

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN BATISTA BOCCHINO
(CRD No. 2876260)

and

RAFAEL BARELA JACINTO
(CRD No. 3115326),

Respondents.

Disciplinary Proceeding
No. 2012032019101

Hearing Officer — MAD

**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION
PURSUANT TO FINRA RULES 8210 AND 9252**

On March 24, 2017, Respondents John Batista Bocchino and Rafael Barela Jacinto ("Respondents") filed a motion under FINRA Rule 9252 that FINRA invoke FINRA Rule 8210 to compel the production of documents by FINRA member firm Morgan Stanley Smith Barney ("Morgan Stanley"). The Department of Enforcement ("Enforcement") filed its opposition on April 7, 2017.

On April 19, 2017, I held a pre-hearing conference ("April 19 Conference") to discuss the following five categories of information requested in Respondents' Rule 9252 motion:

1. Documents evidencing, concerning, or relating to any Morgan Stanley representative found by Morgan Stanley to be improperly utilizing prime broker accounts to effectuate trades for the period 2011 through 2013.
2. All non-privileged records and/or documents reflecting compliance violations reviewed and/or identified at Mr. Marchassalla's Branch Office for the period of 2010 through 2012.
3. All notes and/or documents evidencing the subject matter of compliance meetings and/or teleconferences involving Messrs. Bocchino, Marchassalla, Jacinto, Gabriel Torrens and/or Jean De Pinto for the period 2011 through March 2012.

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 17-12 (2012032019101).

4. A report reflecting all notifications received by any registered representative in Mr. Marchassalla's Branch Office that required a manual change to an institutional customer's Euroclear Number for the period of 2011 through March 2012.
5. All electronic correspondence (to be provided in PST format) sent or received by Messrs. Bocchino, Jacinto, Marchassalla, and Gabriel Torrens for the period of 2011 through March 2012.

Request one seeks documentation relating to *any* Morgan Stanley representative found by Morgan Stanley to be improperly utilizing prime broker accounts to effectuate trades, and Request two seeks documentation reflecting compliance violations reviewed and/or identified at Mr. Marchassalla's Branch Office. The focus of this proceeding is whether Respondents engaged in the misconduct alleged in the Complaint, not the improper conduct or violations by others at Morgan Stanley. It is well established that registered persons cannot excuse their misconduct by showing that others engaged in similar misconduct.¹ Respondents' Requests one and two are not relevant or material to this proceeding. I **DENY** Respondents' motion with respect to Requests one and two.

Request three is overly broad. Rule 9252(b) requires the Hearing Officer to consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified. During the April 19 Conference, Respondents proposed a more narrowly tailored request. Specifically, Respondents proposed adding the following qualifying language to Request three: "As it relates to firm Venezuelan bond policies and/or compliance issues concerning Respondents." Enforcement had no objection to Request three with the addition of the qualifying language. Accordingly, I **GRANT** Respondents' motion with respect to Request three as modified with the above qualifying language.

Request four is moot. During the April 19 Conference, Respondents represented that they received a letter from Morgan Stanley indicating it does not have such a report.

Request five is also moot. Enforcement represented that it would provide the emails to Respondents in PST format on or about April 27, 2017.

As described above and for the reasons stated during the April 19 Conference, the Respondents' FINRA Rule 9252 motion is granted in part and denied in part. Enforcement is **ORDERED** to issue promptly a FINRA Rule 8210 request, and to serve a copy of the request on

¹ *Patricia H. Smith*, 52 S.E.C. 346, 348 n.8 (1995); *Charles E. Krautz*, 52 S.E.C. 730, 733 (1996); OHO Order 07-29 (2005001919501) (July 13, 2007), at 8, http://www.finra.org/sites/default/files/OHODecision/p037091_0_0_0.pdf.

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Respondents' counsel, calling for Morgan Stanley to produce documents responsive to modified Request three. Enforcement shall promptly produce or serve on the Respondents any documents and any written communication it receives from Morgan Stanley pursuant to the FINRA Rule 8210 request.

SO ORDERED.

Maureen A. Delaney
Hearing Officer

Dated: April 21, 2017