

**NASDAQ OMX BX, INC.
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

**TO: Goldman, Sachs & Co.
David A. Markowitz
Managing Director
30 Hudson Street
27th Floor
Jersey City, NJ 07302-4699**

**FROM: NASDAQ OMX BX, Inc. ("BOX")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Market Regulation
9509 Key West Avenue
Rockville, MD 20850**

DATE: September 14, 2012

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100235041-01


Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Nasdaq if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions, and Nasdaq's Finance Department will send you an invoice regarding the payment of any fine.

Goldman, Sachs & Co.
Page 2

If you have any questions concerning this matter, please call Eric Brown, Chief Counsel,
at (212) 858-4308.



Thomas R. Gira
Executive Vice President
Department of Market Regulation, FINRA

Signed on behalf of NASDAQ

Enclosure

FINRA District 10 – New York
Michael Solomon
Regional Director
One World Financial Center
200 Liberty Street
New York, NY 10281

James D. Van de Graaff, Esq.
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
[Counsel for Respondent]

Edward S. Knight, Chief Regulatory Officer
The NASDAQ Stock Market LLC
9600 Blackwell Road
Rockville, MD 20850

NASDAQ OMX BX, Inc.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100235041-01

TO: NASDAQ OMX BX, Inc.
c/o Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Goldman, Sachs & Co., Respondent
Broker-Dealer
CRD No. 361

Pursuant to Chapter XXX of the Grandfathered Rules of NASDAQ OMX BX, Inc.¹ (the "Exchange")² and Rule 9216 of The NASDAQ Stock Market ("Nasdaq") Code of Procedure³, Goldman, Sachs & Co. (the "Firm" or "GSCO") 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, the Exchange will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. GSCO 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

GSCO has been a FINRA member since October 26, 1936, and the Firm's registration remains in effect. The Firm became a Participant of the Boston Options Exchange ("BOX")⁴ on January 27, 2004, when its Options Participation Agreement was accepted by the Exchange. Under the terms of that agreement, the Firm agreed, among other things, to be bound by the Rules of the Exchange, as amended, including the BOX Trading Rules, and to be subject to the Exchange's jurisdiction and oversight.

¹ The applicable Rules and authority for this action can be found in the By-Laws of NASDAQ OMX BX, Inc., the Rules of NASDAQ OMX BX ("The Equities Rules") and the Grandfathered Rules of the Exchange.

² Please note, for purposes of this AWC, "Exchange" includes NASDAQ OMX BX, Inc.

³ Additionally, this disciplinary matter is further governed by The Nasdaq Code of Procedure.

⁴ BOX became a facility of NASDAQ OMX BX in August 2008.

RELEVANT DISCIPLINARY HISTORY

GSCO does not have any relevant disciplinary history.

SUMMARY

In connection with matter 20100235041, on behalf of BOX, FINRA staff (the “staff”) conducted a review of the Firm’s order entry activities during the period between January 2004 and May 2010 (the “review period”) for compliance with exchange rules, including BOX Trading Rules Chapter III, Sections 1 and Section 2, Chapter V, Sections 1 and 15, and Chapter VIII, Section 1; and Section 17(a) of the Securities Exchange Act of 1934, as amended (the “Act”) and Rule 17a-3 promulgated thereunder.

Applicable Exchange rules require that, when accepting an order, a member must obtain and record an appropriate code to identify the origin of the order (e.g., customer, broker-dealer, market maker). Such order origin codes are important because, among other things, they affect the accuracy of the Exchange’s audit trail and may impact the amount of execution fees due to the Exchange.

As a result of its investigation, staff concluded that during the review period, GSCO violated certain Exchange rules and federal securities laws by improperly marking certain options orders on behalf of broker-dealers and market makers as “customer” through various proprietary order entry systems employed by the Firm to send options orders to the Exchange, resulting in: (i) an inaccurate audit trail; and (ii) an underpayment of execution fees that would have been remitted to the Exchange had the orders in question been routed using the correct options origin code. Additionally, staff concluded that Goldman had supervisory deficiencies related to these matters, which are outlined in detail herein.

FACTS AND VIOLATIVE CONDUCT

Marking of Options Orders

1. During the review period, GSCO maintained multiple proprietary order entry systems, including G2 and Stride. The G2 system, implemented in 2004, was designed to handle simple orders. The Stride system, implemented in 2008, was designed to handle complex orders.
2. During the review period, the G2 order entry system was deficient in that, among other things, it only allowed options orders to be coded as “firm”, “broker-dealer” or “customer”, without including functionality that would enable the selection of orders as “market maker,” and defaulted to the “customer” origin code if no origin

code category had been explicitly selected by GSCO sales traders or others entering an order.

3. During the review period, the Stride order entry system was deficient in that, among other things, it had been programmed to code all orders as “customer”, without any functionality for GSCO sales traders or others to select an origin code.
4. Insufficient coordination and inadequate communication among the different groups involved in the development of the G2 and Stride systems, including Compliance, Equity Derivative Sales, and Sales Technology, as well as a lack of awareness of the significance of options order origin code regulatory requirements and an inadequate understanding of the Firm’s client base for its listed options business among the system developers, contributed to the creation of the deficiencies in the order entry systems previously referenced.
5. As a result of the deficiencies in GSCO’s order entry systems described above, the Firm marked numerous options orders with improper origin codes. In the case of G2 and Stride, the improper marking of these options orders prevented the Exchange from receiving proper execution fees from GSCO, as “Customer” orders sent to the Exchange are charged a lower execution rate than other orders. Finally, the conduct described above adversely impacted the Exchange’s ability to surveil for and detect conduct potentially violative of its rules and federal securities laws.
6. The conduct described in paragraphs two through five above constitutes separate and distinct violations of BOX Trading Rules Chapter V, Sections 1 and 15, and Chapter VIII, Section 1; and Section 17(a) of the Act and Rule 17a-3 promulgated thereunder.

Supervision

7. During the period between October 2005 and September 2008, the Firm failed to adequately respond to a number of “red flags” relating to the proper coding of origin codes on orders routed to the options exchanges, in that despite the identification of several of the issues identified above on several occasions by certain compliance and technology employees of the Firm, the Firm failed to remediate its coding deficiencies until after the review period.
8. The conduct described in paragraph 7 above constitutes a violation of BOX Trading Rules Chapter III, Sections 1 and Section 2, and Chapter V, Section 1.

9. During the review period, GSCO failed to have supervisory systems and controls in place, including a separate system of follow-up and review, reasonably designed to achieve compliance with the Exchange's origin code requirements, in that the Firm failed to: (i) reasonably address origin code requirements in the development and programming of its order entry systems; (ii) maintain written supervisory procedures reasonably designed to achieve compliance with the Exchange's rules relating to the assignment of origin codes; (iii) adequately train its employees with respect to the significance of properly marking origin codes in its order entry systems; and (iv) adequately supervise its employees with respect to the proper marking of origin codes.
10. The conduct described in paragraph 9 above constitutes separate and distinct violations of BOX Trading Rules Chapter III, Sections 1 and Section 2, and Chapter V, Section 1.

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

A censure and a total fine of \$6,750,000 due to BOX and the seven options exchanges identified below, of which \$297,428 shall be paid to BOX.

In accepting this AWC, BOX considered: (i) the significant subsequent remedial measures implemented by the Firm, including systems enhancements in its options order entry systems and the development and delivery of training concerning options origin codes for users of the aforementioned systems; (ii) that the Firm separately paid to the Exchange the shortfall in transactions fees ("Fee Payment") associated with the conduct described above; and (iii) the Firm's informing the options exchanges of systems issues that the Firm identified in the course of responding to a regulatory inquiry that affected its assignment of origin codes on certain listed options orders and its ensuing cooperation throughout FINRA's investigation. This Fee Payment fully satisfied all transactions fees owed to the Exchange associated with the conduct described above.

Additionally, acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in related matters between the Firm and the following options exchanges: (i) the Chicago Board Options Exchange, Inc. ("CBOE"); (ii) NASDAQ OMX PHLX, Inc. ("PHLX"); (iii) The Nasdaq Options Market ("NOM"); (iv) BATS Exchange, Inc. ("BATS"); (v) International Securities Exchange, LLC ("ISE"); (vi) NYSE Amex LLC ("AMEX"); and (vii) NYSE Arca, Inc. ("ARCA").

GSCO agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. GSCO has submitted an Election of Payment form showing the method by which they propose to pay the fine imposed.

GSCO 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

GSCO specifically and voluntarily waives the following rights granted under the Rules of the Exchange:

- A. To have a Formal Complaint issued specifying the allegations against the Firm in writing;
- B. To be notified of the Formal 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 Nasdaq Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, GSCO specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

GSCO further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

GSCO 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 FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against GSCO and
- C. If accepted:
 - 1. This AWC will become part of GSCO's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
 - 2. This AWC will be made available through Nasdaq's public disclosure program in response to public inquiries about GSCO's disciplinary record;
 - 3. Nasdaq may make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 4. GSCO 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects GSCO's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. GSCO may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. GSCO 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of GSCO, 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 GSCO to submit it.

6-26-12
Date

Respondent
Goldman, Sachs & Co.

By: [Signature]

Name: David A. Merkur

Title: Managing Director

Reviewed by:

Beth Stekler
~~James D. Van de Graaff, Esq.~~ Beth A. Stekler, Esq.
Counsel for Respondent

Firm Name: WilmerHale

Address: 1875 Penn Ave NW Wash DC 20006

Telephone No.: (202) 663-6588

Accepted by Nasdaq:

9/14/12
Date

[Signature]
Thomas R. Gira
Executive Vice President
Department of Market Regulation

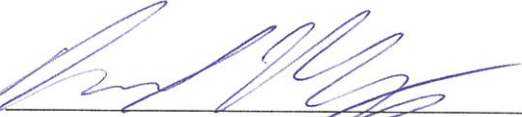
Signed on behalf of Nasdaq, by delegated authority from the Director of ODA

ELECTION OF PAYMENT FORM

Nasdaq will send the firm an invoice for the full amount.

Respectfully submitted,
Respondent
Goldman, Sachs & Co.

6-25-12
Date

By: 

Name: David Markovitz

Title: Managing Director