

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130378671-01**

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

RE: Goldman Sachs Execution & Clearing, L.P.
Broker-Dealer
CRD No. 3466

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Goldman Sachs Execution & Clearing, L.P. ("GSEC" 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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm 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

GSEC has been a member of FINRA since March 31, 1948, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

The Firm has the following relevant history related to the rules cited herein:

- On May 21, 2014, FINRA accepted an AWC in which the Firm consented to a censure and fine of \$10,000 for violations of FINRA Rule 7450 between September 9, 2011 and September 28, 2011.
- On July 23, 2013, FINRA accepted an AWC in which the Firm consented to a censure and fine of \$25,000 for violations of FINRA Rule 7450 between April 1, 2010 and May 31, 2011.

- On March 15, 2010, FINRA accepted an AWC in which the Firm consented to a censure and total fine of \$40,000, which included a fine of \$27,500 for violations of NASD Rule 6955(a) between October 1, 2006 and January 16, 2008.
- On October 1, 2009, FINRA accepted an AWC in which the Firm consented to a censure and total fine of \$24,000 fine, which included a fine of \$19,000 for violations of NASD Rule 6955(a) on August 20 and August 21, 2008.

SUMMARY

Matter No. 20130378671 involves a review conducted by the Department of Market Regulation's ("Market Regulation") Order Audit Trail System ("OATS") Compliance Team (the "staff") of the Firm's compliance with OATS reporting requirements during the period between July 14, 2006 and March 9, 2015.

Matter No. 20140414133 involves a review conducted by staff of the Firm's compliance with OATS reporting requirements during the period between April 7, 2014 and February 13, 2015, and its reporting of trade reports to the FINRA/NYSE Trading Reporting Facility ("TRF") during the period between November 10, 2014 and February 13, 2015.

OVERVIEW

As a result of its review of Matter No. 20130378671, Market Regulation determined that the Firm failed to transmit to OATS approximately 6.3 billion Reportable Order Events ("ROEs") between July 14, 2006 and July 30, 2013 (the "First Review Period") under the Firm's "SGMA" MPID for its Alternative Trading System ("ATS"). By its conduct, the Firm failed to report 6.10% of all ROEs it was required to transmit to OATS during this period.

Moreover, it was determined that the Firm transmitted to OATS 42.1 billion inaccurate and/or incomplete required ROE data elements between July 14, 2006 and March 9, 2015 (the "Second Review Period"). By its conduct, the Firm transmitted incorrect reports for about 20.53% of all ROEs it was required to transmit to OATS during this period.¹

With respect to Matter No. 20140414133, Market Regulation determined that the Firm transmitted a total of approximately 15 billion ROEs to OATS under the Firm's SGMA MPID that failed to report order event timestamps in milliseconds, when the Firm's ATS captured time in milliseconds, between April 7, 2014 and February 13, 2015 (the "Third Review Period"). By its conduct, the Firm transmitted incomplete reports for 100% of all ROEs it was required to transmit to OATS during this period.²

¹ The percentage included herein is calculated as if each inaccurate and/or incomplete data element was related to distinct ROEs. However, in certain cases there was overlap such that two or more inaccurate and/or incomplete data elements may have been contained in the same report.

² Effective April 7, 2014, FINRA Rule 7440 was updated to require firms to express time in milliseconds when reporting order information to OATS if a firm's system captured time in milliseconds. FINRA published Regulatory Notice 14-21 in May 2014, reminding firms of their obligations pursuant to the rule. See also Securities Exchange Act Release No. 70924 (November 22, 2013), 78 FR 71695 (November 29, 2013) (Notice of Filing of File No. SR-FINRA-2013-050). While other Firm systems did not capture time in milliseconds and the Firm indicated that it

Moreover, the Firm submitted approximately 38.6 million trade reports to the FINRA/NYSE TRF under the SGMA MPID that failed to report execution timestamps in milliseconds between November 10, 2014 and February 13, 2015 (the "Fourth Review Period"). By its conduct, the Firm transmitted incomplete reports for 100% of all trade reports it was required to report to the TRF during this period.³

Because FINRA uses OATS data as an integral part of its automated market surveillance program to detect manipulative activity and other potential violations of FINRA rules and the federal securities laws, a failure to transmit ROEs or the transmission of inaccurate or incomplete ROEs can hamper FINRA's ability to detect potentially violative conduct and/or create false positive alerts requiring the expenditure of unnecessary resources to resolve the alerts. Moreover, these failures also caused the Audit Trail to be inaccurate.

In addition, during all the above-referenced review periods, the Firm failed to have adequate supervisory procedures reasonably designed to achieve compliance with NASD Rules 6954 and 6955 and FINRA Rules 7440, 7450 and 6380B(c)(5) in connection with the deficiencies described herein.

FACTS AND VIOLATIVE CONDUCT

Matter No. 20130378671

1. During the First Review Period, the Firm failed to transmit approximately 6,342,481,250 ROEs to OATS under the Firm's SGMA MPID, which includes 6.2 billion ROEs that the Firm failed to transmit between October 17, 2011 and July 12, 2013, involving Customer Initiated Cancels ("Customer CL"). These 6.3 billion ROEs represented 6.10% of all ROEs (*i.e.*, approximately 103.9 billion) that the Firm was required to transmit to OATS during this period, and represented 19.26% of all ROEs for the Firm's SGMA MPID (*i.e.*, approximately 32.9 billion).
2. The conduct described above in paragraph 1 constitutes separate and distinct violations of NASD Rule 6955 (for conduct that occurred prior to December 15, 2008) and FINRA Rule 7450 (for conduct that occurred on and after December 15, 2008).
3. During the Second Review Period, the Firm transmitted to OATS approximately 42,189,531,270 inaccurate and/or incomplete required ROE data elements. Specifically, the Firm: (a) submitted Order Cancellation Flags incorrectly indicating that orders cancelled by the Firm were cancelled by a customer, or indicating that orders cancelled by a customer were cancelled by the Firm between January 1, 2013 and January 3, 2014 (approximately 28.2 billion instances); (b) submitted inaccurate

was concerned about submitting data with potentially conflicting time calibrations, FINRA Rule 7440 required submission for any system that captured time in that manner.

³ Amendments to the Equity Trade Reporting rules relating to reporting milliseconds to FINRA facilities if a member firm's system captures time in milliseconds, became effective November 10, 2014 (for trades reported to the TRF and Alternative Display Facility ("ADF")) and November 17, 2014 (for trades reported to the Over-the-Counter Reporting Facility ("ORF")).

Order Origination Codes indicating that orders were received from a customer or originated from within the Firm instead of indicating the orders were received from another broker-dealer between October 17, 2011 through February 20, 2015 (approximately 11.3 billion instances); (c) failed to submit the accurate Special Handling Codes for orders received from broker-dealer clients of the Firm that utilized GSEC MPIDs for new orders and for cancel/replace orders between March 29, 2010 and March 14, 2014 (approximately 2 billion instances); (d) submitted the incorrect Time in Force Values of "Day" orders instead of Good-Til-Time ("GTT") orders between April 12, 2007 and July 17, 2013 (211.8 million instances); (e) submitted incorrect Execution Type Indicators indicating a partial execution of orders instead of indicating that orders were executed in full between July 14, 2006 and October 3, 2014 (165 million instances); (f) erroneously submitted to OATS New Order and Route events between August 6, 2010 and December 3, 2013 (420,767 instances); and (g) failed to accurately report Order Event Time Stamps between October 17, 2011 and March 9, 2015 (approximately 212 million instances). These 42.1 billion inaccurate ROE data elements (see n. 1 supra) represented 20.53% of all reports (*i.e.*, 205.4 billion) that the Firm transmitted to OATS during this review period.

4. The conduct described in paragraph 3 constitutes separate and distinct violations of NASD Rule 6954 (for conduct that occurred prior to December 15, 2008) and FINRA Rule 7440 (for conduct that occurred on and after December 15, 2008).

Matter No. 20140414133

5. During the Third Review Period, the Firm transmitted approximately 15,094,339,331 ROEs to OATS under the Firm's SGMA MPID that contained inaccurate, incomplete or improperly formatted data. Specifically, SGMA submitted orders to OATS that failed to report order event timestamps in milliseconds when the Firm's ATS captured time in milliseconds. These 15 billion ROEs represented 100% of all ROEs it was required to transmit to OATS during this period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
6. During the Fourth Review Period, the Firm submitted approximately 38,684,488 trade reports to the FINRA/NYSE TRF under the SGMA MPID that contained inaccurate, incomplete or improperly formatted data. Specifically, SGMA submitted trade reports to the TRF that failed to report execution timestamps in milliseconds when the Firm's ATS captured time in milliseconds. These 38.6 million reports represented 100% of all trade reports it was required to report to the TRF during this period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6380B(c)(5).

Matter Nos. 20130378671 and 20140414133

7. During all the review periods referenced above in paragraphs 1 through 6 above, the Firm's supervisory system did not provide for supervision that was reasonably designed to achieve compliance with NASD Rules 6954 and 6955 and FINRA Rules

7440, 7450 and 6380B(c)(5) in connection with the deficiencies described herein. . The conduct described in this paragraph constitutes violations of NASD Rule 3010 (for conduct that occurred prior to December 1, 2014) and FINRA Rule 3110 (for conduct that occurred on and after December 1, 2014), NASD Rule 2110 (for conduct that occurred prior to December 15, 2008) and FINRA Rule 2010 (for conduct that occurred on and after December 15, 2008).

8. As discussed above, the Firm's failures may have affected FINRA's ability to detect potentially violative conduct and/or created false positive alerts requiring the expenditure of unnecessary resources to resolve the alerts.

OTHER FACTORS

In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction for Matter No. 20130378671,⁴ Market Regulation gave significant consideration that for Matter No. 20130378671, the Firm self-reported to Market Regulation staff in July 2013 that it had failed to submit a portion of its OATS reportable activity. The Firm further undertook steps to remediate the issues and conducted a broader review of its OATS reporting, which led the Firm to further identify and report to Market Regulation staff additional OATS reporting issues. The Firm also provided substantial assistance to Market Regulation staff, including providing the staff with data quantifying its OATS reporting issues.

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

1. A censure,
2. A fine of **\$1,800,000** (consisting of a fine of \$1,400,000 for its OATS and TRF violations pursuant to NASD Rules 6954 and 6955 and FINRA Rules 7440, 7450 and 6380B(c)(5), and \$400,000 for violations of NASD Rules 2110 and 3010 and FINRA Rules 2010 and 3110), and
3. An undertaking requiring the Firm to address the OATS and TRF reporting deficiencies described above to ensure that the Firm has implemented procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein. Therefore, within 90 days of the issuance of a Notice of Acceptance of this AWC, a senior Firm management representative shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, or an e-mail from a work-related account of the senior management representative at the Firm to MarketRegulationComp@finra.org providing the following information (1) a reference to this matter; (2) a representation that the Firm has addressed the deficiencies described above; and (3) the dates that this was completed. The Department of Market Regulation may, upon a showing of good cause and in its sole discretion, extend the time for compliance with this provision.

⁴ See Principal Consideration No. 12 of the FINRA Sanction Guidelines and Regulatory Notice 08-70.

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm has submitted an Election of Payment form showing the method by which it proposes to 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 sanctions imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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 NAC and then to the 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 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.

The Firm 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

The Firm 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 the Firm; and
- C. If accepted:
 - 1. this AWC will become part of the Firm'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 accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. 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 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. 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. 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; that it has agreed to the AWC's 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.

7-15-15
Date

Respondent
Goldman Sachs Execution & Clearing, L.P.

By: 

Name: **Kyle Czepiel**
Managing Director

Title: _____

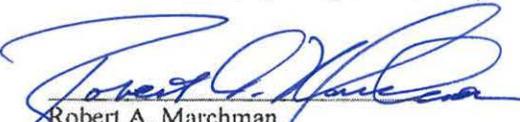
Reviewed by:


Ben A. Indek, Esq.
Morgan, Lewis & Bockius LLP
101 Park Avenue | New York, NY 10178-0060

Accepted by FINRA:

7-24-2015
Date

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


Robert A. Marchman
Executive Vice President
Legal Section
Department of Market Regulation