

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John Batista Bocchino
(CRD No. 2876260)

and

Rafael Barela Jacinto
(CRD No. 3115326),

Respondents.

DISCIPLINARY PROCEEDINGS
No. 2012032019101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From at least May 2011 through March 2012 (the "Relevant Period"), while registered with Morgan Stanley Smith Barney ("Morgan Stanley" or the "Firm"), Respondents John Batista Bocchino ("Bocchino") and Rafael Barela Jacinto ("Barela") engaged in a scheme to circumvent Morgan Stanley's policies restricting trading in Venezuelan bonds. To effect the scheme, Bocchino and Barela used fictitious nominee accounts that appropriated the names of well-known U.S. financial institutions, entered hundreds of unauthorized trades in the nominee accounts, and falsified Firm documents. As a result, Bocchino and Barela were able to trade approximately \$190 million in Venezuelan bonds in violation of the Firm's policies and avoid the appropriate scrutiny of their supervisors and the Firm's anti-money laundering ("AML") and

compliance departments. Based upon the foregoing, Bocchino and Barela violated NASD Rule 3110 and FINRA Rules 4511 and 2010.

RESPONDENTS AND JURISDICTION

2. Bocchino first became registered with FINRA in July 1998. From February 2001 through June 2009, Bocchino was registered as a General Securities Representative through Citigroup Global Markets, Inc. ("Citigroup"). As a result of a joint venture between Citigroup and Morgan Stanley in June 2009, Bocchino became registered in the same capacity through Morgan Stanley.

3. On March 30, 2012, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Bocchino's registration with the Firm because he was found to have been "engaging in securities transactions for clients within accounts other than their own."

4. On or about April 3, 2012, Bocchino became registered as a General Securities Representative with another FINRA member firm.

5. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Bocchino because: (1) he is currently associated with a FINRA member and registered with FINRA; and (2) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

6. Barela first became registered with FINRA in April 1999. From February 2004 through June 2009, Barela was registered as a General Securities Representative with Citigroup. As a result of a joint venture with Morgan Stanley in June 2009, Barela became registered in that same capacity through Morgan Stanley.

7. On March 30, 2012, Morgan Stanley filed a Form U5 terminating Barela's registration with the Firm because he was found to have been "facilitating securities transactions for clients within accounts other than their own."

8. On or about April 17, 2012, Barela became registered as a General Securities Representative with another FINRA member firm.

9. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Barela because: (1) he is currently associated with a FINRA member and registered with FINRA; and (2) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

FACTS

A. DURING THE RELEVANT PERIOD, BOCCHINO, WITH BARELA'S ASSISTANCE, WAS ONE OF THE LARGEST PRODUCERS IN HIS BRANCH, PRIMARILY DUE TO HIS VENEZUELAN BOND SALES

10. From in or about June 2009 through March 2012, Bocchino was a registered representative in Morgan Stanley's branch office on Madison Avenue in New York City (the "New York Branch").

11. During this period, Bocchino's business was largely comprised of transactions in government and sovereign debt bonds issued by South American countries, including, principally, Venezuela. Bocchino also had a significant number of clients located in South America.

12. Bocchino was one of the largest producers in the New York Branch, and received gross compensation from the Firm of approximately \$2.3 million in 2011 and approximately \$2.26 million for the period between January and March 2012.

13. Barela has worked with Bocchino since January 2004. From June 2009 through March 2012, Barela worked in the New York Branch, and functioned as Bocchino's primary sales assistant.

14. At the New York Branch, Barela performed multiple tasks for Bocchino. He assisted in the opening of new accounts by completing and submitting new account documents, completed order tickets to initiate securities trades, and was the liaison between Bocchino and the Firm's "back office" for the purposes of settling trades.

B. VENEZUELAN BONDS AND CURRENCY CONVERSION TRANSACTIONS

15. In or about June 2010, the Central Bank of Venezuela created the Sistema de Transacciones con Titulos en Moneda Extranjera ("SITME") (a/k/a System of Foreign Currency Transactions) to facilitate the conversion of its local currency, the Venezuelan bolivar, to U.S. dollars. Throughout the Relevant Period, and until it was dismantled by the Venezuelan government in February 2013, SITME functioned as a currency exchange market that operated through sales of Venezuelan bonds.

16. Under SITME, the Venezuelan government issued U.S. dollar-denominated bonds to select Venezuelan banks.¹ Individuals and entities seeking to convert bolivars to dollars could purchase the Venezuelan bonds from a Venezuelan bank in bolivars. The Venezuelan bank would then deposit the bonds with a U.S. broker-dealer for sale. The U.S. broker-dealer would sell the Venezuelan bonds and, typically, wire the proceeds (in U.S. dollars) to a third-party financial institution on behalf of the customer.

17. The sale of Venezuelan bonds pursuant to the SITME program, and the lack of transparency between the U.S. and Venezuela, created money laundering risks. For example,

¹ The bonds were issued by the Venezuelan government or PDVSA, which is the Petroleos de Venezuela, S.A., a Venezuelan state-owned oil and natural gas company.

U.S. brokerage firms that sold Venezuelan bonds often could not identify the Venezuelan banks' underlying customers and determine if those customers or their transactions posed a heightened risk of corruption, tax evasion, money laundering, or other potential criminal activity.

18. These risks were further heightened given Venezuela's close economic ties to countries such as Iran, which the U.S. State Department had designated a "state sponsor of terrorism."

C. MORGAN STANLEY RESTRICTS BROKERS FROM EXECUTING VENEZUELAN BOND TRANSACTIONS

19. Morgan Stanley's AML and compliance departments identified Venezuelan bond transactions (particularly those resulting in currency conversion transactions) as presenting regulatory, AML, and reputational risk to the Firm. As a result, in 2010, the Firm began imposing restrictions upon Venezuelan bond trades.

20. In or about October 2010, the Firm enacted a policy that prohibited representatives from effecting currency conversion transactions for certain customers. The Firm defined currency conversion transactions as the free delivery of Venezuelan bonds into an account, the sale of the bonds for U.S. dollars, followed by the transfer of the U.S. dollars from the account.

21. By April 2011, the Firm implemented a more restrictive policy prohibiting registered representatives from effecting sales of Venezuelan bonds unless they could provide the Firm with buy-side confirmations at the time of sale to evidence that the customer had purchased the bonds in U.S. dollars. By providing buy-side confirmations at the time of sale, the Firm could confirm that the transactions were not being effected for the purposes of converting currency.

22. The requirement that representatives obtain buy-side confirmations applied to all customer accounts engaged in Venezuelan bond trading, regardless of the type of account (individual or institutional) or where the account was domiciled (U.S. or foreign).

23. Morgan Stanley's restrictions on Venezuelan bond trading had a negative impact on Bocchino's business, resulting in a sharp decline in his revenue.

24. Because of the negative impact of these policies on his business, in or about June 2011, Bocchino requested permission from his managers to sell Venezuelan bonds for foreign customers without obtaining proof that those bonds had been purchased in U.S. dollars.

25. Morgan Stanley denied Bocchino's request.

26. Although Morgan Stanley denied Bocchino's request, the Firm did permit Bocchino to engage in *proprietary* Venezuelan bond trading on behalf of one U.S. financial institution, PL, based on Bocchino's false representation that PL intended to trade Venezuelan bonds for its own account.

27. In or about January 2012, Morgan Stanley issued a compliance notice prohibiting all of its registered representatives, including Bocchino, from engaging in any "Venezuelan Security Transaction" with any financial institution except in limited circumstances. The policy provided that registered representatives could engage in a "Venezuelan Security Transaction" "if, [p]rior to agreeing to accept free delivery of Venezuelan Securities into a Financial Institution's account at the Firm, branch management has received and approved a written trade confirmation evidencing that the Financial Institution purchased the Venezuelan Securities in U.S. dollars through [Morgan Stanley] or a reputable U.S. or European third party broker-dealer or bank."

D. BOCCHINO AND BARELA'S SCHEME TO CIRCUMVENT THE FIRM'S RESTRICTIONS ON VENEZUELAN BOND TRADES

28. During the Relevant Period, Bocchino and Barela engaged in a scheme to circumvent Morgan Stanley's restrictions on Venezuelan bond trading. As alleged below, to effect the scheme, Bocchino and Barela used at least five different nominee accounts, entered hundreds of unauthorized trades in those accounts, and falsified hundreds of Firm documents. As a result of this scheme, Bocchino and Barela were able to trade approximately \$190 million worth of Venezuelan bonds in violation of the Firm's policies and without the appropriate scrutiny of their supervisors or the Firm's AML and compliance departments.

The Nominee Accounts

29. Bocchino and Barela opened accounts in the names of five well-known U.S. financial institutions and brokerage firms (collectively, the "Nominee Accounts") to execute Venezuelan bond trades without those institutions' knowledge or consent.

30. During the Relevant Period, Bocchino and Barela executed approximately 300 Venezuelan bond trades totaling approximately \$190 million (the "Venezuelan Bond Transactions") in the Nominee Accounts for the benefit of thirteen concealed entities (the "Concealed Customers"). By placing the Venezuelan Bond Transactions through the Nominee Accounts, Bocchino and Barela made it appear to Morgan Stanley that they were complying with the Firm's procedures, thereby avoiding the requirement to produce buy-side confirmations, and concealed the true identities of the underlying customers.

31. None of the U.S. financial institutions associated with the Nominee Accounts authorized Bocchino or Barela to open an account at the Firm to execute trades on behalf of third parties. Similarly, none of these U.S. financial institutions were aware that Bocchino and Barela

were conducting Venezuelan Bond Transactions in their name on behalf of the Concealed Customers.

32. Bocchino and Barela used the following Nominee Accounts to execute Venezuelan Bond Transactions on behalf of the Concealed Customers:

- a. A nominee account in the name of PL, a U.S. financial institution, which was opened on May 18, 2011 (the "PL Nominee Account");
- b. A nominee account in the name of TPFS, a U.S. financial institution, which was opened on August 2, 2011 (the "TPFS Nominee Account");
- c. A nominee account in the name of PFS, a U.S. financial institution, which was opened June 24, 2011 (the "PFS Nominee Account");
- d. A nominee account in the names of both PFS and ACM, a U.S. financial institution, which was opened on April 20, 2010 (the "PFS/ACM Nominee Account"); and
- e. A nominee account in the name of DSL, a U.S. financial institution, which was opened on April 22, 2010 (the "DSL Nominee Account").

33. The majority of the Venezuelan Bond Transactions were effected in the PL Nominee Account.

34. Bocchino and Barela falsely represented in new account documentation for each of the five Nominee Accounts that the trading to be conducted in those accounts would be "proprietary."

The Concealed Customers

35. Bocchino and Barela executed Venezuelan Bond Transactions within the Nominee Accounts for the benefit of the following Concealed Customers:

- a. CBU, a foreign bank domiciled in Venezuela;
- b. LW, a foreign regional investment bank headquartered in Lima, Peru;
- c. MCL, a U.S. broker-dealer located in Florida;
- d. MWM, a foreign institution located in Barbados that provides asset management services to individual investors;
- e. VQWMG, a wealth management company headquartered in Miami, Florida, with offices in Colombia, Chile and Ecuador;
- f. BDV, an international bank based in Caracas, Venezuela;
- g. GSI, a FINRA member with its principal place of business in Miami, Florida. In 2015, GSI was sanctioned and fined by FINRA for AML violations in connection with Venezuelan bond currency conversion transactions;
- h. CGL, a FINRA member with its principal place of business in Charlotte, North Carolina. In 2015, CGL was sanctioned and fined by FINRA for AML violations in connection with Venezuelan bond currency conversion transactions;
- i. MGL, a FINRA member and investment banking, securities and wealth management firm headquartered in New York;
- j. AS, an investment firm headquartered in Buenos Aires, Argentina;
- k. DMB, an investment management firm headquartered in London;
- l. SFSC, a financial institution located in Sao Paulo, Brazil; and
- m. PSC/ACM, a FINRA member headquartered in New York.

36. Several of the Concealed Customers' presented regulatory concerns and heightened money laundering risks. In addition, at least three of the thirteen Concealed

Customers – CBU, AS, and DMB were not customers of Morgan Stanley and were never properly vetted or approved to trade through the Firm.

Bocchino and Barela Purposefully Concealed the Trades from Morgan Stanley

37. Bocchino and Barela typically executed the concealed Venezuelan Bond Transactions through the following steps:

- a. Bocchino would contact a Concealed Customer using the instant message ("IM") feature available through the Firm's Bloomberg terminal;
- b. Bocchino would confirm the trade terms with the Concealed Customer through IMs in the Firm's Bloomberg terminal;
- c. Bocchino would generate a trade confirmation through the Bloomberg system and send it electronically to the Concealed Customer;
- d. Bocchino, or Barela at his direction, would then contact the Firm's trading desk to have the trade executed using the Nominee Account in place of the Concealed Customer; and
- e. Bocchino, or Barela at his direction, would prepare an order ticket falsely memorializing the trade as having been executed on behalf of the Nominee Account. This order ticket was submitted to the Firm and became a record.

38. After Bocchino and Barela entered a Venezuelan Bond Transaction and caused it to be executed by the trading desk, but prior to settlement of the trade, they would instruct the Firm's settlement desk to replace the Euroclear² number (if one existed) for the Nominee Account with the Euroclear number associated with the Concealed Customer's clearing firm, thereby redirecting the trade from the Nominee Account to the Concealed Customer.

² Euroclear is a Belgium-based financial services company that specializes in the settlement of securities transactions as well as the safekeeping and asset servicing of these securities. <http://www.euroclear.com>.

The Concealed Trades

39. As summarized in Exhibit A attached hereto, during the Relevant Period, Bocchino and Barela placed a total of approximately 300 Venezuelan Bond Transactions totaling approximately \$190 million on behalf of the Concealed Customers in the Nominee Accounts.

40. As a result of Bocchino and Barela having concealed the identities of the Concealed Customers from Morgan Stanley, the Firm was unable to conduct an appropriate suitability and/or AML review of the Concealed Customers' transactions.

41. The Firm's inability to conduct such a review is even more critical in the case of the Concealed Customers who were never customers of the Firm. Those entities, all of which were foreign, would have been subject to enhanced scrutiny from Morgan Stanley's AML department had their identities not been concealed by Bocchino and Barela.

42. One of the Concealed Customers, SFSC, had a preexisting account at Morgan Stanley, which Morgan Stanley froze in October 2011 because SFSC failed to provide the Firm with certain Customer Identification Program documentation.

43. Between November 2011 and December 2011, during the time in which the SFSC freeze was in place, Bocchino and Barela intentionally circumvented the freeze restriction by executing four transactions on behalf of SFSC (consisting of both Argentine and Venezuelan bonds) totaling approximately \$1,255,650 through the PL Nominee Account.

FIRST CAUSE OF ACTION

Unethical Conduct, Material Misrepresentations and Omissions (FINRA Rule 2010)

44. The Department re-alleges and incorporates by reference paragraphs 1 through 43 above.

45. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

46. It is a violation of FINRA Rule 2010 for an associated person to intentionally evade firm policies and procedures, to make misrepresentations and omissions to the firm or its representatives, and to falsify records maintained in a member firm's official records.

47. As alleged above, Bocchino and Barela carried out a scheme to evade, circumvent, and thwart the Firm's policies and procedures regarding Venezuelan bond trading.

48. To effect this scheme, Bocchino and Barela used nominee accounts using the names of well-known U.S. financial institutions, hid the identities of customers selling Venezuelan bonds in violation of the Firm's policies, entered false information into the Firm's order entry system, provided false information to the Firm's settlement desk, and falsified documents.

49. As a result of their misconduct, Bocchino and Barela were able to create the false appearance of compliance with the Firm's Venezuelan bond trading restrictions and trade approximately \$190 million worth of Venezuelan bonds in violation of the Firm's policies and without the appropriate scrutiny of their supervisors and the Firm's AML and compliance departments.

50. By this misconduct, Bocchino and Barela violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Unauthorized Activity (Violation of FINRA Rule 2010)

51. The Department realleges and incorporates by reference Paragraphs 1 through 50 above.

52. As alleged above, Bocchino and Barela, while registered with Morgan Stanley, set up the Nominee Accounts fictitious accounts opened in the names of well-known financial institutions without their consent – to effect approximately 300 Venezuelan Bond Transactions totaling approximately \$190 million.

53. The financial institutions whose names were associated with the Nominee Accounts – PL, TPFS, PFS, PFS/ACM and DSL – did not authorize any of the activity in their accounts, including the Venezuelan Bond Transactions.

54. By this misconduct, Bocchino and Barela violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
Falsification of Records
(Violation of NASD Conduct Rule 3110 and FINRA Rules 4511 and 2010)

55. The Department realleges and incorporates by reference Paragraphs 1 through 54, above.

56. FINRA Rule 4511 (formerly NASD Conduct Rule 3110) requires member firms to “make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.” Exchange Act Rule 17a-3 requires a firm to make and keep current certain books and records relating to its businesses, including memoranda of each brokerage order. Inherent in this recordkeeping requirement is the obligation to maintain *accurate records*.

57. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.

58. As discussed more fully above, Bocchino and Barela falsified or caused to be falsified certain categories of documents, which constituted records of the Firm, including but not limited to:

- a. new account documentation;

- b. trade tickets;
- c. order confirmations;
- d. customer account statements;
- e. Firm blotters; and
- f. Firm reports.

59. By this misconduct, Bocchino and Barela violated NASD Conduct Rule 3110 (for conduct before December 5, 2011) and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondents be required to disgorge fully any and all ill-gotten gains, together with interest; and
- C. order that the Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: September 1, 2016


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