

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20070111340**

RECEIVED
2009 OCT 13 P 7 01
REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Morgan Stanley & Co. Incorporated, Respondent
Member Firm
BD No. 8209

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), as successor to Morgan Stanley DW Inc. ("MSDW"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Morgan Stanley and its predecessors have been members of FINRA since 1936. MSDW merged into Morgan Stanley on April 1, 2007. Morgan Stanley maintains its principal place of business in New York, New York and has branch offices throughout the country. During the relevant time period, Morgan Stanley engaged in a general securities business that included retail and institutional brokerage services, trading and advisory services. Effective June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley and Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney Holdings LLC, a new joint venture.

OVERVIEW

During 2005 and 2006, MSDW utilized 33 seminar-related communications in three of its Florida branch offices located in Naples, Sarasota and at 4890 West Kennedy Boulevard in Tampa. While these communications contained certain risk disclosures, they violated NASD rules (then extant) concerning communications with the public in that they failed to provide either adequate balancing language or a sound basis for evaluating the information provided, contained statements that were promissory of successful investment results, contained exaggerated, misleading or unwarranted statements, contained oversimplified and incomplete comparisons, failed to disclose the member firm's name or failed to provide required SEC or SIPC disclosures in conformance with SEC and/or SIPC rules; and just and equitable principles of trade.

FACTS AND VIOLATIVE CONDUCT

During 2005 and 2006, MSDW utilized the 33 communications at issue in three of the firm's Florida branch offices located in Naples, Sarasota and at 4890 West Kennedy Boulevard in Tampa.. The majority of communications were PowerPoint presentations with scripts that a presenter could read or summarize at a seminar. Two were simple invitations to attend events. One was a brochure. They were obtained by NASD's district offices in 2006 during on-site examinations in connection with the coordinated "free lunch" investment seminars exams. The versions of the communications referenced herein are no longer in use.

1. In violation of NASD Rules 2210(d)(1)(A) and 2110, 22 communications failed to provide either adequate balancing language or a sound basis for evaluating the information provided. Some examples of this include communications that:
 - in a discussion of tax consequences, did not disclose the lower tax rates on capital gains and did not advise seminar attendees to consider their current and anticipated tax brackets.
 - did not disclose that past performance was not a guarantee of future results.
 - did not disclose in an illustration that assumed annual rates of return before and after retirement were not representative of future performance.
 - did not disclose that fixed and variable annuity guarantees are based on the claims paying ability of the issuer.
2. In violation of NASD Rules 2210(d)(1)(B) and 2110, six communications contained certain statements that were promissory of successful

investment results. Some examples of this include:

- "Whether your goal is to protect your principal or maximize the growth potential of your investments, you will find that most of your plan's mutual funds are managed to meet one or more of these objectives."
- "Market risk is avoidable [sic] when investing in the stock markets, and according to modern portfolio theory, an investor is rewarded with higher returns when taking on more risk, which is why investors choose to invest in the stock market in the first place."
- "Perhaps the most critical message that I'd like you to take away from this discussion is that investing is not about market timing but time in the market that brings you investment success."

3. In violation of NASD Rules 2210(d)(1)(B) and 2110, 14 communications contained certain exaggerated, misleading or unwarranted statements. Some examples of this include:

- "Money funds also offer a constant share price of \$1.00; only the yield fluctuates."
- "Choose investments that on average earn higher than the rate of inflation."
- "Conversely, if you are far from retirement, you will most likely want to maximize the potential growth of your money by investing in higher earning investments."

4. In violation of NASD Rules 2210(d)(2)(B) and 2110, nine communications contained oversimplified and incomplete comparisons.
5. In violation of NASD Rules 2210(d)(2)(C)(i) and 2110, two communications failed to disclose the member firm's name.
6. In violation of NASD Rules 2210(e) and 2110, four communications failed to provide required SEC or SIPC disclosures in conformance with SEC and/or SIPC rules.

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

1. A censure;
2. A fine in the amount of \$120,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable

to pay, now or at any time hereafter, the monetary sanction(s) 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 FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- 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 National Adjudicatory Council ("NAC") 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 General Counsel, the NAC, or any member of the NAC, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

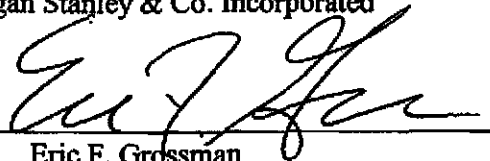
until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Respondent's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Respondent, 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 Respondent has agreed to its 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 Respondent to submit it.

10/1/09
Date

Morgan Stanley & Co. Incorporated

By: 

Eric F. Grossman
Managing Director

Reviewed by:

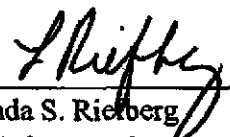


Paul G. Thomas
Counsel for Respondent
Morgan Stanley Smith Barney LLC
2000 Westchester Avenue
Purchase, NY 10577
Tel. (914) 225-5666

Accepted by FINRA:

10-13-09
Date

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


Linda S. Rieberg
Chief Counsel
FINRA Department of Enforcement
14 Wall Street
New York, NY 10005
Tel. (646) 315-7395
Fax (202) 689-3412