UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:	)	
	)	
Goldman Sachs & Co. LLC, f/k/a Goldman, Sachs & Co.,	)	**CFTC Docket No. 20-10**
	)	
Respondent.	)	

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

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from in or about January 2014 to February 2014 ("Relevant Period"), Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC) ("Goldman" or "Respondent") violated Regulations 23.202(a)(1), (b)(1), and 23.203(b)(2), 17 C.F.R. §§ 23.202(a)(1), (b)(1) (2018), 23.203(b)(2) (2017), of the Commission Regulations ("Regulations") promulgated under the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1–26 (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.

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

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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During an investigation by the Commission's Division of Enforcement ("Division"), the Division requested that Goldman produce certain audio recordings on dates in January 2014, which Goldman, as a swap dealer, was required to make and keep. Goldman was unable to produce many of the recordings requested by the Division due to a recording error caused by a malfunction during the course of a system upgrade that affected recordings of the phone lines of a trading and sales desk in one of Goldman's offices for twenty calendar days in January and February 2014. Goldman's inability to produce these recordings impeded the Division's ongoing investigation, because the Division was unable to obtain the information that should have been captured in many of the recordings through any other means.

B. RESPONDENT

Goldman Sachs & Co. LLC, formerly known as Goldman, Sachs & Co., is a global banking, securities, and investment management firm with its main office in New York, New York. Goldman has been provisionally registered with the Commission as a swap dealer since December 31, 2012, and has been registered as an FCM since 1979 and as a CTA and CPO since 1990.

C. FACTS

To comply with its recordkeeping obligations as a swap dealer under Part 23 of the Regulations, 17 C.F.R. pt. 23 (2018), and in particular its obligations to make and keep recordings of certain oral communications concerning trading in swaps and related cash and forward transactions pursuant to Regulations 23.202(a)(1) and (b)(1), and 23.203(b)(2), 17 C.F.R. §§ 23.202(a)(1), (b)(1) (2018), 23.203(b)(2) (2017),[2] Goldman began using recording hardware to record the phone lines of its trading and sales desks in late March 2013.

In the early morning of January 18, 2014, as part of an installation of a Microsoft security patch on certain software Goldman used in one of its offices, Goldman shut down and then restarted its servers. Before Goldman's servers had finished powering back up, the recording hardware that Goldman utilized started prematurely. As a result, the recording hardware did not properly resume recording, nor did the hardware's failsafe alarm alert Goldman to the failure and in turn initiate a backup recording system. While the recording hardware continued to record metadata associated with calls and to create audio recording files, the audio files created were blank. At the time, Goldman had followed the vendor's configuration instructions and was unaware of the vulnerability of the recording hardware it utilized to re-starting prematurely. Goldman did not, however, take any steps to verify that the system was functioning properly and capturing audio after the system upgrade.

[2] After the Relevant Period, the retention period for recordings of oral communications was moved from Regulation 23.203(b)(2) to Regulation 1.31(b)(2), 17 C.F.R. § 1.31(b)(2) (2018), but it continues to be one year.

On February 7, 2014, the physical desk locations of certain personnel in the affected office were changed. That same day, when Goldman conducted a spot-check of the recording system in that office because of the physical desk location changes, it discovered the recording error. After discovering the error, Goldman consulted with the vendor that had provided the recording hardware, identified the issue, and re-engaged the recording system to record properly beginning in the early morning of February 8.

Following the discovery of the recording failure, Goldman put in place a number of measures to decrease the likelihood of such an error recurring, and to catch such an error more promptly should one occur.

The Division subsequently opened an unrelated investigation that concerned the affected office and requested that Goldman produce certain audio recordings for dates within the twenty-calendar-day period of the recording failure described above. Because of the recording failure, Goldman was unable to produce a significant number of the requested recordings. The Division learned of Goldman's failure to keep and maintain the recordings when Goldman informed the Division it was unable to produce them. Goldman's failure to keep, maintain, and produce the requested records impeded the Division's investigation, because the Division was unable to obtain the information that should have been captured in many of the recordings through any other means.[3]

III. LEGAL DISCUSSION

Regulation 23.202(a)(1) and (b)(1), 17 C.F.R. § 23.202(a)(1), (b)(1) (2018), requires, in relevant part, every swap dealer to keep daily trading records of all swaps and related cash and forward transactions it executes, including, specifically a record of all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that led to the execution of a swap transaction or the conclusion of a related cash or forward transaction. During the Relevant Period, Regulation 23.203(b)(2), 17 C.F.R. § 23.203(b)(2) (2017), specified that such recordings must be kept for a period of one year. Goldman, due to a recording failure, did not make and keep required recordings of the phone calls of traders and sales personnel in one of its offices that contained the oral communications that led to the execution of swaps and related cash and forward transactions during the Relevant Period. These failures violated Regulations 23.202(a)(1) and (b)(1) and 23.203(b)(2).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, **Goldman Sachs & Co. LLC** violated Regulations 23.202(a)(1), (b)(1), and 23.203(b)(2), 17 C.F.R. §§ 23.202(a)(1), (b)(1) (2018), 23.203(b)(2) (2017).

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[3] Although Goldman was unable to produce a significant number of the requested recordings, Goldman was able to produce recordings of certain calls made or received by traders in the affected office during this twenty-calendar-day period to or from other recorded phone lines in Goldman's other offices. Goldman was also able to produce the metadata associated with all calls made by the relevant traders, as the recording failure did not affect call metadata.

V. OFFER OF SETTLEMENT

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

A. Acknowledges service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waives:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;

7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

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 Regulations 23.202(a)(1), (b)(1), and 23.203(b)(2), 17 C.F.R. §§ 23.202(a)(1), (b)(1) (2018), 23.203(b)(2) (2017);

2. Orders Respondent to cease and desist from violating Regulations 23.202(a)(1), (b)(1), and Regulation 1.31(b)(2), 17 C.F.R. § 1.31(b)(2) (2018);

3. Orders Respondent to pay a civil monetary penalty in the amount of one million dollars ($1,000,000), plus post-judgment interest;

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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 Regulations 23.202(a)(1), (b)(1), and 1.31(b)(2), 17 C.F.R. §§ 23.202(a)(1), (b)(1), 1.31(b)(2) (2018).

B. Respondent shall pay a civil monetary penalty in the amount of one million dollars ($1,000,000) ("CMP Obligation"). If the CMP Obligation is not paid immediately, 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).

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

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

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

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

1. 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 comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any 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.

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

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: November 26, 2019