

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2010 022 4738 -01**

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

RE: Goldman, Sachs & Co. (BD No. 361)  
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Goldman, Sachs & Co. ("Goldman," the "Firm" or "Respondent") 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. Respondent 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 has been a member of FINRA since 1936. The Firm, headquartered in New York City, has approximately 7,500 registered representatives operating from a total of 18 branch offices. Goldman is a wholly owned subsidiary of The Goldman Sachs Group, Inc., a global investment banking, securities and investment management firm.

The Firm has no relevant formal disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

## **OVERVIEW**

Between November 2009 and May 2010 (the “Relevant Period”), in two instances Goldman failed to update Uniform Applications for Securities Industry Registration or Transfer (“Forms U4”) to disclose investigations when it was required to do so by FINRA By-Laws, Article V, Section 2(c). In the first instance, Goldman failed to file an amendment to Form U4 to disclose that Fabrice Tourre had received a “Wells Notice” from the Securities and Exchange Commission (“SEC”) in connection with the agency’s investigation of an offering of a synthetic collateralized debt obligation (“CDO”) called ABACUS 2007-ACI (“Abacus”). In the second instance, Goldman failed to amend another employee’s Form U4 to disclose that he had received a Wells Notice.

These failures occurred because during the Relevant Period Goldman did not have adequate supervisory procedures and systems in place to ensure that the registrations group within its global compliance division received prompt notice that a registered person was the subject of an “investigation,” as that term is used in Form U4, so that the unit could ensure that the Forms U4 were amended accordingly.

Goldman’s failure to comply with its FINRA By-Law Article V reporting obligations impacted FINRA’s and other securities regulators’ abilities to discharge their registration, examination, and oversight duties, as well as investors’ and other market participants’ abilities to assess the individuals’ backgrounds through FINRA’s public disclosure program, BrokerCheck.

By reason of the foregoing, Goldman violated NASD Conduct Rule 3010 and FINRA Rule 2010.<sup>1</sup> Goldman consents to the imposition of a censure and a fine of \$650,000, and an undertaking that it will certify that it has conducted a review of its procedures and systems concerning Form U4 amendments and compliance with FINRA By-Laws, Article V, Section 2(c) and implemented any necessary revisions.

## **FACTS AND VIOLATIVE CONDUCT**

### *Background*

Form U4 is used to register associated persons of broker-dealers with the appropriate jurisdiction(s) and/or self regulatory organization(s) (“SROs”). Disclosures made in response to the questions on Form U4 play a vital role in the securities industry. The disclosures are used to determine and monitor the fitness of securities professionals. Timely, truthful, and complete answers on Form U4 are essential to meaningful regulation.

---

<sup>1</sup> NASD Conduct Rule 2110 became FINRA Rule 2010 effective December 15, 2008.

FINRA and other regulatory organizations, state regulators, and employers rely upon information reported on Form U4 to judge the fitness of securities professionals. FINRA maintains the information reported on Form U4, and any amendments thereto, in the Central Registration Depository ("CRD"), which is a web-based, FINRA-operated, central licensing and registration system for the U.S. securities industry. Broker-dealers rely on CRD information to fulfill their obligation to investigate the professional background, conduct, and license status of persons whom the firm is contemplating hiring. State securities regulators rely on CRD information to determine whether to grant a broker a securities license under state law. All securities regulators, including FINRA, rely on the currency and accuracy of CRD information for registration, investigation, and examination purposes, and to otherwise promptly discharge their regulatory duties.

FINRA provides the public with certain disclosure information reported to CRD through FINRA's web-based public disclosure program, known as BrokerCheck. Through BrokerCheck, investors can obtain information about the professional backgrounds, business practices, and conduct of FINRA members and their current or former registered persons. Investors and counterparties rely on the integrity of the information in BrokerCheck to assess the backgrounds of current or former registered persons with whom they invest or with whom they may consider doing business, including, for example, whether the person is the subject of a regulatory investigation.

All material information must be fully and accurately disclosed in response to questions on Form U4. In addition, firms are required to amend Form U4 to disclose reportable events not later than 30 days from the date the firm first learns of the event, pursuant to Article V, Section 2(c) of FINRA's By-Laws.

NASD Conduct Rule 3010 requires member firms to establish and maintain a supervisory system and enforce written supervisory procedures that are reasonably designed to achieve compliance with all laws, rules, and regulations applicable to their business and the activities of their associated persons. As relevant here, this includes a requirement that firms have an adequate supervisory system and procedures, including written supervisory procedures, to ensure the timeliness of Form U4 amendment filings, and to detect and prevent late Form U4 amendments.

#### *Failure to Disclose Tourre Wells Notice*

In August 2008, the SEC began seeking information from Goldman regarding Abacus, including the names of the principal employees responsible for Abacus and emails related to the CDO offering. Over the next year and a half, the SEC obtained documents and testimony from Goldman and a number of its employees related to the genesis, structuring and marketing of the Abacus transaction.

Tourre had worked as a Vice President on the structured product correlation trading desk at Goldman's headquarters in New York City when Abacus was structured and marketed. On March 3-4, 2009, Tourre, who at the time had become an Executive Director working in London for the firm's Goldman Sachs

International (“GSI”) affiliate, testified at the SEC in Washington, D.C. in connection with the Abacus investigation.<sup>2</sup>

Tourre’s counsel received a written Wells Notice, dated September 28, 2009, stating that the staff of the SEC intended to recommend that the SEC file a civil action and institute a public administrative proceeding against Tourre alleging that he violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in connection with the CDO offering. Tourre was registered with FINRA through Goldman at the time he received the Wells Notice. Tourre’s counsel immediately informed Goldman’s Legal Department that the Wells Notice had been received.

Tourre has been registered with FINRA as a general securities representative (“GSR”) through Goldman since 2001. Question 14G of the Form U4 Goldman filed on his behalf asks:

Have you been notified, in writing, that you are now the subject of any:

- (1) . . .
- (2) *investigation* that could result in a “yes” answer to any part of 14A, B, C, D or E? (If yes, complete the Investigation Disclosure Reporting Page.)

“Investigation” is defined in Form U4 to include SEC, CFTC, FINRA, or NYSE Regulation investigations when a written “Wells” notice has been given. A “yes” answer to questions 14C or 14E would indicate, among other things, that the SEC, CFTC, or an SRO has found the applicant to have been involved in a violation of its regulations or statutes.

Thus, receipt of a written Wells notice clearly triggers a reporting obligation on a person’s Form U4. Despite the fact that the reporting obligation clearly existed, Goldman failed to ensure that Tourre’s Form U4 was amended within 30 days of its knowledge of the Wells Notice, as required under the By-Laws. Tourre’s Form U4 was not amended until May 3, 2010, more than seven months after Goldman learned of the Wells Notice, and only after the SEC filed its Complaint against Goldman and Tourre on April 16, 2010 (resulting in extensive news coverage).<sup>3</sup>

#### *A Second Failure*

Goldman’s failure vis-à-vis Tourre’s Form U4 was not an isolated incident. Another Goldman employee in New York also received a written Wells Notice during the Relevant Period, indicating that the staff of a regulatory agency had made a preliminary determination to recommend that disciplinary action be

---

<sup>2</sup> GSI is a London-based wholly-owned subsidiary of The Goldman Sachs Group, Inc. GSI is not a FINRA member firm. In a settlement with the United Kingdom’s Financial Services Authority announced on September 9, 2010, GSI paid a substantial fine in connection with the FSA’s finding that GSI had failed to have proper and effective systems and controls in place to ensure that its Compliance department was apprised of information about the SEC’s investigation of Goldman and Tourre.

<sup>3</sup> Goldman agreed to settle the SEC’s action in July 2010.

brought against him. The employee was registered with FINRA through Goldman at the time he received the Wells Notice. In this instance, too, Goldman's Legal Department was promptly informed that a Wells Notice had been received. Goldman, however, did not ensure that the Form U4 was amended within 30 days of its knowledge of the Wells Notice, as required under the By-Laws.

#### *Supervisory Violations*

Global Compliance is the Division within Goldman that advises and assists the Firm's businesses to ensure compliance with applicable laws and regulations. Global Compliance is organized broadly into divisional compliance groups that are embedded in the businesses they support, as well as centralized compliance groups with firm-wide responsibilities, one of which is Global Compliance Employee Services ("GCES"). GCES manages registrations, outside interests and private investments. The "Registrations Group" within GCES is responsible for filing initial Forms U4 and amendments thereto.

For GCES to fulfill its responsibility, other sources within Goldman must identify and communicate reportable events to GCES. In the two instances here, GCES was not timely informed of the Wells Notices. In the case of Tourre, knowledge that he had received a Wells Notice was limited to a small circle of people inside the firm, including certain senior staff and attorneys, who treated the information as confidential and shared it only on a "need to know" basis. The fact that a Wells Notice had been received was not communicated to GCES, and Tourre's Form U4 was not timely amended.

The divisional compliance personnel embedded in the business units where Tourre worked in London (for GSI) and where the other individual worked in New York (for Goldman) were not informed when the firm learned about the Wells Notices.

During the Relevant Period, Goldman did not have in place an effective procedure to ensure that GCES was promptly notified about Wells notices affecting registered persons. Instead, Goldman relied on individuals who were informed of the occurrence of a Form U4 reportable event to recognize the need to tell GCES, and to take the initiative to do so. That "system" failed when Tourre received a Wells Notice on September 28, 2009 and Goldman's Legal Department was so notified. It also failed in the other instance at issue here.

Goldman's written supervisory procedures, divisional supervisory manuals and policies in effect during the Relevant Period were also inadequate. Nowhere do they mention "Wells notices" specifically. Moreover, in several places the procedures state that disclosure is required when an employee is found to have violated any provision of a securities law or regulation, or is named as a defendant or respondent in a regulatory proceeding or civil litigation, but are silent

regarding being the subject of a regulatory *investigation*, which could result in a “yes” answer to any part of questions 14A, B, C, D, or E of Form U4. This creates the mistaken impression that, when a registered person is investigated by the SEC or an SRO such as FINRA, the triggering event requiring a Form U4 amendment occurs, if at all, at a stage significantly later than when the representative receives a Wells notice.

By reason of the foregoing, Goldman violated NASD Conduct Rule 3010 and FINRA Rule 2010.

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

- a censure; and
- a fine of \$650,000.
- Goldman shall comply with the following undertakings within the time periods specified (unless otherwise extended by FINRA staff):
  - 1) Within 90 calendar days of the issuance of this AWC, an officer (or equivalent) of Goldman will certify to FINRA in writing that it has (a) completed a review of its supervisory procedures and systems concerning Form U4 amendments and compliance with FINRA By-Laws, Article V, Section 2(c), and (b) implemented necessary revisions to such procedures and systems. The certification shall also describe the specific actions taken by the firm, including the systems and procedures developed and implemented.

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

Respondent specifically and voluntarily waives any right to claim 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

Respondent specifically and voluntarily waives the following rights granted under FINRA’s Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council (“NAC”) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person’s or body’s participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
  - 1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;

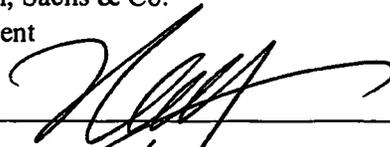
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Goldman, certifies that a person duly authorized to act on its behalf has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Goldman 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.

October 18, 2010  
Date (mm/dd/yyyy)

Goldman, Sachs & Co.  
Respondent

By:  \_\_\_\_\_

Print Name: Morgan Fert

Title: Managing Director, Legal

Reviewed by:

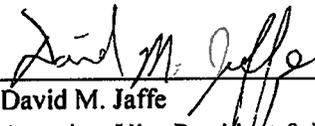


Bingham McCutchen, LLP  
399 Park Avenue  
New York, NY 10022-4689

Accepted by FINRA:

11/9/10  
Date

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



David M. Jaffe  
Associate Vice President & Regional Chief Counsel  
FINRA  
Department of Enforcement  
One Liberty Plaza  
New York, NY 10006  
(212) 858-4762 (T); (212) 858-4770 (F)

## ELECTION OF PAYMENT FORM

Respondent intends to pay the fine set forth in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A personal, business or bank check for the full amount;
- Wire transfer;
- Credit card authorization for the full amount;<sup>1</sup> or
- The installment payment plan (only if approved by FINRA staff and the Office of Disciplinary Affairs).<sup>2</sup>

Respectfully submitted,

October 18, 2010  
Date (mm/dd/yyyy)

Goldman, Sachs & Co.  
Respondent

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

<sup>1</sup> Only Mastercard, Visa and American Express are accepted for payment by credit card. If this option is chosen, the appropriate forms will be mailed to you, with an invoice, by FINRA's Finance Department. Do not include your credit card number on this form.

<sup>2</sup> The installment payment plan is only available for fines of \$5,000 or more. Certain interest payments, minimum initial and monthly payments, and other requirements apply. You must discuss these terms with FINRA staff prior to requesting this method of payment.