

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
Goldman, Sachs & Co.

Notice Pursuant to
Rule 19h-1 of the
Securities Exchange Act
of 1934

SD-2144

Date: December 11, 2017

I. Introduction

On January 13, 2017, Goldman, Sachs & Co. (“Goldman” or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or “Application”) with FINRA’s Department of Registration and Disclosure.¹ The Application seeks to permit the Firm, a FINRA member subject to statutory disqualification, to continue its membership with FINRA notwithstanding its disqualification. A hearing was not held in this matter. Rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Regulation (“Member Regulation”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”).

II. The Statutorily-Disqualifying Event

Goldman is subject to a statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D), as the result of a December 21, 2016 order (the “CFTC Order”) issued by the Commodity Futures Trading Commission (“CFTC”),² finding that the Firm willfully violated certain anti-fraud and anti-manipulation provisions of the Commodity Exchange Act (“CEA”), specifically Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 9, 13b and 13(a)(2)

¹ See MC-400 Application, attached as Exhibit 1 (due to the size of the Application, attachments FINRA01263-1300 have been excerpted). See also the Record (“R.”) that was compiled by FINRA’s Registration and Disclosure Department and provided to the parties and FINRA’s Office of General Counsel on January 17, 2017, pursuant to FINRA Procedural Rule 9524(a)(3).

² Order, *The Goldman Sachs Group, Inc., and Goldman, Sachs & Co.*, CFTC Docket No. 17-03 (Dec. 21, 2016), Exhibit 1 at FINRA01274-1300. The CFTC action was part of a larger, multi-regulator investigation into the manipulation of benchmark rates by various large international banks.

(2006) and, for conduct occurring on or after August 15, 2011, Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d) and 9(a)(2), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b and 13(a)(2) (2012) and CFTC Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a) and 180.2 (2015).³

According to the CFTC Order, from January 2007 through March 2012 (“the Relevant Period”), Goldman,⁴ by and through certain of its traders in New York, attempted to manipulate, and made false reports concerning, the U.S. Dollar International Swaps and Derivatives Association Fix (“USD ISDAFIX”), a global benchmark used to value interest rate products, in order to benefit Goldman’s derivative positions that were priced or valued against the USD ISDAFIX.⁵ The USD ISDAFIX rate is used to value cash settlement of options on interest rate swaps (also referred to as swaptions) and as a valuation tool for a variety of products across financial markets.

The CFTC found that, during the Relevant Period, Goldman attempted – on particular days – to manipulate USD ISDAFIX rates and spreads to benefit its trading positions through two methods. First, certain Goldman traders conducted illegitimate trading in order to influence the reference rates and spreads reflected in the daily “snapshot”⁶ disseminated by an interest rate swaps brokering firm (“Swaps Broker”), in whatever direction benefited their trading positions.⁷ Second, certain Goldman traders attempted to manipulate the USD ISDAFIX by making “false, misleading or knowingly inaccurate” submissions through oral and written communications to the Swaps Broker for the purpose of skewing the USD ISDAFIX to benefit their trading positions. These submissions were “false, misleading or knowingly inaccurate” because they did not reflect the midpoint of where Goldman’s traders would each bid or offer interest rate swaps to a dealer of good credit at the appropriate time, but instead were submitted with the intent to benefit the Firm’s specific positions.⁸ The CFTC found that, at times, Goldman traders combined the illegitimate trading tactics with wrongful rate submissions in order to manipulate the USD ISDAFIX to their benefit.⁹

³ While the CFTC Order did not specify that the violations contained therein were “willful,” because these are anti-fraud and anti-manipulation provisions of the CEA, they are deemed to be willful violations.

⁴ The Goldman Sachs Group, Inc. and Goldman, Sachs & Co., the Firm, were both found liable for the conduct of the Firm’s employees. *See* Exhibit 1 at FINRA01288-92 (CFTC Order at §§ IV.B, C, and D).

⁵ Exhibit 1 at FINRA01275.

⁶ During the Relevant Period, the “snapshot” (or “fix”) was the capture and recording of swap rates and spreads by the Swaps Broker, which occurred at 11 a.m. Eastern Time, and was the first step in a multi-step process for setting the USD ISDAFIX each day. *See id.* at FINRA01275-76.

⁷ *Id.* at FINRA01276.

⁸ *Id.*

⁹ *Id.*

The CFTC Order required Goldman to: (i) cease and desist from violating the above-referenced CEA provisions and regulations; (ii) pay a civil monetary penalty of \$120 million;¹⁰ (iii) undertake certain remediation efforts relating to internal controls and procedures to ensure the integrity of the Firm's participations in and contributions to any interest-swap benchmark; and (iv) cooperate fully with the CFTC in any investigation or other action instituted by the CFTC for at least 3 years, or until all related investigations and litigations are concluded, whichever time period is longer.¹¹ Per the undertakings in the CFTC Order, Goldman is required to: (i) undertake certain remediation efforts to the extent not covered by its previously initiated corrective measures; (ii) submit, within 120 days of the entry of the Order, a report to the CFTC concerning the status of its remediation efforts before and since the entry of the Order;¹² (iii) submit, within 365 days of the entry of the Order, a report and related certification from a representative of the Firm's executive management explaining how Goldman has complied with the Order's undertakings;¹³ and (iv) submit, within 365 days of the entry of the Order, a sworn certification from the Goldman supervisor responsible for oversight of the Firm's United States interest rate derivatives trading business attesting to the accuracy of the report submitted to the CFTC and the status of Goldman's efforts to improve relevant internal controls and procedures.¹⁴

In connection with its offer of settlement, Goldman represented that it had already initiated, and continued to implement, certain corrective measures prior to the entry of the CFTC Order.¹⁵ Per its representations to the CFTC, those corrective measures include, among other things: (i) a global review of risks relating to benchmarks, including the Firm's processes and controls pertaining to its involvement in benchmark rates; (ii) requiring prior approval of all benchmark contributions by a Securities Division PMD; (iii) the establishment of a "Contribution Working Group," which meets regularly to discuss potential risks pertaining to the Firm's benchmark contributions; (iv) requiring an annual review of each benchmark contribution and quarterly attestations by trading supervisors and employees concerning their compliance with relevant policies; (v) the development of escalation procedures for conduct relating to

¹⁰ FINRA staff received documentation from the Firm confirming Goldman's timely payment of the civil penalty. *See* Letter dated March 30, 2017 from T. Russell to E. Goebel with proof of payment, attached as Exhibit 2.

¹¹ Exhibit 1 at FINRA01294-98.

¹² Firm counsel represented to FINRA staff that this report was submitted to the CFTC on April 20, 2017, as required by the CFTC Order. *See* Exhibit 3, Email from T. Russell to E. Goebel dated April 23, 2017 confirming submission of 120-day report pursuant to CFTC Order.

¹³ The final report and certification referenced above are due on or before December 21, 2017, unless an extension is requested. Pursuant to the Order, Goldman further agreed to cooperate in any investigation, or other action instituted by the CFTC related to the subject matter of the Order, for a period of three years. *See* Exhibit 1 at FINRA01298-99 at Section VII(C)(2) ("Cooperation with the Commission").

¹⁴ Exhibit 1 at FINRA01296-98.

¹⁵ *Id.* at FINRA01296.

benchmarks; (vi) the development of daily reports reflecting upcoming settlements and other trading positions that may be tied to the USD ISDAFIX; and (vii) enhanced training for all employees on market manipulation.¹⁶

III. Background Information

A. The Firm

Goldman is based in New York, New York and has been a FINRA (f/k/a NASD) member since October 1936.¹⁷ According to the Central Registration Depository (“CRD”), the Firm has approximately 20 branch offices, 15 of which are Offices of Supervisory Jurisdiction (“OSJ”), and the Firm employs approximately 7,170 registered individuals and approximately 15,113 non-registered individuals. The Firm does not currently employ any statutorily disqualified individuals.¹⁸

Goldman is approved to engage in the following lines of business: exchange member engaged in exchange commission business other than floor activities; exchange member engaged in floor activities; broker or dealer making inter-dealer markets in corporate securities over-the-counter; broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); mutual fund underwriter or sponsor; mutual fund retailer; U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; put and call broker or dealer or option writer; investment advisory services; trading securities for own account; private placements of securities; broker or dealer selling interests in mortgages or other receivables; effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account; and engages in other non-securities business.¹⁹

Goldman is a member of 22 other self-regulatory organizations (“SROs”): BOX Options Exchange LLC (“BOX”), BATS BYX Exchange, Inc. (“BATS-YX”), Bats BZX Exchange, Inc. (“BATS-ZX”), Bats EDGA Exchange, Inc. (“EDGA”), Bats EDGX Exchange, Inc. (“EDGX”), C2 Options Exchange, Incorporated (“C2”), Chicago Board Options Exchange (“CBOE”), Chicago Stock Exchange (“CHX”), Investors’ Exchange LLC (“IEX”), MIAX Pearl, LLC, Miami International Securities Exchange, LLC (“MIAX Options”), NYSE American LLC (“NYSE-AMER”), NYSE Arca, Inc. (“ARCA”), NASDAQ BX, Inc. (“BX”), NASDAQ GEMX,

¹⁶ *Id.* at FINRA01294-95.

¹⁷ *Id.* at FINRA01264.

¹⁸ *See* CRD. This information is current as of December 11, 2017.

¹⁹ *See id.*

LLC (“ISE GEMX”), NASDAQ ISE, LLC (“ISE”), NASDAQ MRX, LLC (“ISE MRX”), NASDAQ PHLX LLC (“PHLX”), NASDAQ Stock Market (“NQX”), New York Stock Exchange (“NYSE”), Municipal Securities Rulemaking Board (“MSRB”), and the Depository Trust Company (“DTC”).²⁰

B. FINRA Routine Examinations

Over the past two years, FINRA has examined the Firm annually. Through these examinations, two of the exceptions found have been referred to FINRA Enforcement and the remaining exceptions resulted in Cautionary Actions.

FINRA’s 2017 Cycle Examination is ongoing. FINRA’s 2016 Cycle Examination (the “2016 examination”) resulted in a referral to Enforcement for certain deficiencies in the Firm’s supervisory controls with respect to its supervisory system, Trader Discipline Report (“TDR”). Among other things, due to errors in the filters placed on trades flowing through TDR, a significant number of trades were not subject to review in the system.²¹ This referral is pending with Enforcement. The firm was also issued a Cautionary Action for seven exceptions pertaining to: (i) the Firm’s failure to have adequate processes in place to take prompt steps to obtain possession or control of certain securities for which it had an open broker-to-broker Fail to Receive, an open stock loan, or securities that were held in non-good control locations for extended periods of time, (ii) insufficient controls with respect to the Firm’s Time Series Variability Reports, Volatility Difference and Outlier Reports, and proxy monitoring process, (iii) its failure to include certain risk factors in its Value at Risk (VaR) model, (iv) the Firm’s satisfaction of its close-out obligations under SEC Rule 204 of Regulation SHO of the Securities and Exchange Act of 1934 (“Exchange Act”) by submitting ETF creations, (v) a lack of proper documentation to support the \$1 billion capital limit set for the Firm’s Agency desk, (vi) issues with respect to certain lien provisions in the Firm’s clearing agreement with Bank of New York Mellon, and (vii) overstating the Firm’s net capital.²²

FINRA’s 2015 Cycle Examination (the “2015 examination”) resulted in a referral to Enforcement for the Firm’s failure to comply with the borrowing and delivery requirements for short sales set forth in Regulation SHO Rule 242.203(b), adopted under the Securities and Exchange Act of 1934.²³ Specifically, the examination found that, during the review period of

²⁰ *See id.*

²¹ *See* Exhibit 4 at FINRA’s Report of Examination No. 20160476909 dated June 29, 2017. Exhibit 4 also includes the Firm’s response dated July 28, 2017 and FINRA’s Exam Disposition Letter dated September 26, 2017.

²² *See id.*

²³ *See* Exhibit 5 at FINRA’s Exam Disposition Letter for Examination No. 20150432659 dated August 25, 2016. As discussed more fully below in Section III(C)(3), Goldman is also statutorily disqualified as the result of an order

April 9, 2015, through May 28, 2015, the Firm executed short sales in securities in reliance on its Easy to Borrow list (“ETB”), which was not updated during the trading day to reflect securities placed on a control list (*i.e.*, the availability of the security was uncertain and required further review before a locate request was granted). Accordingly, the Firm did not have reasonable grounds to believe that the securities in question could be borrowed.²⁴ This referral is pending with Enforcement.²⁵ The Firm was also issued a Cautionary Action for five exceptions pertaining to: its failure to apply appropriate haircuts to certain securities, inaccurate net capital deductions and calculations, its failure to comply with certain recordkeeping requirements pursuant to Exchange Act Rule 17a-4, a lack of written policies or procedures to manage risks associated with its fixed income market access, and supervision issues based on these exceptions.²⁶

C. Regulatory Actions

In the past two years, apart from the CFTC Order, Goldman has been the subject of 17 settled disciplinary matters. Six of these involve Letters of Acceptance, Waiver and Consent (“AWCs”) with FINRA, and the other 11 matters involve the Securities and Exchange Commission (“SEC”), Board of Governors of the Federal Reserve System, and other exchanges and state securities regulators.

1. *FINRA Disciplinary Actions*

In the past two years, the Firm has executed six AWCs to resolve FINRA disciplinary actions.²⁷ Collectively, these AWCs addressed misconduct concerning: violations of NASD Rules 3010(a), 3012, 2110 and FINRA Rule 2010 for its failure to establish, maintain, and enforce a supervisory system and written supervisory procedures (“WSPs”) in connection with its ETF prospectus delivery system, which resulted in numerous undelivered ETF prospectuses

issued by the Securities and Exchange Commission dated January 14, 2016, which found that the Firm willfully violated Rule 203(b)(1) of Regulation SHO. According to the SEC Order, the Rule 203(b)(1) violation resulted from the Firm’s reliance on its automated model to determine securities inventory in connection with executing certain short sales. The Firm’s reliance on this automated model, without additional review, did not provide the Firm with reasonable grounds for believing that the securities to be sold short could be borrowed to meet the delivery requirements.

²⁴ *Id.* In the Firm’s examination response, it represented that it had already undertaken remedial efforts to update its ETB list more frequently to detect securities that had been added to a control list during the trading day. *See* Exhibit 5 at Firm’s response dated July 18, 2016.

²⁵ *See id.*

²⁶ *See id.* at FINRA’s Exam Disposition Letter dated August 25, 2016.

²⁷ FINRA staff confirmed that all fines stemming from these AWCs, with the exception of 20140425821-01, have been paid in full. Due to the recent nature of AWC No. 20140425821-01, FINRA has not yet billed the Firm for associated fine, but anticipates doing so shortly.

to customers,²⁸ violations of FINRA Rule 6622(a) for failures to timely report transactions to the over-the-counter reporting facility (“OTCRF”),²⁹ violations of FINRA Rule 2360(b)(3) and (b)(5) for failures to report and/or inaccurately report options positions to the Large Options Positions Reporting (“LOPR”) system,³⁰ violations of MSRB Rule G-34 for inaccurate rate submissions to the MSRB’s Short-term Obligation Rate Transparency System,³¹ violations of FINRA Rule 7230A(b) for failure to accept or decline in the FINRA/Nasdaq Trade Reporting Facility (“FNTRF”) transactions in reportable securities within the required time period after execution,³² violations of FINRA Rules 7450, 6182, and 2010 for failures to report, or inaccurate reporting to, FINRA’s Order Audit Trail System (OATS) and to FNTRF,³³ and supervisory issues arising from these specific rule violations. The Firm was censured in all six matters, ordered to pay fines ranging from \$20,000 to \$2,500,000 and, in certain cases, ordered to comply with undertakings to revise its WSPs.

2. *Non-FINRA Regulatory Actions*

The Firm has resolved 11 matters with state securities regulators, the Board of Governors of the Federal Reserve System (“Board of Governors”), and other exchanges over the past two years. These actions involved: failures to report and/or inaccurately report options positions to the LOPR system and related supervisory issues; the unauthorized possession and use of confidential supervisory information of the Board of Governors and other banking regulators; misleading representations regarding auction rate securities and related failures to supervise; failure to properly register its Financial and Operations Principal, Chief Compliance Officer, and other associated persons with certain exchanges in Web CRD; and violations of certain other exchange rules pertaining to option position limits, order codes and processing, submission of index prices, and maintenance of an audit trail for certain trading systems.³⁴ The Firm paid fines

²⁸ See FINRA AWC No. 20140425821-01 dated December 1, 2017, attached as Exhibit 6. Exhibit 6 also includes copies of FINRA AWC Nos. 20150451055-01, 20120313180-01, 20130395398-01, 20140400379-01, and 20130358250-01.

²⁹ See Exhibit 6 at FINRA AWC No. 20150451055-01 dated November 1, 2017.

³⁰ See *id.* at FINRA AWC No. 20120313180-01 dated July 14, 2017.

³¹ See *id.* at FINRA AWC No. 20130395398-01 dated May 18, 2016.

³² See Exhibit 6 at FINRA AWC No. 20140400379-01 dated April 5, 2016.

³³ See *id.* at FINRA AWC No. 2013035825001 dated April 4, 2016.

³⁴ See the following documents, attached as Exhibit 7: C2 Options Exchange Decision Accepting Offer of Settlement dated September 13, 2017 (Case No. C2 17-0001); CBOE Decision Accepting Offer of Settlement dated September 13, 2017 (Case No. 17-0046); AWC No. 20120313180-02 dated June 14, 2017 (BATS BZX Exchange); AWC No. 201203131180-03 dated July 14, 2017 (NASDAQ ISE, LLC); Notice of Disciplinary Action by NASDAQ PHLX (Case No. 2017-12) dated July 12, 2017; CME Group Inc. (Case No. 17-9164) dated April 3, 2017 (*see* CRD); Order to Cease and Desist and Order of Assessment of Civil Money Penalty Issued upon Consent

ranging from \$2,000 to \$36,300,000, agreed to implement changes to its internal controls, compliance structure, applicable WSPs and policies regarding supervision in the relevant areas.

3. *Other Statutory Disqualification Matters*

The Firm is also subject to statutory disqualification as a result of three SEC orders and a final judgment based on an SEC complaint. First, Goldman is disqualified as the result of an SEC Order dated January 14, 2016, finding that the Firm willfully violated Rule 203(b)(1) of Regulation SHO and Section 17(a) of the Exchange Act by processing locate requests for customer short sale transactions in reliance on its automated model without appropriate confirmation of securities inventory.³⁵ The Firm was censured, ordered to cease and desist from committing or causing any violations and future violations of Section 17(a) of the Exchange Act and Rule 203(b)(1)(iii), and pay a civil penalty of \$15 million.³⁶

Second, the Firm is disqualified as the result of an SEC Order dated June 30, 2015, finding that the Firm willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5 by failing to establish and implement risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit and capital thresholds and the entry of erroneous orders that exceed appropriate price or size parameters or that indicate duplicative orders.³⁷ The Firm was censured, ordered to cease and desist from committing or causing any violations and future violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5, and was ordered to pay a civil money penalty of \$7 million.³⁸

Third, Goldman entered into a June 2015 SEC Order (“2015 Order”),³⁹ arising out of the SEC’s Municipalities Continuing Disclosure Cooperation Initiative (“MCDC

Pursuant to the Federal Deposit Insurance Act (Docket Nos. 16-011-BH-C and 16-011-CMP-HC) dated August 2, 2016; State of Hawaii Department of Commerce and Consumer Affairs, Consent Order and Consent to Entry of Order (Case No. SEU-2008-048) dated June 20, 2016; Notice of Disciplinary Action by NASDAQ PHLX LLC (Case No. 2016-06) dated July 18, 2016; CME Group, Inc. Summary Fine Notice (Case No. 168954) dated December 22, 2016 (*see* CRD); ICE Futures U.S., Inc. Case Summary (No. ICE 2015-030) dated December 29, 2015; ICE Futures U.S., Inc. Case Summary (No. ICE 2015-106) dated April 4, 2016.

³⁵ *See* Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. (File No. 3-17053) dated January 14, 2016, attached as Exhibit 8.

³⁶ The Firm complied with all of the terms of the order and therefore was not required to file an MC-400A application because the sanctions were no longer in effect.

³⁷ *See* Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. dated June 30, 2015, File No. 3-16665, attached as Exhibit 9.

³⁸ The Firm paid the fine in full on June 30, 2015 and there were no other undertakings. Accordingly, there were no sanctions in effect and the Firm was not required to file an MC-400A application.

³⁹ *See* Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. dated June 18, 2015, File No. 3-16619, attached as Exhibit 10.

Initiative”),⁴⁰ where the Firm willfully violated Section 17(a)(2) of the Securities Act. It was ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, pay a civil penalty of \$500,000, and comply with various undertakings from the 2015 Order, including retaining an independent consultant to conduct a review of the Firm’s policies and procedures as they relate to municipal securities underwriting due diligence and adopt all recommendations stemming from that review.

Lastly, the Firm is subject to statutory disqualification as the result of a judgment entered against it in the United States District Court for the Southern District of New York dated July 20, 2010 (“Judgment”), which was based on a complaint filed by the SEC, and among other things, permanently enjoined the Firm from violating Section 17(a) of the Securities Act. The Judgment ordered the Firm to disgorge \$15 million, pay a civil penalty of \$535 million, and comply with various undertakings.⁴¹

IV. The Firm’s Proposed Continued Membership with FINRA and Plan of Supervision

Goldman seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. In accordance with the agreed undertakings set forth in the CFTC Order, the Firm timely filed its initial report, due within 120 days following entry of the Order, concerning the status of the Firm’s efforts to implement the undertakings.

Goldman has agreed to the following Plan of Supervision as a condition of its continued membership with FINRA:⁴²

1. Retain documentation evidencing the Firm’s implementation of each of the corrective measures relating to its participation in benchmarks as represented in Section VI (F) of the CFTC Order until the undertakings specified in the CFTC Order are complete. Such documentation shall be segregated for ease of review during any statutory disqualification examination;
2. Implement and maintain written policies and procedures to effectuate the corrective measures relating to its participation in benchmarks as represented in Section VI (F) of the CFTC Order. Such policies and procedures shall be available for review during any statutory disqualification examination;
3. Comply with the undertakings specified in Section VII (C) of the CFTC Order;

⁴⁰ Through the MCDC Initiative, the SEC offered certain settlement terms to any underwriter that self-reported to the SEC its involvement in an offering where the issuer of that offering failed to abide by its continuing disclosure requirements pursuant to Exchange Act Rule 15c2-12.

⁴¹ See Consent of defendant Goldman, Sachs & Co., 10-cv-3229 (S.D.N.Y. July 20, 2010), attached as Exhibit 11.

⁴² See executed copy of the Plan of Supervision dated November 6, 2017, attached as Exhibit 12.

4. Provide Member Regulation with copies of correspondence between the Firm and CFTC staff regarding any request to extend the procedural dates relating to the undertakings in the CFTC Order;
5. Provide Member Regulation with a copy of the certifications and all supporting documentation that will be provided to the CFTC upon completion of the undertakings as specified in the CFTC Order; and
6. All requested documents and certifications under this Plan of Supervision shall be sent directly to:

Lorraine Lee-Stepney
Manager, Statutory Disqualification Program
FINRA
1735 K Street NW
Washington, DC 20006
Lorraine.Lee@finra.org.

V. Discussion

After carefully reviewing the record in this matter, Member Regulation approves the Firm's request to continue its membership in FINRA, subject to the terms and conditions set forth herein. In evaluating Goldman's Application, Member Regulation assessed whether the Firm has demonstrated that its continued membership is consistent with the public interest and, as of the time of the filing of this Notice, does not create an unreasonable risk of harm to investors or the markets.⁴³ Typically, factors that bear on Member Regulation's assessment include the nature and gravity of the statutorily-disqualifying misconduct, time elapsed since its occurrence, restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, Member Regulation has determined that Goldman's continued membership is consistent with the public interest and does not create an unreasonable risk of harm. While the CFTC Order at issue involves serious violations of the federal securities laws, the CFTC, through its Order, required the Firm to take appropriate remedial actions, which are being carried out. Specifically, the undertakings address the areas where the Firm failed to prevent misconduct and regulatory non-compliance, and bolster the Firm's training, controls, and

⁴³ See *In the Matter of the Continued Membership of J.P. Morgan Securities, LLC* (citing *Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors")). See J.P. Morgan Securities, LLC, 19h-1 Notice, http://www.finra.org/sites/default/files/NAC%20Statutory%20Disqualification%20Decision%20SD1904_0_0_0_0_0.pdf.

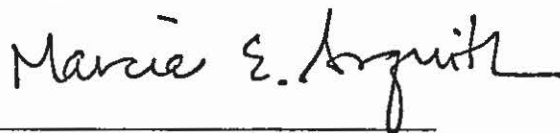
processes pertaining to its participation in benchmarks – including interest-rate swap benchmarks – in order to effectively monitor and deter potential misconduct.

Moreover, the undertakings set forth in the CFTC’s Order, as well as the Firm’s Plan of Supervision, will continue to provide oversight of the Firm’s compliance in the aforementioned relevant areas for several years. For example, the Firm is required to routinely review oral and written communications of any person involved in the fixing of any benchmark based on interest-rate swaps, and maintain documentation of such reviews and any related suspect activity or misconduct for a period of three years.⁴⁴ Following the approval of the Firm’s continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm’s continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523.

In addition, Member Regulation conducted a review of the Firm’s regulatory history and recent disciplinary actions and finds that, as of the date of this Notice, none of these matters would prevent the continuance of the Firm as a FINRA member. Thus, Member Regulation is satisfied, based on the foregoing and on the Firm’s representations made pursuant to the Plan of Supervision, that the Firm’s continued membership in FINRA does not create an unreasonable risk of harm to the market or investors. Accordingly, Member Regulation approves Goldman’s Application to continue its membership in FINRA.

FINRA certifies that the Firm meets all qualification requirements and represents that the Firm is registered with several other self-regulatory organizations (“SROs”), among others, CBOE, BATS-YX, BATS-ZX, EDGA, EDGX, C2, CHX, ISE, ISE MRX, ISE GEMX, NYSE-AMER, PHLX, ARCA, BX, NQX, NYSE, DTC, NSCC, and FICC, which concur with the Firm’s proposed continued membership.⁴⁵ In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

⁴⁴ R. at FINRA01257.

⁴⁵ Based on CRD and DTC records current as of December 11, 2017.

Exhibit List
SD-2144

1. MC-400 Application for Goldman, Sachs & Co. filed on January 13, 2017 (due to the size of the Application, attachments FINRA01263-1300 have been excerpted)
2. Letter dated March 30, 2017 from T. Russell to E. Goebel with proof of payment
3. Email from T. Russell to E. Goebel dated April 23, 2017 confirming submission of 120-day report pursuant to CFTC Order
4. FINRA's Report of Examination No. 20160476909 dated June 29, 2017, Firm's response dated July 28, 2017, and FINRA's Exam Disposition Letter dated September 26, 2017
5. FINRA's Report of Examination No. 20150432659, Firm's response dated July 18, 2016, and Exam Disposition Letter dated August 25, 2016
6. FINRA AWC Nos. 20140425821-01, 20150451055-01, 20120313180-01, 20130395398-01, 20140400379-01, and 20130358250-01
7. Other Regulatory Actions: C2 Options Exchange Decision Accepting Offer of Settlement dated September 13, 2017 (Case No. C2 17-0001); CBOE Decision Accepting Offer of Settlement dated September 13, 2017 (Case No. 17-0046); AWC No. 20120313180-02 dated June 14, 2017 (BATS BZX Exchange); AWC No. 201203131180-03 dated July 14, 2017 (NASDAQ ISE, LLC); Notice of Disciplinary Action by NASDAQ PHLX (Case No. 2017-12) dated July 12, 2017; CME Group Inc. (Case No. 17-9164) dated April 3, 2017 (*see* CRD); Order to Cease and Desist and Order of Assessment of Civil Money Penalty Issued upon Consent Pursuant to the Federal Deposit Insurance Act (Docket Nos. 16-011-BH-C and 16-011-CMP-HC) dated August 2, 2016; State of Hawaii Department of Commerce and Consumer Affairs, Consent Order and Consent to Entry of Order (Case No. SEU-2008-048) dated June 20, 2016; Notice of Disciplinary Action by NASDAQ PHLX LLC (Case No. 2016-06) dated July 18, 2016; CME Group, Inc. Summary Fine Notice (Case No. 168954) dated December 22, 2016 (*see* CRD); ICE Futures U.S., Inc. Case Summary (No. ICE 2015-030) dated December 29, 2015; ICE Futures U.S., Inc. Case Summary (No. ICE 2015-106) dated April 4, 2016
8. Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. (File No. 3-17053) dated January 14, 2016
9. Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. dated June 30, 2015, File No. 3-16665
10. Order Instituting Administrative and Cease-and-Desist Proceedings in the Matter of Goldman, Sachs, & Co. dated June 18, 2015, File No. 3-16619
11. Consent of defendant Goldman, Sachs & Co., 10-cv-3229 (S.D.N.Y. July 20, 2010)
12. Executed copy of the Plan of Supervision dated November 6, 2017