

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Joey W. Dean
(CRD No. 3061136),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008012833801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Joey W. Dean, while registered with Morgan Stanley & Co., made material misrepresentations and omissions to eight customers, many of them retired or elderly, concerning the rate of return of Morgan Stanley unlisted, structured note products known as Protected Buy-Write Securities (Buy-Write). In addition, Dean made unauthorized sales of the Buy-Write securities in the accounts of two customers. He also recommended the purchase by eight customers of the Buy-Write securities at unsuitable levels of concentration.
2. The Protected Buy-Write Securities were structured products issued by Morgan Stanley that offered capital protection if held to maturity, and variable monthly income. The principal was only protected if the structured note was held for five years (maturity). At the time of maturity, the customer could also be paid

000057130 2011

000088257 2010

appreciation on the principal, depending upon the performance of the Russell 2000 index or the S&P 500 index. If the Russell 2000 or the S&P 500 did not perform at a certain level, there would be no capital appreciation upon maturity.

3. Prior to maturity, the customer could receive variable monthly income associated with the structured note. The income was determined according to a formula linked to the Russell 2000 or the S&P 500.
4. The notes were not redeemable prior to maturity, and there was no guarantee that a secondary market would exist for the notes.

RESPONDENT AND JURISDICTION

5. Dean became registered with FINRA on July 16, 1998, as a General Securities Representative. During all periods mentioned herein, Dean, was associated with Morgan Stanley & Co. Incorporated and was registered with FINRA under Article V of the By-Laws as a General Securities Representative.
6. Although Dean has not been associated with a FINRA member firm since May 5, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION

**Section 10(b) of the Exchange Act, SEC Rule 10b-5, NASD Conduct Rules 2110 and 2120, and
FINRA Rules 2010 and 2020 – Material Misrepresentations and Omissions
Regarding the Investment in Protected Buy-Write Securities,
Against Joey W. Dean**

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. During the period from on or about November 2, 2006, through on or about May 8, 2009, Dean made material misrepresentations and/or omissions to customers PG, DG, JM, JD, MD, GB, BM, and BR in connection with the sale of the Protected Buy-Write Security.
9. Dean told customers PG, DG, JM, GB, BM, and BR that their principal was protected and that the customers would receive a 10% fixed annual rate of return on the Buy-Write Security. Dean told customers JD and MD that JD's principal was protected and he would receive an 8% fixed annual rate of return.
10. Dean's representations regarding the annual rate of return were false. There was no guaranteed rate of return. The Protected Buy-Write Security could provide variable monthly income and could achieve capital appreciation under favorable market conditions. The monthly income was not guaranteed. It could be zero and, depending on market conditions, monthly income payments could cease entirely for the remaining term of the note. Likewise, appreciation upon maturity could be zero. Dean did not disclose these risks to the customers.
11. Based upon Dean's representations, the customers made the following investments:

November 2, 2006	BM	Protected Buy-Write S&P 500	\$200,000
November 2, 2006	GB	Protected Buy-Write Russell 2000	\$99,000

December 21, 2006	GB	Protected Buy-Write Russell 2000	\$230,000
December 21, 2006	JD, MD	Protected Buy-Write S&P 500	\$415,000
December 22, 2006	PG	Protected Buy-Write S&P 500	\$197,000
April 23, 2007	BM	Protected Buy-Write S&P 500	\$300,000
April 25, 2007	DG	Protected Buy-Write Russell 2000	\$273,000
April 25, 2007	JM	Protected Buy-Write Russell 2000	\$116,000
April 25, 2007	BR	Protected Buy-Write Russell 2000	\$310,000
July 26, 2007	PG	Protected Buy-Write S&P 500	\$30,000
December 21, 2007	BM	Protected Buy-Write S&P 500	\$100,000

12. Due to Dean's representations, the customers expected to receive a fixed annual rate of return of 10% (or in one case 8%). After purchasing the Protected Buy-Write Securities, customers PG, DG, JD, MD, BM and BR noticed the value of their Protected Buy-Write Securities declining. These customers contacted Dean with their concerns. In each instance, Dean made misrepresentations that lulled the customers into inaction. He reassured the customers that despite the fluctuation in value of the Protected Buy-Write Security, the customers were guaranteed to receive a fixed 10% return.
13. In two instances, Dean's oral misrepresentations are corroborated by written evidence.
14. In the first instance, Dean reassured customer PG by email, stating "your account will grow 10% annually for the 5 year period." The customer replied, "Joey, I understand the part about not losing the initial \$197,000 [the capital] at the end of the five year period. What I am still struggling with is the guaranteed 10% on my investment

which is the reason I moved by retirement account into this account . . . But my understanding was that the \$197,000 was to grow by 10%." Dean confirmed customer PG's understanding, stating "That is correct, a lot of folks [are] taking the 10% interest for their living expenses/retirement, but you are not taking any out, therefore your account will grow 10% for the year period."

15. In the second instance, Dean handwrote in an undated note to customer BM, "... here is the Prospectus. We're not allowed to mark on them, but you can see on the front page where it state [sic] the principal is guaranteed and the target rate is 10%. We were required to state it as a 'target rate' since it is not a traditional bond, but as you read through the prospectus you can see how we easily obtain 10+% and pay every month. Thanks, Joey."
16. Dean's guarantee of a fixed return of 10% was false. The prospectus for the Protected Buy-Write Security disclosed that returns can be achieved on the investment through monthly income or through capital appreciation. The capital appreciation is calculated using a formula linked to returns on the S&P 500 or the Russell 2000. Rather than disclose the variable rates or the possibility of zero returns, Dean represented the "target rate" to be a guaranteed rate.
17. Dean acted with intent because he knew or should have known that the representations he made were contrary to the description of the securities contained in the Buy-Write prospectus documents.
18. In connection with the purchase or sale of the Protected Buy-Write Security, Dean, intentionally or recklessly, by the use of means of interstate commerce or of the mails, (a) employed devices, schemes, or artifices to defraud; (b) made untrue

statements of material fact or omitted to state material facts necessary in order to made the statements made, in the light of the circumstances under which they were made, non misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

19. The conduct described in paragraphs 8 through 18 constitutes willful violations of Section 10(b) the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2110 and 2120, during the period November 2, 2006, through December 14, 2008, and of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and FINRA Rules 2010 and 2020 during the period from December 15, 2008, through May 8, 2009, by Dean.

SECOND CAUSE OF ACTION

NASD Rule 2110 FINRA Rule 2010 – Unauthorized Sale of Protected Buy-Write Securities, Against Joey W. Dean

20. The Department realleges and incorporates by reference paragraphs 1 through 19 above.
21. In order to pay ongoing expenses, customers JD, MD, and BM relied upon the fixed income promised by Dean from their investment in the Protected Buy-Write Security.
22. In January 2008, the Protected Buy-Write Securities owned by JD, MD, and BM ceased paying monthly income. Rather than inform customers JD, MD, and BM of this circumstance, Dean began selling shares of their investments in the Protected Buy-Write Securities to generate proceeds to allow customers JD, MD, and BM to make their accustomed withdrawals. Dean did not receive authorization from the customers to sell their shares and did not disclose that their monthly withdrawals were the result of sales of shares of the Protected Buy-Write Securities.

23. During the months January 2008 through August 2008, Dean made unauthorized sales of 1,940 shares of the Protected Buy-Write Securities in the account of customers JD and MD. Although JD and MD were making withdrawals, they understood from Dean that the withdrawals were based on income generated by the investment. Dean did not tell them that he was selling shares, and thus depleting the capital, to generate the monthly funds. Customers JD and MD realized a loss of \$3,127.98 (or 12.12%) on the unauthorized sale of the shares.
24. On or about June 11, 2008 and January 29, 2009, Dean made unauthorized total sales of 17,000 shares of the Protected Buy-Write Securities in the account of customer BM. Although BM was making withdrawals, she understood from Dean that the withdrawals were based on income generated by the investment. Dean did not tell her that he was selling shares, and thus depleting the capital, to generate the monthly funds. Customer BM realized a loss of \$36,744.47.
25. Such acts, practices, and conduct constitute violations of NASD Conduct Rule 2110 during the period January 2008, through December 14, 2008, and FINRA Rule 2010, during the period from December 15, 2008, through January 29, 2009, by Dean.

THIRD CAUSE OF ACTION

NASD Rules 2310 and 2110, and FINRA Rule 2010 – Recommendation of Unsuitable Transactions due to Overconcentration of Buy-Write Securities,
Against Joey W. Dean

26. The Department realleges and incorporates by reference paragraphs 1 through 25 above.
27. During the period from on or about November 2, 2006, to on or about December 21, 2007, Dean recommended and effected the sale of the Protected Buy-Write Securities

to PG, DG, JM, JD, GB, BM, and BR without having a reasonable basis to believe that the transactions were suitable given the financial circumstances and condition of the customers. The securities had a variable monthly income payment and no guarantee of capital appreciation. In fact, the securities stopped income payments in January 2008.

28. In addition, there were risk factors associated with the Protected Buy-Write Securities. The prospectus devotes over six pages to a listing of the risk factors, including the risk that the securities may not pay more than the principal amount at maturity; that unlike ordinary debt securities, the securities do not guarantee the regular payment of interest; that the target yield is not an indication or a guarantee of current or expected yield on the securities; that because the securities are not listed on an exchange, there may be little or no secondary market for the sale of the securities; that any sale of the securities prior to maturity could be at a substantial discount; and, that the hedging activities of the firm's own traders and affiliates could adversely impact the value of the security.
29. Morgan Stanley, Dean's employer, had a concentration guideline in place during the entire period at issue. The guideline recommended that a customer's investment in structured products such as the Protected Buy-Write Securities not exceed 10% of the customer's liquid net worth. Specifically, the guideline stated, "In keeping with our normal practice of helping clients achieve portfolio diversification, it is recommended that the securities not exceed 10% of the client's liquid net worth."

Customer PG

30. Dean recommended the purchase by PG of \$217,000 in the Protected Buy-Write S&P 500. PG was 51 years old and had recently left his job at Georgia Pacific in Crossett, AR. Georgia Pacific was down-sizing in 2006 and offered PG the option of early retirement. After accepting the early retirement package, PG met with Dean to discuss the roll-over of his Vanguard IRA account and investment of funds from his Georgia Pacific Salaried Employees Retirement Plan. PG had approximately \$250,000 total in these two funds. He did not own a home and had about \$15,000 in a checking account. PG had no other significant assets.
31. PG told Dean that his primary investment objective was capital appreciation. Dean recommended purchase by PG of the Protected Buy-Write S&P 500 Security, stating that the principal was protected and that PG would earn a 10% return on his principal. Due to his recent job loss, it was also important to PG to have income and some liquidity.
32. As a result of Dean's recommendation, PG invested \$217,000, or 82% of his net worth, in the Protected Buy-Write Securities. By January 2008, the Protected Buy-Write Security ceased paying any interest. Due to PG's need for income, he sold the Protected Buy-Write Security in February 2008, realizing a loss of \$6,928.74. The recommendation by Dean that resulted in a concentration of PG's liquid net worth in the Protected Buy-Write Securities had no reasonable basis because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and inconsistent with the customer's stated need for income and liquidity.

Customer DG

33. Dean recommended that DG purchase \$273,000 of the Protected Buy-Write Russell 2000. DG was 63 years old at the time and had worked for Georgia Pacific for 42 years. Prior to investing with Dean, DG had approximately \$271,000 in his Vanguard 401(k) account which was invested in Vanguard's Treasury Money Market Fund and \$35,000 in a bank IRA. He owed \$67,000 on his home which was valued at \$110,000. Consequently, his liquid net worth was \$282,000. As part of Georgia Pacific's downsizing, DG took early retirement in December 2006. After accepting the early retirement package, DG met with Dean to discuss roll-over of his Vanguard IRA account and investment of these funds. DG told Dean that he wanted a safe investment with the opportunity for growth.
34. Dean recommended purchase by DG of the Protected Buy-Write Russell 2000 Security, stating that the principal was protected and DG would earn a 10% return on his principal. Due to his recent job loss, it was also important to DG to have principal protection and a fixed rate of growth.
35. As a result of Dean's recommendation, DG invested \$273,000, or 97% of his net worth, in the Protected Buy-Write Securities. As of May 31, 2009, he had sustained unrealized losses of \$38,356 due to the decline in current value of the principal. In addition, he was no longer receiving the promised 10% return. The recommendation by Dean that resulted in a concentration of DG's liquid net worth in the Protected Buy-Write Security had no reasonable basis, because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley

and inconsistent with the customer's expressed desire for principal protection combined with a fixed rate of growth.

Customer JM

36. Dean recommended that JM purchase \$116,000 of the Protected Buy-Write Russell 2000. JM was 61 years old at the time. Prior to investing with Dean, JM had approximately \$116,000 invested in his Vanguard 401(k), which was invested in a money market fund and an index fund. He had approximately \$135,000 in liquid net worth. As part of Georgia Pacific's downsizing, JM took early retirement in December 2006. After accepting the early retirement package, JM met with Dean to discuss the roll-over of his Vanguard IRA account and investment of these funds. Dean limited his presentation to the Protected Buy-Write Russell 2000. He stated that the investment protected the principal and provided guaranteed annual growth of 10%. JM was very interested in these attributes, because he wanted to protect his retirement savings and wanted to see steady growth.
37. As a result of Dean's recommendation, JM invested \$116,000, or 86% of his liquid net worth, in the Protected Buy-Write Securities. By May 31, 2009, JM had sustained unrealized losses of \$16,298.00 due to the decline in current value of the Protected Buy-Write Security. In addition, the security had ceased paying any interest in January 2008. The concentration of JM's liquid net worth in the Protected Buy-Write Security had no reasonable basis, because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and the customer's expressed desire for principal protection combined with a fixed rate of growth.

Customers JD and MD

38. Dean recommended that JD and MD purchase \$415,000 in the Protected Buy-Write S&P 500. JD was 60 years old and had recently left his job at Georgia Pacific. His wife MD was 59 years old and was also retiring from her position at a local Baptist church. In advance of their approaching retirements, JD and MD met with Dean to discuss investment of their retirement funds. They had retirement assets of \$550,000 and savings of \$20,000, making their liquid net worth approximately \$570,000.
39. JD and MD told Dean that their primary investment objective was guaranteed income and that they had little tolerance for risk. JD and MD stated that they needed 6% to 7% guaranteed annual income. Dean recommended the purchase by JD and MD of the Protected Buy-Write S&P 500 Security, stating that the principal was protected and that JD and MD would earn 8% guaranteed income. The guaranteed income was crucially important to JD and MD due to their need for income during retirement.
40. As a result of Dean's recommendation, JD and MD invested \$415,000, or 73% of their net worth, in the Protected Buy-Write Securities. In January 2008, the Protected Buy-Write Securities ceased paying monthly income. As set forth in the Second Cause of Action, Dean began selling shares without the authorization of JD and MD in order to create the appearance of income. JD and MD became aware that Dean was selling shares of the Protected Buy-Write Security and informed Morgan Stanley in November 2008 that Dean should not sell anymore shares of the security.
41. Because of the lack of income provided by the security, JD and MD liquidated all shares of the Protected Buy-Write Security in their account and sustained a loss of \$112,000. In addition, JD has gone back to work on a part-time basis to provide the

income he and his wife need. The recommendation by Dean that resulted in a concentration of the customers' liquid net worth in the Protected Buy-Write Security had no reasonable basis, because it exposed the customers to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and inconsistent with the customers' expressed desire for fixed income and safety.

Customer GB

42. Dean recommended that GB purchase \$230,000 in the Protected Buy-Write S&P 500 and \$99,000 in the Protected Buy-Write Russell 2000. GB was a 65-year-old widow who had never worked outside the home. Her husband had died in 1994, and she combined her husband's investments into one retirement account valued at approximately \$460,000 in 1994. In October 2006, GB met with Dean to discuss her investments. At the time her liquid net worth was approximately \$400,000.
43. GB told Dean that she needed monthly income and could not afford to invest in a risky investment. Dean recommended purchase by GB of the Protected Buy-Write S&P 500 Security and the Protected Buy-Write Russell 2000 Security, stating that the principal was protected and that GB would earn 10% annually for five years. The guaranteed income was crucially important to GB, because her only other source of income was social security. She immediately began receiving \$1500 a month income. When the Protected Buy-Write Securities ceased paying income in January 2008, Dean arranged for GB to receive her \$1500 a month from her money market account at Morgan Stanley. By January 2009, these savings were almost depleted. In January 2009, GB did not receive her accustomed \$1500 check from Morgan Stanley, and Dean liquidated shares of the Protected Buy-Write. However, he assured her that

the principal upon maturity would not be affected. In April 2009, GB understood that her principal was being depleted and began scaling back her expenses and selling a few other securities she owned to sustain her monthly income.

44. As a result of Dean's recommendation, GB invested \$329,000, or 82% of her liquid net worth, in the Protected Buy-Write Securities. In January 2008, the Protected Buy-Write Securities ceased paying monthly income. In January 2009, Dean began selling shares of the Protected Buy-Write Security in order to provide GB with the monthly check he had promised. The sale of the shares resulted in a loss to GB of \$2,621.69. In addition, as of May 31, 2009, GB had suffered an unrealized loss of \$35,340 due to the decline in value of the Protected Buy-Write Securities. The recommendation by Dean that resulted in a concentration of GB's liquid net worth in the Protected Buy-Write Security had no reasonable basis, because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and inconsistent with the customer's expressed desire for fixed income.

Customer BM

45. Dean recommended that BM make three purchases: (1) a \$200,000 purchase of the Protected Buy-Write S&P 500 on November 2, 2006; (2) a \$300,000 purchase of the Protected Buy-Write Russell 2000 on April 23, 2007; and (3) a \$100,000 purchase of the Protected Buy-Write S&P 500 on December 21, 2007. BM was a retired 58-year-old widow. Prior to her retirement, she was self-employed in a trucking company and had acquired a real estate license. BM had liquid net worth of approximately \$800,000. BM was concerned that the securities she owned were not providing enough income, and she contacted Dean in the fall of 2006 to discuss her investments.

46. BM told Dean that her primary investment objective was fixed income. Dean recommended a purchase by BM of the Protected Buy-Write S&P 500 Security and the Protected Buy-Write Russell 2000 Security, stating that the principal was protected and that BM would earn 10% guaranteed income. The guaranteed income was crucially important to BM due to her need for income during retirement. Based upon Dean's recommendations, BM sold approximately three-quarters of her investments and invested the proceeds in the Protected Buy-Write Securities. Due to her stated need for income, she began drawing monthly income from the investments immediately.
47. As a result of Dean's recommendation, BM invested \$600,000, or 75% of her net worth, in the Protected Buy-Write Securities. In January 2008, the Protected Buy-Write Securities ceased paying monthly income. As set forth in the Second Cause of Action, Dean began selling shares without the authorization of BM in order to create the appearance of income. He also sold shares to cover margin calls in BM's account. BM was not aware that her investment account with Morgan Stanley was a margin account and that Dean had been purchasing some investments on margin.
48. As stated in the First Cause of Action, Dean continued to make misrepresentations, assuring BM that the 10% guaranteed income would continue. In June 2008, BM became aware of the true situation regarding the sale of her shares of the Protected Buy-Write Security and the lack of income. Due to her cash needs for payment of taxes, she authorized Dean in June 2008 to sell additional shares of the Protected Buy-Write Security.

49. Because of the lack of income promised by Dean, BM has suffered financial hardship due to the lack of income and is unable to pay her monthly expenses. The liquidations resulted in a realized loss of \$36,744.47, and the decline in value of the Protected Buy-Write Securities resulted in an unrealized loss of \$55,965. The recommendation by Dean that resulted in a concentration of the BM's liquid net worth in the Protected Buy-Write Security had no reasonable basis, because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and inconsistent with the customer's expressed desire for fixed income.

Customer BR

50. Dean recommended the purchase by BR of \$400,000 in the Protected Buy-Write Russell 2000. BR was 58 years old and had recently left his job at Georgia Pacific, accepting an early retirement package. BR's wife was retired as well. BR met with Dean to discuss the roll-over of his Vanguard IRA account. BR and his wife had liquid net worth of approximately \$430,000.
51. BR told Dean that his primary investment objective was capital appreciation and income. Dean recommended the purchase by BR of the Protected Buy-Write Russell 2000 Security, stating that the principal was protected and that BR would earn a 10% return on his principal. Due to limited income he received from his Georgia Pacific pension and his wife's small pension, it was important to BR to have guaranteed income. BR began immediately taking automatic withdrawals from the Protected Buy-Write Security after the initial investment in order to fund the income needs of him and his wife. The Protected Buy-Write Security ceased paying interest in

January 2008. BR became aware in April 2008 that his principal was being depleted to provide the monthly payments he needed. At that time, he ceased taking withdrawals and went back to work full-time.

52. As a result of Dean's recommendation, BR invested \$400,000, or 93% of his liquid net worth, in the Protected Buy-Write Securities. By May 31, 2009, he had sustained unrealized losses of \$43,555 due to the decline in current value of the Protected Buy-Write Security. In addition, he had not received the promised 10% annual income. The recommendation by Dean that resulted in a concentration of the customer's liquid net worth in the Protected Buy-Write Securities had no reasonable basis, because it exposed the customer to a level of risk inconsistent with the concentration guidelines in place at Morgan Stanley and inconsistent with the customer's stated need for income.
53. Such acts, practices, and conduct constitute violations of NASD Rules 2310 and 2110, and FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Respondent Dean willfully violated Section 10(b) of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 10, 2010



Laura Leigh Blackston, Senior Regional Counsel
Andrew A. Favret, Regional Chief Counsel and
Associate Vice President
FINRA Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
Phone: (504) 522-6527 Fax: (504) 522-4077
Email: laura.blackston@finra.org