



**Andy Hubbart**  
Principal Counsel

*Department of Enforcement*

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Chicago, IL  
Phone: (312) 899-4603  
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June 3, 2020

**Via Certified Mail, Return Receipt Requested and Email (james.mangan@morganstanley.com)**

Morgan Stanley & Co. LLC  
James Magnan  
Counsel for Respondent  
1585 Broadway  
New York, NY 10036-8293

**Re: Payment of Fine in Connection with Executed Letter of Consent  
FINRA Matter No. 2015048329301**

Enclosed is an executed copy of the Letter of Consent ("LOC"), which was signed by you on April 20, 2020, for Morgan Stanley & Co. LLC (the "Firm"), and countersigned by Edward Deitzel, Executive Vice President and Chief Regulatory Officer, for the Business Conduct Committee at the Miami International Securities Exchange, LLC ("MIAX" or the "Exchange") on May 28, 2020. Please consider this correspondence as notice to the Firm that this LOC has been accepted, and as a result, the Firm must promptly remit payment of the agreed upon sanction. Please make the payment to Miami International Securities Exchange, LLC.

The payment should be sent to the below address if payment is by check:



If payment is by wire, wiring instructions are as follows:



Morgan Stanley & Co. LLC  
James Magnan  
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Pursuant to MIAX Rule 1011, after seven calendar days' notice in writing, the Exchange may summarily suspend a Member that fails to pay promptly a fine when such fine becomes finally due and payable.

If you have any questions, please call me at 312-899-4603.

Sincerely,

*Andy Hubbartt*

Andy Hubbartt

Enclosure

cc: Larry O'Leary, VP Regulation, Miami International Securities Exchange, LLC  
(via e-mail to [loleary@miaxoptions.com](mailto:loleary@miaxoptions.com))

Jeffrey Fortune, FINRA Risk Monitoring Director (via email)

Kristyn Obsuth, FINRA Risk Monitoring Analyst (via email)

Carla Madeo, FINRA Risk Monitoring Analyst (via email)

*This letter is issued on behalf of the Miami International Securities Exchange, LLC, by FINRA Market Regulation pursuant to a grant of authority to FINRA. Accordingly, this constitutes a letter by the Miami International Securities Exchange, LLC.*

**MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC**  
**LETTER OF CONSENT**  
**NO. 2015048329301**

TO: Miami International Securities Exchange, 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 1003 of the Rules of the Miami International Securities Exchange, LLC (“MIAX”), Morgan Stanley & Co. LLC (“MSCO” or the “firm”) submits this Letter of Consent (“LOC”) for the purpose of proposing a settlement of the alleged rule violations described below. This LOC is submitted on the condition that, if accepted, MIAX 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 MIAX, or to which MIAX 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 MIAX:

**BACKGROUND**

MSCO became registered with MIAX on December 7, 2012, and with FINRA on June 5, 1970, and its registrations remain in effect. The firm provides services to corporate and broker-dealer clients and institutional investors, and has branches in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. It currently has approximately 3,999 registered representatives. MSCO has no relevant disciplinary history.

**SUMMARY**

On behalf of MIAX, the Options Regulation and Trading and Financial Compliance Examinations sections of FINRA’s Department of Market Regulation (the “staff”) reviewed MSCO’s compliance with MIAX rules in connection with MSCO’s use of Professional Customer origin codes on options orders. These reviews led to findings that the firm had failed to correctly mark certain orders with the Professional Customer origin code from December 7, 2012 through April 27, 2017, in violation of MIAX Rules 300, 301, 513(a), 514 and 800(a); and Section 17(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 17a-3 thereunder.

In addition, in violation of MIAX Rule 500(b)(iii), MSCO's supervisory system and written supervisory procedures ("WSPs") applicable to the assignment of accurate origin codes to options orders during the period between December 7, 2012 and February 19, 2020 were not adequate to ensure compliance with the recordkeeping provisions of the federal securities laws and the rules of MIAX that govern the accuracy of options order origin codes.

Applicable MIAX rules require that, when accepting an order, a member must obtain and record an appropriate account type or origin code in each order record and as an order detail when entering orders into MIAX's systems to indicate the kind of account for which the order will be executed and cleared. Each options market has its own origin codes, but at a minimum, all have codes to indicate that an order is being executed for a customer, a firm, or a market maker. Origin codes are important because, among other things, they affect the accuracy of the member organization's order records and MIAX's audit trail, which may impact the priority of order execution and MIAX's surveillance for compliance with MIAX rules and federal securities laws. In addition, origin codes must be accurate as part of ensuring that trades are reported to the Options Clearing Corporation ("OCC") with accurate trade details.

### **FACTS AND VIOLATIVE CONDUCT**

#### **Origin Code Violations**

1. MIAX requires the use of origin codes. Among other things, the origin code determines the order's execution priority and is part of the audit trail data of every transaction.
2. From December 7, 2012 through April 27, 2017, MSCO submitted an inaccurate origin code of Customer rather than Professional Customer on options orders for four of its customers. These orders were routed to and executed on thirteen exchanges, resulting in executions of 53,032 orders with a volume of 1,239,368 contracts, of which 181,326 contracts, or approximately 14.63 percent, traded on MIAX. The majority of the orders at issue were mismarked due to configuration issues in various of the firm's order management systems, while other orders were mismarked due to coding errors related to the firm's use of the Financial Information eXchange ("FIX") messaging protocol.
3. Each instance in which the firm executed an order with an incorrect origin code potentially had adverse consequences, such as inadvertently impacting the priority of order execution, creating inaccurate records of purchases and sales, creating an inaccurate audit trail, reporting trades to OCC with inaccurate trade details, and impeding MIAX's ability to surveil for and detect potential violations of its rules and federal securities laws.
4. By marking orders with incorrect origin codes, the firm violated the following:

- a. MIAX Rule 800(a), which requires Members to make, keep current and preserve such books and records as prescribed by MIAX, and by the Exchange Act, and the rules thereunder; and Section 17(a) of the Exchange Act and SEC Rule 17a-3(a)(6)(i) thereunder, which require broker-dealers to create a memorandum of each order, and any other instructions, showing the terms and conditions of the order;
- b. MIAX Rules 513(a) and 514, which require that each Member shall submit trade information in such form as may be prescribed by MIAX in order to allow MIAX to properly prioritize and match orders and quotations;
- c. MIAX Rule 300, which prohibits conduct in violation of the Exchange Act, the By-Laws or Rules of the Exchange, or the Rules of the OCC insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof; and
- d. MIAX Rule 301, which requires Members to engage in acts and practices consistent with just and equitable principles of trade.

### **Supervisory Violations**

5. MIAX Rule 500(b)(iii) requires that Members supervise persons employed by or associated with such Member adequately to ensure that person's compliance with MIAX and federal securities rules.
6. From December 7, 2012 through February 19, 2020, the firm's WSPs mandated that the proper origin code be affixed to all options orders at order entry and indicate the capacity in which such orders are entered. However, the firm's WSPs and supervisory system applicability to the assignment of options origin codes were not reasonably designed. Specifically:
  - a. the firm's order management systems had not been properly coded to ensure that "high-touch"<sup>1</sup> Professional Customer orders were tagged with the correct Professional Customer origin code;
  - b. its supervisory system did not include any post-order entry follow-up or review of high-touch Professional Customer options orders entered in the Firm's order management systems to determine whether such orders were tagged with the correct Professional Customer origin code; and
  - c. the firm did not provide its Derivatives Sales Desk personnel with sufficient tools or guidance to reasonably ensure that high-touch Professional Customer options orders were marked with the Professional Customer origin code, or supervise those personnel to determine whether high-touch Professional

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<sup>1</sup> "High-touch" orders are options orders that are manually entered by sales traders on the firm's Derivatives Sales Desk on behalf of the firm's customers.

Customer options orders were properly marked.

7. From December 7, 2012 through February 19, 2020, the firm's WSPs and supervisory system required daily and quarterly Professional Customer reviews to be conducted by the firm's Regulatory Control Group (the "Daily RCG Review" and "Quarterly RCG Review", respectively) in order to determine whether options orders were marked with the correct origin code. However, these reviews were not reasonably designed. Because the Daily RCG Review was established to identify discrepancies between the execution and clearing capacities of options orders, it could not detect instances in which Professional Customer orders were mismarked and executed as Customer orders and then reported to the OCC in the "Customer" range. Furthermore, although the Quarterly RCG Review identified whether relevant client accounts were properly classified as Professional Customer accounts, it did not determine whether options orders for Professional Customer accounts were ultimately tagged with the correct origin code.
8. By failing to establish a supervisory system and WSPs reasonably designed to ensure compliance with the Exchange Act and MIAX rules applicable to the assignment of accurate options order origin codes, MSCO violated MIAX Rule 500.

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

1. a censure; and
2. a fine of \$650,000, of which \$96,525 shall be payable to MIAX, and the balance of which shall be paid to NYSE American LLC, NYSE Arca, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, and Cboe Exchange, Inc.<sup>1</sup>

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between MSCO and each of these self-regulatory organizations.

The firm agrees to pay the monetary sanction upon notice that this LOC has been accepted and that such payment is due and payable. It has submitted an Election of Payment 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 MIAX.

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<sup>1</sup> Although, as set forth in paragraph 2, the violations occurred on thirteen exchanges, the fine is allocated among six exchanges.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under MIAX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the firm;
- B. To be notified of the Statement of Charges 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 MIAX'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 ("CRO"), as well as the Business Conduct Committee ("BCC"), in connection with participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including acceptance or rejection of this LOC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of MIAX Rule 1006, in connection with such person's or body's participation in discussions regarding the terms and conditions of this LOC, or other consideration of this LOC, including its acceptance or rejection.

## III.

### OTHER MATTERS

The firm understands that:

- A. Submission of this LOC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO and the BCC, pursuant to MIAX Rule 1003;
- B. If this LOC 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 LOC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by MIAX or any other regulator against the firm;
  - 2. This AWC will be published on a website maintained by MIAX; and

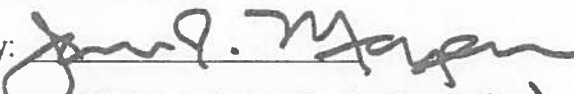
3. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this LOC or create the impression that the LOC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of MIAX, or to which MIAX is a party, that is inconsistent with any part of this LOC. 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 MIAX is not a party.

D. The firm may attach a Corrective Action Statement to this LOC 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 LOC in this Statement. This Statement does not constitute factual or legal findings by MIAX, nor does it reflect the views of MIAX 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 LOC and has been given a full opportunity to ask questions about it; that it has agreed to the LOC'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.

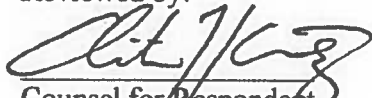
Respondent  
Morgan Stanley & Co. LLC

Date: 4/20/2020

By:   
Name: JAMES J MORGAN

Title: COUNSEL TO MORGAN  
STANLEY & CO LLC

Reviewed by:

  
Counsel for Respondent  
Christian T. Kemnitz  
525 W. Monroe, Suite 1900  
Chicago, IL 60661  
(312) 902-5279



Accepted by Miami International Securities Exchange, LLC:

May 28, 2020  
Date



\_\_\_\_\_  
Edward Deitzel  
Executive Vice President and  
Chief Regulatory Officer  
Miami International Securities Exchange, LLC

Decision of the Business Conduct Committee:

Accept       Decline

May 28, 2020  
Date



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By: Edward Deitzel  
For the Business Conduct Committee

### ELECTION OF PAYMENT FORM

The firm intends to pay the fine proposed in the attached Letter of Consent by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;

Respectfully submitted,  
Respondent  
Morgan Stanley & Co. LLC

4/20/2020  
Date

By: James J. Mangan  
Name: JAMES J. MANGAN

Title: COUNSEL TO MORGAN  
STANLEY & CO LLC