

**NEW YORK STOCK EXCHANGE LLC  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2018-12-00030**

TO: New York Stock Exchange LLC

RE: Morgan Stanley & Co. LLC, Respondent  
CRD No. 8209

**On November 30, 2018, Morgan Stanley & Co. LLC violated NYSE Rule 52 (Dealings on the Exchange—Hours) by seeking to have certain orders included in the closing auction although it had not sufficiently expressed verbal interest prior to the close of trading, and therefore, was not entitled to participate in the closing auction. Consent to a censure and a \$75,000 fine.**

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Pursuant to Rule 9216 of the New York Stock Exchange LLC (the “NYSE” or the “Exchange”) Code of Procedure, Morgan Stanley & Co. 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, the NYSE will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. Morgan Stanley hereby accepts and consents, solely for the purposes of this proceeding and any other proceeding brought by or on behalf of the NYSE, or to which the NYSE is a party, prior to a hearing and without an adjudication of any issue of law or fact, without admitting or denying the findings, to the entry of the following findings by the NYSE:

**BACKGROUND AND JURISDICTION**

1. Morgan Stanley became a member of the NYSE on November 17, 1982, and its registration remains in effect. As part of its business, Morgan Stanley has NYSE floor brokers.

**PROCEDURAL HISTORY**

2. This matter arises from an investigation, opened by NYSE Regulation on December 6, 2018, into Morgan Stanley’s conduct around the close of trading on the NYSE on November 30, 2018.

## VIOLATIONS

### *The NYSE Closing Auction*

3. After the close of trading on the NYSE (4:00 p.m.),<sup>1</sup> the final closing price for NYSE-listed securities is determined through a closing auction every trading day. The closing auction is managed by member firms of the NYSE referred to as Designated Market Makers (“DMM” or “DMM Unit”), with one firm assigned to each NYSE-listed security. DMMs are not affiliated with or employed by the NYSE.
4. One way to participate in the closing auction is to transmit orders electronically to a NYSE floor broker. The floor broker can then electronically transmit the orders to the appropriate DMM for inclusion in the closing auction until 3:59:50 p.m.
5. Floor brokers can also participate in the closing auction by expressing verbally to the appropriate DMM all of the essential elements of an order, which include: the security symbol; the number of shares; whether the order is to buy or sell; and the limit price or fact that the order is a market order. To participate in the closing auction, all of these elements of verbal interest must be expressed to a DMM prior to 4:00 p.m. If a floor broker has properly expressed verbal interest to a DMM prior to 4:00 p.m., he or she will then return to the DMM after the close of trading to consummate the order for inclusion in the DMM’s system for the closing auction. Verbal interest is used on a less frequent basis than electronic orders, with an overwhelming majority of interest included in the closing auction coming from electronic orders.
6. After the close of trading at 4:00 p.m., the DMM assigned to a security will initiate the closing auction at a price that clears the market. This is frequently an automated process, but in certain circumstances the DMM has to close the stock manually. When a DMM manually completes a closing auction for a security symbol, the number of minutes it takes the DMM to close the security varies, depending on volume (among other factors).

### *The Closing Auction on November 30, 2018*

7. On November 30, 2018, at 3:59:46 p.m., a Morgan Stanley trader working at the Firm’s offices in midtown Manhattan sent principal orders in approximately 180 NYSE-listed securities to the Firm’s booth on the NYSE floor.<sup>2</sup> The system in the Firm’s booth electronically split the orders in real-time into three groups, with orders in approximately 60 NYSE-traded symbols routed from the Firm’s booth on the

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<sup>1</sup> All times referenced herein are in the Eastern time zone.

<sup>2</sup> The closing auction on Friday, November 30, 2018 involved unusually high volume as the result of the MSCI Semi-Annual Review, which involved the rebalancing of a number of indices. Approximately 900 million shares were traded on the NYSE around the close on November 30, 2018, with approximately 1.5 billion shares traded over the course of the entire trading day.

NYSE floor to the handheld devices of three different floor brokers about one second later, at 3:59:47 p.m. Orders in approximately 60 symbols were routed to each of:

- a. One Morgan Stanley floor broker who was able to transmit his orders electronically for inclusion in the closing auction before the 3:59:50 p.m. deadline;
  - b. A floor broker associated with another member firm who did not attempt to transmit any of his orders, either electronically or verbally, given the time he received them; and
  - c. Another Morgan Stanley floor broker ("Morgan Stanley Floor Broker 1").
8. At the time Morgan Stanley Floor Broker 1 received his orders in his handheld device (around 3:59:47 p.m.), he was stationed by one of the DMM firms ("DMM Firm 1"). Morgan Stanley Floor Broker 1 has stated that he attempted to route the orders to DMM Firm 1 electronically, but was unable to do so by the 3:59:50 p.m. cutoff for electronic orders.
  9. Morgan Stanley Floor Broker 1 then attempted, in the vicinity of (among others) multiple DMM Firm 1 employees and a NYSE Executive Floor Governor ("EFG"), to state verbal interest in five of the approximately 60 symbols for which he had received orders. Although he verbally stated the symbols for those five securities in the seconds before (or at) the close at 4:00 p.m., he did not verbalize at that time whether his orders were to buy or sell, the quantity of his orders, or whether they were limit or market orders (and, if limit orders, the limit price).
  10. As described above, to participate in the closing auction via the expression of verbal interest, a floor broker must specify the relevant security symbol, his or her intent to buy or sell, the quantity, and a price by 4:00 p.m. *See NYSE Member Education Bulletin No. 2015-2, Trading Near or on the Close - Frequently Asked Questions*, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2015/NYSE%20MEB-15-02.pdf>.<sup>3</sup>
  11. Nonetheless, prior to DMM Firm 1 closing any of the five relevant stocks (which the DMM had to do manually), Morgan Stanley Floor Broker 1, in the presence of one or more EFGs, then sought to have his orders in those five symbols that he had previously shouted (totaling 216,309 shares) included in the closing auction. He did

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<sup>3</sup> Specifically, *see* FAQ #5 ("A Floor broker holding multiple orders in stocks trading at different posts must have an actual order for each stock. Such orders must be entered into an Exchange system and recorded in accordance with Rule 123(e) prior to 4:00 p.m. A Floor broker holding multiple orders who wishes to represent two or more of those orders manually (as opposed to electronically) should adequately communicate the customer's closing interest to the DMM prior to the Close, including his or her intent to buy or sell, the quantity, and a price."); FAQ #10 ("A Floor broker announces at the point of sale that he has 20,000 to sell but does not state a limit price or that he is trading at the market. Is the Floor broker entitled to participate in the Close? No. Non-firm bids or offers are not permissible. The Floor broker's statement is not a firm offer since it does not specify a limit price or that it is at the market.").



this by providing the remaining details of his orders to the DMM Firm 1 employees responsible for closing those particular securities. The DMM Firm 1 employees included Morgan Stanley's orders in those five securities in the closing auction, and the five stocks were closed between 4:03:02 p.m. and 4:12:04 p.m.<sup>4</sup>

12. The closing prices for four out of the five securities were not impacted by the orders included from Morgan Stanley Floor Broker 1. For the fifth symbol, the inclusion of Morgan Stanley's order in the closing auction did not materially impact (.06%) the closing price. Before that order was entered, an EFG, who was present for these events, was consulted.<sup>5</sup> Although Morgan Stanley Floor Broker 1 discussed the orders with an EFG, it remains Morgan Stanley's responsibility to ensure it acts in accordance with Exchange rules. See, e.g., *NYSE Member Education Bulletin No. 2019-01, Floor Broker Verbal Interest at the Close*, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2019/NYSE%20MEB%2019-01.pdf>.<sup>6</sup>

*Morgan Stanley's Violations of the NYSE Rules*

13. NYSE Rule 52 provides that "no member shall make any bid, offer or transaction on the Exchange before or after" the Exchange's hours of business, which ended at 4:00 p.m. on November 30, 2018.
14. On behalf of Morgan Stanley, Morgan Stanley Floor Broker 1 sought to have the Firm's orders in five stocks included in the closing auction, although verbal interest for the Firm's orders was not fully expressed prior to the close of trading, and therefore, Morgan Stanley was not entitled to participate in the closing auction. Accordingly, Morgan Stanley violated NYSE Rule 52.
15. Since the events described above, Morgan Stanley has voluntarily enhanced its procedures concerning trading around the NYSE closing auction.

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<sup>4</sup> Morgan Stanley Floor Broker 1 did not know at the time he sought to have Morgan Stanley's orders included in the closing auction whether the Firm would benefit monetarily rather than having the orders executed the next trading day. In light of the price movement of the five securities the following trading day, Morgan Stanley did not benefit monetarily from having its orders included in the closing auction on November 30, 2018.

<sup>5</sup> At no point was any Floor Official Request Tracking Engine ("FORTE") form filed, which is done by NYSE members to document verbal EFG approvals, consultations, or denials that occur on the NYSE floor. See *NYSE Member Education Bulletin No. 2011-2, Floor Official Request Tracking Engine (FORTE)*, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2011/2011-2.pdf>.

<sup>6</sup> While NYSE Rule 47 provides that EFGs have the "power to supervise and regulate . . . unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor," it is not an unusual situation if a floor broker receives a customer order shortly before the close and the floor broker does not have enough time to electronically enter that order or get to the DMM post to sufficiently verbalize the order to the DMM before the close. See *NYSE Member Education Bulletin No. 2019-01, Floor Broker Verbal Interest at the Close* (cited above).

### **PRIOR RELEVANT DISCIPLINARY HISTORY**

16. Morgan Stanley previously has not been the subject of disciplinary action for seeking to have untimely orders included in the closing auction.

### **SANCTIONS**

- B. The Firm consents to the imposition of the following sanctions:

1. **Censure and fine in the amount of \$75,000.**

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm 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.

The Firm 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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm 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 the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE 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.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer of the NYSE; 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

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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte communication prohibitions of Rule 9143 or the separation of functions prohibitions of 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**

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of the NYSE pursuant to NYSE Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; 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 Rule 9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
  - 3. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;
  - 4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313; and
  - 5. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or



factual positions in litigation or other legal proceedings in which the Exchange 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. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm performed a reasonably diligent search for documents requested by the Exchange and produced responsive, non-privileged documents except as disclosed by the Firm or to the extent requests were modified by NYSE Regulation staff. In agreeing to the AWC, the Exchange has relied upon, among other things, the document productions (subject to any agreed upon modifications).

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.

7/18/2019  
Date

Morgan Stanley & Co. LLC,  
Respondent

By:   
S. Anthony Taggart  
Managing Director & Counsel  
Morgan Stanley & Co. LLC

Reviewed by:



George S. Canellos, Esq.  
Milbank LLP  
55 Hudson Yards  
New York, NY 10001-2163  
1 (212) 530-5000  
Counsel for Respondent

Accepted by NYSE Regulation:

7/18/19

Date



William Vanderveer, Regulatory Attorney  
Tony Frouge, Senior Enforcement Counsel  
NYSE Regulation

Signed on behalf of New York Stock  
Exchange LLC, by delegated authority from  
its Chief Regulatory Officer