UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:
Goldman, Sachs & Co.
Respondent

CFTC Docket No. 13-08

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Goldman, Sachs & Co. ("Goldman" or "Respondent") violated Commission Regulation ("Regulation") 166.3, 17 C.F.R. § 166.3 (2012). 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.

II.

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 Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

[1] Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

For several months including at least November and December 2007 (the "Relevant Period"), Goldman failed to ensure that certain aspects of its risk management, compliance, and supervision programs comported with its obligations to supervise diligently its business as a Commission registrant. During November and December 2007, Goldman further failed to supervise diligently the trading activities of an associated person (hereinafter "Trader"), whose trading activities on seven days in mid-November and mid-December 2007 in the e-mini S&P 500 futures contract traded on the Chicago Mercantile Exchange's ("CME") Globex platform resulted in a substantial loss to Goldman.

Specifically, in violation of Commission Regulation 166.3, Goldman failed to have policies or procedures reasonably designed to detect and prevent the manual entry of fabricated futures trades into its front office systems, which aggregated manually entered and electronically executed trades in the same product. As a result, on seven trading days in November and December 2007, the Trader circumvented Goldman's risk management, compliance, and supervision systems, by entering fabricated e-mini S&P 500 sell trades into its manual trading system, which artificially offset and thereby camouflaged e-mini S&P 500 buy trades the Trader had executed in the market. In particular, the Trader established an $8.3 billion e-mini S&P 500 position in a Firm trading account on December 13, 2007. Goldman suffered a loss of over $118 million in unwinding the Trader's position.

Separately, after the Trader was discharged, Goldman orally notified the CME and the Financial Industry Regulatory Authority ("FINRA"). Goldman's ensuing regulatory filings with the National Futures Association ("NFA") and FINRA stated that the Trader had been accused of "violating investment-related statutes, regulations, rules, or industry standards of conduct" for "conduct related to inappropriately large proprietary futures positions in a firm trading account." Thereafter, in response to FINRA's follow-up inquiries, Goldman provided additional important information only to FINRA, i.e., that the Trader attempted to conceal his trading via fabricated trades. Goldman never provided that additional important information to the NFA or the Commission until after the CFTC's Division of Enforcement commenced its investigation.

B. RESPONDENT

Goldman is registered as a futures commission merchant ("FCM") with the Commission and as a broker-dealer with the Securities and Exchange Commission ("SEC"). Goldman's principal office is in New York, New York.

C. FACTS

During the Relevant Period, Goldman failed to have policies or procedures reasonably designed to detect and prevent the entry of fabricated e-mini S&P 500 futures trades into its manual system. Without proper policies and procedures, Goldman's manual trade entry system could be exploited by a trader in such a way as to mask electronically traded contracts by fabricating offsetting manual trades internally, thereby circumventing risk controls. During the Relevant Period, the Trader placed orders for e-mini S&P 500 futures contracts through an electronic system that routed orders to the CME's Globex platform for execution. The Trader also used a separate manual trade entry system for trades that could not be executed through an electronic platform, for example, for trades executed through floor brokers and over-the-counter. Electronic and manual trades were aggregated into Goldman's risk management, supervision, and compliance systems so as to show net positions. These systems also handled Goldman's commodity futures business.

Approximately sixty times over seven days in mid-November and mid-December 2007, the Trader used Goldman's internal manual trade entry system to enter fabricated trades for e-mini S&P 500 futures. By entering fabricated trades that did not correspond to actual trades in the marketplace, the Trader concealed and misrepresented the size of Goldman's e-mini S&P 500 futures contract position, risk and profits and losses ("P&L") within Goldman's internal front office systems and various risk estimates and risk reports, which Goldman relied on to determine and manage its risk. Goldman's failure to diligently supervise the Trader's trading activities enabled the Trader to amass an $8.3 billion long e-mini S&P 500 futures position in a Firm trading account on December 13, 2007. On December 14, 2007, the Trader admitted to the true position at the end of the trading day. Goldman ultimately suffered losses of over $118 million unwinding this position. The Trader was trading for a Firm trading account; there were no customer losses.

On or about December 21, 2007, Goldman terminated the Trader and orally notified the CME and FINRA. The Trader's termination also gave rise to regulatory reporting disclosures and registration withdrawals that were provided to the Commission through the NFA and FINRA. Although the filings reflected that the Trader had been "discharged...after allegations were made that accused the [Trader] of...violating investment-related statutes, regulations, rules, or industry standards of conduct" for "conduct related to inappropriately large proprietary futures positions in a firm trading account," Goldman did not disclose the Trader's concealment and entry of fabricated trades in these form filings. Subsequently, upon further inquiry from FINRA regarding the basis for the termination, Goldman then disclosed only to FINRA that the Trader had attempted to conceal an e-mini S&P 500 futures position from Goldman and that risk related to that position appeared to have been offset by fabricated trades. Goldman never informed the NFA or the Commission that the Trader had attempted to conceal the position from Goldman via fabricated trades until after the CFTC's Division of Enforcement commenced its investigation.

D. LEGAL DISCUSSION

Commission Regulation 166.3 provides that every Commission registrant (except Associated Persons ("APs") who have no supervisory duties) must diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, employees and agents relating to its business as a Commission registrant. Commission Regulation 166.3 imposes on registrants an affirmative duty to supervise their partners, employees and agents diligently by establishing, implementing and executing an adequate supervisory structure and compliance programs. "The duty to supervise . . . include[s] the broader goals of detection and deterrence of possible wrongdoing by [a registrant's] agents." *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 33,444 (CFTC Dec. 14, 1989). "In appropriate circumstances, a showing that the registrant lacks an adequate supervisory system can be sufficient to establish a breach of duty under Rule 166.3." *See In re Thomas W. Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 (CFTC Dec. 10, 1997). A violation under Commission Regulation 166.3 is an independent violation for which no underlying violation is necessary. *Id.* at 45,744.

For the reasons set forth above, Goldman, a registered FCM, violated Regulation 166.3 because it failed to implement or follow policies and procedures reasonably designed to detect and prevent the entry of fabricated futures trades into its manual trade entry systems. Goldman's traders' access and use of a manual trade entry system for electronically-traded contracts was improperly supervised. *In re GNP*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992), aff'd sub nom., *Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (discussion of "the importance of a line supervisor's duty to investigate questionable activity after that activity is brought to the supervisor's attention"). Regulation 166.3, 17 C.F.R. §166.3 (2012).

In settling this matter, the Commission has taken into account the cooperation of Goldman and the corrective action Goldman undertook after the Trader's activities were discovered.

IV.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that Goldman violated Regulation 166.3.

V.

OFFER OF SETTLEMENT

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

A. Acknowledges receipt of 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 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), 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, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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;

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;

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 Regulation 166.3;

2. orders Respondent to cease and desist from violating Regulation 166.3;

3. orders Respondent to pay a civil monetary penalty in the amount of one million five hundred thousand dollars ($1,500,000);

4. orders Respondent and their 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;

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2012).

B. Respondent shall pay a civil monetary penalty in the amount of one million five hundred thousand dollars ($ 1,500,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). Should Goldman not satisfy its CMP Obligation within ten (10) days of the date of entry of this Order, post-judgment interest shall accrue on 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 (2006). Respondent shall pay the CMP Obligation 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst 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 with notice of payment sent to Regional Counsel, Stephen J. Obie, 140 Broadway, 19 th Floor, New York, New York 10005.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. 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: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns 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.

2. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of

Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or against the Trader or any current or future Commission investigation related thereto or against the Trader.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's 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.

4. Change of Address/Phone: Until such time as Goldman satisfies in full its CMP Obligation as set forth in this Consent Order, Goldman shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

5. Undertakings and Representations: In its Offer, Goldman represents that it has implemented written enhancements to its U. S. futures-related trading and risk management controls reasonably designed to prevent and promptly detect manual entry of fabricated futures trades into Goldman's systems, including but not limited to increased intra-day monitoring of futures-related trade breaks, enhanced communications among risk, control and supervisory functions, and the development of additional surveillance tools designed to assist supervisors with monitoring unusual intra-day trading activity in U.S. futures.

   Goldman undertakes to implement a written procedure to enhance its provision of information to the NFA and the Commission about misconduct or alleged misconduct of terminated Goldman employees that relates to trading on a Commission-regulated market to ensure that termination notifications of associated persons, including follow-up disclosures, are provided to the NFA and the Commission.

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

By the Commission (Commissioners SOMMERS, O'MALIA and WETJEN; Commissioner CHILTON concurring in part and dissenting in part; Chairman GENSLER not participating)

Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 7, 2012