FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
No. 2011030683301

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

FROM: Goldman, Sachs & Co.
CRD No. 361

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Goldman, Sachs & Co. ("Goldman Sachs" 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, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Goldman Sachs 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Goldman Sachs has been a FINRA member since 1936 and is headquartered in New York, New York. The Firm is a full-service brokerage firm with more than 7,300 registered personnel. Among other things, it provides equity research, sales and trading services, and underwriting services.

RELEVANT DISCIPLINARY HISTORY

In 2003, NASD censured Goldman Sachs and other firms as part of the Global Research Settlement and ordered the Firm to pay a total of $110,000,000 for violating NASD Rules 2110, 2210(d)(1), 2210(d)(2), and 3010, by (1) engaging in acts and practices that created and/or maintained inappropriate influence by investment banking over research analysts, and therefore imposed conflicts of interest on its research analysts, which it failed to manage appropriately; (2) issuing research reports on issuers that were not based on principles of fair dealing and good faith and did not provide a sound basis for evaluating facts, contained exaggerated or unwarranted claims about these issuers, and/or contained opinions for which there was no

reasonable basis; and (3) failing to establish and maintain adequate procedures reasonably designed to protect research analysts from conflicts of interest.[1]

In April 2012, FINRA censured Goldman Sachs and ordered it to pay a total of $22,000,000 for violating NASD Rule 3010 and FINRA Rules 5280 and 2010 by (1) failing to supervise equity research analyst communications with traders and clients and (2) failing to adequately monitor trading in advance of published research changes to detect and prevent possible information breaches by its research analysts.[2]

OVERVIEW

In April 2010, Toys R Us ("TRU") and its private equity owners ("Sponsors") invited Goldman Sachs and other broker-dealers to compete for a role in TRU's planned initial public offering (the "TRU IPO"). To win this investment banking business from TRU, Goldman Sachs's equity research analyst participated in the Firm's solicitation efforts, and the Firm offered favorable research coverage to TRU. Moreover, Goldman Sachs failed to adopt and implement adequate written supervisory procedures governing analyst involvement in investment banking solicitations and offers of favorable research coverage. Therefore, in the context of the TRU IPO, Goldman Sachs violated three separate provisions of NASD Rule 2711, the research analyst conflict of interest rule: 2711(c)(4), which prohibits research analysts from participating in efforts to solicit investment banking business; 2711(e), which prohibits firms from directly or indirectly offering favorable research to obtain investment banking business; and 2711(i), which requires firms to adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of NASD Rule 2711.

Goldman Sachs allowed its research analyst to participate in the Firm's solicitation efforts by allowing the analyst to present his views on TRU to TRU's management and Sponsors during the "solicitation period" – *i.e.*, the period after a company has made known that it intends to proceed with a prospective investment banking services transaction, such as an IPO, and before the company has made a bona fide award of a mandate for the transaction. Before TRU awarded the TRU IPO business, it asked the equity research analysts from the firms competing for the business to make presentations to TRU's management and Sponsors. TRU provided specific topics for the analysts to address and put the firms on notice that, as part of the underwriter-selection process, it would consider each analyst's views of the company and whether the analyst's valuation was consistent with the firm's investment bankers' valuation. As described below, Goldman Sachs's research analyst presented to TRU and its Sponsors on May 5, 2010, during the solicitation period, thereby participating in the Firm's efforts to solicit investment banking business from TRU.

[1] In conjunction with Letter of Acceptance, Waiver and Consent No. CAF 030024 (Apr. 24, 2003), Goldman Sachs entered into a Final Judgment with the Securities and Exchange Commission ("SEC") that included, among other things, undertakings with regard to research independence and publication.

[2] In conjunction with Letter of Acceptance, Waiver and Consent No. 2009019301201 (Apr. 12, 2012), Goldman Sachs entered into a related settlement with the SEC. The Firm paid $11 million each to FINRA and the SEC.

Goldman Sachs also offered favorable research to induce TRU to award the Firm its investment banking business. The Firm's analyst's presentation to TRU and the Sponsors supported the Firm's investment banking pitch and offered a positive evaluation of TRU. Moreover, following the analyst's presentation, TRU asked Goldman Sachs to complete a template showing an "Equity Commitment Committee approv[ed]" valuation of TRU, which would include the analyst's views on TRU's valuation. TRU and its Sponsors asked the firms to complete the template and provide a Firm-wide valuation that the Firm, including its analyst, would be expected to support after TRU awarded the TRU IPO business, absent unexpected developments. Indeed, TRU told some firms that the purpose of the template was to prevent TRU from being "burned" by an analyst's decision to adopt a negative view of TRU after the company had awarded its investment banking business to the analyst's firm. Goldman Sachs complied with TRU's request.

Supervisory personnel at Goldman Sachs were aware that TRU had asked the Firm's research analyst to make a presentation to TRU that was not part of the analyst's due diligence, that TRU would take the presentation into account when awarding the underwriting mandate in the TRU IPO, that the presentation would include the analyst's favorable views of the company, and that TRU wanted a final valuation that the entire Firm, including its analyst, would support if selected as an underwriter. Nevertheless, the Firm's supervisory personnel allowed the analyst to make the presentation. Accordingly, Goldman Sachs failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with NASD Rule 2711.

TRU and the Sponsors selected Goldman Sachs as lead underwriter for the TRU IPO. TRU, however, eventually decided not to proceed with the offering.

FACTS AND VIOLATIVE CONDUCT

I. Goldman Sachs Violated NASD Rule 2711(c)(4) by Allowing Its Research Analyst to Participate In the Solicitation of Investment Banking Business.

NASD Rule 2711, the research analyst conflict of interest rule, is designed to insulate research analysts from a myriad of conflicts that could impair their impartiality. Taken together, the various provisions of the rule play a critical role in protecting analysts from improper influences and promoting their independent role providing research and analysis to investors. NASD Rule 2711(c)(4) is a key component of the rule that is designed to preclude analysts from participating in efforts to obtain investment banking business from issuers given that analysts typically initiate coverage of issuers when their firms play a role in bringing the issuer public.

NASD Rule 2711(c)(4) states, at the outset, that "[n]o research analyst may participate in efforts to solicit investment banking business." The rule clarifies this broad prohibition by stating further that "no research analyst may, among other things, participate in any 'pitches' for investment banking business to prospective investment banking clients or have other communications with companies for the purpose of soliciting investment banking business." Thus, the rule prohibits a research analyst from being part of the deal team seeking to win investment banking business.

Under NASD Rule 2711(c)(4), an analyst may communicate with an issuer during the solicitation period as part of the analyst's due diligence efforts to gather information about the company, but may not communicate with the issuer in furtherance of soliciting a role for his investment bank in the underwriting. In the context of a meeting requested by an issuer during the solicitation period for the purpose of obtaining an analyst's views as part of the underwriter selection process, as occurred in the TRU IPO, an analyst from a soliciting investment bank may not communicate to the issuer his views about the issuer or the issuer's industry, such as his views about valuation or comparable companies.

In April 2010, TRU and the Sponsors notified several investment banking firms of their interest in bringing the company public through an initial public offering. On April 23, 2010, TRU telephoned several firms and invited them to bid for a role in the TRU IPO and scheduled a "bakeoff" with each firm's investment bankers for April 30, 2010. TRU also notified the firms that, as part of the process of selecting underwriters, it wanted to hear the views of each firm's analyst who would cover the company following the TRU IPO. Each firm understood that TRU would consider the firm's analyst's views in determining whether the firm would receive an underwriting role in the TRU IPO. TRU gave the firms a list of topics it wished the analysts to cover, including the retail industry outlook, valuation, and comparables. TRU scheduled meetings with the analysts for May 4 and May 5, 2010.

On May 4, 2010, TRU and the Sponsors met with the equity research analysts from the firms competing for the TRU IPO business and provided background and financial information on the company for purposes of the analysts' due diligence.

On May 5, 2010, each firm's analyst made a separate presentation to TRU and the Sponsors. Under the circumstances, the analysts' presentations on May 5 constituted part of each firm's pitch for the TRU IPO and therefore violated NASD Rule 2711(c)(4). The presentations occurred during the solicitation period for the TRU IPO. TRU made clear to each firm that its analyst's presentation would be a factor in TRU's determination of whether the firm would be awarded a role in the IPO. Each analyst presentation was structured so that the analyst spoke and TRU management and Sponsors asked questions. These meetings were not designed to provide information to the analyst that the analyst could use to "vet" the proposed transaction.

Goldman Sachs understood that its analyst's views could influence what underwriting role, if any, it received in the TRU IPO. Shortly after being invited to pitch to TRU and the Sponsors, a Goldman Sachs investment banker sent an email to a banking colleague stating that he wanted the messages from the investment banking team and the Firm's analyst "to be consistent," that he wanted the investment banking team to be "tightly coordinated" with the analyst, and that he wanted to "iterate w[ith the analyst] this week as I think he's an advantage for us." Over the next several days, via chaperoned emails and telephone calls, the investment banking team sought the analyst's views regarding TRU, the industry, and the TRU IPO, including conversations about TRU's valuation and how TRU could be positioned in the market.

After the Firm's investment bankers made their pitch to TRU and the Sponsors on April 30, 2010, they briefed the Firm's analyst on their pitch.

On May 5, 2010, the Goldman Sachs analyst presented to TRU and the Sponsors. During his presentation, the analyst reviewed his experience in IPOs, discussed Goldman Sachs's research strengths, presented his views on the retail sector, generally, and TRU, specifically, and explained how TRU might be perceived by investors. For example:

- The analyst told TRU and the Sponsors that he was "very excited" to be speaking with them and noted his "extensive transactional experience," noting that he had "worked on more than a dozen retail IPOs."

- He highlighted Goldman Sachs's research capabilities, telling TRU and the Sponsors that the Firm's research collaboration "across the consumer sector" was a "real strength" because it gave its analysts "great visibility across sectors, up and down the supply chain." As an example, he noted that Goldman Sachs recently had initiated coverage on two of TRU's biggest suppliers, Hasbro and Mattel.

- He stated that TRU was a "global category dominant firm," and that, with respect to "global potential," "barriers to entry are high" but TRU had "answered those questions" and could "get paid for it."

- He identified the specific comparables that he viewed as the most relevant comparables for TRU.

- He told TRU and the Sponsors that, for valuation purposes, he would look at the company's p/e, ev/ebitda, and free-cash flow ratios, and that he recognized "there's a disconnect between p/e, ev/ebitda given [TRU's] leverage." He stated that TRU's p/e ratio could not be ignored, but the company could "sell off ev/ebitda."

- He concluded his presentation by telling TRU and the Sponsors, once again, that he was "EXTREMELY EXCITED" and "APPRECIATE[D THEIR] TIME."

After the Goldman Sachs analyst finished presenting, he briefed the Firm's investment bankers. The investment bankers began reaching out to TRU. One investment banker told one of his colleagues, a senior-level investment banker, that she should call TRU's CEO, who was the analyst's "biggest supporter," and was "likely to be more forthcoming than sponsors if there's an issue."

The analyst also contacted TRU. In an email to TRU's treasurer, he wrote that he had done "some quick work around your last question, and I'm happy to chat briefly to give you some initial indications." When TRU's treasurer responded that he would not be free until the next day, the analyst replied that he "wanted to share my thoughts ASAP." The analyst had a telephone call with TRU's treasurer the next day and then updated the investment bankers about his conversation.

Additionally, Goldman Sachs complied with TRU's request for a valuation that included the analyst's views.

As a result of the foregoing, Goldman Sachs violated NASD Rule 2711(c)(4) and FINRA Rule 2010.

II. Goldman Sachs Violated NASD Rule 2711(e) by Offering Favorable Research Coverage to Induce Receipt of TRU's Investment Banking Business.

NASD Rule 2711 recognizes that a firm can create a conflict for an analyst and compromise the analyst's independence if it promises favorable research coverage in an effort to win investment banking business. Therefore, NASD Rule 2711 contains a broad prohibition against directly or indirectly offering favorable research: "No member may directly or indirectly offer favorable research, a specific rating, or a specific price target . . . to a company as consideration or inducement for the receipt of business or compensation." Accordingly, in the context of a solicitation period where the issuer has stated that it will consider an analyst's views as part of the underwriter selection process, a firm cannot indicate to a prospective investment banking client its analyst's positive views of the company or the company's prospects, even if honestly held, or the positive prospective valuation the analyst may give the company.

Under the circumstances of the TRU IPO, Goldman Sachs offered favorable research coverage to induce receipt of investment banking business. The Goldman Sachs research analyst expressed favorable views about TRU during his presentation on May 5, 2010, as noted above. Additionally, Goldman Sachs offered favorable coverage by completing and submitting to TRU, during the solicitation period, a valuation template requested by TRU and the Sponsors.

On May 6, 2010, TRU notified the firms that it would be sending a template to each firm to complete as part of the underwriter-selection process. TRU explained that, in order to be selected as an underwriter, each firm had to provide the requested valuation. TRU and the Sponsors wanted to ensure that, if a firm was selected as an underwriter, its analyst's views would be consistent with the valuation provided by its investment bankers.

Later that day, TRU sent the template to each of the firms along with a cover email. The template asked each firm to provide projected EBITDA and net income for 2010 and 2011, the corresponding valuation multiple for 2010 and 2011, and identify up to five comparable companies used for valuation. In the cover email accompanying the template, TRU wrote that, before selecting underwriters, it wanted each firm to provide (1) "Equity Commitment Committee approval of a definitive equity valuation range," and (2) "what company or companies you would choose for the purpose of determining comparative values, and why." TRU stated that if a firm was selected as an underwriter, the firm, including its analyst, would be expected to stand behind the valuation provided in the template. If the valuation changed, the firm would be expected to show that the change was "directly traceable to unexpected findings during due diligence or unexpected changes in exogenous factors." The templates were due on May 10, 2010.

Goldman Sachs understood that TRU and the Sponsors wanted a final valuation that the entire Firm, including its analyst, would support if selected as an underwriter.

After speaking with TRU about the template, a Goldman Sachs investment banker emailed his banking colleagues summarizing the conversation. He wrote that TRU wanted a "commitments

committee approved view on valuation," and wanted to know "who we believe to be the most relevant comps." He explained that TRU was trying to "achieve [] unity between analysts and bankers" on valuation because TRU's "discussions [with analysts on May 5, 2010] highlighted some diff[erences]," although that "was not the case" with Goldman Sachs. He told his banking colleagues that completing the template "will require a call" with the Goldman Sachs analyst and "another review by [the analyst] of whatever we finally say/write." In a later email, the investment banker wrote that, in completing the template, the investment bankers would "need to make sure [the analyst] agrees w[ith] us[.]"

Another Goldman Sachs investment banker summarized a discussion she had with one of the Sponsors about the template. She wrote that the "[r]eason for the call and discussions Tuesday [May 10] is to make sure that firms are approved on valuation and analysts are not in a different place than bankers. Apparently, many of the f[i]rms analysts had WAY different ideas than the bankers. That's why they want everyone going to Commitments Committee. I asked him whether this was the case w[ith] GS and he said no." She further wrote that TRU and the Sponsors "[w]ant to hear whether they (analysts) believe 10% CAGR or not. And if they do, what valuation that leads to. One analyst told them 'best buy' multiple."

And another Goldman Sachs investment banker wrote "[p]art of the purpose of this exercise is to ensure that there's no disconnect b[etween] banking and research on views. We have been told that [Goldman Sachs] is consistent (unlike others), but we'll need to do this exercise anyway."

Goldman Sachs's investment bankers conferred regularly with the analyst in chaperoned communications during the process of completing the template. The Firm's bankers took the analyst's input into account when completing the template and preparing an accompanying memorandum further explaining the Firm's views.

The Firm's investment bankers emailed the completed template to TRU. The Firm provided all of the information TRU had requested. In their email to TRU attaching the template, the bankers wrote that they were "attaching the completed template as you requested," and that they "hope[d]" that their "completed template and executive summary clearly respond to [TRU's] request[.]"

By including favorable views of TRU in the analyst's presentation and providing TRU the unified valuation it sought, Goldman Sachs indicated to TRU that post-IPO research coverage would be positive and aligned with investment banking.

Shortly thereafter, TRU and the Sponsors selected Goldman Sachs as lead underwriter for the TRU IPO.

As a result of the foregoing, Goldman Sachs violated NASD Rule 2711(e) and FINRA Rule 2010.

III. Goldman Sachs Violated NASD Rule 2711(i) Because It Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of Rule 2711.

NASD Rule 2711(i) provides supervision requirements that specify a firm's obligations to develop effective policies and procedures to oversee research analyst conflicts of interest. Specifically, the rule states, "Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule . . . ."

Communications between an analyst and an issuer during the solicitation period present a risk that the analyst will become part of the firm's effort to solicit investment banking business from the issuer and/or offer favorable research to induce receipt of the issuer's investment banking business. Goldman Sachs failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with Rule 2711 so as to avoid conduct that, under the circumstances, constituted (a) participation by its research analyst in the solicitation of a role in the TRU IPO, and (b) an offer of favorable research.

As a result of the foregoing, Goldman Sachs violated NASD Rule 2711(i) and FINRA Rule 2010.

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

- a censure; and
- a fine in the amount of $5,000,000.

Goldman Sachs agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Goldman Sachs has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Goldman Sachs 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

Goldman Sachs 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.

Further, Goldman Sachs 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 acceptance or rejection of this AWC.

Goldman Sachs 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

Goldman Sachs 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 it; and

C. If accepted:

1. this AWC will become part of Goldman Sachs's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. Goldman Sachs 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. Goldman Sachs 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 the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Goldman Sachs 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 FINRA, nor does it reflect the views of FINRA or its staff.

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; has agreed to its 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.

Date: 12/5/14

Goldman, Sachs & Co.

By: _____

Gregory K. Palm
Managing Director

Reviewed by:

Michael Tomaino Jr

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Accepted by FINRA:

Date: 12/10/14

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

By: _____

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