

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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4:46 pm, Sep 29, 2023

In the Matter of:

Goldman Sachs & Co. LLC,
Respondent.

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) **CFTC Docket No. 23-59**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that since becoming a provisionally registered swap dealer on December 31, 2012 until at least the present (the “Relevant Period”), Goldman Sachs & Co. LLC (“Goldman” or “Respondent”) violated Sections 2(a)(13)(F) and (G) and 4s(h)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(13)(F), (G), 6s(h)(1), and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6, 17 C.F.R. §§ 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6 (2022) of the Commission Regulations (“Regulations”) promulgated thereunder.¹ Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity

¹ The Commission amended Parts 43, 45, and 49 on November 25, 2020, with the new regulations becoming effective on January 25, 2021. *See* Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020); Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020); Certain Swap Data Repository and Data Reporting Requirements, 85 Fed. Reg. 75601 (Nov. 25, 2020). The amendments did not affect the substantive requirements at issue in this order.

Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.²

II. FINDINGS

The Commission finds the following:

A. SUMMARY

The Act and Regulations impose supervision requirements on Commission registrants to ensure that they responsibly discharge their crucial role in our markets. Compliance with these requirements is essential to the Commission’s efforts to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

The Division of Enforcement’s (“Division”) investigation revealed that, since becoming a swap dealer, Goldman has failed to properly resource and prioritize CFTC compliance. This failure resulted in violations that permeated numerous aspects of Goldman’s swap dealer activities. As a result, Goldman failed to diligently supervise a wide range of its swap dealer activities in violation of Section 4s(h)(1) of the Act and Regulation 23.602(a). The Division’s investigation revealed supervisory deficiencies in a number of areas: swap data reporting, pre-trade mid-market mark disclosures, a personnel reporting line, clearing member risk management policy, notices regarding its initial margin model and segregation, and disclosure of static material economic terms. These deficiencies were pervasive, and in some instances, have persisted since 2013. The Commission has not brought a swap data reporting case or a pre-trade mid-market marks (“PTMMs”) case with this volume of failures, and thus those failures are also the basis for standalone violations of the Act and Regulations.³

Since the swap data reporting requirements went into effect, Goldman has failed to accurately and timely report a significant portion of its swap data to a swap data repository (“SDR”), as required by CFTC Regulations. While Goldman has backreported more than 20 million swaps to date, the Commission has reason to believe that this figure significantly underestimates the true scope of the swap data⁴ reporting failures at Goldman. As a result, Goldman has violated Section 2(a)(13)(F) and (G) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.4(c), and 45.6.

² Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

³ Some of these failures were the subject of a separate action brought by the National Futures Association (“NFA”).

⁴ The Part 43 required data elements are defined as “swap transaction and pricing data” and the related Part 45 term is “swap data.” For purposes of this Order, references to “swap data” are intended to include both swap transaction and pricing data and swap data.

In addition, on more than one million occasions since 2013, Goldman provided counterparties with PTMMMs that were inaccurate or failed to provide a PTMMM entirely. This conduct violated Section 4s(h)(1) of the Act, 7 U.S.C. § 6s(h)(1), and Regulation 23.431(a)(3)(i), 17 C.F.R. § 23.431(a)(3)(i) (2022).

In accepting Goldman's Offer, the Commission recognizes the substantial cooperation of Goldman with the Division of Enforcement's ("Division") investigation of this matter. The Commission also acknowledges Goldman's representations concerning its remediation in connection with this matter. The Commission's recognition of Goldman's substantial cooperation and appropriate remediation is further reflected in the form of a reduced penalty.

B. RESPONDENT

Goldman Sachs & Co. LLC is a limited liability company, with its principal place of business in New York, New York. Goldman was provisionally registered as a swap dealer from December 31, 2012 to August 15, 2023, and has been registered as a swap dealer since August 15, 2023.

C. FACTS

Since becoming a provisionally registered swap dealer, Goldman failed to diligently supervise swap data reporting, PTMMM disclosures, a personnel reporting line, clearing member risk management, notices regarding its initial margin model and segregation, and disclosure of static material economic terms, as described below. The failures regarding swap data reporting and PTMMM disclosures were extensive in volume and scope. Overall, the Division's investigation exposed that these numerous supervision deficiencies at Goldman persisted, in some instances, for many years.

1. Goldman Failed to Diligently Supervise Numerous Aspects of its Swap Dealer Business

a. Supervisory Failures Regarding Swaps Data Reporting

Since becoming a provisionally registered swap dealer, Goldman experienced a myriad of swap data reporting problems. Many of Goldman's swap data reporting failures persisted over the course of many years, and impacted all asset classes and numerous fields for more than 20 million swaps, as discussed in further detail below.

Many, but not all, of the issues were self-identified and disclosed by Goldman in its annual chief compliance officer reports ("CCO Reports") dating back to 2013. While Goldman routinely included material issues of noncompliance regarding swap data reporting in its CCO Reports, for more than six years, Goldman failed to take steps needed to ensure its compliance with swap reporting rules was adequate. And notably, in its 2018 CCO Report, Goldman expressed its intention to change certain swap data processes but only after the applicable Regulations were amended and SDR architecture was completed.

As discussed further below, during the course of its investigation the Division discovered additional supervisory failures with regard to swap data reporting that went undetected by Goldman.

The duration, scope, and volume of these failures demonstrate Goldman's failure to sufficiently supervise its swap data reporting, and also merit standalone swap data reporting charges.

b. Supervisory Failures Regarding PTMMM Disclosures

Goldman also experienced significant failures with regard to its PTMMM disclosure practices. Goldman failed to implement its policies and procedures with respect to PTMMM disclosures in a variety of transaction types, which resulted in Goldman providing counterparties with PTMMMs that were inaccurate, or failing to provide a PTMMM entirely, on more than one million occasions. Goldman failed to identify these issues, in some instances for more than nine years. In addition, Goldman failed to adhere to policies and procedures requiring its traders and salespeople to provide PTMMMs to potential counterparties for voice trades.

While Goldman identified some of these PTMMM supervisory failures independently, others were discovered by Goldman in response to inquiries from the Division throughout the course of its investigation and in response to examinations conducted by the National Futures Association ("NFA").

The duration, scope, and volume of these PTMMM failures demonstrate that Goldman failed to adequately supervise its PTMMM disclosure practices, and also merit standalone PTMMM disclosure charges.

c. Supervisory Failures Regarding a Personnel Reporting Line, Clearing Member Risk Management, Notices Regarding Its Initial Margin Model and Segregation, and Disclosure of Static Material Economic Terms

The Division's investigation revealed additional supervisory deficiencies regarding a personnel reporting line, clearing member risk management, notices regarding its initial margin model and segregation, and disclosure of static material economic terms. Many of these issues persisted for a significant amount of time because either (1) Goldman failed to have a sufficient policy and procedure in place to prevent the issue or (2) Goldman failed in a timely manner to identify instances in which policies and procedures were not followed. In particular:

- The head of Global Clearing reported to the head of Business Trading at Goldman for more than eighteen months;
- Goldman is a clearing member and did not have a clearing member risk management policy in place;
- Within its existing policies, Goldman failed to have a procedure in place to notify the Commission and NFA when making certain changes to its internal pricing models that have a material impact on its standard initial margin model;

- Goldman failed to provide the required notice to clients who elected not to have their funds segregated for more than two years; and
- Goldman’s static material economic terms template included stale and/or missing information.

2. Goldman Failed to Report Accurate and Timely Swap Data

Reporting is at the heart of the Commission’s market and financial surveillance programs, which are critical to the Commission’s mission to protect market participants and promote market integrity, and helps it to fulfill its Congressional mandate of monitoring systemic risk. Accurate swap data is essential to effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs.

As a registered swap dealer, Goldman is a reporting counterparty and thus is required to report certain data about swap transactions to an SDR. Since provisionally registering, Goldman inaccurately reported swap data, failed to report swap data, reported swaps that should not have been reported, or reported swap data outside of the time requirements prescribed by Part 43 and Part 45 of the Regulations. These errors impacted all asset classes and spanned numerous required data fields for a significant number of swaps.

For example, Goldman identified that from at least December 2014 through June 2020, its reporting system (1) inaccurately reported more than 18 million swaps; (2) failed to report approximately 286,000 swaps; (3) reported more than 169,000 swaps that should not have been reported; and (4) reported more than 1.8 million swaps outside of the time requirements prescribed by the Regulations. Goldman has advised the Division that it backreported more than 20 million swaps to address these failures.

However, aside from that backreporting, the Division’s investigation revealed that Goldman’s remediation of its swap data reporting problems was incomplete. In addition to the errors identified by Goldman from December 2014 through June 2020, the Division identified a significant volume of other errors scattered across asset classes and fields from July 2020 through 2022. For example, the Division discovered that from July 2020 through November 2021 alone, Goldman failed to report tens of thousands of valid legal entity identifiers (“LEIs”), as required by the Regulations.

In addition, the Division identified that on just one representative day in 2022, a significant majority of Goldman’s reported trades contained at least one error.

In light of the additional errors identified by the Division, Goldman’s swap data errors impacted more than the 20 million swaps identified by Goldman. Consequently, Goldman’s reporting failures impeded the Commission’s ability to properly oversee the swap markets and often caused inaccuracies in publicly-disseminated information. Goldman represents that some of the issues causing the errors have been remediated, while others remain ongoing.

3. Goldman Failed to Disclose PTMMMs

Registered swap dealers, such as Goldman, must comply with certain external business conduct standards. One standard requires swap dealers to disclose to potential counterparties the

mid-market mark of a swap before entering a swap. This PTMMM must exclude any amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments. By making such disclosures, swap dealers inform their counterparties of an approximate measure of the objective value of a swap prior to adding the swap dealer's markup.

On more than one million occasions since 2013, Goldman provided counterparties with PTMMMs that were inaccurate or failed to provide a PTMMM entirely. These failures were caused by numerous distinct issues that impacted a variety of products.

For example, while testing an update to its client-facing platform for FX forwards and non-deliverable forwards, Goldman discovered that it had been relaying a PTMMM that reflected Goldman's preference to either be a seller or a buyer based on its inventory risk, rather than calculating the PTMMM as required by the Regulations. Goldman represents that from December 2018 until February 2022, this error impacted approximately (a) 185,000 FX forwards and non-deliverable forwards, (b) 825,000 FX multi-leg forwards and FX swaps, (c) 3,600 credit index swaps, and (d) 3,100 equity index swaps.

In addition, in 2020, Goldman discovered that when traders manually adjusted the bid/ask spread for FX options, in certain instances, Goldman's internal system automatically adjusted the PTMMM in the same direction. In those instances, an inaccurate PTMMM was conveyed to the counterparty as a result of the manual adjustment. Goldman estimates that this failure impacted approximately 70,000 FX options between 2013 and 2020.

Separately, in certain instances, Goldman failed to provide PTMMMs or provided inaccurate PTMMMs for voice trades, including instances where a now-former salesperson provided inaccurate PTMMMs to counterparties in violation of Goldman's policies and procedures.

Goldman represents that it has since taken remedial measures with regard to each of these issues, including by making enhancements to systems that were providing incorrect PTMMMs, providing additional training for its staff, creating pre-trade booking prompts to ensure traders and salespeople provide PTMMMs on voice trades, terminating the salesperson identified in the preceding paragraph after Goldman detected his misconduct, and enhancing its quarterly testing of its PTMMM practices.⁵

⁵ Separately, through the course of its examinations, the NFA identified numerous instances where Goldman failed to act in accordance with CFTC Regulations. These violations included failures to (1) collect and post variation margin ("VM"), (2) have written procedures reasonably designed to ensure compliance with the CFTC's know-your-counterparty requirements, (3) have policies and procedures reasonably designed to obtain and retain a record of essential facts regarding its counterparties, (4) implement policies and procedures reasonably designed to ensure compliance with its PTMMM obligations, (5) provide PTMMM to uncleared swap counterparties when required, (6) create and retain records of compliance with PTMMM obligations and the external business conduct standards, (7) ensure its daily trading records included all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap, including pre-execution trade information, (8) diligently supervise certain activities relating to its swap dealer business, and (9) follow certain external business conduct standards policies and procedures. *See In re Goldman Sachs & Co. LLC*, NFA Case No. 22-BCC-003 (Mar. 31, 2022). While these

4. Goldman's Cooperation

Goldman engaged in open and regular communication with the Division throughout the Division's investigation, performed significant additional analyses of Goldman's compliance programs, provided robust written responses to questions posed by the Division, and voluntarily disclosed new issues to the Division as they arose during the course of the investigation. Goldman's cooperation materially advanced the Division's investigation by allowing the Division to conserve time and substantial resources.

III. LEGAL DISCUSSION

A. Goldman Failed to Supervise Numerous Areas of its Swap Dealer Business in Violation of Section 4s(h)(1) of the Act and Regulation and 23.602(a)

Section 4s(h)(1) of the Act requires "diligent supervision of the business of the registered swap dealer." 7 U.S.C. § 6s(h)(1). Regulation 23.602(a), 17 C.F.R. § 23.602(a) (2022), implement the supervision requirements of Section 4s(h)(1) of the Act.

Regulation 23.602(a) requires swap dealers to establish and maintain a system to supervise, and to diligently supervise, all activities relating to its business performed by its employees and agents, and further requires that such system shall be "reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations." "The operative language of Regulation 23.602(a) is similar to the language of the Commission's longstanding supervision regulation for futures and options, Regulation 166.3." *In re Cargill, Inc.*, CFTC No. 21-37, 2021 WL 4518517, *4 (Sept. 30, 2021) (consent order).

Under Regulation 23.602, a violation is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053, at *10 (Aug. 19, 2020) (consent order) (citing *In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order)); *In re INTL FCStone Mkts., LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (consent order) (interpreting Regulation 23.602 and noting its similarity to Regulation 166.3, 17 C.F.R. § 166.3, making case law concerning Regulation 166.3 instructive); *cf. In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995) (consent order) (interpreting Regulation 166.3).

Either showing "alone is sufficient to establish a violation of the supervision requirement." *Commerzbank*, 2018 WL 5921385, at *10 (interpreting Regulation 23.602 in light of Regulation 166.3 precedents). No evidence of an underlying violation is necessary. *In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997) (interpreting Regulation 166.3). Evidence of violations that "should be detected by a diligent system of supervision,

violations were the subject of an NFA case, the scope of violations cited underscores the widespread failure to properly resource and prioritize compliance with CFTC Regulations.

either because of the nature of the violations or because the violations have occurred repeatedly’ is probative of a failure to supervise.” *CFTC v. Deutsche Bank AG*, No. 1:16-cv-6544 (WHP), 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (quoting *INTL FCStone Mkts.*, 2015 WL 4980321, at *3).

During the Relevant Period, as set forth in Section II.C.1 of this Order, Goldman failed to have adequate policies and procedures in place in certain areas of its swap dealer business, and failed to execute its policies and procedures in other areas. These supervisory failures resulted in a significant amount of violations, over an extended period of time. Goldman, who is a clearing member firm, failed to have a policy in place specific to clearing member risk management. Similarly, Goldman’s existing policies failed to have a procedure in place to notify the Commission and the NFA when it made changes to its internal pricing models that have an impact on its standard initial margin model. Goldman also failed to adhere to its policies and procedures to instruct its traders and salespeople to provide PTMMMs to potential counterparties for voice trades. And while Goldman had policies and procedures in place to ensure compliance with the swap data reporting and other aspects of the PTMMM disclosure requirements, its failure to sufficiently adhere to those policies and procedures resulted in swap data reporting failures impacting more than 20 million swaps, and more than one million PTMMM disclosure failures, as described above. Goldman also failed to adhere to the policy that prohibits the head of Global Clearing from reporting to the head of Business Trading for more than eighteen months. Thus, Goldman violated Section 4s(h)(1) of the Act and Regulation 23.602(a).

B. Goldman Failed to Accurately Report Swap Data in Violation of Section 2(a)(13)(F) and (G) of the Act and Regulations 43.3(a)(1), 45.3(b)(1), 45.4(c), and 45.6

The Act states that, with regard to real-time data, “[p]arties to a swap . . . shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.” Section 2(a)(13)(F) of the Act, 7 U.S.C. § 2(a)(13)(F). The Act also requires data for each swap (whether cleared⁶ or uncleared) to be reported to a registered SDR. Section 2(a)(13)(G) of the Act, 7 U.S.C. § 2(a)(13)(G). Pursuant to these requirements, the Commission adopted implementing swaps data reporting regulations, which apply to Goldman in its capacity as a registered swap dealer. *See, e.g.*, Parts 43 and 45 of the Regulations, 17 C.F.R pts. 43 and 45 (2022).

Specifically, Regulation 43.3(a)(1) states that “[a] reporting counterparty . . . shall report . . . publicly reportable swap transaction[s] to a[n] . . . [SDR] as soon as technologically practicable after execution.”⁷ Regulation 43.3(a)(1), 17 C.F.R. § 43.3(a)(1) (2022).

⁶ A “cleared swap” is defined as “any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization.” Section 1a(7) of the Act, 7 U.S.C. § 1a(7) (2018).

⁷ The phrase “as soon as technologically practicable” means “as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.” Regulation 43.2, 17 C.F.R. § 43.2 (2022). Moreover, in the preamble to Part 43, the Commission acknowledged that swap dealers are “more likely to have the infrastructure to report their swap transaction and pricing data to an SDR faster than other categories of market participants.” 77 Fed. Reg. 1182 (Jan. 9, 2012).

Regulation 45.3(b)(1) sets forth the requirements for reporting creation data, including LEIs, among other fields. *See* 17 C.F.R. §§ 45.3(b)(1) (2022).

Regulation 45.4(c)(1)(i) requires registered entities and swap counterparties to report continuation data for uncleared swaps, including the requirement to report life cycle event data. *See* 17 C.F.R. § 45.4(c)(1)(i) (2022). In addition, Regulation 45.4(c)(2)(i) requires registered entities to report end-of-day valuation data.⁸ *See* 17 C.F.R. § 45.4(c)(2)(i) (2022).

Regulation 45.6 requires each counterparty to a swap to “be identified in all recordkeeping and all swap data reporting pursuant to this part by means of a single [LEI].” 17 C.F.R. § 45.6 (2022).

These implementing regulations “were designed to enhance transparency, promote standardization, and reduce systemic risk.” *In re ED&F Man Capital Mkts., Ltd.*, CFTC No. 22-13, 2022 WL 827785, at *5 (Mar. 15, 2022) (consent order) (quoting *In re Mizuho Capital Mkts. LLC*, CFTC No. 21-17, 2021 WL 4501467, at *9 (Sept. 27, 2021) (consent order)). “Market participants rely upon the public availability of swap data for price discovery purposes.” *In re Morgan Stanley Capital Servs. LLC*, CFTC No. 20-78, 2020 WL 5876732, at *4 (Sept. 30, 2020) (consent order) (citations omitted). “The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *Deutsche Bank*, 2020 WL 4611985, at *8 (citing *In re Société Générale Int’l Ltd.*, 2019 WL 4915485, at *6 (collecting cases)). The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

During the Relevant Period, as set forth in Section II.C.2 of this Order, Respondent failed to report swap data in an accurate fashion resulting in tens of millions of errors, and was also often untimely in its reporting. As a result, Respondent violated Section 2(a)(13)(F) and (G) of the Act, and Regulations 43.3(a)(1), 45.3(b)(1), 45.4(c), and 45.6. *See, e.g., In re BNP Paribas*, CFTC No. 22-19, 2022 WL 2734273, at * 2 (July 5, 2022) (consent order) (millions of errors resulting in violations of Regulations 43.3 and 45.3); *ED&F Man*, 2022 WL 827785, at *5 (hundreds of thousands of errors resulting in violations of, *inter alia*, Regulations 43.3(a), 43.4, 45.3, 45.4, and 45.6); *Mizuho*, 2021 WL 4501467, at *9 (more than one hundred thousand errors resulting in violations of, *inter alia*, Regulations 43.3(a), 43.4, 45.3, and 45.4); *Morgan Stanley*, 2020 WL 5876732, at *2, 4 (approximately three million errors resulting in violations of, *inter alia*, Regulations 43.3(a), 45.3, 45.4, and 45.6).

C. Goldman Failed to Provide PTMMMs in Violation of Section 4s(h)(1) of the Act and Regulation 23.431(a)(3)(i)

Section 4s(h)(1) of the Act requires swap dealers to comply with business conduct standards prescribed by the Commission. Pursuant to Section 4s(h)(1) of the Act, the Commission promulgated Regulation 23.431(a)(3)(i), which requires swap dealers to disclose a PTMMM to counterparties prior to the execution of a swap.

⁸ The term “valuation data” includes “the data elements necessary to report information about the daily mark of the transaction, pursuant to [7 U.S.C. § 6s(h)(3)(B)(iii)], and to [17 C.F.R. § 23.431] of this chapter if applicable.” Regulation 45.1, 17 C.F.R. § 45.1 (2022).

Specifically, Regulation 23.431(a)(3)(i) requires swap dealers to disclose to counterparties “[a]t a reasonably sufficient time prior to entering into a swap,” the “material incentives and conflicts of interest” the swap dealer may have in connection with the swap, which includes “the [pre-trade] mid-market mark of the swap.” Regulation 23.431(a)(3)(i). The mid-market mark “shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.” Regulation 23.431(d)(2), 17 C.F.R. § 23.431(d)(2) (2022). These disclosures must be made “at a reasonably sufficient time prior to entering into a swap.” Regulation 23.431(a). During the Relevant Period, as set forth in Section II.C.3 of this Order, on more than one million occasions, Goldman failed to meet the requirements of Regulation 23.431(a)(3)(i) by failing to provide an accurate PTMMM, or by failing to provide PTMMMs at all.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Goldman violated Sections 2(a)(13)(F) and (G), and 4s(h)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6s(h)(1), and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6, 17 C.F.R. §§ 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6 (2022).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;

7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 2(a)(13)(F) and (G), and 4s(h)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6s(h)(1), and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6, 17 C.F.R. §§ 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6 (2022);
 2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(F) and (G), and 4s(h)(1) of the Act and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6;
 3. Orders Respondent to pay a civil monetary penalty in the amount of thirty million dollars (\$30,000,000), plus post-judgment interest; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.
- F. Represents that it has taken a number of remedial steps, including, but not limited to:
1. Correcting swaps reporting errors by backreporting more than 20 million swaps, including both live and matured positions;
 2. Identifying and remediating the primary root causes of many of the swaps reporting issues identified in the Order;
 3. Assessing supervisory controls to identify and implement enhancements, including improved supervisory reports, to improve compliance with swap reporting rules;
 4. Reviewing electronic systems that provide PTMMMs and making enhancements to systems that were providing incorrect PTMMMs;
 5. Creating pre-booking prompts to ensure traders and salespeople provide PTMMMs on voice trades, providing additional training to traders and

salespeople on PTMMM requirements, and enhancing quarterly testing of compliance with PTMMM rules;

6. Reorganizing clearing reporting lines to enhance the required partition between the clearing unit and the business trading unit;
7. Commencing process of updating policies and procedures to ensure they cover and properly document compliance with Regulation 23.609;
8. Initiating a process to ensure Goldman's policies contain sufficient procedures for notifying the Commission and NFA of changes to its internal pricing models that have a material impact on its standard initial margin model;
9. Providing required notice regarding back-office procedures to unsegregated clients and enhancing process for providing such notices; and
10. Correcting stale and missing terms contained in static material economic term templates.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Sections 2(a)(13)(F) and (G), and 4s(h)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6s(h)(1), and Regulations 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6, 17 C.F.R. §§ 23.431(a)(3)(i), 23.602(a), 43.3(a)(1), 45.3(b)(1), 45.4(c), 45.6 (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of thirty million dollars (\$30,000,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission

6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Consultant: Within 60 days of entry of this Order, at its own expense, Respondent shall retain, in consultation with and subject to the approval of the Division, a consultant (the “Consultant”) for a three-year term, to assist Goldman in its remediation. The Consultant shall advise on and assess Goldman’s implementation of the Remediation Plan, described below. The Consultant shall have sufficient knowledge of the provisions of the Act and Regulations applicable to swap dealers to understand, monitor, and assess the policies, procedures, and practices of Respondent. Furthermore, the Consultant must, in the view of the Division, be sufficiently impartial, distinct, and independent from Respondent and its directors, officers, employees, counsel, and other representatives.
 2. Remediation Plan: The Consultant shall assist Goldman in developing a written remediation plan that will describe the specific steps and timelines necessary for Goldman to fully address the specific items of noncompliance identified in Section II.C.1-3 of this Order, concerning swap data reporting; disclosure of PTMMMs; and supervisory failures regarding swap data reporting, disclosure of PTMMMs, a personnel reporting line, clearing member risk management, notices regarding its initial margin model and segregation, and disclosure of static material economic terms (“Remediation Plan”). The Remediation Plan shall be subject to the review and approval of the Division.
 3. Consultant’s Rights, Authority, and Responsibilities:
 - a. Although the Division shall not be a party to any agreement(s) between the Consultant and Respondent, any agreement between the Consultant and Respondent must include language that the Consultant agrees to provide its services for the benefit of the Commission, that any and all reports and information provided by the Consultant to the Division shall be deemed the property of the Commission, and that the Consultant shall

abide by any specific request by the Division for confidential treatment of any communication among the Consultant and the Division.

- b. The Consultant shall review and assess for sufficiency aspects of Respondent's swap dealer compliance program included in the Remediation Plan. The Consultant shall also review and assess for sufficiency the remedial measures listed in Section V.F, as well as those implemented as part of the Remediation Plan.
- c. Within 180 days of retention, and every six months thereafter, the Consultant shall independently prepare and submit to the Division and Respondent a written report. Such report shall include a description of the Consultant's independent and objective assessment of the status of Respondent's implementation of the Remediation Plan and the Consultant's ongoing independent and objective assessment of Respondent's swap dealer's compliance program related to the items of non-compliance identified in Section VI.C.2 of this Order.

The Consultant's report shall also include: (i) an analysis of Respondent's ability to comply with the Remediation Plan, (ii) any recommendations made by the Consultant to cure Respondent's violations as set out in this Order; and (iii) a description of Respondent's implementation of any such recommendations. If Respondent chooses not to adopt the Consultant's recommendations within a reasonable period of time, the Consultant shall report that fact to the Division, along with Respondent's stated reason for not adopting the same.

The Consultant's report shall also include a description of the Consultant's methodology, information relied upon, and bases for the Consultant's findings.

- d. Respondent may review the Consultant's report prior to its production to the Division. To the extent that Respondent disagrees with the Consultant's findings or recommendations, Respondent may submit its objections in writing to the Division.
- e. Communications between the Consultant and Respondent are not protected by any privilege. The Consultant shall have the right to discuss the facts and circumstances of its findings with the Division, and the Division may disclose to the Consultant those portions of its investigation that may assist the Consultant in reviewing and monitoring Respondent's policies and procedures in accordance with Paragraph 2(c) of these undertakings. The Consultant is also permitted to communicate at any time with the Division concerning its consultantship, review, findings, assessments, and reports.

- f. Respondent shall cooperate fully with the Consultant, including, but not limited to, providing the Consultant:
- i. timely access to all files, documents, books, records, computer systems, personnel, and facilities that fall within the scope of the responsibilities of the Consultant, subject to a legitimate claim of any legally recognized privilege. If timely access is not provided, the Consultant shall immediately notify the Division of the circumstances of the delay;
 - ii. the right to meet independently with and interview any director, officer, employee, agent, or consultant of Respondent and to participate in any meeting concerning any matter within or relating to the Consultant's duties, subject to a legitimate claim of any legally recognized privilege; and
 - iii. the right to observe Respondent's business operations that fall within the scope of the Consultant's responsibilities, subject to a legitimate claim of any legally recognized privilege.

If Respondent agrees, in its sole discretion, to provide the Consultant with access to privileged materials, the Consultant and the Division shall agree not to assert that such access constitutes a waiver of any legally recognized privilege and the Consultant shall further agree to maintain the confidentiality of the privileged materials (except to the extent that disclosure is required by law or may be necessary in furtherance of the Consultant's discharge of its official duties and responsibilities).⁹ In the event Respondent seeks to withhold access to privileged materials from the Consultant, or where the Respondent reasonably believes production would otherwise be inconsistent with applicable law, Respondent shall work cooperatively with the Consultant to resolve the matter to the satisfaction of the Consultant. If the matter cannot be resolved, then, at the request of the Consultant, Respondent shall provide written notice to the Consultant and the Division, including a general description of the nature of the information, documents, records, facilities, and/or employees that are being withheld, as well as the bases of the assertion(s) of privilege(s).

- g. At any time during the Consultant's term, the Division may terminate the term of the Consultant prior to three years elapsing. After two years of the Consultant's term, Respondent may also petition the Division to make such a termination.

⁹ If the Consultant believes that disclosure is necessary in furtherance of the Consultant's discharge of its duties and responsibilities set forth in this Order, the Consultant shall provide Respondent reasonable notice in advance of such disclosure, including the basis for such disclosure, and a reasonable opportunity to oppose any such disclosure.

- h. Goldman will make all reasonable efforts to complete the Remediation Plan during the Consultant's term. Upon request by Respondent or the Consultant, the Division shall have the discretion to extend the time periods set forth in Section VI.C of this Order.
 - i. If new violations are identified during the Consultant's term that are similar in kind to the specific items of non-compliance identified in Section II.C.1-3 of this Order, the Division may recommend that the Commission initiate an enforcement action. However, before making any such recommendation, the Division will consider whether Goldman has cooperated with the Consultant as set forth in Section VI.C.3.f of this Order, has accepted the recommendations made by the Consultant to cure such newly identified violations, and is undertaking or has undertaken reasonable efforts to complete the Remediation Plan.
- 4. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating or tending to create the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's and/or its agents' and/or employees': (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement. The parties understand and agree that, to the extent that the Commission brings an enforcement action against any employee or agent of Respondent arising from the same nexus of facts as this Order, this provision shall not apply to actions or public statements by such employee made in connection with that enforcement action.
- 5. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement and any other governmental agency or any self-regulatory organization, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
- 6. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- 7. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to

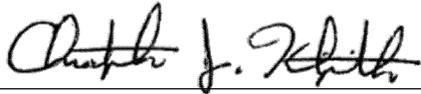
the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

8. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre 1155 21st Street N.W.
Washington, D.C. 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 29, 2023