# NASDAQ PHLX LLC
## LETTER OF ACCEPTANCE, WAIVER AND CONSENT
## NO. 2019061061105

TO:    Nasdaq Phlx LLC
        c/o Department of Enforcement
        Financial Industry Regulatory Authority ("FINRA")

RE:    Goldman Sachs & Co. LLC, Respondent
        Member Firm
        CRD No. 361

Pursuant to Rule 9216 of Nasdaq Phlx LLC ("Phlx") Code of Procedure,[1] Goldman Sachs & Co. LLC ("Goldman" or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, Phlx will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

## I.

## ACCEPTANCE AND CONSENT

A.    Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Phlx, or to which Phlx is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by Phlx:

### BACKGROUND

Goldman has been a member of Phlx since January 1936 and a FINRA member since October 1936. It is a full-service broker-dealer engaged in, among other things, market making, execution services, and underwriting. The firm is headquartered in New York, New York, and has approximately 8,700 registered individuals. The firm has no relevant disciplinary history.

### SUMMARY

This matter arises from a 2019 examination of the firm conducted by FINRA's Department of Market Regulation on behalf of Phlx and other options exchanges. The examination found that from January 2017 to December 2020 (the "Relevant Period"), Goldman failed to comply with the recordkeeping requirements of Rule 17a-3 of the

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[1] Series 9000 of The Nasdaq Stock Market LLC Rules are incorporated by reference into Phlx Rule General 5, Section 3, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction.

Securities Exchange Act of 1934 and Phlx Rule 760.[2]  During the same period, Goldman failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Exchange Act Rule 17a-3 and Phlx Rule 760 in violation of Phlx Rule 748.[3]

## FACTS AND VIOLATIVE CONDUCT

1. The recordkeeping provisions of the federal securities laws and Phlx rules are designed to ensure that regulators have access to important information about securities transactions.  Access to complete and accurate transaction records is essential for effective surveillance and examination of broker-dealers by Phlx and other regulators.

2. Exchange Act § 17(a) and Exchange Act Rule 17a-3(a)(6)(i) thereunder require broker-dealers, such as Goldman, to create a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.  The rule requires the memorandum to show, among other things, the time of order entry.[4]

3. Phlx Rule 760, and subsequently Options 6E, Section 1, requires member organizations to make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

4. During the Relevant Period, Goldman failed to maintain accurate records for thousands of options orders manually handled by the relevant trading desks. Specifically, Goldman routed to Phlx and another options exchange approximately 18,908[5] options orders without systematically recording the transmission times.

5. Accordingly, the firm violated Exchange Act § 17(a) and Exchange Act Rule 17a-3 thereunder, Phlx Rule 760, and subsequently Options 6E, Section 1, during the Relevant Period.

6. Phlx Rule 748, and subsequently General 9, Section 20, requires members to "establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise the types of business(es) in which the member or member organization engages in and to supervise the activities of all registered representatives, employees, and associated persons.  The written supervisory procedures and the system for applying such procedures shall reasonably be designed to prevent and detect, insofar as practicable, violations of the applicable securities laws and regulations, including the By-Laws and Rules of the Exchange."

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[2] As of February 3, 2020, Phlx Rule 760 was renumbered to Options 6E, Section 1.
[3] As of February 3, 2020, Phlx Rule 748 was renumbered to General 9, Section 20.
[4] Rule 17a-3(a)(6) defines the time of order entry as "the time when the member, broker or dealer transmits the order or instruction for execution."
[5] This number represents an extrapolation by FINRA based on sample periods reviewed.

7. During the Relevant Period, firm personnel responsible for reviewing manual options order tickets entered by the relevant trading desks failed to verify that those tickets included the time at which the orders were transmitted to options exchanges. The firm had no automated system or exception reports designed to verify that traders were recording options order transmission times as required or that supervisors were appropriately reviewing the order tickets to detect instances when the transmission time was omitted. The firm remediated these deficiencies as of December 2020.

8. For the reasons set forth above, Goldman violated Phlx Rule 748, and subsequently General 9, Section 20, during the Relevant Period.

B. Respondent also consents to the imposition of the following sanctions:

1. Censure; and

2. A total fine in the amount of $221,500 ($80,750 payable to Phlx).[6]

Respondent agrees to pay the monetary sanction in accordance with its executed payment form. Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

## WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under Phlx's Code of Procedure:

A. To have a Formal Complaint issued specifying the allegations against the firm;

B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;

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[6] The remainder of the fine shall be allocated to BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, The Nasdaq Options Market LLC, and NYSE Arca, Inc. for similar violations.

C.   To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D.   To appeal any such decision to the Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

## III.

## OTHER MATTERS

Respondent understands that:

A.   Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx Rule 9216;

B.   If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondent; and

C.   If accepted:

   1.   This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;

   2.   Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and

   3.   Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis.  Respondent may not take any position in any proceeding brought by or on behalf of Phlx, or to which

Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.

D.  Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by Phlx, nor does it reflect the views of Phlx or its staff.

The undersigned, on behalf of the firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the firm has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

Goldman Sachs & Co. LLC
Respondent

March 30, 2022
_____
Date

By: _Colleen M. O'Brien_____

Print Name: ___Colleen M. O'Brien_____

Title: ___Managing Director_____

Accepted by Phlx:

April 14, 2022
_____
Date

_Monika Mohan_____

Monika V. Mohan
Counsel
Department of Enforcement

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