

NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061061107

TO: NYSE Arca, Inc.

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

Goldman Sachs & Co. LLC violated Rule 17a-3 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and NYSE Arca Rule 6.68 (Record of Orders) by failing to record the correct order entry time on the brokerage memoranda of options orders and violated NYSE Arca Rule 11.18 (Supervision) by failing to establish, maintain, and enforce a supervisory system reasonably designed to comply with federal securities laws and NYSE Arca rules related to recordkeeping from January 2017 to December 2020 (the “Relevant Period”). Consent to a censure and a \$80,750 fine (resolved simultaneously with similar matters for a total fine of \$221,500).¹

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

- A. Goldman 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

BACKGROUND AND JURISDICTION

1. The Firm became registered as an Options Trading Permit (“OTP”) holder with NYSE Arca on November 25, 1975. The Firm is a full-service broker-dealer engaged in, among other things, market making, execution services, and underwriting. The Firm is headquartered in New York, New York, and has approximately 8,700 registered individuals. The Firm does not have relevant disciplinary history.

¹ Those matters were brought on behalf of BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq Phlx LLC, and The Nasdaq Options Market LLC.

VIOLATIONS

2. The recordkeeping provisions of the federal securities laws and NYSE Arca rules are designed to ensure that regulators have access to important information about securities transactions. Access to complete and accurate transaction records is essential for effective surveillance and examination of broker-dealers by NYSE Arca and other regulators.
3. Exchange Act § 17(a) and Exchange Act Rule 17a-3(a)(6)(i) thereunder require broker-dealers, such as Goldman, to create a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The rule requires the memorandum to show, among other things, the time of order entry.²
4. NYSE Arca Rule 6.68 requires each OTP Holder and OTP Firm to maintain a record of every order for the purchase or sale of option contracts, which must show the terms and conditions of the order including the date and time of order entry.
5. During the Relevant Period, Goldman failed to maintain accurate records for thousands of options orders manually handled by relevant trading desks. Specifically, Goldman routed to NYSE Arca and another options exchange approximately 18,908³ options orders without systematically recording the transmission times.
6. Accordingly, the Firm violated Exchange Act § 17(a) and Exchange Act Rule 17a-3 thereunder, and NYSE Arca Rule 6.68 during the Relevant Period.
7. NYSE Arca Rule 11.18 requires each OTP Holder to establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Among other things, the OTP Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca Rules.
8. During the Relevant Period, Firm personnel responsible for reviewing manual options order tickets entered by the relevant trading desks failed to verify that those tickets included the time at which the orders were transmitted to NYSE Arca floor brokers. The Firm had no automated system or exception reports reasonably designed to verify that traders were recording options order transmission times as required or that supervisors were appropriately reviewing the order tickets to detect instances when the transmission time was omitted. The Firm remediated these deficiencies as of December 2020.

² Rule 17a-3(a)(6) defines the time of order entry as “the time when the member, broker or dealer transmits the order or instruction for execution.”

³ This number represents an extrapolation by FINRA based on sample periods reviewed.

9. For the reasons set forth above, Goldman violated NYSE Arca Rule 11.18 during the Relevant Period.

SANCTIONS

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

A censure and a \$80,750 fine (resolved simultaneously with similar matters for a total fine of \$221,500).⁴

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will 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 Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

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

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca Code 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 Exchange's Board of Directors and then to the

⁴ The remainder of the fine shall be allocated to BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Nasdaq Phlx LLC, and The Nasdaq Options Market LLC for similar violations.

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 prejudice of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- 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. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and

5. 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 the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
 - E. 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

