

NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017053128504

TO: NYSE Arca, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

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

From July 17, 2017 through July 21, 2017, Morgan Stanley & Co. LLC violated Rule 17a-3(a)(6)(i) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and NYSE Arca Rule 6.68 (Record of Orders) by failing to accurately record the order receipt and order transmission times, and the accurate exchange of execution, of manual options orders it had routed to NYSE Arca and various other national securities exchanges for execution. Morgan Stanley & Co. LLC also violated NYSE Arca Rule 11.18 (Supervision) by, during the period from July 2017 through the present, failing to establish and maintain written supervisory procedures and a supervisory system that were reasonably designed to ensure compliance with the recordkeeping provisions of the federal securities laws and NYSE Arca rules. Morgan Stanley & Co. LLC consents to a censure and a \$120,000 fine, of which \$40,000 shall be paid to NYSE Arca, and an undertaking.

* * *

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") Code of Procedure, Morgan Stanley & Co. LLC ("MSCO" 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, NYSE Arca will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 Arca, or to which NYSE Arca 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 Arca:

BACKGROUND

The firm became registered as an Options Trading Permit ("OTP") Holder with NYSE Arca on July 29, 1974, and a member of FINRA on June 5, 1970. Its registrations remain in effect. MSCO, a subsidiary of Morgan Stanley Domestic Holdings, Inc., is a Delaware STAR No. 20170531285 (ST)

limited liability company headquartered in New York, New York. The firm, which has approximately 4,010 registered representatives in 39 branch offices, provides services to corporate and broker-dealer clients and institutional investors, and acts as an agency broker-dealer, providing market access and execution services to market participants for a wide variety of products.

The firm does not have any relevant disciplinary history.

SUMMARY

1. The Financial Industry Regulatory Authority's ("FINRA") Trading and Financial Compliance Examinations staff (the "Staff") within the Department of Market Regulation, on behalf of NYSE Arca and other options exchanges, conducted a review of the manual options order tickets handled by the firm during the period between July 17, 2017 and July 21, 2017 (the "Exam Review Period").
2. During the Exam Review Period, MSCO failed to accurately record the order receipt and order transmission times, and the accurate exchange of execution, of manual options orders it had routed to NYSE Arca and various other national securities exchanges for execution in violation of Exchange Act Rule 17a-3(a)(6)(i) and NYSE Arca Rule 6.68. During the Exam Review Period, MSCO also failed to accurately record the exchange of execution of facilitation orders in violation of Exchange Act Rule 17a-3(a)(6)(i) and NYSE Arca Rule 6.68.
3. From July 2017 through the present (the "Supervisory Review Period"), the firm also violated NYSE Arca Rule 11.18 by failing to establish, maintain and enforce written supervisory procedures ("WSPs") and a system of supervision that were reasonably designed to ensure compliance with the applicable federal securities laws and NYSE Arca rules that require the accurate documentation of the order receipt and transmission times, and exchange of execution, of options orders.

FACTS AND VIOLATIVE CONDUCT

4. The recordkeeping provisions of the federal securities laws and NYSE Arca rules are designed to ensure that regulators have access to certain basic information about securities transactions. Access to transaction records serves as an essential component for effective surveillance and examination of broker-dealers by NYSE Arca and other self-regulatory organizations.
5. Section 17 of the Exchange Act and Exchange Rule 17a-3(a)(6)(i) promulgated thereunder require broker-dealers, such as MSCO, to create a brokerage order ticket of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. In relevant part, the rule requires the brokerage order ticket to show, among other things, the terms and conditions of the order or instructions, the time the order was received, the time the order was entered, and the time of execution or cancellation. Such records must be accurate.

6. NYSE Arca Rule 6.68 requires members to maintain a record of every order for the purchase or sale of option contracts, which must show the terms and conditions of the order and also must include, among other things, order entry date and time, or the date and time of any modification of the terms of the order or cancellation of the order; order execution time and price; and such other information as may be required by NYSE Arca.
7. NYSE Arca Rule 11.18 states, in pertinent part, “[e]ach OTP Holder or OTP Firm must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.”
8. During the Exam Review Period, the firm handled approximately 1,176 manual options orders, approximately 20% of which (237) were manual customer options orders routed to certain option exchanges. Forty-eight manual customer options orders routed to these options exchanges during the Exam Review Period were reviewed for timestamp and venue of execution accuracy, and 156 were reviewed for venue of execution accuracy.
9. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain an accurate record of the order receipt time for eight (approximately 17%) of the sampled orders. Of these eight orders, two were executed on NYSE Arca.
10. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain an accurate record of the order transmission time for 30 (approximately 63%) of those orders. Of these 30 orders, 18 were executed on NYSE Arca.
11. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain any record of the order transmission time for ten (approximately 21%) of those orders.
12. From the 156 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm's records contained the incorrect execution venue for five (approximately 3%) of those orders. All five were executed on NYSE Arca.
13. In addition, 72 facilitations were reviewed for the accuracy of the firm's records of the execution venue. Of those, the firm's records contained the incorrect execution venue for ten (approximately 14%) of those orders. Of those ten orders, six were executed on NYSE Arca.
14. The conduct described in paragraphs 9 through 13 constitutes violations of Rule 17a-3(a)(6)(i) promulgated under the Exchange Act, and NYSE Arca Rule 6.68.

15. During the Supervisory Review Period, the firm failed to establish and maintain WSPs and a supervisory system applicable to the Firm's Derivatives Trading Desk (the "Desk") that were reasonably designed to ensure compliance with the recordkeeping provisions of the federal securities laws and NYSE Arca rules that require the accurate documentation of the order receipt and transmission times and execution venues of options orders. During the Supervisory Review Period, the firm's WSPs and supervisory system did not include a supervisory review of the accuracy of order receipt and order transmission times of options orders handled by the Desk.
16. The conduct described in paragraph 15 constitutes a violation of NYSE Arca Rule 11.18.

B. The firm also consents to the imposition of the following sanctions:

1. A censure;
2. A fine of \$120,000, of which \$40,000 shall be paid to the Exchange¹ and;
3. An undertaking requiring the firm to address the deficiencies discussed in paragraph 15 of the AWC. Within 60 days of the date of this AWC, MSCO shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 Omega Drive, Suite 300, Rockville, MD 20850-3241, a written report, certified by a senior management firm executive, to MarketRegulationComp@finra.org that provided the following information:
 - (i) a reference to this matter;
 - (ii) a representation that the firm addressed each of the deficiencies described above, including the specific measure or enhancements taken to address those deficiencies; and
 - (iii) the date the measures or enhancements were implemented.

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and Nasdaq PHLX LLC and NYSE American LLC.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is 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 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

¹ The balance of the fine shall be paid to Nasdaq PHLX LLC and NYSE American LLC.

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 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

The firm specifically and voluntarily waives the following rights granted under the NYSE Arca'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.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer of NYSE Arca; 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 Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 and accepted by the Chief Regulatory Officer of NYSE Arca, pursuant to NYSE Arca Rule 10.9216;

- 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 Arca Rule 10.9310(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 NYSE Arca, or any other regulator against the the firm;**
 - 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;**
 - 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca 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. This Statement does not constitute factual or legal findings by NYSE Arca, 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.

1/13/2020
Date

Morgan Stanley & Co. LLC
Respondent


By: 
Name: JAMES MANGAN
Title: Counsel to MSCo

Reviewed by:


Counsel for Respondent
Christian T. Kemnitz
Katten Muchin Rosenman
525 W. Monroe
Suite 1900
Chicago, IL 60661
312-902-5379

Accepted by FINRA:

1/16/2020
Date


Steven M. Tanner
Senior Counsel
Department of Enforcement

Signed on behalf of NYSE Arca, Inc. by
delegated authority from the Chief Regulatory
Officer of NYSE Arca, Inc.