

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2016051634802**

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

RE: Morgan Stanley Smith Barney LLC (Respondent)
Member Firm
CRD No. 149777

Pursuant to FINRA Rule 9216, Respondent Morgan Stanley Smith Barney LLC (Morgan Stanley or 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Morgan Stanley has been a FINRA member since 2009, when it was created as a joint venture through the merger of the Global Wealth Management Group of Morgan Stanley & Co. LLC (CRD No. 8209) and the Smith Barney Division of Citigroup Global Markets Inc. (CRD No. 7059). Morgan Stanley is headquartered in Purchase, New York, and conducts a general securities business. The firm has more than 25,000 registered individuals and approximately 860 branch offices.¹

OVERVIEW

From January 2014 through December 2018, Morgan Stanley failed to reasonably supervise nine registered representatives who recommended potentially high-risk securities to their customers in violation of the firm's Plan of Solicitation policy. As a result, the firm violated NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 2010.²

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

² FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of a customer arbitration award.

FINRA Rule 3110, like its predecessor, NASD Rule 3010, requires a member firm to establish and maintain a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. To discharge these responsibilities, firms must reasonably investigate red flags of potential misconduct and take appropriate action when misconduct has occurred. A violation of FINRA Rule 3110 or NASD Rule 3010 also is a violation of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

FINRA Rule 2111 requires member firms and their associated persons to have a reasonable basis to believe that a recommended securities transaction or investment strategy is suitable for a customer, based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.

From January 2014 to December 2018, Morgan Stanley received alerts that nine registered representatives had made hundreds of recommendations that violated the firm's Plan of Solicitation policy. The Plan of Solicitation policy requires that representatives seeking to recommend, in the aggregate, more than 60,000 shares of a security not included in the S&P 500 Index, not covered by Morgan Stanley Research and not rated 3 stars or better by an independent third-party research service, complete a "Plan of Solicitation" setting forth their rationale for doing so. The firm's procedures also require that a supervisor at Morgan Stanley review and approve the Plan of Solicitation prior to the representative recommending the security.

Each of the nine representatives referenced above recommended that customers purchase securities in quantities that were subject to Morgan Stanley's pre-approval requirement but did not complete a Plan of Solicitation. Some of the recommended securities, including master limited partnerships in the energy and natural resources sectors and early-stage pharmaceutical, biotechnology and telecommunications companies, were high risk and inconsistent with certain of their customers' moderate or conservative risk tolerances. Morgan Stanley did not take appropriate action in response to alerts that its representatives had violated the Plan of Solicitation policy. In particular, the firm did not evaluate whether the recommendations were consistent with the customers' investment profiles. These customers incurred realized losses as a result of many of the recommended trades.

For example, Representative 1 recommended that eight of his customers—six of whom had a moderate risk tolerance—purchase shares in a Chinese telecommunications company that was subject to the Plan of Solicitation policy. Representative 1 failed to complete the Plan of Solicitation form prior to recommending that the customers

collectively purchase 112,100 shares of the security in March and April 2014. Although Morgan Stanley required Representative 1 to retroactively submit the Plan of Solicitation form in late April 2014, the firm never approved that form. Representative 1 continued to recommend that his customers purchase additional shares of this security without the firm taking reasonable steps to determine that his recommendations were suitable for these customers. In fact, the recommendations were not consistent with the customers' investment profiles, and the value of the shares fell by 70 percent by July 2016, and by 93 percent by June 2018. Representative 1's customers collectively incurred losses of more than \$1.6 million as a result.³

Since the trading discussed in the prior paragraphs, Morgan Stanley has improved its enforcement of the Plan of Solicitation policy, including by directing review of Plan of Solicitation alerts to a central review unit.

Therefore, Respondent violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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

- a censure;
- a \$200,000 fine; and
- restitution of \$497,897 plus interest as described below.⁴

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

Restitution is ordered to be paid to the customers listed on Attachment A to this AWC (Eligible Customers) in the total amount of \$497,897, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from January 1, 2019 until the date this AWC is accepted by the National Adjudicatory Council (NAC).

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution and interest (separately specifying the date and amount of each paid to each Eligible Customer) or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted by email to EnforcementNotice@FINRA.org from a work-related account of the registered principal of Respondent. The email must identify Respondent and the case number and include a copy of the check, money order,

³ FINRA barred Representative 1 from associating with any FINRA member firm in all capacities for his failure to appear for on-the-record testimony requested pursuant to FINRA Rule 8210 in connection with FINRA's investigation in this matter.

⁴ Morgan Stanley has previously paid restitution to some of the customers who suffered losses as a result of the conduct described in this AWC, either through settlement or as part of an arbitration award. This AWC orders restitution to the remaining customers.

or other method of payment. This proof shall be provided by email to EnforcementNotice@FINRA.org no later than 120 days after the date of the notice of acceptance of the AWC.

The restitution amount plus interest to be paid to each Eligible Customer shall be treated by the Respondent as the Eligible Customer's property for purposes of state escheatment, unclaimed property, abandoned property, and similar laws. If after reasonable and documented efforts undertaken to effect restitution Respondent is unable to pay all Eligible Customers within 120 days after the date of the notice of acceptance of the AWC, Respondent shall submit to FINRA in the manner described above a list of the unpaid Eligible Customers and a description of Respondent's plan, not unacceptable to FINRA, to comply with the applicable escheatment, unclaimed property, abandoned property, or similar laws for each such Eligible Customer.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

The imposition of a restitution order or any other monetary sanctions in this AWC, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

Restitution payments to customers shall be preceded or accompanied by a letter, not unacceptable to FINRA, describing the reason for the payment and the fact that the payment is being made pursuant to a settlement with FINRA and as a term of this AWC.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

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 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 its acceptance or rejection.

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:

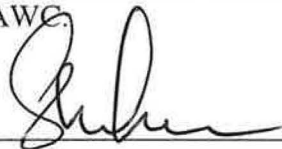
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter 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. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- 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.

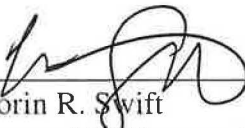
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

11-8-2022
Date


Morgan Stanley Smith Barney LLC
Respondent

Print Name: S. Anthony Taggart
Title: Managing Director

Reviewed by:


Corin R. Swift
Counsel for Respondent
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

Accepted by FINRA:

11/21/22
Date

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

Ka C Daly
Karen C. Daly
Principal Counsel
FINRA
Department of Enforcement
1601 Market St., 27th Floor
Philadelphia, PA 19103-2339

Schedule A

Customer	Restitution
Customer 1	\$3,298.37
Customer 2	\$2,245.39
Customer 3	\$1,045.27
Customer 4	\$1,377.51
Customer 5	\$4,605.63
Customer 6	\$1,245.80
Customer 7	\$1,065.80
Customer 8	\$11,987.45
Customer 9	\$7,851.62
Customer 10	\$25,409.11
Customer 11	\$4,652.59
Customer 12	\$26,260.00
Customer 13	\$2,087.86
Customer 14	\$23,964.21
Customer 15	\$2,806.25
Customer 16	\$21,444.30
Customer 17	\$3,081.86
Customer 18	\$1,510.39
Customer 19	\$13,621.38
Customer 20	\$4,248.00
Customer 21	\$1,023.23
Customer 22	\$1,845.08
Customer 23	\$13,155.85
Customer 24	\$4,606.46
Customer 25	\$1,044.80
Customer 26	\$1,580.48
Customer 27	\$2,188.69
Customer 28	\$2,709.63
Customer 29	\$9,482.95
Customer 30	\$4,360.28
Customer 31	\$1,987.30
Customer 32	\$4,282.90
Customer 33	\$3,735.01
Customer 34	\$3,132.38
Customer 35	\$1,578.04
Customer 36	\$4,106.47
Customer 37	\$2,048.22
Customer 38	\$1,424.07
Customer 39	\$2,259.61
Customer 40	\$12,823.51
Customer 41	\$140,664.54
Customer 42	\$1,722.52
Customer 43	\$1,214.60
Customer 44	\$2,348.52
Customer 45	\$2,594.69
Customer 46	\$5,122.62
Customer 47	\$3,803.70
Customer 48	\$2,579.29
Customer 49	\$4,309.03
Customer 50	\$10,603.49

Schedule A

Customer	Restitution
Customer 51	\$8,988.80
Customer 52	\$2,468.22
Customer 53	\$1,658.07
Customer 54	\$3,034.04
Customer 55	\$5,285.62
Customer 56	\$2,270.60
Customer 57	\$2,228.05
Customer 58	\$2,426.94
Customer 59	\$4,123.15
Customer 60	\$1,415.59
Customer 61	\$30,878.46
Customer 62	\$14,972.68