

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2023077632501**

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 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. It is a full-service firm headquartered in Purchase, New York and conducts a general securities business. The firm has over 27,200 registered representatives in approximately 1,000 branch offices.

In December 2016, FINRA censured and fined Morgan Stanley \$1.5 million for, among other things, failing to deliver approximately 2.1 million prospectuses and failing to implement a reasonable supervisory system relating to prospectus delivery during the period of November 8, 2013 to August 14, 2014.¹

OVERVIEW

From August 2020 to October 2022, Morgan Stanley failed to deliver prospectuses to customers electing paper delivery in connection with 166,104 sales of 65 Exchange-Traded Funds (ETFs). As a result, the firm violated FINRA Rule 2010 by acting in contravention of Section 5(b)(2) of the Securities Act of 1933. In addition, Morgan Stanley failed to establish and maintain a supervisory system reasonably designed to monitor and confirm the delivery of prospectuses to customers, in violation of FINRA Rules 3110 and 2010.

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

FACTS AND VIOLATIVE CONDUCT

This matter originated from disclosure by Morgan Stanley pursuant to FINRA Rule 4530(b).

Section 5(b)(2) of the Securities Act prohibits the delivery of certain securities, including ETFs, unless such delivery is accompanied or preceded by a copy of a prospectus, or an exemption applies. FINRA Rule 2010 requires that a member firm, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. A firm that acts in contravention of Section 5(b)(2) of the Securities Act violates FINRA Rule 2010.

FINRA Rule 3110 requires member firms to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010.

From August 2020 to October 2022, Morgan Stanley failed to deliver prospectuses to customers electing paper delivery in connection with 166,104 trades in 65 ETFs, affecting over 44,000 accounts. The firm's prospectus delivery failures stemmed from coding in the firm's internal systems that incorrectly indicated that prospectuses need not be delivered for transactions in these 65 ETFs, all of which were in the same fund family. Because Morgan Stanley's third-party prospectus fulfillment vendor delivered a paper prospectus only when Morgan Stanley's systems indicated one should be delivered, the vendor did not deliver prospectuses for the 65 ETFs until Morgan Stanley discovered and fixed the coding error in October 2022. The firm subsequently implemented additional procedures requiring manual reviews of prospectus delivery indicators to confirm its systems accurately indicate whether prospectuses are to be delivered.

In failing to deliver the 166,104 prospectuses, Respondent violated FINRA Rule 2010 by acting in contravention of Section 5(b)(2) of the Securities Act.

Morgan Stanley was obligated to implement a reasonable supervisory system to achieve compliance with requirements for the delivery of prospectuses to customers. During the relevant period, Morgan Stanley's supervisory system was not able to detect whether its internal systems accurately indicated that these prospectuses should be delivered. Because its supervisory system was not reasonably designed, Morgan Stanley violated FINRA Rules 3110 and 2010.

CREDIT FOR EXTRAORDINARY COOPERATION

In resolving this matter, FINRA has recognized Respondent's extraordinary cooperation for: (1) self-reporting the issue to FINRA, including contacting FINRA staff separately from its FINRA Rule 4530(b) disclosure, after identifying the issue from a self-initiated quality assurance review of its vendor; (2) taking immediate remedial steps, including new procedures requiring manual reviews of prospectus delivery indicators and a comprehensive review of its entire wealth management platform to confirm the accuracy

of the prospectus delivery indicators for all products; and (3) providing substantial assistance to FINRA in its investigation, including a voluntary offer to provide substantially all relevant information prior to its receipt of a document request letter.

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

- a censure; and
- a \$400,000 fine.

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
- 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

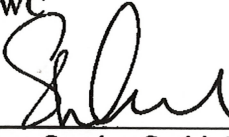
Respondent understands that:

- 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.

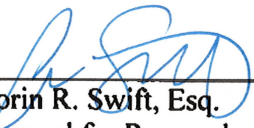
The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and 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.

11/10/2023
Date


Morgan Stanley Smith Barney LLC
Respondent

Print Name: S. Anthony Taggart
Title: Managing Director

Reviewed by:


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

Accepted by FINRA:

11/16/2023
Date

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


Jeffrey E. Baldwin
Senior Counsel
FINRA
Department of Enforcement
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