

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEE W. WALLER
(CRD No. 6124796),

Respondent.

Disciplinary Proceeding
No. 2013038196601

Hearing Officer — KBW

DEFAULT DECISION

May 4, 2015

Respondent violated FINRA Rule 2010 by misleading, and causing others to mislead, his firm regarding two securities in his trading book. For this conduct, Respondent is barred from associating with a member firm in any capacity.

Appearances

Michael J. Rogal, Esq. for the Department of Enforcement, Complainant.

No appearance by or on behalf of Lee W. Waller, Respondent.

DECISION

I. Introduction

On December 4, 2014, the Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers. The Complaint alleges that Respondent Lee W. Waller, a sovereign fixed income trader at Goldman Sachs International (“GSI”), violated FINRA Rule 2010 by taking steps in May and June 2013 to mislead GSI regarding two securities in his trading book.¹

Enforcement served Waller with the Complaint in accordance with FINRA’s Code of Procedure, and Waller failed to file an answer or otherwise respond. Accordingly, on February 1, 2015, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions (“Default Motion”), together with the Declaration of Michael Rogal (“Rogal Decl.”) and exhibits marked CX-1 through CX-6. Waller did not respond to the Default Motion.

¹ FINRA’s Rules are available at www.finra.org/rules.

II. Findings of Fact and Conclusions of Law

A. Waller's Background

Waller filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") applying to register with member firm Goldman Sachs & Co. ("Goldman Sachs") on May 6, 2013.² While associated with Goldman Sachs, Waller was a sovereign fixed income trader at GSI, a foreign affiliate of Goldman Sachs.³ In September 2013, Goldman Sachs filed a Uniform Termination Notice of Securities Regulation ("Form U5") reporting that Waller's "employment with a foreign affiliate was terminated due to concerns about his conduct during the quarter end price verification and involving a particular bond trade."⁴ Waller is not currently associated with a FINRA member firm.⁵

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Enforcement filed the Complaint within two years of the termination of Waller's registration; and (2) the Complaint alleges that Waller engaged in misconduct while he was associated with a FINRA member firm.

C. Origin of Investigation

After Goldman Sachs filed the Form U5, Enforcement commenced the investigation that led to filing the Complaint in this disciplinary proceeding.⁶

D. Service of Complaint and Waller's Default

1. First Notice

On December 4, 2014, Enforcement served the Complaint and Notice of Complaint (collectively, "First Notice") on Waller via FedEx International Priority (with a separate copy sent via email) to an address in Great Britain that was substantially the same as Waller's most recent residential address as recorded in the Central Registration Depository ("CRD")⁷ A FedEx confirmation of delivery indicates that the package was signed for by "L. Waller" on December 9, 2014.⁸

² Complaint ("Compl.") ¶ 5; CX-1, at 6; Rogal Decl. ¶ 4.

³ Compl. ¶¶ 1, 6.

⁴ Compl. ¶ 5; CX-1, at 3.

⁵ Compl. ¶ 7.

⁶ Rogal Decl. ¶ 8.

⁷ Rogal Decl. ¶ 6.

⁸ Rogal Decl. ¶ 6; CX-3, at 21.

The Notice of Complaint required Waller to file an Answer no later than January 2, 2015.⁹ Waller did not file an Answer or other response by that date.

2. Second Notice

On January 7, 2015, Enforcement served the Second Notice of Complaint, (with a copy of the Complaint and the Notice of Complaint) (collectively, the “Second Notice”) via FedEx International Priority (with a separate copy sent via email) to the same address in Great Britain as the First Notice.¹⁰ A FedEx confirmation of delivery indicates that the package was signed for by “Waller” on January 9, 2015.¹¹

The Second Notice of Complaint required Waller to file an Answer no later than January 26, 2015.¹² Waller did not file an Answer or other response by that date.

3. Waller’s Default

FINRA’s Code of Procedure provides, “Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or attempts at delivery.”¹³ FedEx is a courier service.¹⁴ Both of the delivery attempts by FedEx generated a confirmation of receipt. Accordingly, Enforcement properly served Waller with a copy of the Complaint, and Waller received valid notice of this proceeding. With one exception, the allegations in the attached Complaint therefore are deemed admitted pursuant to FINRA Rules 9215(f) and 9269(a).¹⁵

E. Waller’s Misconduct

In 2013, while a sovereign fixed income trader with GSI, Waller misled, and arranged for two other firms to mislead, GSI regarding two securities in his trading book. In addition, to mislead GSI regarding one of the securities, Waller entered into an arrangement with another firm to sell that security to that firm at a certain price and promptly repurchase the security from that firm at the same price.¹⁶

⁹ CX-3, at 1-2.

¹⁰ Rogal Decl. ¶ 7.

¹¹ CX-5, at 25.

¹² CX-5, at 1.

¹³ FINRA Rule 9134(a)(3).

¹⁴ NASD Notices to Members Number 00-73 (Oct. 2000).

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003977.pdf> (“NASD Regulation interprets the term ‘overnight courier’ to refer to any entity that regularly provides overnight delivery services, such as Federal Express, DHL, or the United States Postal Service.”)

¹⁵ Compl. ¶ 41 refers to a sale as having occurred on June 25, 2014. Because the alleged date is inconsistent with other allegations in the Complaint, it is not deemed admitted.

¹⁶ Compl. ¶¶ 1-4.

1. Waller's Misconduct in Connection with Credit Default Swap Index

In March 2013, GSI controllers found a variance between GSI's internal price and the price that an external provider had provided for a particular credit default swap index ("SovX") in Waller's trading book. One of the GSI controllers asked Waller to provide additional independent evidence to support the pricing he had provided internally for SovX.¹⁷

Waller responded by arranging for GSI's controllers to receive purportedly independent evidence regarding the pricing of SovX from PW, a trader at another London broker-dealer firm. Specifically, on April 30, 2013, Waller and PW agreed that PW would provide the specific pricing for SovX that Waller had supplied to the GSI controllers. PW provided that pricing to the GSI controllers on April 30, 2013.¹⁸

In May 2013, as part of a quarterly independent price verification process, GSI controllers began reviewing certain internal GSI fixed income prices compared to prices provided by an external provider. As part of that review, on May 7, 2013, GSI controllers asked Waller to verify that the SovX pricing that PW had provided at Waller's request was independent. In response, Waller falsely represented to GSI controllers that the SovX pricing they received from PW was independent and at market and not pricing that had originated from Waller. In addition, PW provided false information regarding the pricing that he had provided to the GSI controllers.¹⁹

On May 7, 2013, GSI controllers also asked Waller to obtain pricing of SovX from another trader. Rather than obtain independent pricing for SovX, Waller colluded with another trader, MT, to provide GSI controllers with pricing that was not independent. Specifically, on May 7, 2013, Waller provided the pricing he wanted MT to relay to the GSI controllers and MT emailed the pricing to the GSI controller.²⁰ Waller falsely represented to GSI that the pricing information that MT provided was independent.²¹

Waller knew that the GSI controllers wanted independent pricing from external sources, not pricing that he originated. Waller also knew that he was misleading the GSI controllers by lying about the independent nature of the SovX pricing provided by PW and MT and colluding with MT to provide false SovX pricing.²²

"[P]roviding false information to a member firm . . . violates FINRA Rule 2010."²³ Once Waller's Form U4 was filed with FINRA on May 6, 2013, he was an associated person within

¹⁷ Compl. ¶¶ 8, 9.

¹⁸ Compl. ¶¶ 10-12.

¹⁹ Compl. ¶¶ 13-20.

²⁰ Compl. ¶¶ 21-25.

²¹ Compl. ¶ 30.

²² Compl. ¶¶ 26-30.

²³ *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *16 (NAC Mar. 9, 2015).

the meaning of Article I, Section (rr) of the FINRA By-Laws. Accordingly, the Hearing Officer finds that Waller violated FINRA Rule 2010 in connection with the pricing of the SovX security by colluding on May 7, 2014, with MT to have MT provide to GSI controllers pricing supplied by Waller and by falsely representing that the pricing provided by PW and MT was independent.

2. Waller's Misconduct in Connection with Eurobonds

On June 25, 2013, Waller entered a sale of Ukraine Eurobonds ("Eurobonds") to PW's firm at the price of 99. Waller entered this trade in error. When GSI's back-office support staff questioned Waller about the trade, Waller falsely claimed that the trade was genuine.²⁴

On June 26, 2013, Waller had a telephone conversation with PW in which he explained to PW that he had accidentally booked a sale of the Eurobonds to PW's firm and asked if PW's firm could book the transaction and then Waller would buy it back from PW's firm. PW's firm then purchased the Eurobonds at 99 with a trade date of June 25, 2013, and Waller repurchased the position from PW's firm at the same price with a trade date of June 26, 2013. Waller misled GSI personnel by engaging in the trading arrangement with PW's firm.²⁵

A third-party service priced the Eurobonds at 95. Waller's trade of the Eurobonds at a price of 99 created a price variance in Waller's trading book of approximately \$1.5 million, leading to a review of Waller's trades by the GSI controllers. During this review, the GSI controllers discovered that Waller had purchased back the Eurobond position a day later at the same price and quantity with the same counterparty as the sale. When the GSI controllers questioned Waller, he misled the GSI controllers by initially claiming that the trades were genuine.²⁶

The GSI controllers continued to question Waller about the Eurobonds trades, and Waller ultimately changed his explanation to admit that the entry of the sale was an error. Waller also admitted that, because he was embarrassed by the trading error, he executed the trades with PW's firm, rather than cancel the trade as GSI's procedures required. Waller falsely claimed that it was PW's idea to have GSI repurchase the position at the same price.²⁷

The Hearing Officer finds that Waller violated FINRA Rule 2010 in June 2013 in connection with the Eurobonds by falsely representing that the erroneous trade of the Eurobonds was genuine and arranging with PW's firm to sell the Eurobonds at a certain price and promptly repurchase the Eurobonds at the same price.

²⁴ Compl. ¶¶ 31-33.

²⁵ Compl. ¶¶ 34-36, 44.

²⁶ Compl. ¶¶ 37-40, 44.

²⁷ Compl. ¶¶ 41-43.

III. Sanctions

The FINRA Sanction Guidelines provide that “[a]ggregation or ‘batching’ of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.”²⁸ The essence of both causes of action is that Waller took steps in 2013 to mislead GSI regarding securities in his trading book. Accordingly, it is appropriate to aggregate the violations for the purpose of determining sanctions.

FINRA’s Sanction Guidelines do not specifically address the misconduct for which Waller is liable here. The Hearing Officer agrees with Enforcement’s suggestion that the most nearly comparable type of misconduct addressed in the Sanction Guidelines is forgery or falsification of documents.²⁹ For forgery or falsification of documents the Guidelines recommend fines from \$5,000 to \$100,000, and suspension in any or all capacities for up to two years, if mitigation exists, or, in egregious cases, a bar.³⁰ In knowingly misleading his firm and colluding with traders at other firms to mislead his firm in connection with two securities, Waller’s misconduct was egregious. Accordingly, a bar is the appropriate sanction.

IV. Order

Respondent Lee W. Waller is barred from associating with any member firm in any capacity for misleading, and causing others to mislead, his firm regarding two securities in his trading book, in violation FINRA Rule 2010.³¹ The bar will become effective immediately if this decision becomes FINRA’s final disciplinary action in this proceeding.



Kenneth Winer
Hearing Officer

Copies to:

Lee W. Waller (*via overnight courier, and first-class mail*)
Michael J. Rogal, Esq. (*via email and first-class mail*)
Jeffrey D. Pariser, Esq. (*via email*)

²⁸ FINRA Sanction Guidelines at 4 (2013)(“Guidelines”), available at www.finra.org/industry/sanction-guidelines.

²⁹ *Dep’t of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *69-70 (NAC July 18, 2014) (in cause of action involving misstating facts on compliance questionnaires, finding that the Guidelines related to falsification of records are most analogous).

³⁰ Guidelines at 37.

³¹ There was no customer harm and consequently Enforcement did not seek restitution.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**LEE W. WALLER
(CRD No. 6124796),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2013038196601**

HEARING OFFICER—_____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In May and June 2013, Lee W. Waller ("Waller"), a sovereign fixed income trader with Goldman, Sachs & Co.'s ("GS") foreign affiliate Goldman Sachs International ("GSI"), falsely represented to GSI that prices he arranged to provide to verify his internal valuations for positions in his trading book were independent market prices.
2. In fact, Waller colluded with two traders at other firms to provide GSI with prices that he determined himself.
3. Waller also falsely represented to GSI that a wash trade he engaged in to cover-up a trade error was a genuine trade.
4. By arranging for the provision of false pricing information and by making false statements to his firm regarding pricing of his trading positions and a wash trade, Waller violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

5. Lee W. Waller (CRD # 6124796) filed a Form U4 applying to register with member firm GS on May 6, 2013. On September 5, 2013, GS filed a Form U5 terminating Waller's application for registration "after the representative's employment with a foreign affiliate was terminated due to concerns about his conduct during a quarter end price verification and involving a particular bond trade."

6. While associated with GS by virtue of the filing of the Form U4 on May 6, 2013, Waller was a sovereign fixed income trader at GS's foreign affiliate, GSI, located in London, England.

7. Although Respondent is no longer associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, namely, September 5, 2013 and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

STATEMENT OF FACTS

Waller Made False Statements to GSI Regarding a Price Supplied by Another Trader

8. On March 27, 2013, GSI controllers found a variance between GSI's internal price and an external data provider's price for iTraxx SovX CEEMEA CDS ("SovX"), a security in Waller's book.¹

9. Upon discovery of this variance, one of the GSI controllers requested that Waller provide additional independent evidence to support his SovX price.

¹ This security is a Credit Default Swap Index of sovereign issuers from Central and Eastern Europe, the Middle East and Africa.

10. In response to this request, Waller arranged for GSI's controllers to receive a purportedly independent price for SovX from PW, a trader at GF, another London broker-dealer firm.

11. On April 30, 2013, Waller and PW exchanged Bloomberg messages in which Waller colluded with PW to provide the specific price for SovX that Waller supplied to GSI controllers.

12. On that same day, PW provided GSI controllers the pricing Waller provided to him.

13. In May and June 2013, GSI controllers commenced a review of certain internal GSI fixed income prices compared to an external data provider as part of a quarterly independent price verification process.

14. As part of that review, on May 7, 2013 GSI controllers requested that Waller verify the SovX price that PW had provided in April 2013 was independent.

15. In response to this request, Waller falsely represented to GSI controllers that the SovX price they received from PW was an independent market price and not a price that originated from him.

16. On June 28, 2013, Waller wrote in an email to GSI controllers "[n]o[,] these aren't our prices in the broker screens."

17. This statement was false—Waller had previously arranged with PW for PW to provide a price for SovX that originated from Waller himself and was not an independent market price.

18. On June 6, 2013, PW wrote to GSI controllers: "I can confirm these were tradeable levels on the 31st may [sic] and were not gs [sic] levels."

19. On June 28, 2013, PW wrote in an email to GSI controllers that "I can confirm these are not gs [sic] levels are tradeable prices and are seen by all market participants."

20. These statements, which Waller arranged for PW to make, were false.

Waller Colluded with a Trader at Another Firm to Provide a False Price

21. On May 7, 2013, GSI controllers also requested Waller obtain a price on SovX from another broker dealer besides GF.

22. In response, Waller represented that he could "easily get another set of broker quotes for the SovX series no problem."

23. However, rather than obtain an independent price for SovX, Waller colluded with MT, a trader at London broker-dealer TP, to provide GSI controllers a SovX price that was not truly independent.

24. During a May 7, 2013 telephone conversation between Waller and MT, Waller provided the prices he wanted MT to relay to GSI controllers and even remarked: "[Expletive deleted] you know I'm basically making these up right."

25. That same day, MT emailed GSI controllers the prices that Waller provided to him.

Waller's Actions and False Statements Were Intentional

26. Waller was aware that the GSI controllers did not want prices that originated from him but rather wanted independent market prices from an external source.

27. Waller also knew he was misleading the GSI controllers by colluding with TP to provide a false SovX price and by lying about the independent nature of the SovX price provided by PW.

28. On February 28, 2013, Waller wrote an email to GSI controllers stating: “[I] am waiting for the brokers to get some markets in them [sic] as [I] know u [sic] don’t want our prices.”

29. Similarly, on June 28, 2013, Waller wrote an email to GSI controllers stating: “[I] know you guys ask for prices from brokers which aren’t ours.”

30. Despite this awareness that GSI wanted independent prices, Waller arranged for two traders at other firms to provide GSI controllers with Waller’s own SovX prices and falsely represented to GSI that those prices were independent.

Waller’s Misrepresentations Concerning a Wash Trade

31. On June 25, 2013, Waller entered a sale of a Financing of Infrastructural Projects State Enterprise Ukraine Eurobond (“Fininpro Eurobonds”) to GF at the price of 99.

32. Waller entered this trade in error.

33. When GSI’s back office support staff questioned Waller about the trade, Waller claimed the trade was genuine.

34. On June 26, 2013, Waller had a telephone conversation with PW, the trader at GF. Among other things, during this telephone conversation Waller told PW: “I [expletive deleted] something up yesterday and I wonder if you can help me out I’ve accidently booked I sold you a billion [Fininpro Eurobonds] . . . And I’ve sworn blind to my middle office all throughout the day that I done the trade. . . . And I told them nah nah [GF] have not, [GF’s] missed it. Is it alright if you book it and I’ll buy them back from you today”

35. Following the call with PW, GF purchased the Fininpro Eurobonds at 99 with a trade date of June 25, 2014.

36. Waller then repurchased the position from GF at the same price with a trade date of June 26, 2014.

37. Waller's trades of the Fininpro Eurobonds at a price of 99 were higher than the price provided by a third-party service of approximately 95. This resulted in a price variance in Waller's trading book of approximately \$1.5 million.

38. The price variance prompted review of Waller's trades by GSI controllers.

39. During that review, GSI's controllers discovered that he had bought back the position a day later at the same price and same quantity with the same counterparty.

40. When GSI controllers questioned Waller about the Fininpro Eurobonds trades with GF, Waller claimed the trades were genuine.

41. After further questioning about the Fininpro Eurobond trades by GSI controllers, Waller ultimately changed his explanation to claim that the June 25, 2014 sale was an error.

42. Waller also admitted that, rather than cancel the trade, as he was required to do in accordance with the firm's procedures, he executed the trades with GF because he was embarrassed by the trading error.

43. Waller also claimed, falsely, that it was PW's idea to have GSI repurchase the position at the same price.

44. Waller misled GSI personnel by engaging in the Fininpro Eurobonds wash trades with GF to disguise a trading error and by claiming that the trades were genuine.

**FIRST CAUSE OF ACTION
FALSE STATEMENTS REGARDING SOVX PRICING
(FINRA Rule 2010)**

45. The Department realleges and incorporates by reference paragraphs 1 through 44 above.

46. As described above, in connection with a GSI audit, Waller falsely represented to GSI personnel that certain SovX prices were independent market prices when in fact he colluded with two brokers to supply GSI with his own prices to justify his internal marks.

47. Waller also arranged to have one of these brokers falsely represent to GSI that the prices he provided were independent.

48. Waller's collusion and false representations to GSI were inconsistent with high standards of commercial honor and just and equitable principles of trade.

49. As a result of the foregoing conduct, Waller violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
WASH TRADE AND FALSE REPRESENTATIONS
(FINRA Rule 2010)**

50. The Department realleges and incorporates by reference paragraphs 1 through 49 above.

51. As described above, Waller falsely represented that an erroneous trade was genuine and misled GSI by engaging in a wash trade to make it appear that the erroneous trade was genuine.

52. Waller's conduct and false representations were inconsistent with high standards of commercial honor and just and equitable principles of trade.

53. As a result of the foregoing conduct, Waller violated FINRA Rule 2010.


RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and,
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 4, 2014



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