failing to properly report to NYSE certain transactions involving NYSE-listed securities that were not reported to consolidated tape; violated NYSE Rule 476(a)(11) by failing to timely file certain Daily Program Trade Reports; violated NYSE Rule 460.30 by failing to timely notify NYSE of participation in three offerings for which its affiliated specialist was registered; violated Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; violated NYSE Rule 132.30 by failing to submit accurate account type indicators to the NYSE for comparison and/or settlement; violated NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including system of reasonable follow-up and review, with respect to: accurate filing of Form SS20 reports, accurate filing of Form 121 reports, accurate and timely filing of Daily Program Trade Reports, proper reporting to NYSE of certain transactions involving NYSE-listed securities that were not reported to consolidated tape, submission of accurate reports of short interest positions in securities listed on NYSE, and timely notification to NYSE of participation in certain offerings for which its affiliated specialist was registered – Consent to censure and \$160,000 fine.

HEARING BOARD DECISION 09-NYSE-6

**GOLDMAN SACHS EXECUTION & CLEARING, L.P.
MEMBER ORGANIZATION**

Violated NYSE Rule 476(a)(10) by failing to accurately file with NYSE certain Form SS20 reports, Form 121 reports, Daily Program

Trade Reports, and Reports of short interest positions in securities listed on NYSE; violated NYSE Rule 410B by failing to properly report to NYSE certain transactions involving NYSE-listed securities that were not reported to the consolidated tape; violated Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; violated NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including system of reasonable follow-up and review, with respect to: accurate filing of Form SS20 reports, accurate filing of Form 121 reports, accurate filing of Daily Program Trade Reports, submission of accurate reports of short interest positions in securities listed on the NYSE, and proper reporting to NYSE of certain transactions involving NYSE-listed securities that were not reported to consolidated tape – Consent to censure and \$180,000 fine.

HEARING BOARD DECISION 09-NYSE-7

**SPEAR, LEEDS & KELLOGG SPECIALISTS L.L.C.
MEMBER ORGANIZATION**

Violated NYSE Rule 476(a)(10) by failing to accurately file with NYSE certain Form 121 reports; violated Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; violated NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including system of reasonable follow-up and review, with respect to filing of Form 121 reports – Consent to censure and \$20,000 fine.

HEARING BOARD DECISION 09-NYSE-8

**SLK INDEX SPECIALISTS L.L.C.
MEMBER ORGANIZATION**

Violated NYSE Rule 476(a)(10) by failing to accurately file with NYSE certain Form 121 reports; violated Section 17(a) of Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; violated NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including system of reasonable follow-up and review, with respect to filing of Form 121 reports – Consent to censure and \$10,000 fine.

NYSE AMEX LLC**HEARING BOARD DECISION 09-AMEX-4**

GOLDMAN SACHS EXECUTION & CLEARING, L.P.
MEMBER ORGANIZATION

Violated Amex Rule 30 by failing to accurately submit to Amex mid-month and end-of-month reports of short interest positions in Amex-listed securities, and Form 1S reports; violated Amex Rule 320 by failing to establish and maintain appropriate policies, systems and procedures of supervision and control, including system of reasonable follow-up and review, to ensure compliance with short interest and short sale reporting requirements of Amex – Consent to censure and \$40,000 fine.

Appearances:

For the Division of Enforcement

Susan Light, Esq.
Steven Brostoff, Esq.
Richard Chin, Esq.
Lara Posner, Esq.
Josefina Martinez, Esq.
Daniel Kane

For Respondents

Beth A. Stekler, Esq

* * *

A Hearing Officer on behalf of the New York Stock Exchange LLC (“NYSE” or the “Exchange”) and NYSE Amex LLC (“NYSE Amex”) considered a Stipulation of Facts and Consent to Penalty entered into between NYSE Regulation, Inc.’s Division of Enforcement (“Enforcement”) and Goldman Sachs & Co. (“GS&Co.”), Goldman Sachs Execution & Clearing, L.P. (“GSEC”), Spear, Leeds & Kellogg Specialists L.L.C. (“SLKS”), and SLK Index Specialists L.L.C. (“SIS”) (collectively, “Respondents” or the “Firms”), NYSE member organizations. GSEC was also a member organization of the American Stock Exchange LLC (“Amex”) ¹. Without admitting or denying guilt, Respondents consented to a finding by a Hearing Officer that:

¹ On October 1, 2008, the Amex was acquired by the NYSE Euronext and was subsequently renamed NYSE Amex LLC. Thus, while the rules of NYSE Amex govern the procedural aspects of this Stipulation and Consent, because the conduct referred to herein occurred prior to the acquisition date, the violations were of “Amex Rules.”

GS&Co. violated:

- I. NYSE Rule 476(a)(10) by failing to accurately file with the NYSE certain:
 - a. Form SS20 reports;
 - b. Form 121 reports;
 - c. Daily Program Trade Reports; and
 - d. Reports of short interest positions in securities listed on the NYSE.

- II. NYSE Rule 410B by failing to properly report to the NYSE certain transactions involving NYSE-listed securities that were not reported to the consolidated tape;

- III. NYSE Rule 476(a)(11) by failing to timely file certain Daily Program Trade Reports;

- IV. NYSE Rule 460.30 by failing to timely notify the NYSE of its participation in three offerings for which its affiliated specialist was registered;

- V. Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; and

- VI. NYSE Rule 132.30 by failing to submit accurate account type indicators to the NYSE for comparison and/or settlement.

- VII. NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including a system of reasonable follow-up and review, with respect to:
 - a. the accurate filing of Form SS20 reports;
 - b. the accurate filing of Form 121 reports;
 - c. the accurate and timely filing of Daily Program Trade Reports;
 - d. the proper reporting to the NYSE of certain transactions involving NYSE-listed securities that were not reported to the consolidated tape;
 - e. the submission of accurate reports of short interest positions in securities listed on the NYSE; and
 - f. the timely notification to the NYSE of its participation in certain offerings for which its affiliated specialist was registered

GSEC violated:

- I. NYSE Rule 476(a)(10) by failing to accurately file with the NYSE certain:
 - a. Form SS20 reports;
 - b. Form 121 reports;
 - c. Daily Program Trade Reports; and

- d. Reports of short interest positions in securities listed on the NYSE.
- II. NYSE Rule 410B by failing to properly report to the NYSE certain transactions involving NYSE-listed securities that were not reported to the consolidated tape;
 - III. Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; and
 - IV. NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including a system of reasonable follow-up and review, with respect to:
 - a. the accurate filing of Form SS20 reports;
 - b. the accurate filing of Form 121 reports;
 - c. the accurate filing of Daily Program Trade Reports;
 - d. the submission of accurate reports of short interest positions in securities listed on the NYSE; and
 - e. the proper reporting to the NYSE of certain transactions involving NYSE-listed securities that were not reported to the consolidated tape.
 - V. Amex Rule 30 by failing to accurately submit to the Amex:
 - a. mid-month and end-of-month reports of short interest positions in Amex-listed securities; and
 - b. Form 1S reports.
 - VI. Amex Rule 320 by failing to establish and maintain appropriate policies, systems and procedures of supervision and control, including a system of reasonable follow-up and review, to ensure compliance with short interest and short sale reporting requirements of the Amex.

SLKS violated:

- I. NYSE Rule 476(a)(10) by failing to accurately file with the NYSE certain Form 121 reports;
- II. Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; and
- III. NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including a system of reasonable follow-up and review, with respect to the filing of Form 121 reports.

SIS violated:

- I. NYSE Rule 476(a)(10) by failing to accurately file with the NYSE certain Form 121 reports;
- II. Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440 by failing to make and preserve accurate books and records; and
- III. NYSE Rule 342 by failing to provide for, establish and maintain appropriate procedures of supervision and control, including a system of reasonable follow-up and review, with respect to the filing of Form 121 reports.

For the sole purpose of settling this disciplinary proceeding, without adjudication of any issues of law or fact, and without admitting or denying any allegations or findings referred to in the Stipulation of Facts and Consent to Penalty, Respondent stipulates to certain facts, the substance of which follows:*

Background and Jurisdiction

1. GS&Co. is a wholly-owned subsidiary of The Goldman Sachs Group, Inc. (“Goldman”). GS&Co. is a global investment banking and multi-service brokerage firm that, among other activities, trades securities for institutional and individual customers as well as for proprietary accounts. GS&Co.’s principal place of business is in New York City. GS&Co. is registered with the U.S. Securities & Exchange Commission (“SEC”) and has been a member organization of the NYSE since November 1982.
2. GSEC is a wholly-owned subsidiary of Goldman with its principal place of business in Jersey City, NJ. GSEC’s main lines of business are securities clearing and execution (including direct market access). GSEC is registered with the SEC and has been a member organization of the NYSE since November 1982.² During all relevant times herein, GSEC was also a member organization of the Amex.

* Hearing Officer Note: The facts, allegations, and conclusions contained in paragraphs 1 to 94 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Officer, except that pseudonyms have been provided to protect the privacy of non-parties.

² GSEC was formerly known as Spear, Leeds & Kellogg, L.P. (“SLK”). On October 31, 2000, Goldman acquired SLK and its affiliates, including First Options of Chicago, Inc. (“FOC”). In June 2004, Goldman merged FOC and SLK into one entity. In January 2005, the name of the combined entity was changed to GSEC. After the merger, GSEC continued to be supported by two back office systems (the legacy SLK system and the legacy FOC system).

3. SLKS, a wholly-owned subsidiary of Goldman with its principal place of business in New York City, is a designated market maker on the NYSE. SLKS does not conduct business with public customers but does trade for its own account. SLKS is registered with the SEC and has been a member organization of the NYSE since December 1996.
4. SIS, a wholly-owned subsidiary of Goldman, was a registered specialist firm for certain exchange-traded funds (“ETFs”). SIS did not conduct business with public customers but did trade for its own account. SIS is registered with the SEC and has been a member organization of the NYSE since February 26, 2002.³
5. This matter arose from Enforcement’s investigation of certain referrals and other information received by Enforcement from NYSE Regulation’s Divisions of Member Firm Regulation (“MFR”) and Market Surveillance (“MKS”) between April 2005 and January 2007, as well as information disclosed to the NYSE by the Firms.
6. In June and August 2007, the Trading Analysis Department of the FINRA Market Regulation-Amex Division referred to the Amex Department of Enforcement reports of certain short interest and Form 1S reporting deficiencies by GSEC.
7. In August 2004, Goldman formed a group known as the Exchange Reporting Group (“ERG”) to centralize reporting obligations of the Firms, improve the Firms’ reporting processes, and manage the Firms’ efforts to identify and remediate reporting issues. ERG conducted a thorough review of the Firms’ processes and procedures with respect to US transaction reporting. In the course of its review, ERG identified issues that may have had a significant impact on the quality of the reports that the Firms filed with the NYSE. The Firms disclosed these issues to the NYSE.

OVERVIEW

8. From October 2000 to at least September 2005, the Firms had deficiencies in their reporting processes and procedures, which caused the Firms to inaccurately and/or untimely file numerous required reports with the NYSE, including Forms 121, Forms SS20, NYSE Rule 410B reports, Daily Program Trade Reports (“DPTR”), NYSE Rule 421 short interest reports and notifications of participation in public offerings pursuant to NYSE Rule 460.30. The Firms’ reporting violations also resulted in inaccurate books and records in violation of Section 17 of the Exchange Act and Rules 17a-3 and 17a-4 thereunder and NYSE Rule 440. Additionally, from October 2000 until August 2004, the Firms failed to provide for appropriate procedures of supervision and control, including a separate system of reasonable follow-up and review to confirm that the above-referenced reports required to be filed with the NYSE were accurately and timely submitted. The Firms’ failure to accurately or timely file these reports affected NYSE Regulation’s ability to conduct certain

³ On Friday, December 28, 2007, SIS ceased operations as an ETF specialist on the Floor of the NYSE. The entity remains as a broker/dealer and member organization of the NYSE.

surveillances that utilized data from these reports and caused the NYSE to publicize certain inaccurate market information.

9. Additionally, during the time period January 2005 through March 2006, GS&Co. submitted numerous inaccurate account type indicators to the NYSE's On-Line Comparison System in violation of NYSE Rule 132.30. The inaccurate account type indicators, among other things, caused the generation of false positive alerts to MKS surveillance of market activity.
10. From July 2004 through December 2004, GSEC also filed inaccurate short interest reports with the Amex and from October 2000 through December 2006, GSEC filed inaccurate Form 1S reports with the Amex, both in violation of Amex Rule 30. Additionally, from October 2000 until August 2004, GSEC failed to provide for appropriate procedures of supervision and control, including a separate system of reasonable follow-up and review to confirm that the above-referenced reports required to be filed with the Amex were accurately submitted.

GOLDMAN, SACHS & CO.

GS& Co. Failed to Submit Accurate and/or Timely Required Reports to the NYSE

11. Pursuant to NYSE Rule 476(a)(10), member organizations are under a duty to take reasonable steps to ensure that their submissions filed with the NYSE are free of any "misstatement or omission of fact."
12. Pursuant to NYSE Rule 476(a)(11), member organizations are required to comply with NYSE requests to furnish information to the NYSE within the time period that the NYSE requires.

Form SS20 and Form 121 Submissions

13. NYSE Rule 440F requires each member organization to report via Form SS20 every "ROUND-LOT short sale transaction in stocks (or certificates therefor) or warrants effected on the floor of the Exchange for the accounts of public customers...." Reports must be filed by the member organization through which the transaction is cleared/settled.
14. During all relevant times herein, NYSE Rule 440G required members and member organizations to report via Form 121 "[a]ny ROUND-LOT purchase or sale of stock (or certificates therefor) or warrant effected on the floor of the Exchange for the accounts of: (a) NYSE members; (b) NYSE [a]llied members; or (c) NYSE member organizations...." These transactions must be reported "regardless of where the order originated or by whom it was executed."
15. NYSE Information Memo No. 01-45, dated December 12, 2001, provides that Form 121 and Form SS20 data shall be filed on a weekly basis. This information is released to the public.

16. From May 2003 to June 2005, GS&Co. transmitted to the NYSE approximately 100 Form SS20 reports which contained inaccurate information.
17. From mid-2001 to June 2005, GS&Co. transmitted to the NYSE approximately 200 Form 121 filings which contained inaccurate information.
18. Deficiencies in the filings of GS&Co.'s Forms SS20 and 121 included the following:
(a) certain short sale-exempt transactions were erroneously reported as short sale transactions; (b) certain transactions in Crossing Session II were erroneously included in GS&Co.'s filings; (c) certain proprietary short sales were not counted towards GS&Co.'s short sale volume; and (d) odd-lot transactions were combined with round-lot transactions and erroneously reported.
19. Based on the foregoing, GS&Co. violated NYSE Rule 476(a)(10).

Daily Program Trade Reports

20. Since 1988, the NYSE has required member organizations to report their program trading on a daily basis via DPTRs. These reports must include all program trades executed on the NYSE and any other markets. The DPTR must include the details of each transaction, such as the number of shares and the dollar value of the shares in each basket.
21. NYSE Information Memo No. 03-09, dated March 17, 2003, provides that member organizations that engage in program trading activity, whether agency, proprietary, or both, shall submit a report on a daily basis no later than the close of business on the second business day (T+2) following the reportable activity.
22. The NYSE uses the program trading information reported in DPTRs for surveillance purposes. The information contained in DPTRs is also utilized by the NYSE to report program trading statistics to the public on a weekly basis.
23. From mid-2002 through October 12, 2004 GS&Co. inaccurately reported the transmission lines through which its program trades were executed.
24. During the month of December 2003, GS&Co. submitted one DPTR with an incorrect trade date.
25. On seven trade dates during the months of December 2003, September 2004 and November 2004, GS&Co. either untimely or inaccurately filed DPTRs related to transactions occurring during Crossing Session II.
26. During the months of September 2004 and November 2004, GS&Co. submitted late information to the NYSE about eight program trades (beyond T+2).

27. From June 1, 2005 to July 31, 2005, GS&Co. inaccurately and/or untimely filed certain DPTRs, including Crossing Session II Detail Reports, with the NYSE.
28. Additionally, from November 15, 2002 to July 6, 2005 GS&Co. filed approximately 650 DPTRs which contained inaccurate information.
29. Based on the foregoing, GS&Co. violated NYSE Rule 476(a)(10) and 476(a)(11).

Short Interest Reporting

30. NYSE Rule 421 requires, in pertinent part, that member organizations submit periodic reports with respect to short positions in securities.
31. NYSE Rule 421.10 adds that member organizations “for which the Exchange is the designated examining authority are required to report ‘short’ positions, including odd lots, in each stock or warrant listed on the Exchange, and in each other stock or warrant not listed on the Exchange which is not otherwise reported to another United States securities exchange or securities association.... Such reports must include customer and proprietary positions....”
32. Member organizations are required to file short interest reports pursuant to NYSE Rule 421 on a monthly basis (generally the 15th of every month). The NYSE provides this information to the public for their use.
33. For the reporting period ending September 15, 2005, GS&Co. inaccurately reported short interest positions in approximately 55 securities. Updated figures for 22 of the 55 securities were submitted to the NYSE as part of the routine verification process and prior to the NYSE’s dissemination of short interest to the media. For the remaining 33 securities, the variances between the positions that were initially reported and revised figures provided by GS&Co. ranged from 1% to 14% (with 25 of the 33 securities having variances of less than 6%).
34. GS&Co.’s failure to file accurate short interest reports constitutes a violation of NYSE Rule 476(a)(10).

NYSE Rule 410B Reports

35. NYSE Rule 410B(a), in pertinent part, requires members and member organizations to report to the NYSE “[t]ransactions in securities listed for trading on the Exchange effected for the account of a member or member organization, or for the account of a customer of a member or member organization, that are not reported to the Consolidated Tape....”
36. NYSE Rule 410B(b) also provides, “[t]ransactions in listed securities required to be reported by paragraph (a) [of NYSE Rule 410B] shall be reported to the Exchange by

- the close of the next business day that the [NYSE] is open.” NYSE Rule 410B(d) identifies the transaction details required to be included in the report.
37. From mid-2002 to September 2005, GS&Co. submitted to the NYSE approximately 775 inaccurate 410B reports.
 38. GS&Co.’s deficiencies relative to the filing of NYSE Rule 410B reports included, among other things: (a) certain program trades comprised primarily of NYSE-listed securities and executed in foreign markets that were not reported in DPTRs also were excluded from 410B reports; (b) GS&Co. used an out of date table to determine whether a NYSE-listed security was also listed on a foreign exchange and thus whether trades on the foreign exchange were required to be reported; and (c) for certain transactions in NYSE-listed securities executed in foreign markets, the exchange rate used to convert the transaction price into United States dollars was out of date.
 39. Based on the foregoing, GS&Co. violated NYSE Rule 410B.

GS&Co. Failed to Timely Notify the NYSE of Its Participation in Three Stock Distributions In Which Its Associated Specialist Was Registered

40. SEC Regulation M (“Reg M”) of the Exchange Act governs the activities of underwriters, issuers, selling security holders, and others in connection with offerings and distributions of securities.
41. In connection with Reg M, the SEC approved NYSE Rule 460.30. During all relevant times herein, NYSE Rule 460.30(a) stated, in pertinent part, “[a]n approved person associated with a specialist member organization (‘Affiliated Specialist’) that is entitled to an exemption from certain Exchange rules pursuant to Exchange Rule 98⁴ shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of this rule, in such form and within such time frame as may be prescribed by the Exchange....”
42. NYSE Rule 460.30(b) states, “[t]he notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is . . . a covered security as defined in Rule 100 of Regulation M.”
43. NYSE Information Memo No. 97-41, dated July 30, 1997, requires an approved person subject to NYSE Rule 460.30 to notify the NYSE of its participation in a distribution, “the earlier of two business days prior to pricing the offering or one business day prior to the commencement of the restricted period for a distribution participant as defined in Rule 100 under Regulation M....”

⁴ During all relevant times herein, NYSE Rule 98 exempted approved persons associated with a specialist member organization from certain NYSE rules, provided that the approved person and specialist member organization maintained a functional separation approved by the NYSE. SLKS and GS&Co. obtained such exemptive relief pursuant to Rule 98.

44. On or about July 8, 2005, ABC Corp. (“ABC”) announced that it filed a registration statement with the SEC in connection with a proposed offering of 30 million American Depositary Receipts (“ADR”) of ABC. GS&Co. was the lead underwriter and SLKS was the specialist assigned to the stock. On Monday, July 18, 2005, the 30 million ADRs of ABC were priced at \$15.35 per ADR. The restricted period for this offering also began on July 18, 2005. The primary offering was worth \$460.5 million.
45. As an approved person associated with the Affiliated Specialist for ABC, GS&Co. was required to notify the NYSE of its participation in the offering the earlier of two business days prior to the pricing date or one business day prior to the commencement of the restricted period.
46. GS&Co. failed to make timely notification to the NYSE of its participation in the ABC offering.
47. GS&Co. also failed to make timely notifications to the NYSE of its participation in connection with two offerings of DEF Co. Ltd. (“DEF”) – one in August 2005 and another in September 2006.
48. GS&Co.’s failure to timely notify the NYSE of its participation in the above-referenced offerings constituted violations of NYSE Rule 460.30.

GS&Co. Submitted Inaccurate Account Type Indicators to the NYSE’s On-Line Comparison System

49. NYSE Rule 132 requires that each party to a contract submit certain audit trail data regarding its side of the contract to a fully interfaced clearing agency for comparison and settlement. As set forth in NYSE Rule 132.30 and as explained in various Information Memos issued by the NYSE, including Information Memo 02-59 (New Identification Code/Audit Trail Account Type “Q”) (December 17, 2002) and Information Memo 96-36 (New Audit Trail Identifiers) (December 5, 1996), such required data includes an identifier indicating the type of account for which the trade was effected. Through Information Memo 02-59 (December 17, 2002), the NYSE provided to member firms an updated list of account type identifiers that firms should use in complying with NYSE Rule 132.30.
50. From January 2005 through March 2006, GS&Co. submitted thousands of inaccurate account type indicators to the NYSE’s On-Line Comparison System (“OCS”). The comparison and clearing of these orders was not affected by incorrect account type indicators.
51. For example, executions that should have been marked as “C” indicating a proprietary program were marked as “P”, and executions that should have been marked as “Y” indicating a customer program were marked as “A”.

52. The inaccurate account type indicators, among other things, caused the generation of false positive alerts to MKS surveillance of market activity. Resolution of these alerts unnecessarily required the devotion of significant resources on the part of NYSE Regulation.
53. Although the executions were fed to OCS for comparison and settlement with inaccurate account type indicators, the relevant orders had been submitted to the NYSE for execution with the correct account type indicators and the issues described above did not have an effect on the Firm's order handling or prioritization.
54. Based on the foregoing, GS&Co. violated NYSE Rule 132.30.

GOLDMAN SACHS EXECUTION & CLEARING, L.P.

GSEC Failed to Submit Accurate and/or Timely Required Reports to the NYSE

Form SS20 and Form 121 Submissions; Daily Program Trade Reports

55. From October 31, 2000 to September 2005, GSEC filed approximately 250 Form 121 Reports and approximately 250 Form SS20 reports which contained inaccurate information.
56. Deficiencies in the filings of GSEC's Forms SS20 and 121 included the following: (a) certain trades executed in Crossing Session II were not excluded from GSEC's filings; (b) the report used to generate the legacy SLK Form 121 reports did not capture short sale transactions; (c) trades settling outside the normal T+3 cycle were not included; and (d) trades on the Floor of the NYSE on behalf of Amex ETF specialist accounts were not included in GSEC's Form 121 reports.
57. Based on the foregoing, GSEC violated NYSE Rule 476(a)(10).
58. From October 31, 2000 through January 2006, GSEC filed with the NYSE approximately one thousand DPTRs which contained inaccurate information.
59. Deficiencies in reporting included, among other things, (a) use of inaccurate strategy codes for certain program trades, (b) the reporting of trades for other member firms who did not arrange for GSEC to report trades on their behalf, (c) the exclusion of certain trading in customer accounts; and (d) transactions in certain program trading accounts were not captured and/or transactions in certain non-program trading accounts were included.
60. Based on the foregoing, GSEC violated NYSE Rule 476(a)(10).

Short Interest Reporting

61. From July to December 2004, GSEC filed six monthly short interest reports reflecting inaccurate short interest positions in approximately 2,500 securities.
62. GSEC's percentage rate of inaccurate short interest positions (i.e., the percentage of positions in a given month's report that were inaccurate) for the months July 2004 through December 2004 ranged from approximately 40% to approximately 48%.
63. GSEC's failure to accurately file its short interest reports from July through December 2004, constituted a violation of NYSE Rule 476(a)(10).

NYSE Rule 410B Reports

64. From October 31, 2000 to December 2005, GSEC submitted to the NYSE approximately 1,000 inaccurate NYSE Rule 410B reports.
65. Deficiencies included, among other things: (a) submissions omitted the marketplace of execution; (b) transactions in NYSE-listed securities executed on Electronic Communication Networks when the Consolidated Tape was closed were erroneously excluded; and (c) reports of certain transactions executed on foreign markets did not correctly identify the contra-side broker-dealer.
66. From November 6, 2006 to December 1, 2006, GSEC failed to timely report to the NYSE in excess of 200 transactions in NYSE-listed securities that occurred off the Floor of the NYSE.
67. Based on the foregoing, GSEC violated NYSE Rule 410B.

GSEC Failed to Submit Accurate Required Reports to the Amex

Amex Short Interest Reporting

68. Amex Rule 30 provided that "[e]very member and member organization shall file with the [Amex] such periodic or special reports as the Board of Governors may, by rule or otherwise, from time to time authorize. All such reports shall be filed at such time or times and in such form as the [Amex] may prescribe."
69. Amex Information Circular No. 95-136 ("Reporting of Monthly Short Interest Positions"), distributed May 8, 1995, advised all members and member organizations that it was their responsibility to report to the Amex the relevant short positions in Amex-listed securities maintained by them, certain subsidiaries and their customers pursuant to Amex Rule 30. Short positions in Amex-listed securities were required to be reported on the 15th of each month or, where the 15th was not a settlement date, on the preceding settlement date.
70. Amex Information Circular No. 98-234 ("Additional Short Position Reporting of Amex-listed Securities"), distributed February 26, 1998, advised all members and member organizations that it was their responsibility to report to the Amex, the

relevant short positions in Amex-listed derivative securities maintained by them, certain subsidiaries and their customers pursuant to Amex Rule 30. Commencing with the April 30, 1998 settlement date, in addition to the mid-month reporting described above, short positions in the derivative securities were also required to be reported as of the close of the last settlement date of each month.

71. From July 2004 through December 2004, GSEC filed six mid-month and six end-of-month short interest reports incorrectly reporting the Firm's short interest positions in approximately 200 securities.
72. The variances between the short interest positions that were initially reported and the revised figures provided by GSEC for the above-referenced mid-month short interest reports ranged from less than 1% to approximately 85% with a discrepancy of less than 1% in 331 of the 463 inaccurately reported short interest positions.
73. The variances between the short interest positions that were initially reported and the revised figures provided by GSEC for the above-referenced end-of-month short interest reports ranged from less than 1% to approximately 15% with a discrepancy of less than 1% in 183 of the 199 inaccurately reported short interest positions.
74. Based on the foregoing, GSEC violated Amex Rule 30.

Amex Form 1S Submissions

75. Pursuant to Amex Form 1S, member firms are required to report total daily round-lot short sale activity in proprietary and customer accounts. Member firms are required to file Amex Form 1S on a weekly basis.
76. From on or about October 31, 2000, through December 2006, GSEC inaccurately reported hundreds of round-lot short sales on its Form 1S submissions to the Amex.
77. Legacy FOC over-reported short sale activity by approximately 100% for the period from October 2006 through December 2006. Legacy SLK's short sales were calculated through a separate software program and thus were not affected. Legacy FOC short transactions represented approximately 33% of all GSEC (i.e., combined FOC and SLK) short transactions during the above-referenced period.
78. Based on the foregoing, GSEC violated Amex Rule 30.

SLKS AND SIS Failed to Submit Accurate Required Reports to the NYSE

Form 121 Submissions

79. From October 31, 2000 to April 2005, SLKS inaccurately filed approximately 200 Form 121 reports with the NYSE.
80. From February 26, 2002 to September 2005, SIS inaccurately filed approximately 175 Form 121 Reports with the NYSE.
81. Deficiencies in the filings of SLKS' and SIS' Forms 121 included the following: (a) trades executed in NYSE Crossing Session II were erroneously included in filings; (b) "as of" transactions and other post trade date activity were not captured; and (c) trades settling outside the normal T+3 cycle were not included.
82. Based on the foregoing, SLKS and SIS violated NYSE Rule 476(a)(10).

THE FIRMS' FAILURE TO MAINTAIN ACCURATE BOOKS AND RECORDS

83. Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder require broker-dealers to make and preserve certain books and records associated with its business.
84. NYSE Rule 440 requires that member organizations maintain a recordkeeping format, medium and retention period that complies with Exchange Act Rule 17a-4.
85. The deficiencies in the Firm's reporting processes and procedures as described above resulted in the Firms' creation and maintenance of certain inaccurate books and records in violation of Exchange Act Rules 17a-3 and 17a-4 and NYSE Rule 440.

THE FIRMS' SUPERVISORY FAILURES

86. NYSE Rule 342(a) requires, among other things, that "[e]ach office, department or business activity of a member or member organization ... shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility."
87. NYSE Rule 342(b) requires, in relevant part, that "each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall: (1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control [and] (2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised."

88. Amex Rule 320(b) states, in pertinent part, “[e]ach office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility.”
89. Amex Rule 320(c) states, in pertinent part, “[t]he general partners, directors, trustees of each member or member organization shall provide for appropriate supervisory control and shall designate a general partner, principal executive officer, trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations and [Amex] [r]ules.”
90. As described above, from October 2000 to at least September 2005, the Firms experienced deficiencies in their reporting processes that resulted in inaccurate and/or untimely reporting of certain required information to the NYSE.
91. From October 2000 until August 2004, the Firms failed to provide for appropriate procedures of supervision and control, including the establishment of a separate system of reasonable follow-up and review to confirm that their policies and procedures regarding transaction reporting were implemented, their reporting processes were adequately monitored, and reporting deficiencies were identified and remediated in a timely manner.
92. Accordingly, the Firms failed to appropriately supervise their transaction reporting systems and processes in connection with the filing of the above-referenced reports with the NYSE in violation of NYSE Rule 342.
93. As described above, from October 2000 until August 2004, GSEC failed to provide for a system reasonably designed to achieve compliance with applicable Amex Rules and the federal securities laws and regulations concerning short interest and short sale reporting in violation of Amex Rule 320.

OTHER FACTORS CONSIDERED

94. In arriving at the agreed upon penalty, Enforcement considered a number of factors including the following: (a) Goldman created ERG in August 2004 to centralize reporting obligations, improve the Firms’ reporting processes and manage the Firms’ efforts to identify and remediate reporting issues; (b) ERG conducted a thorough review of the Firms’ transaction reporting processes and procedures and disclosed the results to the NYSE; and (c) for fiscal years 2005 through 2008, the Firms implemented substantial remedial measures at significant cost to enhance their US transaction reporting.

DECISION

The Hearing Officer, in accepting the Stipulation of Facts and Consent to Penalty, found that Respondents committed the offenses as set forth above.

PENALTY

In view of the above findings, the Hearing Officer, imposed the penalties consented to by Respondent Goldman, Sachs & Co. of a censure and a \$160,000 fine; by Respondent Goldman Sachs Execution & Clearing, L.P. of a censure and \$180,000 for the NYSE violations and of a censure and a \$40,000 for the Amex violations; by Respondent Spear, Leeds & Kellogg Specialists L.L.C. of a censure and a \$20,000 fine; and by Respondent SLK Index Specialists L.L.C. of a censure and a \$10,000 fine.

For the Hearing Board

Peggy Kuo - Chief Hearing Officer