

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101169 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22185

In the Matter of

**The Goldman Sachs Group,
Inc.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against The Goldman Sachs Group, Inc. (“Goldman” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to this reporting requirements with respect to several issuers, Goldman failed to file on a timely basis multiple Section 16(a) reports of holdings and/or transactions in these issuers' securities that it and certain Goldman affiliates were required to file.

Respondent

3. **Goldman**, a Delaware corporation headquartered in New York, New York, together with its direct and indirect subsidiaries, is a global financial services firm. Goldman's common stock is registered with the Commission under Section 12 of the Exchange Act and trades on the NYSE (ticker: GS). At the relevant times discussed herein, Goldman and certain Goldman affiliates were required Section 16(a) reporting persons with respect to the following issuers, each of which had and/or has a class of equity securities registered with the Commission under Section 12 of the Exchange Act: Ambarella Inc. (NASDAQ: AMBA) ("AMBA"), Avantor, Inc. (NYSE: AVTR) ("AVTR"), EnLink Midstream LLC (NYSE: ENLC) ("ENLC"), EnLink Midstream Partners, LP (NYSE: ENLK) ("ENLK"), Flywire Corp (NASDAQ: FLYW) ("FLYW"), Membership Collective Group Inc. (NYSE: MCG) (currently renamed Soho House & Co Inc. (NYSE: SHCO)) ("MCG"), ON24, Inc. (NYSE: ONTF) ("ONTF"), ProSight Global, Inc. (NYSE: PROS) ("PROS"). Goldman and relevant Goldman affiliates were greater than 10% beneficial owners of AMBA, AVTR, ENLC, ENLK, MCG, ONTF, and PROS; Goldman and certain Goldman affiliates also had arrangements, directly or indirectly, with AVTR, FLYW, and PROS pursuant to which Goldman designated one or more directors of the companies, and a

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

managing director of a Goldman affiliate served as a director of ON24. Goldman took responsibility for making Section 16(a) filings on behalf of itself and the relevant Goldman affiliates that were required to file such reports with respect to these issuers.

Applicable Legal Framework

4. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder,² subject to limited exceptions.³

5. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer’s

² Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities. Because a beneficial owner, under this standard, includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership held by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity. See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2857 (Jan. 16, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. Id.

³ A limited exception under Rule 16a-1(a)(1) applies to certain specified types of institutional investors, such as registered investment advisers and broker-dealers, that permit such institutions to exclude any shares “held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business” if “such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d-3(b)” (a “Qualified Institution”). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities. Rule 16a-1(a)(1)(vii).

fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer’s most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

6. There is no state of mind requirement for violations of Section 16(a) and the rules thereunder.⁴ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁵

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis⁶

7. Goldman and certain Goldman affiliates were required Section 16(a) reporting persons with respect to the issuers AMBA, AVTR, ENLK, ENLC, FLYW, ONTF, and PROS at the relevant times discussed herein.

8. Goldman and relevant Goldman affiliates failed to file on a timely basis multiple required Section 16(a) reports with the Commission with respect to these issuers, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
ENLK	4	3/15/2018	3/19/2018	8/14/2019
ENLK	4	3/23/2018	3/27/2018	8/14/2019

⁴ See, e.g., SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”). Negligence is sufficient to establish liability for causing such violations. See KPMG Peat Marwick LLP, 74 SEC Docket 357, 2001 WL 47245, at *19 (Jan. 19, 2001) (Commission opinion) (“[N]egligence is sufficient to establish ‘causing’ liability under Exchange Act Section 21C(a) ... in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter.”).

⁵ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

⁶ At the relevant times with respect to the issuers discussed herein, Goldman and the relevant Goldman affiliates were not eligible under Exchange Act Rule 16a-1(a)(1) subparagraphs (i) through (xi) to exclude any securities over which they were deemed to have direct or indirect beneficial ownership under Section 13(d) and the rules thereunder.

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
ENLK	4	3/26/2018	3/28/2018	8/14/2019
ENLK	4	4/11/2018	4/13/2018	8/14/2019
ENLK	4	6/15/2018	6/19/2018	8/14/2019
ENLK	4	6/18/2018	6/20/2018	8/14/2019
ENLK	4	7/3/2018	7/6/2018	8/14/2019
ENLK	4	8/7/2018	8/9/2018	8/14/2019
ENLK	4	8/22/2018	8/24/2018	8/14/2019
ENLK	4	8/23/2018	8/27/2018	9/13/2018
ENLK	4	8/23/2018	8/27/2018	8/14/2019
ENLK	4	8/24/2018	8/28/2018	9/13/2018
ENLK	4	8/27/2018	8/29/2018	8/14/2019
ENLK	4	8/31/2018	9/5/2018	8/14/2019
ENLK	4	10/23/2018	10/25/2018	8/14/2019
ENLK	4	12/28/2018	1/2/2019	8/14/2019
ENLK	4	1/3/2019	1/7/2019	8/14/2019
ENLK	4	1/23/2019	1/25/2019	8/14/2019
AVTR	4	6/13/2019	6/17/2019	5/28/2020
AMBA	4	3/25/2020	3/27/2020	4/7/2020
AMBA	4	3/26/2020	3/30/2020	4/7/2020
AMBA	4	3/27/2020	3/31/2020	4/7/2020
PROS	4	4/30/2021	5/4/2021	7/15/2021
FLYW	4	5/28/2021	6/1/2021	6/3/2021
ENLC	4	7/29/2021	7/31/2021	8/3/2021
ONTF	4	8/23/2021	8/25/2021	8/26/2021

9. The above-described late-reported transactions primarily involved, among other things, failures of Goldman's systems and controls intended to restrict trading in securities of which Goldman and certain Goldman affiliates were required Section 16(a) reporting persons, misapplication by Goldman's personnel of policy exceptions to Goldman's restricted lists, failures to timely identify when Goldman became a 10% beneficial owner, and internal delays at Goldman in gathering or verifying information for filings.

10. In addition to the late-reported transactions described above, Goldman and certain Goldman affiliates became subject to the reporting requirements of Exchange Act Section 16(a) as greater than 10% beneficial owners of the registered class of Class A common stock of MCG as of July 19, 2021, in connection with the closing of MCG's initial public offering. However, Goldman failed to timely identify its status as a 10% beneficial owner of MCG due to a series of data entry and systems errors and did not file any Section 16(a) reports until December 22, 2021—approximately five months after becoming required to do so. On December 22, 2021, Goldman filed a Form 3 and Forms 4 to report transactions on numerous dates between July 19, 2021 and November 23, 2021 that were effected by an affiliate acting as a market maker, which were not timely reported as required under Section 16(a) and were not entitled to an exemption under Section 16(d).

11. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, and was a cause of violations by certain Goldman affiliates of such provisions.

Respondent's Remedial Efforts

12. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Goldman cease and desist from committing or causing any violations and any future violations of Section 16(a) of the Exchange Act and Rule 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission, for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying The Goldman Sachs Group, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary