

NASDAQ BX, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019063499508

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,¹ Goldman Sachs & Co. LLC (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 member of FINRA since 1936 and a member of BX since 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 7,700 registered persons and more than 75 branch offices. The firm does not have any relevant disciplinary history.

SUMMARY

From February 2009 until mid-April 2023, Goldman failed to include warrants, rights, units, and certain over the counter (OTC) equity securities in nine of its automated surveillance reports designed to identify potentially manipulative proprietary and customer trading activity. As a result, Goldman’s supervisory system was not reasonably designed to identify potentially manipulative trading activity. Therefore, the firm violated BX Rule General 9, Sections 20(a) and 1(a) and BX Rules 3010 and 2110.

¹ Section 9000 of The Nasdaq Stock Market Rules are incorporated into BX Rule General 5, Section 2, and are thus BX Rules and thereby applicable to BX members, associated persons, and other persons subject to BX’s jurisdiction.

FACTS AND VIOLATIVE CONDUCT

1. This matter originated from cross-market surveillance conducted by FINRA.
2. BX Rule General 9, Section 20(a), and its predecessor, BX Rule 3010, provide 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.”¹
3. BX Rule General 9, Section 1(a) and its predecessor, BX Rule 2110, provide that “[e]very member, member organization, or person associated with or employed by a member or member organization shall not engage in conduct inconsistent with just and equitable principles of trade.”² A violation of BX Rules constitutes a violation of BX Rules General 9, Section 1(c) and 2110.
4. Between February 2009 and mid-April 2023, Goldman failed to include warrants, rights, units, and certain OTC equity securities in nine surveillance reports designed to identify potentially manipulative proprietary and customer trading. These securities were excluded for extended periods ranging from approximately two years to more than 12 years. For example, a Goldman surveillance report designed to identify potential wash trades excluded warrants from October 2010 through March 2021 and excluded rights and units from October 2010 through April 2022. Additionally, Goldman’s surveillance reports designed to identify potential marking the open and marking the close excluded warrants, rights, units, and certain OTC equity securities from the inception of the reports in February 2009 until April 2018.
5. As a result of the gaps in its surveillance reports and written procedures, Goldman could not perform reasonable supervisory reviews of trading activity in warrants, rights, units, and certain OTC equity securities for potential manipulation. The nine affected reports would have identified approximately 5,000 alerts (based on extrapolations from available data) for potentially manipulative trading activity in those securities from February 2009 through mid-April 2023. Goldman added the missing securities to the surveillance reports either in response to FINRA’s investigation or through the firm’s adoption of new surveillance reports. Goldman completed remediation for all surveillance reports by April 2023.
6. Goldman’s supervisory system, including its written procedures, also did not require a review of its automated surveillance reports to ensure they included all relevant securities traded as part of the firm’s business. As a result, the firm failed to detect that nine surveillance reports for potentially manipulative trading excluded warrants, rights, units, and certain OTC equity securities. In February

¹ BX Rule General 9, Section 20 superseded BX Rule 3010 on October 23, 2019.

² BX Rule General 9, Section 1(a) superseded BX Rule 2110 on October 23, 2019.

2021, Goldman implemented reviews to identify if any security has been inadvertently excluded from new or modified surveillance reports.

7. By failing to have a reasonably designed supervisory system, Goldman violated BX Rules 3010 and 2110 and BX Rule General 9, Sections 20(a) and 1(a).

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

1. A censure; and
2. a \$37,000 fine (resolved simultaneously with similar matters for a total fine of \$512,500).

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The firm 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, 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 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; 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 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.

January 24, 2024

Date

Goldman Sachs & Co. LLC
Respondent

By: *Colleen M. O'Brien* _____
COLLEEN M. O'BRIEN
Managing Director & Senior Counsel

Accepted by BX:

February 6, 2024

Date

Gerald O'Hara _____
GERALD O'HARA
Department of Enforcement

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