

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20110281827-01

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

RE: Morgan Stanley Smith Barney LLC, Respondent
Broker-Dealer
CRD No. 149777

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Morgan Stanley Smith Barney LLC (the "firm") 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 the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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

The firm has been a member of FINRA since May 19, 2009, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On May 9, 2012, FINRA accepted an AWC in connection with 20100215694 in which the firm was fined \$62,500, of which \$45,000 was for Municipal Securities Rulemaking Board ("MSRB") reporting violations that occurred from June 1, 2009 through June 30, 2010, and \$12,500 was for TRACE reporting violations that occurred during various periods from January 1, 2010 through December 31, 2010.

On April 25, 2013, FINRA accepted an AWC in connection with 20110264460 in which the firm was fined \$47,500, of which \$30,000 was for Trade Reporting and Compliance Engine ("TRACE") reporting violations that occurred during various periods from October 1, 2010 December 31, 2011.

On February 5, 2014, FINRA accepted an AWC in connection with 20110303983 in which the firm was fined \$41,000, of which \$5,000 was for TRACE reporting violations that occurred in 3Q12, \$10,000 was for TRACE reporting violations that occurred in 4Q12, and \$10,000 was for TRACE reporting violations that occurred in 1Q13.

SUMMARY

In connection with 20110281827, the staff of the Department of Market Regulation (the "staff") reviewed the firm's compliance with trade reporting and order marking requirements for short sale transactions during the period February 28, 2011 through May 18, 2012 (the "short sale review period").

In connection with 20130367558, the staff reviewed the firm's compliance with MSRB rules applicable to trade reporting in the Real-time Reporting System ("RTRS") during the period January 1, 2013 through March 31, 2013 (the "1Q13 period").

In connection with 20130377914, the staff reviewed the firm's compliance with TRACE reporting requirements for transactions involving securitized products during the period April 1, 2013 through June 30, 2013 (the "2Q13 period").

In connection with 20130378460, the staff reviewed the firm's compliance with TRACE reporting requirements for transactions involving agency bonds during the 2Q13 period.

In connection with 20130379158, the staff reviewed the firm's compliance with TRACE reporting requirements for large corporate bond transactions during the 2Q13 period.

In connection with 20130388035, the staff reviewed the firm's compliance with TRACE reporting requirements for large agency bond transactions during the period July 1, 2013 through September 30, 2013 (the "3Q13 period").

In connection with 20140400256, the staff reviewed the firm's compliance with TRACE reporting requirements for transactions involving securitized products during the period October 1, 2013 through December 31, 2013 (the "4Q13 period").

In connection with 20140412001, the staff reviewed the firm's compliance with TRACE reporting requirements for transactions involving large corporate bond transactions during the period January 1, 2014 through March 31, 2014 (the "1Q14 period").

In connection with 20140411484, the staff reviewed the firm's compliance with TRACE reporting requirements for agency bond transactions during 1Q14 period.

In connection with 20140431355, the staff reviewed the firm's compliance with TRACE reporting requirements for large agency bond transactions during the period July 1, 2014 through September 30, 2014 (the "3Q14 period").

Based on the foregoing reviews, the staff found violations of TRACE and MSRB reporting requirements, and of short sale reporting and order marking requirements, as set forth below.

FACTS AND VIOLATIVE CONDUCT

20110281827 (short sale review)

1. During the short sale review period, the firm executed 274 long sale transactions in NMS securities and reported each of these transactions to FINRA with a short exempt modifier in reliance upon the provisions set forth in SEC Regulation SHO Rule 201(d), when such provisions were not applicable. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6182.
2. During the short sale review period, the firm executed 857 short sale transactions in OTC equity securities and incorrectly reported each of these transactions to FINRA with a short exempt modifier. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6624.
3. During the short sale review period, the firm executed 253 short sale orders and improperly marked the orders as short exempt. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 200(g) of Regulation SHO.
4. During the short sale review period, the firm failed to establish, maintain and enforce written supervisory procedures reasonably designed to ensure that orders marked as short exempt complied with the provisions of SEC Rule 201(c) of Regulation SHO. The conduct described in this paragraph constitutes a violation of SEC Rule 201(c), NASD Rule 3010, and FINRA Rule 2010.

20130367558 (1Q13 MSRB review)

5. During the 1Q13 period, the firm failed to report the correct time of trade execution to the Real-time Transaction Reporting System ("RTRS") in 70 reports of transactions in municipal securities. These transactions constituted 2.8 percent of the transactions that the firm reported to the RTRS during the review period. The firm also failed to report information about 32 of these same transactions within 15 minutes of Time of Trade to an RTRS Portal. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-14(b)(ii) (for the inaccurate reports) and MSRB Rule G-14 (for the late reports).

6. The firm failed to show the correct time of trade execution on the memorandum for these same 70 transactions. The conduct described in this paragraph constitutes separate and distinct violations of MSRB Rule G-8.

20130377914 (2Q13 TRACE SP review)

7. During the 2Q13 period, the firm failed to report to TRACE the correct time of trade execution for 961 transactions in TRACE-eligible securitized products. These inaccurate reports constituted 7.0 percent of the 13,651 matched inter-dealer reports that the firm submitted to TRACE during the review period. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(c)(8).
8. The firm failed to show the correct time of trade execution on the memorandum for these same 961 brokerage orders. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 17a-3 and FINRA Rule 4511.

20130378460 (2Q13 TRACE Agency review)

9. During the 2Q13 period, the firm failed to report to TRACE 734 transactions in TRACE-eligible agency bonds within 15 minutes of the time of execution. These transactions constituted 3.8 percent of the 19,257 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.
10. During the 2Q13 period, the firm failed to report the correct market identifier for 17 S1 transactions and three P1 transactions involving agency bonds. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(d)(4)(C).

20130379158 (2Q13 TRACE Corporate large/late review)

11. During the 2Q13 period, the firm failed to report to TRACE 39 large block S1 transactions in corporate bonds within 15 minutes of the time of execution. These transactions constituted 10.6 percent of the 369 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a).

20130388035 (3Q13 TRACE Agency large/late review)

12. During the 3Q13 period, the firm failed to report to TRACE 50 large block S1 transactions in agency bonds within 15 minutes of the time of execution. These transactions constituted 16.8 percent of the 297 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a).

20140400256 (4Q13 TRACE SP review)

13. During the 4Q13 period, the firm failed to report to TRACE 750 transactions in TRACE-eligible securitized products within the time required by FINRA Rule 6730. These transactions constituted 3.0 percent of the 24,791 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

20140412001 (1Q14 TRACE Corporate large/late review)

14. During the 1Q14 period, the firm failed to report to TRACE 43 large block S1 transactions in corporate bonds within 15 minutes of the time of execution. These transactions constituted 10.3 percent of the 419 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a).

20140411484 (1Q14 TRACE Agency late review)

15. During the 1Q14 period, the firm failed to report to TRACE 364 transactions in TRACE-eligible agency bonds within 15 minutes of the time of execution. These transactions constituted 2.7 percent of the 13,377 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a) and a pattern or practice of late reporting without exceptional circumstances in violation of FINRA Rule 2010.

20140431355 (3Q14 TRACE Agency large/late review)

16. During the 3Q14 period, the firm failed to report to TRACE 44 large block S1 transactions in agency bonds within 15 minutes of the time of execution. These transactions constituted 14.7 percent of the 299 total of such trades reported by the firm. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 6730(a).

B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$225,000 (\$15,000 for the short sale reporting and order marking violations; \$5,000 for the supervision violation relating to short sales; \$15,000 for the MSRB reporting violations; and \$190,000 for the TRACE reporting violations); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph A.4. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **Compliance Assistant, Legal Section, Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850**, a signed, dated letter, or an email from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in this paragraph; and (3) the date the revised procedures were implemented.

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

The firm 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

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

- A. To have a Complaint issued specifying the allegations against the firm;
- 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, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

The firm 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

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

4 May 2015
Date

By: Harry Walters

Name: Harry Walters

Title: Managing Director

Counsel for Respondent

May 13, 2015
Date

Robert A. Marchman
Robert A. Marchman
Executive Vice President
Department of Market Regulation