

**NYSE MKT LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20150441008**

TO: NYSE MKT LLC
c/o Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 9216 of the NYSE MKT LLC ("NYSE MKT" or the "Exchange") Code of Procedure, Morgan Stanley Smith Barney LLC ("MSSB", the "Firm" or "Respondent") 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, NYSE MKT will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 NYSE MKT, or to which NYSE MKT 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 NYSE MKT:

BACKGROUND

MSSB became a member organization of FINRA on May 19, 2009, and a member organization of NYSE MKT as of September 27, 2010. These registrations remain in effect.

RELEVANT DISCIPLINARY HISTORY

The Firm has no relevant disciplinary history.

SUMMARY

1. During the pendency of a prior related investigation related to the Firm's reporting to the Options Clearing Corporation ("OCC") Large Options Positions Report system ("LOPR"), in January 2015 and again in September 2015, MSSB self-reported to NYSE Regulation, through FINRA staff (the "staff"), that it had identified additional LOPR issues related to certain accounts acting in-concert and other reporting issues that spanned the period between September 27, 2010 and

January 2016 (the "Review Period").¹ Upon being informed of these issues, and on behalf of NYSE Regulation, in connection with FINRA Matter No. 20150441008, the staff conducted a review of MSSB's submissions to the OCC LOPR for compliance with Exchange options reporting rules during the Review Period. In a letter dated December 18, 2015, the Legal Section of FINRA's Market Regulation Department, on behalf of the Exchange, advised the Firm of this investigation.

2. As a result of its investigation, staff concluded that during the Review Period, in over 13 million instances,² MSSB had reported positions to the LOPR without identifying the relevant accounts as acting in-concert, and further failed to report or accurately report reportable positions to the LOPR in millions of additional instances. Lastly, the staff concluded that MSSB had supervisory deficiencies related to these matters, as described below.
3. LOPR data is used extensively by the Exchange, FINRA and other self-regulatory organizations to identify holders of large option positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations. The accuracy of LOPR data is essential for the analysis of potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.

FACTS AND VIOLATIVE CONDUCT

4. During the Review Period, in over 13 million instances, MSSB reported positions to the LOPR without the requisite in-concert identification due to the duplication of two required data fields (Reference ID and Registration ID) for in-concert submissions. Unbeknownst to the Firm, the duplicated data had caused rejections of certain of its in-concert reports. MSSB's failure to review and re-submit the rejected in-concert submissions to the OCC caused positions reported to not be identified as acting in-concert.
5. During the Review Period, MSSB failed to accurately or completely report positions to the LOPR as follows: (i) in over 500,000 instances, MSSB reported positions for domestic and foreign accounts to the LOPR without tax identification numbers ("TINs") or social security numbers ("SSNs"), including approximately 100,000 domestic accounts; (ii) in over 38 million instances,

¹ Effective May 14, 2012, NYSE Amex LLC was renamed NYSE MKT LLC. Thus, while certain of the conduct referred to herein occurred prior to May 14, 2012, and thus the violations were of NYSE Amex rules, for purposes of this document all the violations cited herein will be referred to as Exchange Rules.

² An "instance" is a single failure to report, or inaccurately report, a given options position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had been reported inaccurately.

MSSB reported positions to the LOPR in the wrong account type, in that the Firm reported "customer" positions with an inaccurate account type of "firm"; (iii) in over 36,000 instances, MSSB reported positions to the LOPR with account names extending into the address field, with incomplete address fields, or with street addresses that included additional information; and (iv) in over 500,000 instances, MSSB reported positions to the LOPR without a zip code.

6. During the Review Period, in a significant but unquantified number of instances, MSSB also failed to report, or accurately report, reportable options positions to the LOPR as follows:
 - a. MSSB failed to capture for in-concert reporting certain joint and partnership accounts, accounts with a status of closed or "swung" (client account transferred to new account number), certain foreign accounts, certain financial advisor and portfolio manager accounts, and accounts with third-party trading authority over non-discretionary accounts.
 - b. MSSB failed to include FLEX options in its LOPR aggregation.
 - c. MSSB failed to include options marked as inactive in its LOPR position file.
 - d. MSSB incorrectly populated the Effective Date of options positions with the submission date rather than the trade date.
7. The conduct described in paragraphs four through six above constitutes separate and distinct violations of Exchange Rule 906(a).NY.

Supervision

8. During the Review Period, MSSB failed to have supervisory systems and controls in place, including a separate system of follow-up and review, reasonably designed to achieve compliance with the Exchange's option reporting rules. MSSB also lacked adequate written supervisory procedures requiring reviews to ensure that its submissions to the LOPR were complete and accurate.
9. The conduct described in paragraph eight above constitutes a violation of Exchange Rule 320.NY.

OTHER FACTORS

10. In determining to resolve this matter on the basis set forth herein, the Legal Section of Market Regulation took into consideration the following: (i) the Firm's self-reporting of these LOPR violations and the Firm's ensuing cooperation throughout FINRA's investigation; and (ii) the subsequent remedial measures implemented by the Firm, including system and surveillance enhancements.

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

A censure and a total fine of \$2,200,000, of which \$1,650,000 shall be paid to NYSE MKT³ (\$825,000 for LOPR violations and \$825,000 for related inadequate supervision) for MSSB's violations of Exchange Rules 906(a).NY and 320.NY.

Additionally, acceptance of this AWC is conditioned upon acceptance of an equivalent settlement agreement in a related matter between the Firm and FINRA.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. Respondent has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

Respondent 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.

Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that Respondent pays pursuant to this AWC, regardless of the use of the fine amounts.

The sanctions imposed herein shall be effective on a date set by NYSE Regulation staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under the NYSE MKT's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal 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 Exchange's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

³ The balance of the fine will be paid to FINRA pursuant to a separate settlement agreement.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer of NYSE MKT; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC") and Committee for Review ("CFR"); any Director, DAC member or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE MKT employee; or any Regulatory Staff as defined in Rule 9120 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of NYSE MKT Rule 9143 or the separation of functions prohibitions of NYSE MKT 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:

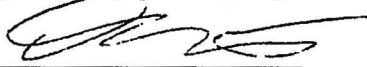
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Market Regulation and the Chief Regulatory Officer of NYSE MKT, pursuant to NYSE MKT Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 1. The AWC shall be sent to each Director and each member of the Committee for review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE MKT Rule 9310(a)(1)(B).
 2. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NYSE MKT, or any other regulator against the Respondent;
 3. NYSE MKT shall publish a copy of the AWC on its website in accordance with NYSE MKT Rule 8313;
 4. NYSE MKT may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE MKT Rule 8313; and

5. 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 NYSE MKT, or to which NYSE MKT is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which NYSE MKT is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. 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 NYSE MKT, nor does it reflect the views of NYSE Regulation or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

9-16-16
Date

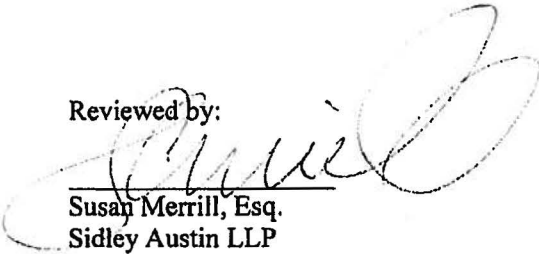
Respondent
Morgan Stanley Smith Barney LLC

By: 

Name: Scott Tucker

Title: Global Head of Litigation

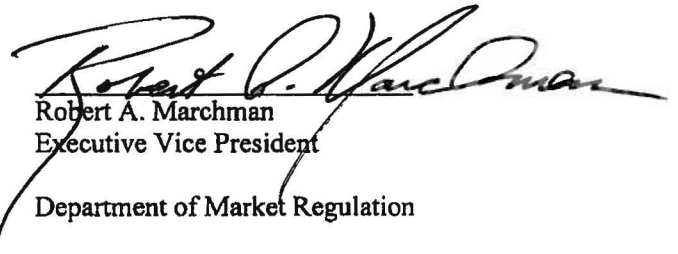
Reviewed by:



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202.738.8000
Counsel for Respondent
Morgan Stanley Smith Barney LLC

Accepted by FINRA:

9/20/16
Date



Robert A. Marchman
Executive Vice President
Department of Market Regulation

Signed on behalf of NYSE MKT LLC, by
delegated authority from the Chief
Regulatory Officer of NYSE MKT LLC.