

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2021069319401**

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) 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 May 2009. The firm is headquartered in Purchase, New York, and as of December 2023, had approximately 27,000 registered representatives and approximately 1,000 branches. It is a full-service brokerage firm and conducts, among other things, a general and municipal securities business with retail and high net-worth customers.¹

OVERVIEW

From May 2018 through July 2022, Morgan Stanley provided written trade confirmations to non-institutional customers that did not accurately disclose or did not disclose at all the firm's mark-ups and mark-downs for approximately 19,000 municipal securities and corporate debt transactions. In addition, the firm did not disclose the time of execution, and/or a security-specific URL (providing a hyperlink to a FINRA or MSRB-hosted web page with publicly available trading data for the security), for approximately 35,000 fixed price, primary market transactions involving municipal securities and approximately 500,000 fixed price primary market transactions involving corporate or agency debt securities. As a result, Morgan Stanley violated MSRB Rule G-15 (with respect to the municipal securities transactions) and FINRA Rules 2232 and 2010 (with respect to the corporate or agency debt transactions).

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

Additionally, Morgan Stanley did not establish, maintain, and enforce a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with MSRB Rule G-15 and FINRA Rule 2232. As a result, Morgan Stanley violated MSRB Rule G-27 and FINRA Rules 3110(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a firm examination conducted by FINRA Member Supervision.

Morgan Stanley failed to disclose—and inaccurately disclosed—required information on approximately 550,000 non-institutional customer confirmations.

Trade confirmations protect investors who buy or sell securities through broker-dealers by, among other things, alerting them to potential conflicts of interest with their broker-dealers and providing them the means to verify the terms of their transactions and evaluate transaction costs and the quality of their broker-dealers' executions.

Municipal Securities Rulemaking Board (MSRB) Rule G-15 requires each broker, dealer, or municipal securities dealer, at or before the completion of a transaction in municipal securities with or for the account of a customer, to send to the customer a written confirmation that complies with the requirements of MSRB Rule G-15(a)(i).

MSRB Rule G-15(a)(i)(A)(2)(b) requires confirmations to include "[t]he time of execution," except for transactions for institutional accounts or in municipal fund securities. MSRB Rule G-15(a)(i)(D)(4) requires, in relevant part, that non-institutional customer confirmations include "a reference and, if the confirmation is electronic, a hyperlink to a webpage on [MSRB's Electronic Municipal Market Access website (EMMA)] that contains publicly available trading data for the specific security that was traded, along with a brief description of the type of information available on that page." MSRB Rule G-15(a)(i)(F)(1) requires, in relevant part, that, where the dealer offsets a non-institutional customer trade with one or more same-day principal trades, the member must include its mark-up or mark-down on the customer confirmation, to be calculated as provided in the rule and expressed as a total dollar amount and as a percentage of the prevailing market price.

FINRA Rule 2232(c) similarly requires, in relevant part, that where a member offsets a non-institutional customer trade with one or more same-day principal trades, the customer confirmation must include the firm's mark-up or mark-down for the transaction, expressed as a total dollar amount and as a percentage of the prevailing market price. FINRA Rule 2232(e) requires that for all transactions in corporate or agency debt securities, non-institutional customer confirmations must include the time the trade was executed. It also requires "a reference, and hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains Trade Reporting And Compliance Engine (TRACE) publicly available trading data for the specific security that was traded. . . along with a brief description of the type of information available on that page[.]"

A violation of FINRA Rule 2232 is also a violation of FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

From May 2018 through July 2022, Morgan Stanley provided non-institutional customers with confirmations that either inaccurately disclosed or did not disclose required mark-up or mark-down information for approximately 19,000 transactions involving municipal securities or corporate debt securities. From May 2018 through June 2021, Morgan Stanley did not include the time the trade was executed and references and hyperlinks to the EMMA and TRACE webpages containing the security-specific trading data on non-institutional customer confirmations for approximately 500,000 fixed price corporate primary market or agency primary market and approximately 35,000 fixed price municipal securities primary market transactions. Morgan Stanley self-identified these matters in June 2021 and reported them to FINRA.

Therefore, Morgan Stanley violated MSRB Rule G-15 (with respect to the municipal securities transactions) and FINRA Rules 2232 and 2010 (with respect to the corporate and agency debt transactions).

Morgan Stanley did not reasonably supervise for compliance with the disclosure requirements of MSRB Rule G-15 and FINRA Rule 2232.

MSRB Rule G-27 requires brokers, dealers and municipal securities dealers to establish and maintain a supervisory system, including written procedures, to supervise the conduct of their municipal securities activities to ensure compliance with MSRB rules and applicable provisions of the Securities Exchange Act of 1934 and Exchange Act rules.

FINRA Rule 3110(a) requires member firms to establish and maintain a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules. A violation of FINRA Rule 3110 also is a violation of FINRA Rule 2010.

From May 2018 through July 2022, Morgan Stanley's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with MSRB Rule G-15 and FINRA Rule 2232. For example, with respect to the firm's not disclosing mark-up and mark-down information on confirmations, the firm did not have any reasonably designed process in place to test the accuracy of the information in its internal systems that triggered mark-up and mark-down disclosures on non-institutional customer confirmations.

In addition, under both MSRB Rule G-15 and FINRA Rule 2232, when the offsetting principal trade triggering mark-up or mark-down disclosure is executed with an affiliate of the dealer and not an arm's length transaction, the dealer is required to "look through" to the time and terms of the affiliate's transaction to determine whether disclosure is required and if so, accurately calculate the mark-up or mark-down. The firm did not reasonably evaluate whether its internal systems accurately captured offsetting trading activity involving one of its affiliates and, as a result, it did not timely detect that it was not capturing trade data from an affiliate and, therefore, was not disclosing or was inaccurately disclosing mark-ups and mark-downs on confirmations involving transactions executed with that affiliate.

The firm's supervisory system also was not reasonably designed to ensure that it complied with the time-of-execution and security-specific URL disclosure requirements. Both MSRB

Rule G-15 and FINRA Rule 2232 require dealers to disclose the time of execution and a security-specific URL on non-institutional customer confirmations regardless of whether a mark-up or mark-down disclosure is also required.² Nevertheless, the firm did not include the time of execution and a security-specific URL on non-institutional customer confirmations unless a mark-up or mark-down disclosure was also required, and its WSPs only required the firm to review confirmations for time-of-execution and security-specific URL disclosures where a mark-up or mark-down disclosure was required. As a result, the firm was unable to detect the time-of-execution and security-specific URL disclosure omissions described herein.³

Therefore, Morgan Stanley violated MSRB Rule G-27 and FINRA Rules 3110(a) and 2010.

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

- a censure; and
- a \$400,000 fine (\$24,000 of which pertains to the violations of MSRB Rules G-15 and G-27).

Respondent agrees to pay the monetary sanction 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.

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 sanction imposed in this matter.

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

² See MSRB Notice 2018-05, "MSRB Provides New and Updated FAQs on Confirmation Disclosure and Prevailing Market Price" (March 19, 2018); FINRA Regulatory Notice 17-08, "SEC Approves Amendments to Require Mark-Up/Mark-Down Disclosure on Confirmations for Trades with Retail Investors in Corporate and Agency Bonds" (February 15, 2017).

³ By July 2022, the firm revised its procedures to address and conform with the requirements of MSRB Rule G-15 and FINRA Rule 2232 with respect to the issues discussed herein.

- 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.

August 8, 2024

Date

S. Anthony Taggart

Morgan Stanley Smith Barney LLC
Respondent

Print Name: S. Anthony Taggart

Title: Managing Director & Counsel

Reviewed by:

Daniel Schubert

Daniel Schubert, Esq.
Counsel for Respondent
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
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New York, New York 10007

Accepted by FINRA:

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

August 13, 2024

Date

Nicholas Pilgrim

Nicholas Pilgrim
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