UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:	)	
The Goldman Sachs Group, Inc., and Goldman, Sachs & Co.,	)	CFTC Docket No. 17 –03
Respondents.	)	

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (collectively, "Respondents," "Goldman," or the "firm") have violated the Commodity Exchange Act (the "Act" or "CEA") and Commission Regulations ("Regulations"). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, Respondents consent to the entry and acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order").[1]

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[1] Respondents consent 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 Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order, 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 do Respondents 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

Beginning in January 2007 and continuing through March 2012 (the "Relevant Period"), Goldman, by and through certain of its traders in New York, attempted to manipulate the U.S. Dollar International Swaps and Derivatives Association Fix ("USD ISDAFIX" or the "benchmark"), a leading global benchmark referenced in a range of interest rate products, to benefit Goldman's derivatives positions in instruments such as swaps, cash-settled options on interest rate swaps, swap futures contracts, and at times certain exotic structured products.

ISDAFIX rates and spreads are published daily and are meant to indicate the prevailing mid-market rate, at a specific time of day, for the fixed leg of a standard fixed-for-floating interest rate swap.[2] They are issued in several currencies. USD ISDAFIX rates and spreads are published for various maturities of U.S. Dollar-denominated swaps, including 1-year to 10-years, 15-years, 20-years, and 30-years. The most widely used USD ISDAFIX rates and spreads, and the ones at issue in this Order, are those that are intended to indicate the prevailing market rate as of 11:00 a.m. Eastern Time. The 11:00 a.m. USD ISDAFIX rate is used for cash settlement of options on interest rate swaps, or swaptions, and as a valuation tool for certain other interest rate products. For example, USD ISDAFIX was used during the Relevant Period in settlement of interest rate swap futures contracts traded on the Chicago Mercantile Exchange ("CME") and as a component in the calculation of various proprietary interest rate indices and structured products.

During the Relevant Period, USD ISDAFIX was set each day in a process that began at exactly 11:00 a.m. Eastern Time with the capture and recording of swap rates and spreads from a U.S.-based unit of a leading interest rate swaps broking firm ("Swaps Broker"). Swaps Broker disseminated rates and spreads captured in this 11:00 a.m. "snapshot," "fix," or "print" – as it was referred to by traders and brokers – as references to a panel of banks and other financial institutions (collectively, "banks"). The banks then made submissions to Swaps Broker. Some Goldman traders referred to Goldman's submissions and the submission process as the "poll" or "polling." Each bank's submission was supposed to reflect the midpoint of where that dealer would itself offer and bid a swap to a dealer of good credit as of 11:00 a.m. Eastern Time. Most banks on the panel, including Goldman, usually submitted Swaps Broker's reference rates and spreads as captured in the 11:00 a.m. snapshot. As a result, after an averaging of the submissions, the reference rates and spreads became the published USD ISDAFIX almost every day.

On certain days on which Goldman had a trading position settling or resetting against the USD ISDAFIX, Goldman attempted to manipulate USD ISDAFIX rates through its trading at the

[2] In 2014, the administration of ISDAFIX changed, and a new version of the benchmark is published under a different name by a new administrator using a different methodology.

11:00 a.m. fixing and by making submissions to Swaps Broker that were skewed to benefit derivatives positions held by Goldman. Goldman's unlawful conduct involved multiple traders, including the head of Goldman's Interest Rate Products Trading Group in the United States.

First, certain Goldman traders bid, offered, and executed transactions in targeted interest rate products, including swap spreads, at the critical 11:00 a.m. fixing time with the intent to affect the reference rates and spreads captured by Swaps Broker in the "print" sent to submitting banks, and thereby to affect the published USD ISDAFIX. As captured in emails and audio recordings, on some occasions when Goldman had derivatives positions settling or pricing against USD ISDAFIX, its traders discussed among themselves and with Swaps Broker employees their intent to move USD ISDAFIX rates in whichever direction benefitted their positions. Certain Goldman traders described such attempts to manipulate USD ISDAFIX as having "gamed the fix."[3]

Second, certain traders at Goldman attempted to manipulate USD ISDAFIX by making false submissions to Swaps Broker on behalf of Goldman, skewing the rates and spreads submitted in the direction that could have moved the USD ISDAFIX setting to benefit Goldman's trading positions. A bank's derivatives trading positions or profitability are not legitimate or permissible factors on which to base submissions in connection with a benchmark. Yet on many occasions in the Relevant Period, Goldman traders made USD ISDAFIX submissions higher or lower for the purpose of benefitting derivative positions priced or valued against the benchmark. These submissions were false, misleading, or knowingly inaccurate because they did not report where Goldman would itself bid or offer interest rate swaps to a dealer of good credit absent a desire to manipulate USD ISDAFIX, but rather reflected prices that were more favorable to the firm's specific positions. At times, Goldman combined such wrongful submissions with its illegitimate attempts to manipulate the benchmark through trading to increase the likelihood that the targeted USD ISDAFIX rates would move in a beneficial direction.

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In accepting Goldman's Offer, the Commission notes that prior to the latter stages of the Division of Enforcement's ("Division") investigation, Goldman's cooperation was not satisfactory. Goldman did not make certain productions as expeditiously as the Division expected and initially failed to produce certain communications and documents that were potentially relevant to identifying misconduct. The Commission recognizes that Goldman took remedial action to improve internal controls and policies related to ISDAFIX and its successor benchmark.

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[3] Unless otherwise indicated, all of the quotations in this Order are drawn from written communications, generally emails and instant messages, between and among traders and brokers during the Relevant Period.

B. Respondents

The Goldman Sachs Group, Inc. is a bank holding company and the publicly held parent company of the Goldman organization.

Goldman, Sachs & Co. is a global banking, securities and investment management firm with its main office in New York City, New York, and is an indirectly wholly owned subsidiary of The Goldman Sachs Group, Inc. Goldman, Sachs & Co. became provisionally registered with the Commission as a swap dealer on December 31, 2012, and has been registered as an FCM since 1979 and as a CTA and CPO since 1990.

C. Facts

1. USD ISDAFIX Setting

ISDAFIX rates and spreads are benchmarks that indicate prevailing market rates for "plain-vanilla" interest rate swaps.[4] The 11:00 a.m. USD ISDAFIX was set during the Relevant Period using a combination of swap spread trade data from Swaps Broker,[5] electronic trading in U.S. Treasuries and Eurodollars, and submissions from a panel of swap dealer banks, including Goldman.

Swaps Broker's medium-term USD swap desk ("MTS Desk") functioned much like a traditional futures trading pit. Brokers on the desk sat (or stood) together and each serviced a number of major swap dealer banks, to whom they were connected throughout the trading day by direct phone lines and speaker boxes. The brokers communicated their clients' bids and offers by open outcry to the entire MTS Desk and all of the brokers simultaneously. Any client could accept a bid or offer. Once a broker confirmed that a client was "hitting" a bid, "lifting" an offer, or was otherwise "done" in a designated notional amount (either a minimum default amount or a greater amount), the trade between the counterparties was executed and the counterparties received a confirmation of the trade. Goldman's interest rate swaps traders primarily worked with one broker on the MTS Desk, but at times also worked with other Swaps Broker employees, including brokers from Swap Broker's short-term swap desk.

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[4] The term "swap" is defined in CEA Section 1a(47). Here, a "plain-vanilla" interest rate swap is generally an ongoing exchange of fixed payments for floating payments, wherein one party to a swap pays a fixed rate on a set notional amount (the party who "pays fixed" is said to have "bought" the swap, or to be "long" the swap) and the other party pays a floating rate generally tied to three-month LIBOR (the party who "receives fixed" is said to have "sold" the swap, or to be "short" the swap). The "maturity" or "tenor" of a swap refers to the number of years over which counterparties exchange payments.

[5] An interest rate swap *spread* trade consists of a fixed-for-floating interest rate swap and an offsetting trade in U.S. Treasuries of the same maturity, which can be used to hedge part of the interest rate risk associated with the fixed-for-floating interest rate swap. The difference in basis points between the U.S. Treasury yield and the swap rate constitutes the "spread" quoted in a spread trade. The party who "receives fixed" in a swap and sells U.S. Treasuries to hedge is "short" spreads or has "sold" spreads, while a party who "pays fixed" in a swap and buys Treasuries to hedge is "long" spreads or has "bought" spreads.

Swaps Broker published a live feed of transaction data for USD interest rate swap spreads, swap rates, and U.S. Treasury yields and prices to an electronic screen, known as the "19901 screen," accessible through a subscription-based market news service. The 19901 screen reflected the levels at which those products were trading through the MTS Desk (for swap spreads and swap rates) and Swaps Broker's proprietary electronic trading platform (for U.S. Treasury securities). The levels displayed on the 19901 screen for swap spreads were manually controlled by an employee of the Swaps Broker, known colloquially as the "screen guy" or "screen operator," who would toggle the levels up or down based on the swap spread trading activity that occurred before him on the MTS Desk. The 19901 screen is a reference used widely throughout the financial industry by swap dealer banks, hedge funds, asset managers, businesses, and other participants in interest rate markets. During the Relevant Period, levels displayed on the 19901 screen at precisely 11:00 a.m. were critical because they were used to set USD ISDAFIX.

To set USD ISDAFIX rates for the 2-year through 30-year maturities, Swaps Broker first generated reference rates and spreads from the snapshot of 11:00 a.m. 19901 screen prices, reflecting either the last traded spread or the mid-point between the most recent executable bid and offer. Swaps Broker's reference rates, for all maturities except the 1-year, were the sum of the reference spread and the 19901 screen's U.S. Treasury yield in the corresponding maturity. To generate the 1-year reference rate (for which there was no associated swap spread), Swaps Broker utilized a combination of Eurodollar futures yields (based on trading on CME's Globex platform) and broker "sentiment," which was intended to reflect prevailing rates for 1-year swaps based on trading though Swaps Broker's short-term swap desk.

Minutes after the 11:00 a.m. snapshot of the 19901 was taken, Swaps Broker distributed its reference rates and spreads to a panel of 14 or more contributing banks, which either accepted and submitted the reference rates and spreads as their own or submitted adjusted levels. Each bank, including Goldman, was expected to submit "the mean of where that dealer would itself offer and bid a swap in the relevant maturity for a notional equivalent amount of USD $50 million or whatever amount is deemed market size in that currency for that maturity to an acknowledged dealer of good credit in the swap market."[6] In making their submissions, banks could change the prices for all rates and spreads across all maturities in their submissions; change any subset, including any single rate or spread; or change none at all and simply submit the reference rates and spreads. Alternatively, a panel bank could make no submission at all. After a quorum of contributing banks made their submissions, a calculation agent eliminated the highest and lowest submissions (known as "topping and tailing") and averaged the remaining submissions. The submission and calculation process was generally completed in the half hour following 11:00 a.m., after which the results were accessible to the public through a subscription-based news service.

In practice, most panel banks accepted Swaps Broker's reference rates and spreads as their default submissions. Thus, as traders at panel banks knew, after "topping and tailing,"

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[6] *See* ISDA, ISDAFIX, https://web.archive.org/web/20140209180148/http:/www2.isda.org/asset-classes/interest-rates-derivatives/isdafix/ (last accessed August 2, 2016).

Swaps Broker's reference rates and spreads usually became the final published USD ISDAFIX benchmarks. Goldman traders often contacted Swaps Broker's MTS Desk just after 11:00 a.m. to find out where the print came out, because the traders understood that the 11:00 a.m. print usually became the final published USD ISDAFIX rate.

2. Goldman's Interest Rate Products Trading Group

Through its Interest Rate Products Trading Group, located in downtown Manhattan, Goldman traded and held financial products, including swaps, swap futures, swaptions, exotic interest-rate derivatives ("exotics"), U.S. Treasuries and a variety of other products. Within that trading group, Goldman's U.S. Dollar Swap Desk in New York (the "Swap Desk" or the "swap desk") transacted and held, among other products, swaps, and swap futures positions. Another desk within that trading group, Goldman's U.S. Dollar Volatility Desk in New York (the "Volatility Desk" or the "volatility desk"), transacted and held, among other products, swaption and exotics positions. The Swap Desk was located in close proximity to the Volatility Desk.

3. Goldman's Role in USD ISDAFIX Setting

Throughout the Relevant Period, Goldman was one of the panel banks that submitted rates and spreads for the determination of USD ISDAFIX. Because the Swap Desk had primary responsibility for the U.S. Dollar swaps business, the Swap Desk was responsible for Goldman's USD ISDAFIX submissions. For much of the Relevant Period, the Swap Desk delegated ISDAFIX submissions to its primary broker at Swaps Broker, who routinely ratified the reference rates and spreads disseminated by Swaps Broker based on the 11:00 a.m. "snapshot."

Throughout the Relevant Period, Goldman did not have specific internal controls or procedures, written or otherwise, regarding how USD ISDAFIX submissions should be determined or monitored. Goldman ISDAFIX submitters received no formal training on making ISDAFIX submissions, and Goldman did not require submissions to be documented.

4. Goldman's Positions with Exposure to USD ISDAFIX

As described in more detail below, Goldman traders engaged in attempts to manipulate USD ISDAFIX for three primary reasons: (1) to maximize profits (or minimize losses) for the Swap Desk in connection with the desk's own positions in swaps priced based on the USD ISDAFIX (typically where other Goldman desks had effectively transferred USD ISDAFIX exposure to the Swap Desk) and in swap futures settlements; (2) to maximize profit (or minimize loss) for the Volatility Desk in connection with the desk's swaption cash settlements; and (3) at times to maximize profit (or minimize loss) for each desk in connection with exotics, such as spreadlocks, Goldman's proprietary Alpha Index products, and various constant maturity swap ("CMS") products.

Goldman traders' attempts to move USD ISDAFIX rates in Goldman's favor, if successful, hurt the firm's counterparties in cash settlements and resets, as well as any other market participants who had positions referencing USD ISDAFIX on a given day that were directionally equivalent to Goldman's counterparties' in the same maturity. A small movement of the benchmark higher or lower (*e.g.*, one basis point or less) could result in meaningful gain for Goldman on its cash settlements.

a. Swap Positions Held by the Swap Desk

Throughout the Relevant Period, the Swap Desk attempted to manipulate USD ISDAFIX to benefit its swap positions based on the benchmark ("ISDAFIX swaps"). The Volatility Desk often entered into ISDAFIX swaps with the Swap Desk to transfer its USD ISDAFIX exposure resulting from cash-settling swaptions to the Swap Desk.

In a typical, internal ISDAFIX swap, the Swap Desk agreed in advance of 11:00 a.m. to pay or receive the fixed leg of the swap at whatever rate that USD ISDAFIX set that day in the relevant maturity. On occasions when the Swap Desk knew it would be *receiving* the USD ISDAFIX rate from the Volatility Desk in the swap, the Swap Desk traders wanted the rate to set *higher* so that they could receive a higher fixed rate on the swap from the Volatility Desk. Likewise, on occasions when the Swap Desk knew it would be *paying* the USD ISDAFIX rate, swap traders wanted the rate to set *lower*, so that they could pay a lower fixed rate on the swap to the Volatility Desk. In many ISDAFIX trades, other Goldman desks were effectively transferring to the Swap Desk their exposure to USD ISDAFIX vis-à-vis counterparties. Accordingly, for every fraction of a basis point that the Swap Desk could successfully move the relevant USD ISDAFIX rate to Goldman's advantage, the benchmark would move to the disadvantage of Goldman's counterparties.

One trader on Goldman's Volatility Desk thus referred to the USD ISDAFIX in such a trade as the "jacked price" as opposed to the "fair price." Other Goldman traders appreciated how internal ISDAFIX trades presented an opportunity for the firm to profit. For example, in mid-2008, the then-head of Goldman's Interest Rate Products Trading Group in the United States explained why the Swap Desk should take on "as much as possible" of the Volatility Desk's ISDAFIX exposure: the trader expected "positive value" from these positions, especially "the larger size stuff," and if the Volatility Desk "EVER ha[d] any settlements that don't face the street," meaning non-dealer counterparties who lacked a view into the ISDAFIX setting process, he expected those ISDAFIX trades would also have "higher value." On this particular day, the Volatility Desk had not passed all of its USD ISDAFIX exposure to the Swap Desk, but that morning and later that day, both traders agreed that they should have "let [the Swap Desk] have fun with the full amount of 30s [30-year swaps]."

b. Swap Futures Positions Held by the Swap Desk

Throughout the Relevant Period, the Swap Desk also attempted to manipulate USD ISDAFIX to benefit its swap futures positions by increasing payments to Goldman (or decreasing payments from Goldman) during settlements.[7]

Goldman regularly transacted in swap futures contracts and routinely maintained net exposure to the settlement of these contracts, which occurred on a quarterly basis. The final settlement price of each contract was determined based on the USD ISDAFIX rate in the relevant

[7] During the Relevant Period, swap futures contracts were listed at and subject to the rules of the Chicago Board of Trade ("CBOT"). Swap futures were traded through both "open outcry" and through CME Globex.

maturity on the contract's last day of trading. Under swap future contract specifications, the value of the contract had an inverse relationship to USD ISDAFIX rates: when Goldman was *long* swap futures contracts, the firm would benefit from a *lower* USD ISDAFIX rate in the relevant maturity on the contract's last day of trading; when Goldman was *short* swap futures contracts, the firm would benefit from a *higher* USD ISDAFIX rate in the relevant maturity on the contract's last day of trading. Goldman's Swap Desk, a market maker in swap futures contracts, typically held a net long or net short position in multiple swap futures maturities on the contracts' settlement days, giving that desk a corresponding incentive to push USD ISDAFIX up or down in a direction that would maximize the desk's profits and minimize its losses.

c. Swaption and Other Positions Held by the Volatility Desk

Throughout the Relevant Period, traders on Goldman's Volatility Desk, in coordination with the Swap Desk, also attempted at times to manipulate USD ISDAFIX in order to benefit the Volatility Desk's derivatives positions, such as by increasing their payments from counterparties, or decreasing payments to counterparties, in swaption cash settlements.

A so-called "European swaption," one of the primary products traded by the Volatility Desk, is an option to enter into a plain-vanilla fixed-for-floating interest rate swap, which must be exercised at 11:00 a.m. on a specified "expiry" date in the future at a pre-agreed fixed "strike" rate. A swaption can be exercised by "physical" delivery of the underlying swap, or by cash settlement in reference to a benchmark rate. Swaption cash settlements denominated in U.S. Dollars are typically calculated based on USD ISDAFIX rates according to a formula which measures the difference between the relevant USD ISDAFIX rate on the expiry date and the strike rate of the swaption. In any cash-settling swaption, the Volatility Desk's incentive to push the USD ISDAFIX higher or lower depended on (1) whether Goldman was the owner (buyer) or seller of the swaption and (2) whether the swaption conferred the right to pay or receive the fixed rate in the underlying swap. The Volatility Desk also traded products consisting of combinations of swaptions, such as straddles, and other products for which cash settlements were similarly calculated based on the relevant USD IDAFIX rate at expiry and therefore created similar incentives for Goldman traders to attempt to push USD ISDAFIX rates in the firm's favor.

Throughout the Relevant Period, traders on Goldman's Volatility Desk, in coordination with the Swap Desk, also attempted to manipulate USD ISDAFIX in order to benefit the desks' derivatives positions in connection with various exotic derivative instruments, such as spreadlocks,[8] Goldman's proprietary Alpha Index products,[9] and the periodic resets and

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[8] A "spreadlock" is a derivative financial instrument that allows counterparties to lock in a fixed spread to be paid or received in the future. Spreadlocks may, at times, cash settle by reference to the USD ISDAFIX. On occasion, Goldman's Swap and Volatility Desks entered into spreadlocks that were valued in reference to USD ISDAFIX. Depending on where USD ISDAFIX set on the expiry or valuation dates of these trades, the desks would have the opportunity to either receive more from (or pay less to) their counterparties in cash settlements.

[9] Goldman's proprietary Alpha Index products allowed clients to take positions relative to anticipated changes in 2-year, 10-year, and 30-year swap rates, measured by observing prices on the 19901 screen at various times of the day on observation dates, including at the 11:00 a.m. USD ISDAFIX setting time. Goldman's client-facing Alpha Index positions were overseen by an interest rates trading group in London ("London Exotics Desk"),

settlements of CMS products.[10] For example, in April 2007, in anticipation of a spreadlock valuation based on USD ISDAFIX, a Volatility Desk trader asked the firm's USD ISDAFIX submitter: "Hey, can you make sure to poll high." Similarly, in December 2007, a Goldman Volatility Desk trader complained to a Swaps Broker employee: "[N]ow you screw up our isdafix resets? What's your encore?"

5. Means Employed in Goldman's Attempts to Manipulate USD ISDAFIX

Given all of these financial incentives, Goldman traders understood and employed two primary means to attempt to manipulate USD ISDAFIX rates. One method was to bid, offer, and trade the instruments that could influence Swap Broker's reference rates—namely, swap spreads traded through Swap Broker, Eurodollar futures traded through the CME Globex platform, and/or U.S. Treasuries traded through Swap Broker's proprietary electronic platform—at and around Swaps Broker's 11:00 a.m. print, in a manner designed to push USD ISDAFIX rates in a favorable direction. Another method employed by Goldman traders in attempts to manipulate USD ISDAFIX rates was making false submissions.

Using each of these means, at times independently and at times in combination, Goldman traders sought the same illicit goal: to move USD ISDAFIX in the direction that was best for Goldman at the expense of its counterparties and clients.

a. Goldman's Improper Trading Conduct

As described below, one of Goldman traders' means to attempt to manipulate USD ISDAFIX involved improper trading conduct relating to the inputs to Swap Broker's 11:00 a.m. print, namely, swap spreads traded through Swaps Broker, Eurodollar futures traded through Globex, and U.S. Treasuries traded through Swaps Broker's proprietary electronic trading

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which periodically entered into swap trades opposite the Swap Desk to offset its exposure from Alpha Index trades, often at rates priced in part by reference to the day's USD ISDAFIX rate and in advance of the USD ISDAFIX setting. When the Swap Desk knew it would be *receiving* based in part on the USD ISDAFIX rate from the London Exotics Desk, Swap Desk traders wanted the ISDAFIX rate to set *higher* so that they could receive a higher fixed rate on the swap from the London Exotics Desk. Conversely, when the Swap Desk knew it would be *paying* based in part on the USD ISDAFIX rate, Swap Desk traders wanted the rate to set *lower*, so that they could pay a lower fixed rate on the swap. As the Alpha Index-related swap trades between the Swap Desk and the London Exotics Desk typically transferred ISDAFIX exposure vis-à-vis clients from the London Exotics Desk to the Swap Desk, for every fraction of a basis point that the Swap Desk could successfully move the relevant USD ISDAFIX rates to its advantage, Alpha Index clients facing the London Exotics Desk were disadvantaged.

[10] A "constant maturity swap," or "CMS," is a swap in which the rate of one leg of the swap is periodically reset (or "fixed") in reference to the then-prevailing market rate of a specified product. The Swap Desk and the Volatility Desk held numerous CMS positions during the Relevant Period which periodically reset with reference to USD ISDAFIX. On reset or "fixing" days, depending on the terms of a given CMS product, the Swap Desk and the Volatility Desk could benefit from causing the relevant ISDAFIX rate to set higher or lower. Goldman traders were sensitive to their profits and losses in connection with CMS resets.

platform. Such trading strategies were a regular practice at Goldman, and supervisors were not only aware of subordinates executing such trading strategies, but at times executed them directly.

i. Trading Swap Spreads to Affect the USD ISDAFIX

During the Relevant Period, Goldman traders bid, offered, and/or executed swap spread trades at and around Swaps Broker's 11:00 a.m. print to affect prices on the 19901 screen and thereby increase or decrease Swaps Broker's reference rates and spreads and influence the final published USD ISDAFIX.[11] To execute this strategy, Goldman's swap traders often indicated to their brokers their intention to achieve a certain swap spread level at 11:00 a.m., rather a desire to buy or sell a specific amount of swap spreads. For example, at various times during the Relevant Period, Goldman swap traders told their primary broker:

- "we're going to want to keep 10s low and 5's high at 11 overall want lowest spreads possible"
- "11 am...will need: 5yr, 7yr & 30yr lower & 10s higher"
- as stated in a recorded phone call: "[t]ens – I want at 3/4's for the fix. Bonds – I want at 53 for the fix"

Goldman's intent to achieve certain 11:00 a.m. print levels on such occasions was evident to other brokers who sat on the MTS Desk; one observed during the Relevant Period: "I don't think Gold[man] knows what [amount] they do at 11, that's not their main concern, it's the print that matters."

In attempts to push the USD ISDAFIX higher or lower, Goldman traders were even willing at times to buy higher or sell lower than the market required because they expected to benefit their cash settlements to an extent that would likely exceed, but at least cover, any resulting trading losses incurred through such trading. To affect the USD ISDAFIX print at minimal cost, traders typically timed their trading activity to try to be the last screen-moving event before the 11:00 a.m. print. When Goldman's brokers failed to achieve the critical 11:00 a.m. print level, or spent more than Goldman traders wanted to spend to achieve their desired result, Goldman traders expressed their discontent: "I should control the screen without having to given [sic] some loser another 50 [million notional]," the then-head of the Swap Desk complained in July 2007.

In one particularly brazen attempt to manipulate USD ISDAFIX by a Goldman trader, captured by a contemporaneous audio recording, the Goldman trader told his primary broker to

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[11] Goldman traders referred to trades that they made around 11:00 a.m. for risk management purposes as hedging. When Goldman's derivative products cash-settled, reset, or otherwise fixed to a benchmark, changes in the desks' risk positions could potentially cause traders to seek hedging trades, depending on a variety of factors, including the risk profile of other positions and whether the desk wanted to keep any resulting risk. Likewise, with internal ISDAFIX trades between desks, the desk taking on new risk, depending on a variety of factors, might have a reason or desire to hedge. Irrespective of whether the Goldman traders had an interest in hedging, the traders engaged in attempted manipulation when they placed bids and offers or executed trades around 11:00 a.m. with the improper intent to move the USD ISDAFIX rate in Goldman's favor.

arrange for the employee who operated Swaps Broker's 19901 screen to refrain from reporting any changes in 10-year prices that went against Goldman's interest until after 11:00 a.m. that day, and then directed the broker to trade whatever it took to keep the price down:

> If someone lifts us at, ya know, 10:59:59, you're going to be the last one to hit it back down and your screen guy is not going to touch it. *Just have your screen guy go to coffee* . . . That's why I'm calling you ten minutes before, so you can get all this worked out. *Have your screen guy go to the bathroom.* You don't need to move tens for the next ten minutes. . . . If someone lifts us up, give it down.

(emphasis added). The trader followed up this oral instruction to the broker with an email that summed up his intention to achieve the desired 11:00 a.m. print: "spend what you need, but make SURE we get the print." (emphasis in original)

ii. Trading Eurodollar Futures Contracts to Affect the USD ISDAFIX

On occasion, during the Relevant Period, Goldman traders traded Eurodollar futures at and around 11:00 a.m. in attempts to influence the final published 1-year USD ISDAFIX. For example, in September 2009, on a day when Goldman stood to pay less to its counterparty, the lower the 1-year USD ISDAFIX rate fixed, in connection with a cash-settling straddle swaption (i.e., Goldman benefited from a lower 1-year USD ISDAFIX rate), a Goldman swaps trader asked the firm's primary MTS Desk broker "how does isda 1yr get fixed. If I put a price in 1yr [swaps] will that affect the post and does it matter semi bond or [annual money]?" The broker, a few minutes later, explained that the trader could more easily impact the 1-year USD ISDAFIX by trading Eurodollar futures, as opposed to 1-year swaps, and recommended that strategy: "it populates auto off futures unless manually changed by strong market sentiment . . . sentiment seems to be better bid so if you wanted lower print may be better to do futures . . ." Armed with this knowledge, the Goldman trader both sold 1-year swaps shortly before 11:00 a.m., in an attempt to affect the "market sentiment" component of the 1-year USD ISDAFIX, and following the broker's advice traded Eurodollar futures in a direction that would put downward pressure on the Eurodollar futures rates and thereby the related 1-year USD ISDAFIX.

iii. Trading U.S. Treasuries to Affect the USD ISDAFIX

During the Relevant Period, Goldman traders also bid, offered, and/or executed trades in U.S. Treasuries on Swaps Broker's electronic bond trading platform (for 2-year through 30-year maturities) in attempts to increase or decrease Swaps Broker's reference rates and spreads and thereby to influence the final published USD ISDAFIX. For example, in October 2007, when the firm stood to benefit from a lower 10-year USD ISDAFIX rate in a cash-settling swaption, a Goldman swap trader first confirmed the desired direction of the manipulative attempt with the Volatility Desk ("you want a low rate fix...correct?"); then, upon learning that the then-head of the Volatility Desk was "not sure if he wants to hedge," the swap trader replied less than a minute later that, regarding the 10-year USD ISDAFIX rate, "I'll just make sure it's low." In an effort to accomplish this goal, the swaps trader then bought 10-year Treasuries immediately before 11:00 a.m. through Swap Broker's proprietary platform, thereby attempting to put downward pressure on the 10-year Treasury rate that would be an input to Swaps Broker's reference rates and the related 10-year USD ISDAFIX.

b. Goldman's False, Misleading, or Knowingly Inaccurate Submissions

During the Relevant Period, multiple Goldman traders also attempted to manipulate the USD ISDAFIX by causing the firm to make false, misleading, or knowingly inaccurate submissions to Swaps Broker concerning swap rates and spreads. For example, in February 2009, on a day when Goldman stood to receive *more* from various pension funds and other clients in the cash settlement of 5-year straddle swaptions the *higher* the 5-year USD ISDAFIX set (i.e., the Volatility Desk stood to benefit from a higher 5-year USD ISDAFIX rate), the Volatility Desk emailed Goldman's ISDAFIX submitter "can you poll high in yield on 5s for 11am isda," and noted "we don't need to do anything w/ you, we're going to keep the risk," indicating that the Volatility Desk did not intend to hedge the risk associated with the cash settlement. Goldman's USD ISDAFIX submitter complied, submitting a higher rate on behalf of Goldman in the 5-year maturity in an attempt to manipulate the 5-year USD ISDAFIX rate.

According to one Volatility Desk trader, such communications between the Volatility Desk and the ISDAFIX submitter were a routine practice at Goldman, and supervisors on the Swaps and Volatility desks were aware of the requests and their connection to swaption cash settlements. Often requests from the Volatility Desk for a high or low "poll" occurred before 11:00 a.m., which in itself revealed that the submission requested could not have been an accurate reflection of where Goldman saw the swap market at 11:00 a.m. In fact, to streamline the Volatility Desk's ability to attempt to manipulate the USD ISDAFIX through submissions, Goldman traders tried several times to gain an additional submission login from Swaps Broker for a Volatility Desk trader, which would allow a volatility trader to make such manipulative attempts directly without needing to communicate with Goldman's designated ISDAFIX submitter.

6. Additional Examples of Attempted Manipulation to Benefit the Swap Desk's and Volatility Desk's ISDAFIX-Related Derivatives Positions

During the Relevant Period, Goldman traders on the Swap Desk and the Volatility Desk used various means in attempts to move USD ISDAFIX higher or lower, in order to get more from, or pay less to, their counterparties in swaps, swap futures, cash-settled swaptions, and other derivatives that referenced USD ISDAFIX. The following are additional specific examples and further details of Goldman traders' attempts to manipulate USD ISDAFIX rates in order to benefit derivatives positions that were tied to the USD ISDAFIX that day.

- **ISDAFIX Swaps.** In January 2007, the Swap Desk stood to gain from a lower 10-year USD ISDAFIX and a higher 30-year USD ISDAFIX because the desk was entering into two swaps opposite the Volatility Desk priced at those rates (the Volatility Desk faced clients in certain CMS products that were fixing based on the difference between those rates). To benefit the Swap Desk's positions, a Goldman swaps trader employed various methods in attempting to manipulate the 10-year and 30-year USD ISDAFIX rates. <u>First</u>, a few minutes before 11:00 a.m., the trader called his broker and instructed, as to 10-year spreads and 30-year spreads (referred to as "bonds"): "Tens – I want at 3/4's for the fix. Bonds – I want at 53 for the fix." Shortly before 11:00 a.m., the broker executed this instruction by engaging in trading activity in both 10-year and 30-year spreads, and informing the trader shortly after 11:00 a.m., that he had "sold 50 down to get the thing in the tens." Second, the Goldman trader attempted to increase the final published 30-year USD ISDAFIX rate by submitting higher than Swaps Broker's reference rate. When the broker asked the trader why he had not also submitted a higher 30-year spread, so as to be consistent with his changed rate submission, the trader explained: "I just cared about the rate."

- **ISDAFIX Swap.** In July 2007, the Swap Desk stood to benefit from a lower 30-year USD ISDAFIX because it was entering into swaps opposite Goldman's London Exotics Desk that were priced, in part, based on that rate. These swaps were in connection with the London Desk's unwinding of proprietary Alpha Index positions, including more than $1 billion notional of 30-year swap exposure. To benefit the Swap Desk's positions, a Goldman swaps trader attempted to manipulate the 30-year ISDAFIX rate by trading swap spreads through Swaps Broker. In particular, shortly before 11:00 a.m., the Goldman swap trader sold a total of $425 million notional 30-year swap spreads through Swaps Broker, thereby putting downward pressure on the 30-year USD ISDAFIX rate. Shortly after 11:00 a.m., the broker apologized for trading more 30-year spreads than the trader expected because, as the broker explained, he "was so anxious to cover the bids" at the lower price level in 30-year swap spreads "so they could not be lifted up" to a higher price level.

- **Swaption Cash Settlements.** In April 2008, the Volatility Desk stood to benefit from higher 2-year and 5-year USD ISDAFIX rates, and a lower 3-year USD ISDAFIX rate relative to those rates, due to the desk's positions in a 2-year/3-year/5-year butterfly swaption that was cash-settling based on USD ISDAFIX in those maturities. To benefit the desk's positions, one of its traders asked the Swap Desk to "make sure 3s are not silly high to 2s and 5s at 11am," i.e., to take action to prevent those USD ISDAFIX rates from fixing at levels unfavorable to Goldman.

- **ISDAFIX Swap.** In September 2008, the Swap Desk stood to benefit from a higher 10-year ISDAFIX rate because the Swap Desk had agreed before 11:00 a.m. to enter into a swap opposite the Volatility Desk, with the Volatility Desk paying the Swap Desk the 10-year ISDAFIX rate plus a small premium, in connection with the Volatility Desk's cash settlement of a $150 million notional 10-year swaption. To benefit the Swap Desk's position, seconds before 11:00 a.m. a Swap Desk trader sold 10-year U.S. Treasuries via Swap Broker's proprietary electronic trading platform (transactions that could put upward pressure on the 10-year ISDAFIX rate). Later that day, once the 10-year ISDAFIX rate was published, a Volatility Desk trader complained to a Swap Desk trader about the trade, objecting to the small premium in light of the Swap Desk's attempts to manipulate the ISDAFIX: "So you gamed the fix and then charged us on top of it?"

- **Swap Futures Cash Settlement.** In March 2009, the Swap Desk stood to benefit from a higher 5-year USD ISDAFIX rate and a lower 10-year USD ISDAFIX rate due to cash settlements of the desk's positions in March 2009 swap futures contracts in those maturities that day. To benefit these positions, the Swap Desk employed various methods of attempted manipulation to influence the 5-year and 10-year ISDAFIX rates. First, shortly before 11:00 a.m., a Goldman swap trader informed his broker: "we're going to want to keep 10s low and 5's high at 11[,] overall want lowest spreads possible." To accomplish this, just seconds before 11:00 a.m., the broker engaged in trading conduct, including selling 10-year swap spreads through Swaps Broker, in a manner designed to push down the 10-year USD ISDAFIX rate. A few minutes after 11:00 a.m., the trader and the broker referred to their attempt to lower the 10-year rate just before the print, with the trader noting that "they should have gone down[,] there was about 7 sec" left before 11:00 a.m. Second, shortly before 11:00 a.m., multiple Goldman swap traders working in concert traded U.S. Treasuries via Swap Broker's proprietary electronic trading platform, selling 5-year Treasuries (which would put upward pressure on the 5-year USD ISDAFIX) and buying 10-year Treasuries (which would put downward pressure on the 10-year ISDAFIX). Third, the Goldman swap desk falsely submitted higher 5-year spreads and rates and lower 10-year spreads and rates, in an additional attempt to influence the USD ISDAFIX rates in those maturities. As Goldman's then-head of Interest Rate Products in the U.S. noted in a "PnL" update later in the day, these settlements were "very nice for the home team."

- **Swap Futures Cash Settlement.** In December 2009, the Swap Desk stood to benefit from lower USD ISDAFIX rates in the 5-year, 7-year, and 30-year maturities, and from a higher USD ISDAFIX rate in the 10-year maturity, in connection with the cash settlements of multiple swap futures positions in those tenors that day. To benefit those positions, the Swap Desk attempted to manipulate the ISDAFIX in the relevant maturities in multiple different ways. First, the trader notified his broker before 11:00 a.m. that at "11 am...will need: 5yr, 7yr & 30yr lower & 10s higher." The broker understood that the trader clearly had a direction in mind and wanted to move the market, and replied to confirm the goal: "OK[ ]will come down to timing and amount to spend []on keeping it there." Soon thereafter, the broker informed the 19901 screen operator of Goldman's goals for the 5-year, 7-year, 10-year, and 30-year USD ISDAFIX rates: "5, 7 AND 30 LOWER 10'S HIGHER." Then, shortly before 11:00 a.m., the broker, on Goldman's behalf bought and sold 5-year, 7-year, and 10-year swap spreads, amounting to billions of dollars notional, in a direction and a manner calculated to achieve the trader's desired result. The broker did not trade any 30-year swap spreads (despite the trader's instruction "will need . . . 30yr lower . . ."), and in summarizing his trading activity at 11:00 a.m. for the trader, explained that a different firm had sold that maturity at the fixing (which put downward pressure on the 30-year ISDAFIX). The broker's explanation of his conduct, and the lack of objection or response from the trader, reflect their shared understanding that the goal of a lower 30-year USD ISDAFIX could be achieved at no cost to Goldman if another firm was selling in the targeted maturity. Second, shortly before 11:00 a.m., a Goldman swap trader traded 5-year, 7-year, 10-year, and 30-year U.S. Treasuries via Swap Broker's proprietary electronic trading platform, in the directions that would push the USD ISDAFIX in each maturity in Goldman's favor. Third, the Swap Desk capped off its attempted trading manipulations with a false submission in the 5-year maturity—the maturity that represented the bulk of its USD ISDAFIX exposure.

- **ISDAFIX Swaps.** In January 2012, the Swap Desk stood to benefit from a higher 30-year USD ISDAFIX in connection with a combination of exotics products. To benefit the net exposure of these positions, a Goldman swaps trader bought 30-year swap spreads through Swaps Broker shortly before 11:00 a.m. in an attempt to push the 30-year USD ISDAFIX higher. Later, the swap trader referred to these trades in a communication with a client who had wanted the 30-year trade, and explained that he had to do at least part of the trade through Swaps Broker (in the minimum notional size required to move the 19901 screen) instead of facing the customer (which would not have affected the 19901 screen): "had an isda fix" he explained, and so "had to pay 50k in the street (min screen size)."

IV.

LEGAL DISCUSSION

A. Jurisdiction

As set forth below, Sections 6(c), 6(d), and 9(a)(2) of the Act have long prohibited attempted manipulation of the prices of, or false reporting in regard to, *any* commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity. 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006). An interest rate benchmark, such as USD ISDAFIX, is a commodity, *see* Sections 1a(9) and (19) of the Act, 7 U.S.C. §§ 1a(9), (19) (2012); *see also* 7 U.S.C. §§ 1a(4), (13) (2006), and therefore may be subject to illegal attempted manipulation, whatever the manipulative means may be, or false reporting.

Here, Goldman's attempted manipulation is also proscribed by the Act for the separate reason that the conduct involved swaps executed or traded on a Swaps Broker desk that operated in practice as a "trading facility" under the Act, *see* 7 U.S.C. § 1a(34) (2006) (defining trading facility); 7 U.S.C. §§ 2(d)(1)(B), 2(g)(3) (2006) (limiting jurisdictional exclusions to agreements, contracts, or transactions not executed or traded on a trading facility).

Lastly, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Commission also has authority to initiate proceedings and impose sanctions for a broader range of manipulative conduct and false reporting, including in connection with any swap. *See* Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Commission Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2015). The Relevant Period encompasses conduct that occurred after the passage and effective date of the Dodd-Frank Act.

B. Respondents Attempted to Manipulate USD ISDAFIX

Section 9(a)(2) of the Act makes it unlawful for "[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity." 7 U.S.C. § 13(a)(2) (2006). With respect to conduct on or after July 16, 2011, amended Section 9(a)(2) of the Act also makes it unlawful to manipulate or attempt to manipulate the price of "any swap." 7 U.S.C. § 13(a)(2) (2012).

For conduct before August 15, 2011, Sections 6(c) and 6(d) of the Act authorize the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission "has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, . . . or otherwise is violating or has violated any of the provisions of [the] Act." 7 U.S.C. § 9 (2006); *id.* § 13b (2006).

For conduct occurring on or after August 15, 2011, the Commission is authorized to serve a complaint and impose penalties and orders with regard to attempted manipulation in violation of the broader amended provisions of Sections 6(c)(1) and 6(c)(3) and the Commission regulations implementing those provisions. *See* Sections 6(c)(4)(A) and 6(d) of the Act, 7 U.S.C. §§ 9(4)(A), 13b (2012).

Sections 6(c)(1) and 6(c)(1)(A) of the Act prohibit the use or attempted use of any manipulative device, including false reporting, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery, 7 U.S.C. §§ 9(1), 9(1)(A) (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015), makes it "unlawful . . . , directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to . . . (1) [u]se . . . or attempt to use . . . any manipulative device; (2) [m]ake, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; or, (4) [d]eliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, . . . a false or misleading or inaccurate report concerning . . . market information or conditions that affect or tend to affect the price of any commodity in interstate commerce."

Section 6(c)(3) of the Act prohibits the attempted manipulation of the price of any commodity in interstate commerce, 7 U.S.C. § 9(3) (2012), and Commission Regulation 180.2, 17 C.F.R. § 180.2 (2015), makes it "unlawful . . . directly or indirectly, to . . . attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity."

To prove attempted manipulation under each of these provisions, the following two elements are required: (1) an intent to affect market price, and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.* [1975-77 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271, at 21,477 (CFTC Feb. 18, 1977). To prove the intent element of attempted manipulation, the respondent must have "acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand." *In re Indiana Farm Bureau Coop. Ass'n*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796, at 27,283 (CFTC Dec. 17, 1982). "[W]hile knowledge of relevant market conditions is probative of intent, it is not necessary to prove that the accused knew to any particular degree of certainty that his actions would create an artificial price. It is enough to present evidence from which it may reasonably be inferred that the accused 'consciously desire[d] that result, whatever the likelihood of that result happening from his conduct.'" *Id.* (quoting *United States v. U.S. Gypsum Co.*, 438 U.S. 442, 445 (1978)). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido* [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970, at 62,484 (CFTC Nov. 5, 2008) (citing *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 21,478)), *aff'd sub. nom. DiPlacido v. CFTC*, 364 Fed. App'x 657 (2d Cir. 2009). It is also not necessary that there be an actual effect on price. *See CFTC v. Amaranth Advisors, L.L.C.*, 554 F. Supp. 2d 523, 533 (S.D.N.Y. 2008).

1. Respondents Attempted to Manipulate USD ISDAFIX Through Improper Trading Conduct

As evidenced by the communications among Goldman traders and between Goldman traders and their brokers, as well as their actual trading conduct, Goldman traders specifically intended to manipulate USD ISDAFIX by placing bids or offers or executing trades in the moments leading into 11:00 a.m. designed in a manner, including timing and pricing, to increase or decrease swap spreads at 11:00 a.m., with the intent to affect levels reported on the 19901 screen and USD ISDAFIX fixings. Moreover, the evidence reflects that the traders intended such trading conduct to affect the fixings in order to benefit Goldman's trading positions against the firm's counterparties.

The Goldman traders' bids, offers, and executed trades in the moments leading into 11:00 a.m., which were intended to affect USD ISDAFIX, as well as the traders' communications with each other and with their Swaps Broker brokers to plan and execute this trading conduct, constituted overt acts in furtherance of their intent to affect USD ISDAFIX. The Goldman traders thereby engaged in acts of attempted manipulation in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006). Additionally, with respect to conduct occurring on or after August 15, 2011, Goldman engaged in acts of attempted manipulation in violation of Section 6(c)(3), 7 U.S.C. § 9(3) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2015), and they used or attempted to use a manipulative device in violation of Sections 6(c)(1) and 6(c)(1)(A), 7 U.S.C. §§ 9(1), 9(1)(A) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015).

2. Respondents Attempted to Manipulate USD ISDAFIX Through False, Misleading, or Knowingly Inaccurate Submissions

As evidenced by communications among Goldman traders, as well as Goldman's USD ISDAFIX submissions themselves, Goldman traders specifically intended to affect the rate at which USD ISDAFIX was set by making false, misleading, or knowingly inaccurate submissions to Swaps Broker for inclusion in the calculation of the daily rates. At times during the Relevant Period, Goldman submitted market information, specifically rates that were supposed to reflect the mean of where Goldman would itself offer and bid a USD denominated swap in the relevant maturity to an acknowledged dealer of good credit, to Swaps Broker that were used as part of the process for determining the daily USD ISDAFIX rate for the various maturities. However, rather than submitting rates and spreads that reflected Goldman's honest view of the true costs of entering into a standard USD interest-rate swap in particular maturities, Goldman at times knowingly made submissions with the intent to move USD ISDAFIX rates higher or lower in order to benefit Goldman's trading positions. Through its false, misleading, or knowingly inaccurate submissions, Goldman attempted to manipulate USD ISDAFIX for numerous tenors.

The Goldman traders' oral and written requests for certain rates to be submitted which would benefit their trading positions, and the submissions resulting from those requests, constituted overt acts in furtherance of the traders' intent to affect USD ISDAFIX. By doing so, the Goldman traders engaged in acts of attempted manipulation in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2012). Additionally, with respect to conduct occurring on or after August 15, 2011, the Goldman traders engaged in acts of attempted manipulation in violation of Section 6(c)(3), 7 U.S.C. § 9(3) (2012), and Regulation 180.2, 17 C.F.R. § 180.2 (2015), and they used or attempted to use a manipulative device in violation of Sections 6(c)(1) and 6(c)(1)(A), 7 U.S.C. §§ 9(1), 9(1)(A) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2015).

C. Respondents Made False, Misleading, or Knowingly Inaccurate Reports Concerning USD ISDAFIX in Violation of Section 9(a)(2) of the Act

In addition to the prohibition on attempted manipulation contained in Section 9(a)(2) of the Act, that provision also makes it unlawful for any person "knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce." 7 U.S.C. § 13(a)(2) (2006); *see also United States v. Brooks*, 681 F.3d 678 (5th Cir. 2012); *United States* v. *Valencia*, 394 F.3d 352 (5th Cir. 2004); *CFTC* v. *Johnson*, 408 F. Supp. 2d 259, 267 (S.D. Tex. 2005).

From time to time during the Relevant Period, Goldman, through electronic and telephonic transmission of information to Swaps Broker, knowingly delivered or caused to be delivered the firm's USD Dollar ISDAFIX submissions through the mails or interstate commerce. Goldman's submissions were also delivered through the mails or interstate commerce through daily dissemination and publication globally, including throughout the United States, of the official published rates for USD ISDAFIX, as determined by averaging the submissions of Goldman and other panel banks after "topping and tailing." Data on submissions themselves were also disseminated. Goldman's daily USD ISDAFIX submissions contained market information concerning the mean of where Goldman would itself offer and bid a swap in the relevant maturity to an acknowledged dealer of good credit in the swap market absent intent to manipulate USD ISDAFIX. Such market information affected or tended to affect the prices of commodities in interstate commerce, including the daily fixing rates for USD ISDAFIX, as well as the on-exchange interest rate swap futures and other financial instruments which relied upon those rates.

From time to time during the Relevant Period, Goldman's USD ISDAFIX submissions constituted false, misleading, or knowingly inaccurate reports because they purported to reflect Goldman's honest view of the true costs of entering into a standard fixed-for-floating interest rate swap in particular tenors, but in fact reflected traders' desire to move USD ISDAFIX higher or lower in order to benefit their positions.

By using these impermissible factors in making its USD ISDAFIX submissions and without disclosing that it based its submissions on these impermissible factors, Goldman conveyed false, misleading, or knowingly inaccurate information that the rates it submitted were based on the prices at which Goldman would offer and bid swaps to an acknowledged dealer of good credit in the swaps market absent intent to manipulate USD ISDAFIX. Moreover, certain Goldman submitters and traders knew that Goldman's USD ISDAFIX submissions contained false, misleading, or knowingly inaccurate information. By such conduct, Respondents violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2006).

D. The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. Are Liable for the Acts of their Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2015), provide that "[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust." Pursuant to Section 2(a)(1)(B) of the Act and Commission Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. are liable for the acts, omissions, and failures of any traders, managers, and submitters who acted as their employees and/or agents in the conduct described above. Accordingly, as set forth above, The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006); Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012); and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2015).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006), and for conduct occurring on or after August 15, 2011, Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2015).

VI.

OFFER OF SETTLEMENT

Respondents, without admitting or denying the findings or conclusions herein, have submitted the Offer in which they:

A. Acknowledge receipt of service of this Order;

B. Admit the jurisdiction of the Commission with respect to this Order only and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), 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 (2015), relating to, or arising from, this proceeding;

7. any and all claims that they 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. makes findings by the Commission that Respondents violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2006), and for conduct occurring on or after August 15, 2011, Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2015);

2. orders Respondents to cease and desist from violating Sections 6(c)(1),

6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Commission Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2015);

3. orders Respondents to pay a civil monetary penalty in the amount of one hundred twenty million U.S. dollars ($120,000,000) plus post-judgment interest; and

4. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

F. Respondents represent that they have already undertaken certain steps intended to make reasonable efforts to ensure the integrity of any submission to, and trading in connection with, certain benchmarks to which Goldman submits or submitted, including ISDAFIX and its successor benchmark (*see supra* footnote 2), including, but not limited to, the following:

1. Respondents have conducted a global review of risks relating to benchmarks, including of the processes and controls governing their participation in benchmark rates, including USD ISDAFIX, and have reaffirmed their prohibition on manipulation and attempted manipulation of benchmark rates specifically (in addition to existing broad prohibitions on market manipulation);

2. Respondents enhanced controls and processes surrounding their participation in benchmarks (including interest-rate swap benchmarks), including but not limited to:

a. Enhanced guidance relating to the appropriate source of benchmark contribution information, including the implementation of automated and/or transaction-based contributions where possible, as well as identification and mitigation of potential conflicts of interest relating to Respondents' trading in products affected by the relevant benchmark;

b. Required prior approval of all contributions to benchmarks by a Securities Division PMD, including the identification of contributing individuals and their supervisors;

c. Implementation of record keeping of benchmark contributions and the methodologies for establishing contributions;

d. Establishment of a Contribution Working Group comprised of Compliance personnel, which meets regularly to discuss topics and potential risks relating to benchmark contributions;

e. Annual review of each benchmark contribution by the relevant approver (a Securities Division PMD), as well as quarterly attestations by trading supervisors and employees regarding compliance with established policies;

f. Enhanced control framework and governance, including developing appropriate escalation procedures for both internal and external conduct relating to benchmarks, and mandating periodic review and audit of contributions to benchmarks.

3. Respondents enhanced controls and processes relating to their prohibition on benchmark contributions (and trading generally) intended to mislead or manipulate the market, including but not limited to:

a. Development of daily reports showing upcoming expiries potentially referencing ISDAFIX, as well as additional trading and position surveillances, designed to detect potential manipulation of benchmark rates through trading and/or related communications;

b. As part of enhanced training of all employees on the submitting and trading desks regarding market manipulation, additional discussion concerning improper submission and trading practices;

c. Enhanced policies and procedures providing additional guidance regarding benchmark contributions and market manipulation generally.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents shall cease and desist from violating Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13b, 13(a)(2) (2012), and Commission Regulations 180.1(a) and 180.2, 17 C.F.R. §§ 180.1(a), 180.2 (2015).

B. Respondents shall pay a civil monetary penalty of one hundred twenty million U.S. dollars ($120,000,000), within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then 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 (2012). Respondents 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262
Nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondents and the name and docket number of this proceeding. The Respondents 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. Respondents and their successors and assigns shall comply with the following undertakings set forth in the Offer:

1. REMEDIATION

As set forth above in Section VI, paragraph F, Respondents represent that they have already undertaken and continue to undertake extensive remedial measures to implement and strengthen Respondents' internal controls and procedures relating to the fixing of interest-rate swaps benchmarks and related supervision of Respondents' swaps, options (volatility), and exotics desks. With respect to Respondents' remediation efforts to the extent not already undertaken, Respondents undertake that:

a. Respondents will implement and improve their internal controls and procedures in a manner reasonably designed to ensure the integrity of the fixing of any interest-rate swap benchmark, including measures to identify and address internal or external conflicts of interest;

b. Respondents' remediation improvements will include established internal controls and procedures relating to:

i. measures designed to enhance the detection and deterrence of improper communications concerning interest-rate swap benchmarks, including the form and manner in which communications may occur;

ii. monitoring systems designed to enhance the detection and deterrence of trading or other conduct potentially intended to manipulate directly or indirectly swap rates, including benchmarks based on interest-rate swaps;

iii. periodic audits, at least annually, of Respondents' participation in the fixing of any benchmark based on interest-rate swaps;

iv. supervision of trading desks that participate in the fixing of any benchmark based on interest-rate swaps;

v. supervision of trading desk conduct that relates to any interest-rate swap benchmark;

vi. routine and ongoing training of all traders, supervisors and others who are (1) involved in the fixing of any benchmark based on interest-rate swaps or (2) oversee supervisors or desk heads involved in the fixing of any benchmark based on interest rate swaps;

vii. routine and on-going training of all trading desk personnel and supervisors relating to the trading of any product that references a benchmark based on interest-rate swaps;

viii. processes for the periodic but routine review of written and oral communications of any traders, supervisors and others who are involved in the fixing of any benchmark based on interest-rate swaps with the review being documented and documentation being maintained for a period of three (3) years; and

ix. maintain a system for reporting, handling and investigating any suspected misconduct or questionable, unusual or unlawful activity relating to the fixing of any benchmark based on interest-rate swaps with escalation to compliance and legal, and with reporting of material matters to the executive management of Respondents and the Commission, as appropriate; the Respondents shall maintain the record basis of the handling of each such matter for a period of three (3) years.

c. Within 120 days of the entry of this Order, Respondents shall make a report to the Commission, through the Division, concerning their remediation efforts before and since the entry of this Order. Within 365 days of the entry of this Order, Respondents shall submit a report to the Commission, through the Division, explaining how Respondents have complied with the undertakings set forth herein. The report shall contain a certification from a representative of Respondents' Executive Management, after consultation with Respondents' chief compliance officer(s) and any other applicable parties, that Respondents have complied with the undertakings set forth above, and that Respondents have established policies, procedures, and controls to satisfy the undertakings set forth in the Order.

d. In addition to and apart from the Executive Management certification required in Section C(1)(c), the Goldman supervisor responsible for oversight of the firm's United States interest rate derivatives trading business (i.e., the most senior supervisor of the firm's swaps, volatility, exotics, and U.S. Treasuries trading desks) shall provide a sworn certification, after consultation with Goldman's chief compliance officer(s) and any other applicable parties, that (i) he or she has reviewed the Section C(1)(c) report required within 365 days of the entry of this Order concerning Goldman's compliance with the undertakings set forth herein; (ii) based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report; (iii) based on his or her role with respect to the relevant trading desks, he or she has evaluated the effectiveness of the internal controls and procedures implemented by Goldman and reported his or her evaluation to Goldman's chief compliance officer(s) and any other applicable parties; and (iv) with respect to the undertakings in Section C(1)(a) and (b)(i) through (b)(ix), specifies his or her personal knowledge of and/or involvement in Goldman's efforts to implement each undertaken improvement in internal controls and procedures. The certification described in this paragraph shall be sworn and delivered to the Commission, through the Division, within 365 days of the entry of this Order.

2. COOPERATION WITH THE COMMISSION

In this action, and in any investigation or other action instituted by the Commission related to the subject matter of this action, Respondents shall cooperate fully and expeditiously with the Commission, including the Division. As part of such cooperation, Respondents agree to the following for a period of three (3) years from the date of the entry of this Order, or until all related investigations and litigations in which the Commission, including the Division, is a party, are concluded, including through the appellate review process, whichever period is longer:

- **a.** Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
- **b.** Comply fully, promptly, completely, and truthfully with all inquiries and requests for non-privileged information or documents;
- **c.** Provide authentication of documents and other evidentiary material;
- **d.** Provide copies of non-privileged documents within Respondents' possession, custody, or control;
- **e.** Subject to applicable laws and regulations, make their best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondents, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
- **f.** Subject to applicable laws and regulations, make their best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondents;

Respondents also agree that they will not undertake any act that would limit their ability to cooperate fully with the Commission. Respondents will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should Respondents seek to change the designated agent to receive such requests, notice of such intention shall be given to the Division fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States of America.

3. PROHIBITED OR CONFLICTING UNDERTAKINGS

Should the Undertakings herein be prohibited by, or be contrary to, the provisions of any obligations imposed on Respondents by any presently existing, or hereinafter enacted or promulgated laws, rules, regulations, or regulatory mandates, then Respondents shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondents will abide by the obligations imposed by the laws, rules, regulations, and regulatory mandates. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, including, but not limited to, Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2015), in effect now or in the future.

4. PUBLIC STATEMENTS

Respondents agree that neither they nor any of their successors and assigns, agents, or employees under their 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 Respondents' (i) testimonial obligations, or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

5. PARTIAL SATISFACTION

Respondents understand and agree that any acceptance by the Commission of partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.

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: December 21, 2016