

TWO SIGMA INVESTMENTS, LP v. GOLDMAN, SACHS & CO.

Two Sigma

Exhibit A

COEXISTENCE AGREEMENT AND CONSENT

This Coexistence Agreement and Consent (“Agreement”) is made as of June 19, 2017 (“Effective Date”) by and between Two Sigma Investments, LP with an office located at 100 Avenue of the Americas, New York, NY 10013 (“Two Sigma”), on the one hand, and Goldman Sachs & Co. LLC, whose address is 200 West Street, New York, NY 10282 (“Goldman Sachs”), on the other hand.

WHEREAS, Two Sigma has used the name and mark “Two Sigma” (the “Two Sigma Mark”) in connection with: hedge fund investment services, operation and management of hedge funds, private placements of hedge funds, investment advisory and management services, investment of funds for others; financial investment analysis and stock research, and related financial services since as early as July 2001 and has since expanded that use to other financial services, including dealing in securities as a market maker and in trading commodities, securities, options, futures, derivatives, equities, debt instruments and fixed income products in the United States and overseas market securities; commodity pools and other collective investment vehicles; investment by electronic means; financial investment brokerage; information, advisory, consultancy and research services relating to finance and investments; insurance, lending, private equity funds, securities and derivatives for others; providing financial market news, information and commentary (the “Two Sigma Area of Use”);

WHEREAS, on November 11, 2016, Two Sigma filed Application Serial Number 87234283 to register its Two Sigma Mark in the United State Patent and Trademark Office (the “Two Sigma Trademark Application”);

WHEREAS, Goldman Sachs has used the “Sigma X” mark in connection with private exchanges or forums for trading securities, also known as “dark pool(s),” and has used the “Sigma” mark in connection with smart order router(s) (the “Goldman Sachs Sigma Marks”);

WHEREAS, Goldman Sachs owns U.S. Trademark Registration Numbers 4,139,894 for the mark “Sigma” and 4,139,896 for the mark “Sigma X,” both in connection with “financial services, namely, securities brokerage services; electronic trading of securities; financial portfolio management services; investment management and advisory services; trading of financial securities; hedge fund/mutual fund investment management services; financial planning services; management of financial accounts; trading of securities via an online platform; financial transaction and portfolio investment advisory services; financial research services”, with first use as early as July 2003 for “Sigma” and July 2005 for “Sigma X” (together, the “Goldman Sachs Sigma Registrations”);

WHEREAS, the United States Patent and Trademark Office cited the Goldman Sachs Sigma Registrations against the Two Sigma Trademark Application as bars to registration of the Two Sigma Mark based on a likelihood of confusion;

WHEREAS, Two Sigma, in order to maintain the *status quo* and prevent the Two Sigma Trademark Application from receiving a final rejection from the United States Patent and Trademark Office, filed a petition to cancel or amend the Goldman Sachs Sigma Registrations in the United States Patent and Trademark Office’s Trademark Trial and Appeal Board, the proceeding being captioned *Two Sigma Investments, LP v. Goldman, Sachs & Co.*, Cancellation No. 92065508 (the “Cancellation Proceeding”);

WHEREAS, Goldman Sachs has agreed to amend its descriptions in the Goldman Sachs Sigma Registrations and Two Sigma has agreed to withdraw the Cancellation Proceeding with prejudice as part of this Agreement;

WHEREAS, the parties have used their respective marks simultaneously in commerce for over a decade without, to the knowledge of the parties, causing any consumer confusion; and

WHEREAS, the parties agree that the marks, respective services, actual areas of use, and the nature of the potential customers are sufficiently distinct that there is no likelihood of confusion going forward between use of their respective marks used in their respective areas of use;

NOW THEREFORE, in consideration of the mutual promises exchanged below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Goldman Sachs.** Goldman Sachs acknowledges that Two Sigma has used its Two Sigma Mark in the Two Sigma Area of Use, and Goldman Sachs:
 - a. will not challenge, oppose, contest, or interfere with any current or future use or registration of any Two Sigma Mark in the Two Sigma Area of Use and, upon request by Two Sigma, Goldman Sachs

will provide Two Sigma with a letter of consent for the registration of the Two Sigma Trademark Application and any future registration of the Two Sigma Mark within the Two Sigma Area of Use;

- b. will not use the name, number, or symbol of 2 (e.g., “2,” “two,” or “II”) in connection with a mark that includes the term “Sigma” in connection with the Two Sigma Area of Use and the Goldman Sachs Area of Use (defined *infra*), except that Goldman Sachs may use the mark SIGMA X² (i.e., with the number 2 in superscript to clearly communicate that it is SIGMA X-squared) in connection with the Goldman Sachs Area of Use; however, Goldman Sachs may use SIGMA X2 (i.e., with the number 2 not in superscript) whenever typographical limitations prevent the use of SIGMA X² (e.g., in tweets); Two Sigma acknowledges that (1) Goldman Sachs is not responsible for the use of SIGMA X2 with the number 2 not in superscript by third parties, and (2) incidental, accidental uses by Goldman Sachs of SIGMA X2 with the number 2 not in superscript will not violate this Agreement;
 - c. will, within five (5) calendar days of the Effective Date, amend its descriptions for the Goldman Sachs Sigma Registrations to read as follows, deleting those words struck through in red: “financial services, namely, securities brokerage services; electronic trading of securities; ~~financial portfolio management services; investment management and advisory services~~; trading of financial securities; ~~hedge fund/mutual fund investment management services; financial planning services; management of financial accounts~~; trading of securities via an online platform; ~~financial transaction and portfolio investment advisory services; financial research services~~” (“Goldman Sachs Area of Use”);
 - d. will, in future filings to register SIGMA X² as a trademark, do so only with the 2 clearly in superscript, and will promptly correct or amend existing filings for that mark in block letter format (i.e., as SIGMA X2 with the number 2 not in superscript) in the United States, the European Union, the People’s Republic of China, and Japan so that it is clear that the 2 is in superscript; Two Sigma acknowledges that other trademark applications filed as of June 1, 2017, with the 2 in block letter format and any resulting registrations do not violate this Agreement, but nothing in this subsection (d) shall alter or detract from Goldman Sachs’ obligations concerning use of the SIGMA X² trademark; and
 - e. will not use the Goldman Sachs Sigma Marks in the Two Sigma Area of Use.
2. **Two Sigma.** Two Sigma acknowledges that Goldman Sachs has used and is currently using the Goldman Sachs Sigma Marks in the Goldman Sachs Area of Use, and Two Sigma:
- a. will not challenge, oppose, contest, or interfere with any current or future use or registration of the Goldman Sachs Sigma Marks in the Goldman Sachs Area of Use, and, upon request by Goldman Sachs, Two Sigma will provide Goldman Sachs with a letter of consent for any future registration of the Goldman Sachs Sigma Marks within the Goldman Sachs Area of Use (for the sake of clarity, new Goldman Sachs marks which comply with paragraph 1(b) above will also be deemed Goldman Sachs Sigma Marks for the purposes of this paragraph);
 - b. will, within five (5) calendar days of the Effective Date, take affirmative steps before the TTAB to withdraw the Cancellation Proceeding with prejudice; and
 - c. acknowledges that Goldman Sachs is free to register and use any mark containing the term SIGMA in the Goldman Sachs Area of Use and that does not violate the provisions of paragraph 1, and such marks of Goldman Sachs that contain SIGMA will be deemed Goldman Sachs Sigma Marks.

3. **Territory.** This Agreement shall apply throughout the World.

4. **Coexistence.** Having carefully considered the market realities, the differences between the parties' respective services and marks, the parties' respective potential users, and the fact that the parties' respective marks have already coexisted in the marketplace for over a decade without causing any consumer confusion, and based upon the best information available to the parties, the parties believe that the simultaneous use of the Goldman Sachs Sigma Marks and the Two Sigma Mark consistent with the terms and conditions of this Agreement is not likely to cause confusion or mistake or to deceive potential customers as to the source of the parties' respective services.

5. **Avoidance of Confusion.** If either party becomes aware of any actual confusion or potential for confusion as a result of the simultaneous use of the parties' respective marks, it will contact the other party at the below address within 30 calendar days of its notification of such confusion, and the parties will cooperate in taking action necessary to avoid customer confusion going forward and to correct any instances of actual confusion:

If to Two Sigma:

General Counsel
Two Sigma Investments, LP
100 Avenue of the Americas, 16th Floor
New York, NY 10013

If to Goldman Sachs:

General Counsel
Goldman Sachs & Co. LLC
200 West Street
New York, NY 10282

If either party has difficulties registering its mark(s) consistent with this Agreement, the parties will cooperate to take reasonable steps to permit registration of the mark consistent with the above provisions, including filing any consent to such registration. Any such registration will not affect the rights of the other party to simultaneous use of its mark(s) under this Agreement.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between Two Sigma and Goldman Sachs with respect to the subject matter hereof, and supersedes and cancels any and all prior representations, negotiations, and agreements, whether oral or written, by the parties or their agents in connection with any of the matters contained herein. This Agreement may only be amended or modified by a writing duly executed by the parties.

7. **No Coercion.** Each party to this Agreement represents that it has carefully read this Agreement and knows and understands the contents hereof, and that it has signed this Agreement as its own free act without any duress, coercion, or undue influence by or on behalf of any other party.

8. **Representations and Warranties.** Each party hereto covenants and represents that it is fully authorized to enter into this Agreement and to carry out the obligations provided for herein without the need for any licenses, releases, consents, approvals or immunities not yet obtained. Where a party hereto has executed this Agreement on behalf of another party, such executing party covenants, warrants, and represents that he or she is and has been authorized to do so by such party.

9. **Enforcement.** The parties acknowledge and agree that compliance with this Agreement is necessary to protect the business, brand, and goodwill of each respective party and that a breach of paragraphs 1 or 2 would cause irreparable harm. In the event of a breach or threatened breach of paragraphs 1 or 2 of this Agreement, the non-breaching party shall be entitled to a preliminary and/or permanent injunction, including a mandatory injunction and/or specific performance, without showing or proving any actual damages and without diminishing any other right or remedy it may have at law or in equity to enforce the provisions of this Agreement. Before any party seeks to enforce this provision, such party will first notify the other party in writing of the purported breach/threatened breach of paragraphs 1 or 2. The parties will then promptly discuss such purported breach/threatened breach and potential ways to cure such purported breach/threatened breach. If the parties cannot agree upon a cure of the purported breach/threatened breach after five (5) business days from the time discussions begin, the aggrieved party may proceed with its action for injunctive relief/specific performance.

10. **Choice of Law, Jurisdiction, and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, and all issues with respect to the construction of this Agreement and the rights and liabilities of the Parties shall be governed by the laws of the State of New York, without regard to its conflicts of law rules. The federal and state courts in New York, N.Y. shall have the sole and exclusive jurisdiction to hear any disputes arising from or in connection with this Agreement or its validity. The Parties hereby irrevocably concede to the venue and jurisdiction of these courts.

11. **Binding Agreement.** This Agreement is binding on and shall inure to the benefit of the parties, their respective parents, subsidiaries, and affiliates, as well as their successors-in-interest, licensees, and assignees.

12. **Costs.** Each party shall bear its own attorney's fees and costs in connection with this Agreement, and no compensation, remuneration or costs shall be due by any Party to the other on any basis whatsoever other than as provided herein.

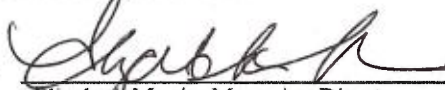
13. **Counterparts.** This Agreement may be executed and forwarded by fax or e-mail or in any other digital manner commonly used in business activities, which shall be deemed valid and binding, and in any number of

counterparts, each of which shall be an original as against either party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals, all of which shall for all purposes be deemed an original.

Goldman Sachs & Co. LLC

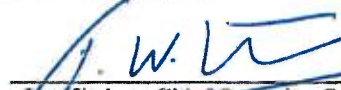
By: _____



Elizabeth Martin, Managing Director
Date: June 16, 2017

Two Sigma Investments, LP

By: _____



Jon Hitchon, Chief Operating Officer
Date: June 16, 2017