

NASDAQ BX, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018059146503

TO: Nasdaq BX, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of the Nasdaq BX, Inc. (“BX”) Code of Procedure, Goldman Sachs & Co. LLC (“Goldman” 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, BX 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 BX, or to which BX 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 BX:

BACKGROUND

Goldman has been a BX member since January 2009. It is a full-service broker-dealer engaged in market making, execution services, and underwriting. The firm is headquartered in New York, New York and has approximately 8,500 registered individuals among its headquarters and approximately 70 branches. Goldman does not have any relevant disciplinary history.

SUMMARY

From October 2015 through April 2018, Goldman, through the operation of an automated hedging logic for its Synthetic Product Group (“SPG”), mismarked as “long” approximately 60 million short sale orders totaling more than 14 billion shares. Nearly eight million of those orders, totaling more than a billion shares, were executed. Due to the inaccurate “long” mark, 12,335 of the executed orders were executed at or below the national best bid while a short sale circuit breaker was in effect. These mismarked orders also caused the firm to maintain inaccurate books and records.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from a FINRA examination.

Goldman erroneously marked and routed certain sell orders.

2. Rule 200(g) of Regulation SHO of the Securities Exchange Act of 1934 (“Exchange Act”) requires broker-dealers to “mark all sell orders of any equity security as ‘long,’ ‘short,’ or ‘short exempt.’” The broker-dealer selling an equity security may mark an order as “long” only if it is deemed to own the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. A violation of Rule 200(g) also constitutes a violation of BX Rule 2110.
3. BX Rule 4702(a) provides that “[p]articipants may express their trading interest in the Nasdaq BX Equities Market by entering Orders. The Nasdaq BX Equities Market offers a range of Order Types that behave in the manner specified for each particular Order Type. Each Order Type may be assigned certain Order Attributes that further define its behavior. All Order Types and Order Attributes operate in a manner that is reasonably designed to comply with the requirements of Rules 610 and 611 under Regulation NMS. Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.”¹
4. Nasdaq BX Rule 2110 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”²
5. From October 2015 through April 2018, Goldman mismarked 59,981,252 short sell orders as long, of which 1,014,420 were sent to BX. These orders represented less than one percent of Goldman’s total principal sell orders during this time period. The orders were auto-generated to promptly hedge SPG’s synthetic risk exposure resulting from its execution of equity swap transactions with clients. The mismarked orders were caused by Goldman’s implementation of an upgrade to the relevant automated trading software that was intended to simplify this order flow. Goldman inadvertently failed to include a single line of code that was designed to copy the long or short mark from a parent sell order and affix it to the instantaneously created child sell order(s) that were routed to the market. While the parent orders were accurately marked as short sales and a locate was obtained for each, the child orders did not receive the short sale order mark of the parent order due to the missing line of code. The firm immediately fixed this coding error after being notified by FINRA in April 2018.
6. Separately, Goldman misapplied order marking logic to sell orders routed to the firm by a foreign affiliate in a manner that resulted in certain of those orders being inaccurately marked short. A sample of six months of data revealed that approximately 670 orders of that foreign affiliate were broken up into child orders

¹ As of April 27, 2021, BX Rule 4702(a) was renumbered to BX Rule Equity 4, Section 4702.

² As of October 23, 2019, BX Rule 2110 was renumbered to BX Rule General 9, Section 1.

and sent to various market centers with the incorrect short sale indicator, including 4,065 sent to BX, resulting in 26,377 executions.³ Goldman corrected this error after being notified by FINRA in October 2019.

7. By marking short sell orders as long, Goldman violated Regulation SHO Rule 200(g) and BX Rules 4702(a) and 2110.
8. By marking short sell orders as long, Goldman also violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, and BX Rule 3110(a) relating to maintaining accurate order memoranda.
9. Section 17(a) of the Exchange Act and Rule 17a-3(a)(7)(i) thereunder require broker-dealers to make and keep current memoranda for trade executions that include the terms and conditions of the order. Implicit in these provisions is the requirement that such memoranda be accurate.
10. BX Rule 3110(a) provides that “[e]ach member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of the Exchange and as prescribed by SEC Rule 17a-3.”⁴
11. Goldman mismarked and routed 59,981,252 short sale orders as long; 1,014,420 of the orders were sent to BX. Of those 59,981,252 orders, 7,866,996 were executed, including 550,040 executed on BX. The firm maintained inaccurate memoranda with respect to the correct short sale order marking for each of the 7,866,996 sales.
12. As a result, Goldman violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(7)(i) thereunder, and BX Rules 3110(a) and 2110.

Goldman failed to establish and maintain a supervisory system reasonably designed to comply with Rule 200(g) and BX rules relating to accurate order memoranda.

13. BX Rule 3010 provides that “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Exchange rules.”⁵
14. Goldman failed to establish and maintain a supervisory system reasonably designed to achieve compliance with Rule 200(g) and rules relating to accurate order memoranda. Although Goldman had a report that was designed to surveil for order marking accuracy, that report reviewed the accuracy of the order marks of parent orders, but did not confirm that the proper marking of the parent order carried over to the child orders. This deficiency resulted in Goldman’s failure to

³ The sample data set was drawn from the time period January 2018 through June 2019.

⁴ As of October 23, 2019, BX Rule 3110(a) was renumbered to BX Rule General 9, Section 30.

⁵ As of October 23, 2019, BX Rule 3010 was renumbered to BX Rule General 9, Section 20.

detect that it had mismarked approximately 60 million short sale orders as long, 1,014,420 of which were routed to BX, during an approximately 29-month period and the execution of 12,355 short sale transactions for 1,596,375 shares at or below the national best bid while a short sale circuit breaker was in effect. It also resulted in Goldman creating and maintaining over seven million inaccurate order memoranda.

15. In May 2019, Goldman enhanced its order marking surveillance report to capture child orders as well as parent orders. In September 2019, the firm also added an additional control designed to detect and prevent the routing of inaccurately marked short sale orders (i.e., orders marked long that should be marked short).
16. By failing to have supervisory reviews reasonably designed to ensure the mismarked orders were appropriately marked long or short consistent with Regulation SHO and order marking and books and records requirements, Goldman violated BX Rules 3010 and 2110.

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

Censure and a \$70,900 fine (resolved simultaneously with similar matters for a total fine of \$3,000,000).⁶

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. It has submitted a Payment Information 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 sanction 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 BX's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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,

⁶ The balance of the fine will be allocated to Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Investors Exchange LLC, The Nasdaq Stock Market LLC, Nasdaq Phlx LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, and FINRA.

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 Exchange Review Council 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 Regulatory Officer, the Exchange Review Council, or any member of the Exchange 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.

The firm 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

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 FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to BX 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 BX or any other regulator against the firm;
 - 2. BX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3;⁷ and
 - 3. 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

⁷ On December 6, 2019, BX Rules Rule 8310 and IM-8310-3 were renumbered to BX Rule General 5, Sections 8310 and IM-8310-3.

without factual basis. The firm may not take any position in any proceeding brought by or on behalf of BX, or to which BX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which BX 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 BX, nor does it reflect the views of the Exchange 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.

April 3, 2023

Date

Goldman Sachs & Co. LLC,
Respondent

By: David Markowitz
Name: David Markowitz
Title: Global Co-Head of Litigation and
Regulatory Proceedings

Reviewed by:

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Counsel for Respondent

Accepted by BX:

April 4, 2023

Date

Steven M. Tanner
Steven M. Tanner
Senior Counsel
Department of Enforcement

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