

**THE NASDAQ STOCK MARKET LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2018056929907**

TO: The Nasdaq Stock Market LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of The Nasdaq Stock Market LLC (“Nasdaq”) Code of Procedure, Morgan Stanley & Co. LLC (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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

Morgan Stanley became a member of FINRA in June 1970 and Nasdaq in July 2006. Its registrations remain in effect. The firm is headquartered in New York, New York, maintains 37 branches, and employs roughly 4,400 registered representatives. Morgan Stanley is a multi-service broker-dealer that provides, among things, securities underwriting, distribution and financial advisory services; sales, equities and equity derivatives trading; and financing and market-making activities in equity and fixed income securities and related products. The firm has no relevant disciplinary history.

SUMMARY

Morgan Stanley & Co. LLC violated Regulation M of the Securities Exchange Act of 1934 and Nasdaq Rules 4624 and 2010A in November 2017 by failing to file the required notification to Nasdaq in connection with its participation in a distribution of securities. Between approximately July 2017 and December 2020 (the “Supervisory Review Period”), the firm also violated Nasdaq Rules 3010 and 2010A (for conduct prior to December 6, 2019), and Nasdaq Rule General 9, Sections 20(a) and 1(a) (for conduct on

or after December 6, 2019),¹ by failing to establish and maintain a system to supervise, including written supervisory procedures, reasonably designed to achieve compliance with Nasdaq's Regulation M related notification rules.

FACTS AND VIOLATIVE CONDUCT

Regulation M

1. Regulation M, promulgated under the Securities Exchange Act of 1934, is the U.S. Securities and Exchange Commission's principal anti-manipulation provision that applies to securities offerings.
2. Regulation M is intended to preclude manipulative conduct by preventing persons with an interest in the outcome of an offering from influencing those offerings and from conditioning the market in order to facilitate a distribution.
3. Regulation M prohibits manipulative conduct by deeming certain conduct as unlawful. For example, subject to the exceptions set forth therein, Exchange Act Rule 101 prohibits bidding for or purchasing a covered security during the applicable restricted period.
4. Exchange Act Rule 104 regulates syndicate covering transactions, which is defined as "the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a short position created in connection with [an] offering."
5. Exchange Act Rule 104(h)(2) requires any person effecting a syndicate covering transaction to provide prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected.
6. Nasdaq Rule 4624, now Nasdaq Rule Equities 2, Section 15, requires every Nasdaq market maker acting as a manager in a distribution subject to Regulation M to provide a written Notice of Intent to conduct a syndicate covering transaction pursuant to Exchange Act Rule 104 prior to the first transaction.²

¹ Effective December 6, 2019, Nasdaq Rule 3010 (now, Nasdaq Rule General 9, Section 20) was renumbered and relocated under the General 9 title ("Regulation") in the Nasdaq rulebook. *See* Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098). Moreover, effective December 6, 2019, Nasdaq Rule 2010A (now, Nasdaq Rule General 9, Section 1(a)) was also renumbered and relocated under the General 9 title ("Regulation") in the Nasdaq rulebook. *See* Securities Exchange Act Release No. 34-87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

² Effective November 23, 2020, Nasdaq Rule 4624 (now, Nasdaq Rule Equities 2, Section 15) was renumbered and relocated under the Equity 2 title ("Equity Market Participants") in the Nasdaq rulebook. *See* Securities Exchange Act Release No. 34-90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079).

7. Nasdaq Rule 2010A, now Nasdaq Rule General 9, Section 1(a), requires members, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”
8. In November 2017, in connection with one distribution, Morgan Stanley failed to submit to Nasdaq a written Notice of Intent to conduct a syndicate covering transaction pursuant to Exchange Act Rule 104 prior to the first transaction as required.
9. As a result, Morgan Stanley violated Exchange Act Rule 104, and Nasdaq Rules 4624 and 2010A.

Supervision

10. Nasdaq Rule 3010(a), now Nasdaq Rule General 9, Section 20(a) requires each member to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.
 11. During the Supervisory Review Period, the firm’s system for supervising compliance with the notification requirements of Regulation M was not reasonably designed to achieve compliance with certain applicable securities laws and regulations, and with certain applicable Exchange rules, as specified herein. Specifically, the firm’s system was not reasonably designed to verify the accuracy of certain elements of Regulation M filings. For example, the firm failed to conduct an independent review to verify the accuracy of the identities of syndicate members listed in certain filings or to ensure that certain filings were updated when members were added to a distribution. In addition, when the firm did identify deficiencies in the notifications, it did not do anything to remediate them.
 12. By virtue of the foregoing, Morgan Stanley violated Nasdaq Rules 3010 and 2010A (for conduct prior to December 6, 2019), and Nasdaq Rule General 9, Sections 20(a) and 1(a) (for conduct on or after December 6, 2019).
 13. Morgan Stanley took several steps to correct the above-referenced issues, including enhancing its supervisory systems and procedures regarding compliance with Regulation M and Nasdaq Rule 4624.
- B. The firm also consents to the imposition of the following sanctions:
- 1. Censure and fine in the amount of \$20,000 (resolved simultaneously with similar matters for a total fine of \$500,000).³**

The firm agrees to pay the monetary sanction upon notice that this AWC has been

³ Those matters were brought by FINRA, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, NYSE National, Inc., and NYSE Chicago, Inc.

accepted and that such payment is due and payable. It has submitted a Payment Information form showing the method by which it proposes to 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 sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under Nasdaq'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 Nasdaq Review Council 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, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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 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 and accepted by FINRA's Department of Enforcement

and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (“ODA”), pursuant to Nasdaq 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. This AWC will become part of the firm’s permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the firm;
 - 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 - 3. 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm’s right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. 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 Nasdaq, nor does it reflect the views of Nasdaq 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.

September 23, 2022

Date

Morgan Stanley & Co. LLC
Respondent

By: Samantha Schreiber _____

Name: Samantha Schreiber

Title: Authorized Signatory, Co-Head US Litigation

Reviewed by:

Elizabeth Vicens _____

Elizabeth Vicens
Counsel for Respondent
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza,
New York, NY, 10006

Accepted by Nasdaq:

September 28, 2022

Date



Manuel Yanez
Senior Counsel
Department of Enforcement

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