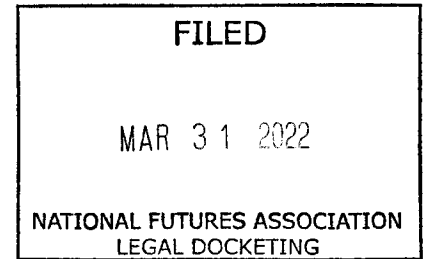


**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**



In the Matter of: )  
)  
GOLDMAN SACHS & CO., LLC ) NFA Case No. 22-BCC-003  
(NFA ID #0002014), )  
)  
Respondent. )

**COMPLAINT**

Having reviewed the investigative report submitted by the OTC Derivatives Compliance Department of National Futures Association (NFA), and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, this Committee issues this Complaint against Goldman Sachs & Co., LLC (Goldman).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Goldman was provisionally registered with the Commodity Futures Trading Commission (CFTC) as a swap dealer (SD) and approved as an NFA Member. As such, Goldman was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

**BACKGROUND**

2. Goldman has been an NFA Member since 1982 and became a provisionally registered SD in December 2012. The firm is headquartered in New York, New York.

3. Goldman is a "covered swap entity" within the meaning of CFTC Regulations Part 23, Subpart E, "Capital and Margin Requirements for Swap Dealers and Major Swap Participants."
4. NFA commenced an examination of Goldman on January 15, 2019 (the 2019 exam). The 2019 exam also included a review of documents and transactions related to other Goldman-affiliated SD Members. All of these SDs are operated along with Goldman as a single global business and pursuant to similar policies and procedures. NFA issued a report detailing its exam findings on October 1, 2019.
5. As alleged in more detail below, during the 2019 exam, NFA discovered that Goldman had deficiencies related to the CFTC Part 23 Regulations governing variation margin (VM) and external business conduct standards, among other areas.
6. The 2019 exam also revealed deficiencies relating to Goldman failing to produce accurate and complete information to NFA in a timely fashion.
7. Apart from the 2019 exam, Goldman also did not provide NFA with timely, accurate, and complete information relating to its initial margin (IM) model monitoring activities.

#### **APPLICABLE RULES**

8. NFA Compliance Rule 2-49(a) provides that any SD Member that violates any requirement under Part 23 of the CFTC's Regulations shall be deemed to have violated an NFA requirement.

9. CFTC Regulation 23.153(a) and (b) require in pertinent part that a covered swap entity shall collect the VM amount from, or post the VM amount with, a counterparty that is a swap entity or financial end user on an initial and continuing basis.
10. CFTC Regulation 23.202(a) requires, in pertinent part, an SD to make and keep daily trading records of all swaps it executes, and to ensure that its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap.
11. CFTC Regulation 23.202(a)(1) further specifies that an SD must make and keep pre-execution trade information, including records of all oral and written communications provided concerning prices, that lead to the execution of a swap.
12. CFTC Regulation 23.402(a) requires, in pertinent part, an SD to have written policies and procedures reasonably designed to ensure compliance with the requirements of Subpart H (i.e., CFTC Regulations 23.400 to 23.451), and to implement and monitor compliance with such policies and procedures as part of the SD's supervision requirements specified under Subpart J (i.e., CFTC Regulations 23.600 to 23.611).
13. CFTC Regulation 23.402(b) requires, in pertinent part, an SD to implement policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the SD prior to the execution of the transaction that are necessary for conducting business with the counterparty, including facts required to comply with applicable laws, regulations and rules.

14. CFTC Regulation 23.402(d) allows, in pertinent part, an SD to rely on the written representations of a counterparty to satisfy its due diligence requirements under Subpart H, unless it has information that would cause a reasonable person to question the accuracy of the representation.
15. CFTC Regulation 23.402(g) requires, in pertinent part, an SD to create a record of its compliance with the requirements of Subpart H and to retain records in accordance with Subpart F and Regulation 1.31.
16. CFTC Regulation 23.431(a) requires, in pertinent part, an SD to disclose to any counterparty (other than a SD, major swap participant, security-based swap dealer, or major security-based swap participant), at a reasonably sufficient time prior to entering into a swap, material information concerning the swap, which shall include with respect to disclosure of the price of the swap, the mid-market mark of the swap.
17. CFTC Regulation 23.602 requires an SD to diligently supervise all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function).
18. NFA Compliance Rule 2-49(b) requires, in pertinent part, SD Members to promptly submit to NFA any reports, documents, or notices, and any other supplemental information, as required by NFA, and in the form and manner prescribed by NFA.

## COUNT I

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-49(a): FAILURE TO COMPLY WITH CFTC REGULATIONS 23.153, 23.202(a), 23.402(a), 23.402(b), 23.402(g), AND 23.431(a).**

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19. The foregoing paragraphs are realleged as if fully stated herein.

#### Variation Margin

20. Under CFTC Regulation 23.153(a) and (b), Goldman is required to collect or post VM, on an initial and continuous basis, on all non-exempt uncleared swaps executed with another SD or financial end user.

21. Under CFTC Regulation 23.402(a), Goldman is required to have, implement, and monitor its compliance with written policies and procedures reasonably designed to ensure compliance with the requirements of Subpart H, which includes the Know Your Counterparty (KYC) requirements of CFTC Regulation 23.402(b).

22. Under CFTC Regulation 23.402(b), entitled "Know Your Counterparty," Goldman is required to implement policies and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to Goldman prior to conducting business with the counterparty. For purposes of this regulation, the essential facts concerning a counterparty are, in pertinent part, the facts required to comply with applicable laws, regulations, and rules, which would include the CFTC's VM regulations.

23. During the 2019 exam, NFA reviewed Goldman's then-current KYC policies and procedures, as well as the firm's KYC practices.

24. NFA's review showed that Goldman did not establish policies and procedures reasonably designed to obtain and retain a record of the essential facts required to determine if the firm was required to exchange VM with its counterparties.
25. Although Goldman relied extensively on counterparty representations to determine whether it had to post and collect VM with them, Goldman's KYC procedures did not include any process for checking a counterparty's representations about VM against other information Goldman had that would cause a reasonable person to question the accuracy of such representations.
26. In accord with these deficient KYC procedures, in some circumstances, Goldman relied on representations from some counterparties regarding their supposed VM exemptions even though Goldman had information that would cause a reasonable person to question the accuracy of the representations. Goldman did not conduct the required due diligence on these counterparties.
27. In October-November 2019, in response to NFA's 2019 exam findings, Goldman began to review all counterparties the firm had previously classified as exempt from the CFTC's VM requirements and reassess whether such counterparties should have been treated as exempt.
28. Based on this review, in May 2020, Goldman determined and told NFA that there were at least 8 counterparties with which it should have been exchanging VM but did not do so.
29. Additionally, in May 2020, Goldman told NFA that there were at least 428 counterparties the firm had previously treated as exempt from the CFTC's VM requirements, but that it would now treat as non-exempt. Goldman indicated that

some of this group of counterparties appeared to be financial in nature and previously had uncleared swaps with Goldman.

30. As alleged above, Goldman did not collect or post VM on uncleared swaps with counterparties that were covered by the CFTC's VM regulations; did not have written procedures reasonably designed to ensure compliance with the CFTC's KYC requirements; and did not implement policies and procedures reasonably designed to obtain and retain a record of essential facts regarding its counterparties.

#### Pre-Trade Mid-Market Mark

31. Under CFTC Regulation 23.431(a), Goldman is required to disclose material information about a swap to the counterparty before trade execution, including the pre-trade mid-market mark (PTMM) of an uncleared swap, as set forth in CFTC Regulation 23.431(d)(2).
32. Under CFTC Regulation 23.202(a) and (a)(1), Goldman is required to maintain daily trading records that include, among other things, all written and oral communications (including PTMM disclosure) for each transaction, which records are sufficient to conduct a comprehensive and accurate trade reconstruction for the swap.
33. Under CFTC Regulation 23.402(a), Goldman is required to have and implement written policies and procedures reasonably designed to ensure compliance with the requirements of Subpart H, which includes CFTC Regulations 23.431(a) and 23.402(g).

34. Under CFTC Regulation 23.402(g), Goldman is required to create and retain records demonstrating its compliance with the requirements of Subpart H, which includes CFTC Regulation 23.431.
35. During the 2019 exam, NFA reviewed Goldman's policies, procedures and practices for providing counterparties with the PTMM for its swaps.
36. On April 15, 2019, Goldman staff made a presentation to NFA in which they said that the firm's process is to provide counterparties with the PTMM for a trade in one of several ways: orally, or via chat, email, or the firm's online platform called Marquee.
37. NFA requested documentation for a sample of 10 swaps demonstrating that Goldman had provided PTMM for these swaps.
38. The documentation that Goldman produced showed that it either had not provided PTMM to counterparties or had not created and maintained a record that it had provided PTMM to counterparties in 9 out of the 10 transactions.
39. Specifically, Goldman did not provide evidence to NFA that the firm had disclosed PTMMs for 4 transactions; did not maintain records to demonstrate that PTMMs on Marquee were actually available to counterparties prior to trade execution for 4 other transactions; and did not confirm the PTMM in writing for 1 transaction where Goldman provided the PTMM orally.
40. As part of the 2019 exam, NFA also reviewed 39 of Goldman's trade reconstruction exercises, which the firm uses to review compliance with CFTC Regulations 23.202(a) and 23.402(g), among other requirements.



41. At least 25% of the trades underlying these reconstruction exercises also had deficiencies related to PTMM, where Goldman either did not provide the PTMM, or did not maintain records showing the firm had provided the PTMM, or did not confirm the PTMM in writing after providing the PTMM orally.
42. During the exam, in May 2019, Goldman became aware that the PTMMs for Latin American (LatAm) interest rate products had been unavailable on Marquee since at least 2015. However, the Goldman desk trading LatAm interest rate products had been relying exclusively on Marquee to provide PTMMs to counterparties.
43. As a result, Goldman did not provide PTMMs for LatAm interest rate products from 2015 until May 2019.
44. As alleged above, Goldman did not implement policies and procedures reasonably designed to ensure compliance with its PTMM obligations; did not make and retain records of compliance with its PTMM obligations; did not provide PTMM to uncleared swaps counterparties when required; did not create and retain records of its compliance with the business conduct standards; and did not ensure its daily trading records included all information necessary to conduct a comprehensive and accurate trade reconstruction for each swap including pre-execution trade information.
45. By reason of the foregoing acts and omissions, Goldman is charged with violating NFA Compliance Rule 2-49(a).

## COUNT II

### **VIOLATIONS OF NFA COMPLIANCE RULE 2-49(b): FAILURE TO PROMPTLY SUBMIT ACCURATE AND COMPLETE REPORTS, DOCUMENTS, AND SUPPLEMENTAL INFORMATION AS REQUIRED BY NFA.**

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46. The foregoing paragraphs are realleged as if fully stated herein.
47. NFA requires its Members, including SDs, to submit certain reports, documents and other information to NFA.
48. However, as alleged below, Goldman provided inaccurate, incomplete, and inconsistent information in certain quarterly IM Model Ongoing Monitoring Reports (Monitoring Reports) and in other submissions provided to NFA.
49. Under CFTC Regulation 23.154, Goldman, as a covered SD, has been required since September 1, 2016 to daily calculate IM to be exchanged with in-scope counterparties.
50. In August 2016, NFA approved Goldman's use of a risk-based model to calculate IM. Since that time, NFA has required Goldman to provide quarterly Monitoring Reports to NFA that demonstrate that Goldman is appropriately monitoring the model's performance to ensure that the firm remains in compliance with the CFTC's margin regulations.
51. Starting in late 2018, Goldman filed multiple incomplete and/or late Monitoring Reports, which required NFA staff to contact Goldman on these occasions to clarify the firm's analysis of IM model performance and request information that Goldman had omitted.

52. For example, Goldman submitted reports due December 31, 2018 incomplete, which filing was not complete until 66 days after the due date; submitted reports due September 30, 2019 incomplete, which filing was not complete until 21 days after the due date; and submitted reports due December 31, 2019 incomplete, which filing was not complete until 41 days after the due date.
53. Additionally, NFA in an October 2020 Notice required SD Members to make certain submissions to NFA regarding their incorporation of SOFR-linked products in their IM models.
54. Goldman initially and for a period of time did not make the submissions required by this Notice.
55. From January through April 2021, NFA made other requests of Goldman for information and submissions relating to its incorporation of SOFR-linked products into its IM model.
56. Goldman provided incomplete responses from January through April 2021.
57. NFA repeated its inquiries to Goldman several times and in different forms before Goldman on April 23, 2021 provided NFA with a clear and direct response regarding the October 2020 Notice, and its incorporation of SOFR-linked products into its IM model.
58. Additionally, during the 2019 exam, Goldman was often late in providing NFA with requested documents and information. Many requested documents were submitted to NFA 40 or more days after the deadline imposed by NFA, including a written response from Goldman regarding swap employee trainings, and Goldman's deficient KYC policies and procedures.

59. Goldman also did not provide NFA with accurate and complete information during the 2019 exam about how it decided to treat counterparties as exempt from the CFTC's VM requirements.
60. Additionally, as described above, in May 2019 Goldman learned that PTMMs for LatAM interest rate products were not available on Marquee, which should have made Goldman aware that its April 15, 2019 presentation to NFA was not fully accurate regarding PTMM. Goldman did not update NFA concerning this PTMM compliance failure for over 2 months after having discovered it, leaving NFA with incorrect information regarding this aspect of Goldman's provision of PTMMs during that period of the exam.
61. By reason of the foregoing acts and omissions, Goldman is charged with violating NFA Compliance Rule 2-49(b).

### **COUNT III**

#### **VIOLATIONS OF NFA COMPLIANCE RULE 2-49(a): FAILURE TO SUPERVISE BY FAILING TO COMPLY WITH CFTC REGULATIONS 23.402(a)(2) and 23.602(a).**

62. The foregoing paragraphs are realleged as if fully stated herein.
63. Under CFTC Regulation 23.602(a), Goldman is required to diligently supervise all activities relating to its business.
64. As part of this supervision requirement, under CFTC Regulation 23.402(a)(2) Goldman must monitor its compliance with its external business conduct standards policies and procedures.
65. As alleged throughout this Complaint, Goldman did not meet its obligation to diligently supervise activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status

or performing a similar function). Goldman also did not sufficiently monitor its own compliance with certain external business conduct standards policies and procedures.

66. For example, Goldman's inadequate VM-related KYC policies and procedures resulted in a failure to properly classify certain counterparties and conduct additional due diligence when required, as well as to exchange required VM with certain counterparties.
67. Additionally, Goldman either did not provide a PTMM to certain counterparties when required or lacked records to demonstrate that a PTMM was provided. Moreover, Goldman did not detect for years that the firm was not providing PTMMs to any of its counterparties on LatAm interest rate products.
68. Goldman's failures to provide complete, accurate, and timely submissions to NFA, both during the 2019 exam and in respect to its IM model monitoring, also show that the firm did not diligently supervise activities relating to its business.
69. Goldman's supervisory deficiencies with respect to recordkeeping and pre-trade disclosure requirements are illustrated by Goldman's trade reconstruction exercises.
70. Goldman reviews compliance with certain CFTC recordkeeping requirements through trade reconstruction exercises in which Goldman's compliance employees are supposed to review trades and take corrective action when the trades do not comply with recordkeeping or pre-trade disclosure requirements.
71. As alleged above, NFA reviewed a sample of 39 of Goldman's trade reconstruction exercises during the 2019 exam.

72. The majority of these 39 trade reconstruction exercises were done in a way that would not have provided Goldman with the information the firm needed to determine if it was complying with the CFTC's recordkeeping and pre-trade disclosure requirements.
73. For example, several of the trade reconstruction exercises had inaccurate timelines, including instances where the firm supposedly completed the trade reconstruction months before the actual trade even occurred.
74. For the trade reconstruction exercises that had PTMM-related deficiencies in the trade itself or the trade documentation (*i.e.*, the trades referenced in ¶ 41 above), in nearly all of them Goldman either did not note in the exercise the PTMM-related deficiency at all or noted the deficiency but did not take remedial action.
75. As alleged above, Goldman's trade reconstruction exercises also lacked documentation showing that PTMMs supposedly "streaming" to counterparties, via Marquee or otherwise, were actually available to particular counterparties prior to the execution of particular trades.
76. For additional trade reconstruction exercises out of the 39 that NFA sampled for review, Goldman concluded that no PTMM was required but did not include documentation to substantiate this conclusion.
77. Further, Goldman completed some trade reconstruction exercises too late (*e.g.*, 6 to 9 months after the date of the trade) to provide sufficient compliance or remedial value even if deficiencies were noted.

78. The inadequacy of Goldman's trade reconstruction exercises contributed to Goldman not detecting that from 2015 to 2019 PTMMs were not being provided on LatAm interest rate products.
79. By reason of the foregoing acts and omissions, Goldman is charged with further violations of NFA Compliance Rule 2-49(a).

### **PROCEDURAL REQUIREMENTS**

#### **ANSWER**

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department-Docketing

E-Mail: [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

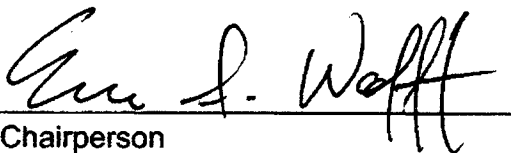
**POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY**

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: 3/31/2022

By:   
Chairperson