

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090188410**

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

RE: Morgan Stanley Smith Barney LLC ("MSSB" or the "Firm"),
CRD No. 149777

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, MSSB submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against MSSB alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. MSSB 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

In May 2009 when the Global Wealth Management Group of Morgan Stanley & Co., Inc. and the Smith Barney Division of Citigroup Global Market, Inc. were combined, MSSB was formed and became a FINRA regulated broker-dealer. MSSB has approximately 1,104 active branch offices with about 24,930 registered representatives. The Firm provides a full range of financial services.

RELEVANT DISCIPLINARY HISTORY

MSSB has no prior relevant formal disciplinary history.

OVERVIEW

On July 14, 2009, by the end of the trading day, a MSSB junior trader accumulated a futures position of approximately \$744 million; over double the MSSB's Agency Desk limit of \$350 million and several multiples over his position limit of \$116 million. The trader then continued to trade remotely overnight from home. By 5:00 a.m. the following morning, July 15, 2009, the trader had further increased his futures position to \$1.33 billion when the market turned against him. MSSB ultimately lost approximately \$14.9 million as a result of these trades.

The Firm did not have adequate safeguards or controls in place to determine that a junior trader had exceeded his position limit by the end of the trading day, July 14, 2009, or to prevent him from exceeding his position limit while trading remotely overnight. Consequently, MSSB violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a system to supervise the activities of a junior trader that was reasonably designed to detect and prevent the execution of unauthorized proprietary trades that exceeded position limits.

FACTS AND VIOLATIVE CONDUCT

Jared Weinryt, a junior trader, began working on Morgan Stanley & Co. Inc.'s Agency Desk in August 2008. Agency Desk traders facilitate client orders, hedge Firm positions and take directional views on the market in conjunction with the facilitation of client orders. In January 2009, Weinryt assumed responsibility for the Five-year Agency book. In this role, Weinryt was responsible for trading federal agency products (Fannie Mae and Freddie Mac) in a "cash book" and futures contracts (Eurodollar and Treasuries) in a "futures book." Weinryt was permitted to trade remotely so he could trade after hours and react to events occurring globally.

Junior Trader Exceeded his Position Limit

On July 14, 2009, by the end of the trading day, Weinryt had accumulated a futures position of approximately \$744 million, over double the Agency Desk's limit of \$350 million and several multiples over his position limit of \$116 million. Beginning around 8:00 p.m. that evening, Weinryt again began to trade futures, this time remotely from home and he continued to trade overnight. By 5:00 a.m. the following morning, Weinryt had further exceeded his position limit with holdings in Eurodollar and Treasury futures of \$1.33 billion. The market turned against Weinryt during the morning of July 15, 2009, and he attempted unsuccessfully to reduce his exposure and suffered losses.

During the morning of July 15, 2009, while Weinryt was still out of the office, the Firm identified (on a T+1 basis) a risk anomaly. The Firm traced the issue to Weinryt and cut-off his access to the trading system in the late morning. By 11:00 a.m., Weinryt had reduced the cumulative position to \$740 million but in the process the Five-year Agency book sustained a realized loss of approximately \$4.7 million. Between 11:30 a.m. and 3:00 p.m. on July 15, 2009, the Firm liquidated 75% of the remaining contracts. The Firm liquidated the remaining contracts the following morning, thereby realizing additional losses. Based on Weinryt's trading over these two days, the Firm's account sustained realized losses totaling approximately \$14.9 million. As these were proprietary positions, there was no customer loss.¹

¹ The positions were proprietary because they were for the Firm's account. The Agency Desk was not a proprietary trading desk, and the trades were not part of an authorized [or Firm] proprietary trading strategy.

MSSB Failed to Establish and Maintain a System to Supervise the Activities of a Junior Trader that was Reasonably Designed to Detect and Prevent the Execution of Unauthorized Proprietary Trades that Exceeded Position Limits.

At the time of the misconduct Weinryt was a junior trader who had been on a trading desk for less than a year. On July 13, 2009, Weinryt had assumed increased responsibilities by also covering the book of another trader who was on vacation. At the end of the trading day, July 14, 2009, Weinryt sent an email to his trading manager stating that it had been a "Terrible day" and he had incurred approximately \$520,000 in net losses on the Agency Desk. After sending the email, Weinryt continued to further exceed his position limit by trading futures remotely overnight.

In supervising the junior trader, the Firm did not have adequate safeguards or controls in place to detect that Weinryt had exceeded his position limit by the end of the trading day, July 14, 2009, or to prevent him from exceeding his position limit while trading remotely overnight. During July 14 and 15, 2009, the trading manager did not regularly monitor a trader's positions on a real time basis. The trading desk did not have a consolidated view to capture and monitor trading activity across products and systems. Thus, real time monitoring of the trading activity of the junior trader was difficult at the desk level as the process required manual aggregation of risk and position data across accounts, risk measures and systems. This contributed to the Firm's failure to detect that Weinryt had greatly exceeded the Agency Desk's and his own position limit by the end of trading day on July 14, 2009. Further, on July 14 to July 15, 2009, the Firm did not have off-premises or after-hours trading policies. The Firm also did not have sufficient controls to prevent Weinryt from exceeding his position limit while trading remotely overnight.

Based on the foregoing, MSSB violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain a system to supervise the activities of a junior trader that was reasonably designed to detect and prevent the execution of unauthorized proprietary trades that exceeded his position limit.

OTHER FACTORS

In determining the appropriate sanction in this matter, FINRA took into account that the Firm discovered and self-reported the Weinryt incident giving rise to this AWC and provided substantial assistance to FINRA staff during the investigation.

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

A censure; and

\$450,000 fine.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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

MSSB specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

II.

WAIVER OF PROCEDURAL RIGHTS

MSSB specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against MSSB;
- 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, MSSB 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.

MSSB 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

MSSB 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 me; and
- C. If accepted:
 - 1. this AWC will become part of MSSB's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against MSSB;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about MSSB'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. MSSB 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. MSSB 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 MSSB's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. MSSB may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. MSSB 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.

MSSB certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the 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 MSSB to submit it.

5/31/2012
Date (mm/dd/yyyy)

[Signature]
Respondent
Morgan Stanley Smith Barney LLC

By: Scott Tucker

Title: Global Head of Litigation

Reviewed by:
[Signature]
Michael A. Asaro, Esq.
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
(212) 872-8100

Accepted by FINRA:

5/31/2012
Date
6/18/12

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

[Signature]
Susan Light
Senior Vice President & Chief Counsel
FINRA, Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, NY 10281-1003
T: (646) 315-7333
F: (202) 689-3411
susan.light@finra.org