

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of

Morgan Stanley Smith Barney LLC (CRD
No. 149777)

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2344

January 29, 2024

I. Introduction

On October 14, 2022, Morgan Stanley Smith Barney LLC, (“MSSB” or the “Firm”) submitted a Membership Continuance Application (“Application”) to FINRA’s Credentialing Registration, Education, and Disclosure (“CRED”).¹ The Application seeks to permit the Firm to continue its membership with FINRA notwithstanding its statutory disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA’s Department of Member Supervision (“FINRA,” “Member Supervision,” or “Department”) approves the Application and is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Event

The Firm is subject to statutory disqualification, as that term is defined in Section 3(a)(39)(F) of the Exchange Act, incorporating by reference Section 15(b)(4)(D) and (E), as a result of a September 2022 Order issued by the Securities and Exchange Commission (“SEC” or “Commission”) finding that MSSB willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder (“SEC Order”).² According to the SEC Order, from at least January 2018 to September 2021, employees of the Firm sent and received off-channel communications that related to the Firm’s business,

¹ See MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022, collectively attached as Exhibit 1.

² See SEC Order, *In re Morgan Stanley & Co. LLC and Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 95924 (Sept. 27, 2022), attached as Exhibit 2 at FINRA p. 6.

The SEC Order also triggered disqualification under Rules 262(a)(4), 506(d)(1)(iv), and 602(c)(3) of the Securities Act of 1933 and Rule 503(a)(4)(ii) of Regulation Crowdfunding. On September 27, 2022, the SEC granted a waiver from the application of the disqualification provisions of these Rules. See *In re Certain Broker-Dealer Practices*, Securities Act Release. No. 11109 (Sept. 27, 2022), attached as Exhibit 3.

and a majority of these written communications was not maintained or preserved by the Firm.³ Further, supervisors who were responsible for preventing this misconduct among junior employees routinely communicated off-channel using their personal devices and in so doing failed to comply with Firm policies by communicating using non-Firm approved methods on their personal devices about the Firm's broker-dealer business.⁴

The Firm was ordered to cease and desist from committing or causing any future violations, censured, was ordered to pay a civil money penalty jointly and severally, with its affiliate under common control Morgan Stanley & Co. LLC, in the amount of \$125,000,000⁵ and to comply with undertakings.⁶

III. Remedial Measures

In the Application, the Firm represented that it has undertaken significant remedial measures in response to the SEC's findings, including expansion of Firm approved messaging applications, targeted surveillance to identify violations of the Firm policy prohibiting off-channel business communications, additional trainings and employee certifications regarding compliance with Firm policy regarding business communications, and policy reminders from senior firm personnel regarding the prohibition of off-channel business communications.⁷ According to the SEC Order, the SEC considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement.⁸

IV. Firm Background

MSSB has been a FINRA member since May 2009.⁹ MSSB is headquartered in Purchase, New York,¹⁰ with 1058 active branches with 544 listed as offices of supervisory jurisdiction.¹¹ The Firm employs approximately 42,122 individuals, which includes 27,317

³ See Exhibit 2 at FINRA p. 2.

⁴ *Id.*

⁵ *Id.* at FINRA p. 10. MSSB represented and submitted evidence showing that the civil penalty was paid on October 11, 2022. See Correspondence from Elizabeth Marino to FINRA dated April 5, 2023, attached as Exhibit 4 at FINRA p. 1, Response 1 and MSSB-2023-FINRA 000001, FINRA p. 6.

⁶ See Exhibit 2 at FINRA pp. 6-10.

MSSB represented that it is in compliance with the undertakings ordered by the SEC and has retained an Independent Consultant ("IC"). Further, the Firm represented that it has imposed discipline on employees in accordance with the undertakings in the SEC Order and has submitted periodic reports to the Commission. See Exhibit 4 at FINRA pp. 1-2, Response 1.

⁷ See Exhibit 1 at pp. FINRA00037-38.

⁸ See Exhibit 2 at FINRA p. 6.

⁹ See Central Registration Depository ("CRD") Firm Snapshot, attached as Exhibit 5 at p. 3.

¹⁰ *Id.*

¹¹ FINRA confirmed this through analysis of MSSB's CRD information, last performed on December 14,

registered representatives and investment adviser representatives, 3692 of whom are registered principals, 14,779 non-registered fingerprint employees, and 471 operations professionals.¹² MSSB employs eleven statutorily disqualified individuals.¹³

MSSB is approved to engage in the following lines of business:¹⁴ exchange member engaged in exchange commission business other than floor activities; broker or dealer making inter-dealer markets in corporate securities over-the-counter; broker or dealer retailing corporate equity securities over-the-counter; broker or dealer selling corporate debt securities; underwriter or selling group participant (corporate securities other than mutual funds); U.S. government securities dealer; U.S. government securities broker; municipal securities dealer; municipal securities broker; broker or dealer selling variable life insurance or annuities; solicitor of time deposits in a financial institution; broker or dealer selling gas or oil interests; put and call broker or dealer or option writer; broker or dealer selling securities of non-profit organizations; investment advisory services; non-exchange member arranging for transactions in listed securities by exchange member; trading securities for own account; private placements of securities; broker or dealer selling interests in mortgages or other receivables; broker or dealer involved in a networking, kiosk, or similar arrangement with a bank, saving bank or association, or credit union; engages in other securities business – repos and reverse repos, online trading, selling securities futures products, selling interests in unregistered private investment funds, research, soft dollar activities, merger and acquisition advisory services; effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account; and, engages in other non-securities business – transactions in foreign exchange, precious metals, certificates of deposit, and non-securities based futures, non-client facing hedging in non-securities products.

MSSB is a member of the following self-regulatory organizations (“SROs”): Municipal Securities Rulemaking Board (“MSRB”), The Depository Trust Company (“DTC”), National Securities Clearing Corp. (“NSCC”), Fixed Income Clearing Corporation - Government Securities Division (“FICC-GOV”),¹⁵ NYSE American LLC (“NYSE

2023.

¹² *Id.*

¹³ *Id.* These individuals include Timothy Mark Stevens (CRD No. 1645792) (Flemington, NJ branch); David A. Pendleton (CRD No. 869125) (Saginaw, MI branch); Karl Wolfgang Frisch (CRD No. 4442414) (Newport Beach, CA branch); Stewart James Small (CRD No. 1148738) (West Conshohocken, PA branch); John William Corbett III (CRD No. 1839595) (Norwell, MA branch); Henry Loren Auwinger (CRD No. 807347) (Roseville, CA branch); Joel Lawrence Halpern (CRD No. 234602) (Supervised from Boca Raton, FL branch); Neil Alan Fox (CRD No. 212289) (Boca Raton, FL branch); Charles Walter Tomasheski (CRD No. 501934) (Paramus, NJ branch); Nina Bryan Nitti (CRD No. 1087137) (Carlsbad, CA branch); and, Robert Anthony Biernat (CRD No. 817429) (Deerfield, IL branch). All of these individuals are currently classified as Tier 3 statutorily disqualified individuals, permitted to associate without any special supervision. *See also* Appendix A.

¹⁴ *See* MSSB CRD Excerpts: Types of Business and Other Business Descriptions, attached as Exhibit 6.

¹⁵ Membership in these organizations was verified by FINRA staff through a search of public member directories, last performed on January 29, 2024.

American”), New York Stock Exchange (“NYSE”), and The Nasdaq Stock Market LLC (“Nasdaq”).¹⁶

Recent Examinations

In the past two years, FINRA completed two routine examinations, one of which was conducted on behalf of other SROs including Nasdaq, NYSE American and Long-Term Stock Exchange, Inc. (“LTSE”) pursuant to Regulatory Service Agreements (“RSAs”), and eight non-routine examinations of MSSB that had findings which resulted in a Cautionary Action Letters (“CAL”).

A. FINRA Routine Examinations

The examination completed in December 2022¹⁷ resulted in a Cautionary Action for ten exceptions, a referral to FINRA’s Market Regulation Department for five exceptions, and a referral to FINRA’s Department of Enforcement (“DOE”) for one exception. The exceptions that resulted in a Cautionary Action pertained to: not easily located Form CRS on the Firm’s website; failure to include link to Form CRS in email communications; difficult to navigate Form CRS required disclosure information; failure to implement internal controls to ensure compliance with Bank Secrecy Act (“BSA”) requirements; failure to report transactions for its Internal Investment Advisory customers to the MSRB; the Firm inaccurately reported the time of first execution and failed to append the M020 indicator on certain transactions due to a systemic issue; the Firm failed to enforce its WSPs associated with MSRB transaction reporting; the Firm did not have adequate documentation of their supervisory process specific to clock sync; the Firm failed to show an accurate consolidated display to customers; and, the Firm did not have WSPs that codified its supervisory process to ensure employees were properly registered as Securities Traders.¹⁸ In response, the Firm updated its disclosure page on its website and the link in its electronic communication, commenced an effort to update its disclosures, undertook technological improvements, implemented system changes, and updated its procedures.¹⁹ The five exceptions referred to FINRA’s Market Regulation Department pertained to: the Firm not submitting or submitting inaccurate data to the Consolidated Audit Trail (“CAT”) and to FINRA TRF.²⁰ The one exception referred to DOE pertained to a failure to maintain an adequate supervisory system regarding certain customer confirmation disclosure requirements of MSRB rules.²¹

¹⁶ See Exhibit 5 at pp. 3-4.

¹⁷ See Disposition Letter for Examination No. 20210693194 dated December 22, 2022, Examination Report dated June 30, 2022, and the Firm’s Response dated July 29, 2022, collectively attached as Exhibit 7.

¹⁸ See Disposition Letter at Exhibit 7, FINRA pp. 1, 8-13, 17-18, 19, 20.

¹⁹ See Firm Response at Exhibit 7, FINRA p. 29.

²⁰ See Disposition Letter at Exhibit 7, FINRA pp. 13-17, 19-20. The exceptions are under review by Market Regulation CAT Compliance Surveillance & Investigations group under Marketspace alert no. 1001325537.

²¹ See Disposition Letter at Exhibit 7, FINRA pp. 1, 6. The exception is under review by DOE under Matter

The examination completed in November 2022,²² on behalf of Nasdaq, NYSE American and LTSE, resulted in a cautionary action for one exception. The exception that resulted in a cautionary action pertained to a failure to have written supervisory procedures (“WSPs”) that codified the Firm’s supervisory process to ensure employees are properly registered as securities traders.²³ In response, the Firm updated its WSPs.²⁴

B. FINRA Non-Routine Examinations

In October 2023, FINRA issued a Cautionary Action to the Firm for failures that resulted in inaccurate trade confirmations that contained inaccurate representative codes for approximately 28,800 trades; and, failure to establish and maintain a supervisory system and procedures reasonably designed to achieve compliance with obligations to maintaining accurate books and records in respect to trade confirmations.²⁵ FINRA acknowledged that the Firm paid restitution to customers and registered representatives, changed its order entry system and enacted new policies and procedures.²⁶

In August 2023, FINRA issued a Cautionary Action to the Firm for failure to timely deliver proxy and other issuer-related materials to customers and relied on a third party for the delivery of the materials without an adequate supervisory system in place to ensure successful delivery of proxy and materials.²⁷ In response, the Firm updated its supervisory procedures and enacted two additional daily reports for increased transparency with its third party service provider.²⁸

In July 2023, FINRA issued a Cautionary Action to the Firm for failing to supervise a registered representative that made unsuitable recommendations to a non-retail customer.²⁹

No. 20210693194.

²² See Disposition Letter for Examination No. 20210693195 dated November 4, 2022, Examination Report dated September 27, 2022, and the Firm’s Response dated October 25, 2022, collectively attached as Exhibit 8.

²³ See Disposition Letter at Exhibit 8, FINRA pp. 1, 5.

²⁴ See Firm Response at Exhibit 8, FINRA p. 8.

²⁵ See CAL for Matter No. 20180606706, attached as Exhibit 9. A Firm response was not required.

²⁶ *Id.*

²⁷ See Disposition Letter for Matter No. 20210731340 dated August 17, 2023, Examination Report dated August 1, 2023, and the Firm’s Response dated August 11, 2023, attached as Exhibit 10.

²⁸ See Firm Response at Exhibit 10, FINRA pp. 7-10.

²⁹ See Disposition Letter for Matter No. 20220769514 dated July 21, 2023, attached as Exhibit 11. A Firm response was not required.

In May 2023, FINRA issued a Cautionary Action to the Firm for failing to adequately maintain the tax status of customers' accounts.³⁰

In March 2023, FINRA issued a Cautionary Action to the Firm for incorrectly memorializing the nature of its relationship with its routing venues listed on the 606(a)(1) report.³¹

In July 2022, FINRA issued a Cautionary Action to the Firm for failure to establish adequate WSPs regarding charitable sponsorships.³² In response, the Firm updated its policies and systems.³³

In June 2022, FINRA issued two Cautionary Actions to the Firm for failure to maintain and enforce a supervisory system reasonably designed to ensure securities are accurately classified, which impacted the permitted commissions charged to customers, and, for failure to include a yield disclosure statement in trade confirmations for certain purchases of asset-backed and mortgage-backed securities.³⁴ In response to the securities classification finding, the Firm represented that it corrected the system responsible for the issue.³⁵

In December 2021, FINRA issued a Cautionary Action to the Firm for inaccurate time of trade reporting to the MSRB and failure to establish and maintain a supervisory system reasonably designed to review for accurate time of trade reporting.³⁶

Regulatory Actions

MSSB has recently been the subject of seven disciplinary matters, besides the SEC Order at issue in this Notice. The Firm was subject to disciplinary matters brought by FINRA, the SEC, and the State of Maine.

³⁰ See Disposition Letter for Matter No. 20220757868 dated May 12, 2023, attached as Exhibit 12 at p. 3. A Firm response was not required.

³¹ See Disposition Letter for Matter No. 20220772633 dated March 23, 2023, attached as Exhibit 13, p. 4. A Firm response was not required.

³² See Disposition Letter for Examination No. 20210710525 dated July 1, 2022, Examination Report dated April 8, 2022, and the Firm's Response dated May 13, 2022, collectively attached as Exhibit 14, FINRA pp. 5-6.

³³ See Firm Response at Exhibit 14, FINRA pp. 8-9.

³⁴ See CALs for Matter Nos. 20210692083 dated June 7, 2022 and 20200653189 dated June 17, 2022, and the Firm Response for Matter No. 20210692083, collectively attached as Exhibit 15. A Firm response was not required for Matter No. 20200654189.

³⁵ See Firm Response at Exhibit 15, FINRA p. 3.

³⁶ See Disposition Letter for Matter No. 20180592582 dated December 14, 2021, attached as Exhibit 16. A Firm response was not required.

A. FINRA Actions

In December 2022, the Firm entered into an AWC with FINRA to settle allegations that the Firm's supervisory system did not provide certain customers with mutual fund sales charge waivers and fee rebates.³⁷ The Firm consented to a censure and to pay a restitution to customers of \$802,483 plus interest.³⁸

In November 2022, the Firm entered into an AWC with FINRA to settle allegations that the Firm failed to reasonably supervise nine representatives who recommended high-risk securities to customers in violation of the Firm's plan of solicitation policy.³⁹ The Firm consented to a censure, \$200,000 fine, and to pay a restitution to customers of \$497,897 plus interest.⁴⁰

B. SEC Actions and Other Statutory Disqualification Matters

The Firm was subject to four SEC orders, which also subjected the Firm to statutory disqualification.

On September 20, 2022, the SEC issued an order finding that the Firm willfully violated both Rules 30(a), the Safeguards Rule, and (b), the Disposal Rule, of Regulation S-P.⁴¹ According to the order, the Firm failed to oversee its vendor during a decommissioning of data centers, which resulted in the exposure of customer records and information.⁴² Furthermore, during the decommissioning of servers from various offices, the Firm failed to safeguard customer personal identifying information and consumer report information.⁴³ The Firm was ordered to cease and desist from violating the cited rules of Regulation S-P, censured, and to pay a \$30,000,000 civil penalty.⁴⁴

³⁷ See FINRA AWC No. 2021069495301 accepted on December 22, 2022, attached as Exhibit 17 at pp. 2-3.

³⁸ *Id.* at 3. The Firm provided proof of payment to FINRA on June 22, 2023. See Correspondence from W. Hardy Callcott to FINRA dated June 22, 2023, attached as Exhibit 18.

³⁹ See FINRA AWC No. 2016051634802 accepted on November 21, 2022, attached as Exhibit 19, pp. 2-3.

⁴⁰ *Id.* at FINRA p. 4. Per CRD, the fine was paid on December 18, 2022. The Firm represented that it made the required restitution payments prior to March 23, 2023. See Exhibit 4, FINRA p. 2 and MSSB-2023-FINRA 000025, FINRA p. 30.

⁴¹ See *In re Morgan Stanley Smith Barney LLC*, Exchange Release Act No. 95832 (Sept. 20, 2022), attached as Exhibit 20. The SEC's order, which includes willful findings, subjects the Firm to a statutory disqualification as defined in Exchange Act § 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

⁴² *Id.* at p. 2.

⁴³ *Id.*

⁴⁴ *Id.* at p. 10. According to CRD, on October 24, 2022, the Firm submitted an affirmation to FINRA that sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules. See also [FINRA](#)

In May 2020, the SEC issued an order finding that the Firm willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-7 thereunder.⁴⁵ According to the order, MSSB provide incomplete and inaccurate information regarding trade execution services and transaction based execution costs in wrap fee program accounts, which was misleading to retail customers.⁴⁶ The Firm was ordered to cease and desist violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, censured, and to pay a \$5,000,000 civil penalty.⁴⁷

In November 2019, the SEC issued an order finding that the Firm willfully violated Sections 17(a)(2) and (3) of the Securities Act.⁴⁸ The order stated that the Firm misrepresented to customers that it sold them the most economical share classes; however, the Firm recommended and sold more expensive share classes when less expensive share classes were available.⁴⁹ As a result of customers purchasing the more expensive share classes, the customers’ overall return was negatively impacted, while MSSB received great compensation from the sale of the more expensive share classes.⁵⁰ The Firm was ordered to cease and desist violating Sections 17(a)(2) and (3) of the Securities Act, censured, to pay disgorgement of \$42,389 plus interest, and to pay a \$1,500,000 civil penalty.⁵¹

In September 2019, the SEC issued an order finding that the Firm willfully violated Section 15(B)(c)(1) of the Exchange Act and MSRB Rules G-8, G-17, G-19, and G-27.⁵² According to the order, MSSB representatives recommended swap transactions of municipal bonds with no economic benefit to customers, and, although MSSB procedures required employees to determine whether bond swaps were suitable, there was no evidence

[Regulatory Notice 09-19](#) (June 15, 2009).

⁴⁵ See *In re Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 88856 (May 12, 2020), attached as Exhibit 21. The SEC’s order, which includes willful findings, subjects the Firm to a statutory disqualification as defined in Exchange Act § 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

⁴⁶ *Id.* at p. 2.

⁴⁷ *Id.* at pp. 7-8. According to CRD, on June 27, 2020, the Firm submitted an affirmation to FINRA that sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules.

⁴⁸ See *In re Morgan Stanley Smith Barney LLC*, Securities Act Release No. 10726 (Nov. 7, 2019), attached as Exhibit 22. The SEC’s order, which includes willful findings, subjects the Firm to a statutory disqualification as defined in Exchange Act § 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

⁴⁹ *Id.* at p. 2

⁵⁰ *Id.*

⁵¹ *Id.* at p. 6. According to CRD, on December 4, 2019, the Firm submitted an affirmation to FINRA that sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules.

⁵² See *In re Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 86988 (Sept. 17, 2019), attached as Exhibit 23. The SEC’s order, which includes willful findings, subjects the Firm to a statutory disqualification as defined in Exchange Act § 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

of the determination being made or reviewed with respect to the bond swaps.⁵³ The Firm was censured and fined \$225,000.⁵⁴

C. State of Maine Office of Securities

In August 2023, the Firm entered into a Consent Agreement with the State of Maine Office of Securities to settle allegations that the Firm failed to conduct on-site branch office inspection of all of its Maine offices in 2022.⁵⁵ The Firm was ordered to pay a civil fine of \$5,000.⁵⁶

V. **Prior SEA Rule 19h-1 Notices**

FINRA filed a Rule 19h-1 Notice approving MSSB continued membership notwithstanding the existence of its statutory disqualification on November 28, 2017.⁵⁷ The Commission acknowledged FINRA's Notice on February 1, 2018.⁵⁸ The disqualification resulted from a January 13, 2017 SEC order finding that the Firm willfully violated various sections of the Advisers Act dealing with annual surprise custody examinations and maintenance of client contracts.⁵⁹

VI. **The Firm's Proposed Continued Membership with FINRA Plan of Heightened Supervision**

The Firm seeks to continue its membership with FINRA notwithstanding its status as a disqualified member. The Firm has agreed to the following Plan of Heightened Supervision as a condition of its continued membership with FINRA ("Supervision Plan"):⁶⁰

MSSB is subject to statutory disqualification pursuant to 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections

⁵³ *Id.* at p. 2.

⁵⁴ *Id.* at p. 5. According to CRD, on September 27, 2019, the Firm submitted an affirmation to FINRA that sanctions are no longer in effect. Since there are no sanctions in effect for statutory disqualification purposes, an application to continue in membership is no longer required under FINRA rules.

⁵⁵ See Consent Agreement No. 2023-35, *In re Morgan Stanley Smith Barney LLC* Case No. 23-19301, dated August 14, 2023, attached as Exhibit 24.

⁵⁶ *Id.* at p. 2. According to CRD, the Firm paid the fine in accordance with the terms of the Consent Agreement.

⁵⁷ See *In re the Continued Membership of Morgan Stanley Smith Barney, LLC* (FINRA SD-2147) dated November 28, 2017, and the SEC's Letter of Acknowledgement dated February 1, 2018, collectively attached as Exhibit 25.

⁵⁸ *Id.* at pp. 1-2.

⁵⁹ *Id.* at p. 11.

⁶⁰ See Executed Consent to Plan of Heightened Supervision dated November 28, 2023, attached as Exhibit 26.

15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission dated September 27, 2022, which found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(b)(4) thereunder. The Order also found that the Firm failed to reasonably supervise its employees within the meaning of Section 15(b)(4)(E).

For the purpose of this Supervision Plan, the term “Digital Communication Channels” means all written electronic methods of communication used to conduct Firm business, including but not limited to, text message platforms, whether via SMS messaging, iMessage, or other messaging services such as WhatsApp; direct messaging platforms including Twitter, Instagram, LinkedIn, Slack, or Bloomberg Messaging; non-firm domain email accounts; and any other written electronic business-related correspondence. “Digital Communication Channels” encompass platforms used to exchange messages with internal or external stakeholders using either a personal or Firm-provided device.

For the purpose of the supervisory plan below, “Off-Channel Communications” shall be defined as all business-related written electronic messages required to be maintained under Rule 17a-4 sent on Digital Communication Channels that are not captured by Firm surveillance and record-keeping systems.

In consenting to this Supervision Plan, MSSB agrees to the following:

1. The Firm shall comply with all of the undertakings outlined in the Securities and Exchange Commission (“SEC” or “Commission”) Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) and 21(C) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, *In the Matter of Morgan Stanley & Co. LLC and Morgan Stanley Smith Barney LLC*, Admin. Proc. 3-21169 (September 27, 2022) (“SEC Order”).
2. The Firm shall maintain copies of all correspondence between the Firm and Commission staff relating to the SEC Order, including documenting when Commission staff grants extensions to the deadlines set forth in the SEC Order. The Firm shall maintain copies of all such correspondence in a readily accessible place for ease of review by FINRA staff.
3. The Firm shall provide FINRA’s Statutory Disqualification Group with copies of all certifications submitted to the SEC upon completion of the undertakings as specified in the SEC Order. The Firm shall also maintain copies of all certifications in a readily accessible place for ease of review by FINRA staff.
4. The Firm shall maintain copies of all reports and supporting documentation submitted to SEC staff in accordance with the SEC Order, as well as any other documentation needed to evidence the status and completion of each of the undertakings outlined in the SEC Order. The Firm shall maintain copies of such documentation in a readily accessible place for ease of review by FINRA staff.

5. Within six months of the SEC's Letter of Acknowledgement in this matter ("LOA"), to the extent that it has not already done so within the past six months, and on at least an annual basis thereafter, for a term of six years from the date of the LOA, the Firm shall conduct training for all associated persons regarding the Digital Communication Channels that the Firm has approved for business communication, along with the Firm's current policies regarding retention of business-related electronic communications. The Firm shall maintain a record of individual completion of said training and a copy of said training materials in a readily accessible place for ease of review by FINRA staff.
6. The Firm shall conduct the training described in item number 5 above for all new hires, within sixty-five days from the date of commencement of new hire training, for a term of six years from the date of the LOA. The Firm shall retain a record of all new hire training, including a copy of all written training materials, and keep said record(s) in a readily accessible place for ease of review by FINRA staff.
7. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, establish and maintain a written list(s) of all Digital Communication Channels that its associated persons are permitted to use to communicate about Firm business. The list(s) shall be circulated to all of the Firm's associated persons at least on a semi-annual basis, for a term of six years from the date of the LOA. The Firm shall require that all associated persons obtain written approval for use of any Digital Communication Channels to communicate about Firm business that are not already on the approved list(s) maintained by the Firm. The Firm shall maintain a record of all requests and approvals or rejections of each request, including the date of the requests and the Firm's decision. The Firm shall maintain copies of such requests and decisions in a readily accessible place for ease of review by FINRA staff.
8. The Firm shall require all associated persons to disclose on at least a semi-annual basis, for a term of six years from the date of the LOA, any unapproved Digital Communication Channels he/she is using to communicate about Firm business. The Firm shall retain records of such disclosures in a readily accessible place for ease of review by FINRA staff.
9. Subject to Paragraph 7 above, the Firm shall prohibit associated persons from using Off-Channel Communications.
10. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop a process whereby, in the event that an associated person sends or receives an Off-Channel Communication, the Off-Channel Communication is submitted to the Firm and retained in compliance with relevant securities laws and regulations. For a term of six years from the date of the LOA, the Firm shall maintain a record of all such Off-Channel Communications, including a record of the Firm's receipt of the communication, in a readily accessible place for ease of review by FINRA staff.

11. Within 90 days of the LOA, the Firm shall, to the extent that it has not already done so, develop and maintain written policies and procedures detailing the Firm's processes for disciplining associated persons who use Off-Channel Communications to communicate about Firm business. When the Firm uses the disciplinary process, the Firm shall document each instance and retain records of such instances and outcomes. The Firm's written policies and procedures will be owned by the Legal and Compliance Division.
12. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.
13. The Firm shall obtain written approval from FINRA's Statutory Disqualification Group prior to changing any provision of the Supervision Plan.
14. The Firm shall submit any proposed changes or other requested information under this Supervision Plan to FINRA's Statutory Disqualification Group at SDMailbox@FINRA.org.

VII. Discussion

After carefully reviewing the entire record in this matter, FINRA approves the Firm's request to continue its membership with FINRA, subject to the terms and conditions set forth herein. In evaluating MSSB's Application, FINRA assessed whether the Firm demonstrated that its continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). Typically, factors that bear on FINRA's assessment include, among other things, the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the Firm's regulatory history, and whether there has been any intervening misconduct.

As of the date of this Notice, FINRA has determined that the Firm's continued membership is consistent with the public interest and does not create an unreasonable risk of harm to investors or the markets. While the SEC Order identified serious violations of securities laws, the Firm was not expelled or suspended, nor were any limitations placed on MSSB's securities activities. Moreover, the full amount of the civil monetary penalty was promptly paid. Member Supervision also acknowledges that within the SEC Order the Commission considered the Firm's prompt remedial actions and cooperation with the Commission when determining to accept the Offer of Settlement. Specifically, the Commission acknowledged that MSSB implemented technological improvements, imposed, and publicized internally, disciplinary sanctions on employees who violated its policies prohibiting off-channel communications, and increased training in an effort deter future violations of its policies. Further, although the SEC Order triggered certain disqualifications from exemptions from registration available under the Securities Act of 1933 ("Securities Act"), specifically Regulations A, D and E of the Securities Act and

Regulation Crowdfunding, the SEC granted the Firms a waiver from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding. The Department is further reassured by the progress the Firm has made on the undertakings required by the SEC. Specifically, the Firm retained the compliance consultant within the required timeframe in the SEC Order and notified the SEC regarding the imposition of certain discipline concerning the preservation of electronic communications.⁶¹

It is well settled that a firm's regulatory history bears upon the assessment of its ability to comply with securities law and regulations. *See In the Matter of the Continued Association of Craig Scott Taddonio with Meyers Associate, L.P.*, SD-2117, slip op. at 24-25 (FINRA NAC March 8, 2017). However, the corrective measures taken by firms to address deficiencies are weighed in determining whether to approve applications. *See In the Matter of the Association of X with the Sponsoring Firm*, SD11007 (FINRA NAC 2011) (where a firm's corrective actions negated Member Regulation's assertion that the firm failed to appreciate or respect securities rules and regulations). FINRA has also previously approved applications for continued membership where the firms had extensive regulatory history, including disqualifying events. *See In the Matter of the Continued Membership of Deutsche Bank Securities, Inc.*, SD-2190, (FINRA Jan. 14, 2020) and *In the Matter of the Continued Membership of Citigroup Global Markets, Inc.*, SD-2082, (FINRA May 2, 2017) approving continued membership where the firms had extensive regulatory history, including recent disqualifying events.

In its evaluation of the Firm's Application, FINRA acknowledges the Firm's recent regulatory and disciplinary history, including its additional statutory disqualifying events. Member Supervision also notes that, as of the date of this Notice, the Firm has paid all fines and complied with all undertakings ordered by regulators. None of these matters would prevent the continuance of the Firm as a FINRA member. With respect to the Firm's recent examination exceptions, the Firm took multiple steps to resolve deficiencies, including updating its procedures and various disclosures, and implementing technological improvements.

FINRA is further reassured by the controls set in place by the Firm's Supervision Plan which bolster the undertakings outlined in the SEC Order and will continue to provide oversight of the Firm and compliance with its remaining undertakings. In accordance with the Supervision Plan, the Firm agreed to conduct annual training for all associated persons, including new hires, regarding the Firm's approved digital communication methods and record retention policies. Further, the Supervision Plan calls for each associated person to obtain written approval prior to using digital communication channels and requires associated persons to annually disclose the digital communication methods they are using for Firm business. These provisions will help to ensure that the Firm is aware of the communication methods being used by associated persons so that it can appropriately monitor, capture, and retain those communications. Additionally, the Supervision Plan mandates that the Firm develop policies and procedures for disciplining associated persons who use unapproved communication methods for Firm business and segregate all

⁶¹ See Exhibit 4 at FINRA pp. 1-2.

certifications, reports, and supporting documentation submitted to the SEC regarding compliance with the undertakings, for ease of review by FINRA staff to ensure ongoing compliance.

Following the approval of the Firm's continued membership in FINRA, FINRA intends to utilize its examination and surveillance processes to monitor the Firm's continued compliance with the standards prescribed by Exchange Act Rule 19h-1 and FINRA Rule 9523

Thus, FINRA is satisfied, based on the foregoing representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves MSSB's Application to continue its membership with FINRA.

FINRA certifies that the Firms meet all qualification requirements and represents that the MSSB is registered with several other SROs, including DTC, NSCC, FICC-Gov, NYSE American, NYSE, and Nasdaq. The SROs were provided with the terms and conditions of the Firm's proposed continued membership and concur with FINRA.

In conformity with the provisions of Rule 19h-1 of the Exchange Act, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the SEC.

On Behalf of FINRA,



Marcia E. Asquith
Executive Vice President & Corporate Secretary

Appendix A

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[Redacted]

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[Redacted]

[REDACTED]

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EXHIBITS
SD-2344

1. MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022.
2. SEC Order, *In re Morgan Stanley & Co. LLC and Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 95924 (Sept. 27, 2022).
3. *In re Certain Broker-Dealer Practices*, Securities Act Release No. 11109 (Sept. 27, 2022).
4. Correspondence from Elizabeth Marino to FINRA dated April 5, 2023.
5. Central Registration Depository (“CRD”) Firm Snapshot.
6. CRD Excerpts: Types of Business and Other Business Descriptions.
7. Disposition Letter for Examination No. 20210693194 dated December 22, 2022, Examination Report dated June 30, 2022, and the Firm’s Response dated July 29, 2022.
8. Disposition Letter for Examination No. 20210693195 dated November 4, 2022, Examination Report dated September 27, 2022, and the Firm’s Response dated October 25, 2022.
9. Cautionary Action Letter for Matter No. 20180606706 dated October 31, 2023.
10. Disposition Letter for Matter No. 20210731340 dated August 17, 2023, Examination Report dated August 1, 2023, and the Firm’s Response dated August 11, 2023.
11. Disposition Letter for Matter No. 20220769514 dated July 21, 2023.
12. Disposition Letter for Matter No. 20220757868 dated May 12, 2023.
13. Disposition Letter for Matter No. 20220772633 dated March 23, 2023.
14. Disposition Letter for Examination No. 20210710525 dated July 1, 2022, Examination Report dated April 8, 2022, and the Firm’s Response dated May 13, 2022.
15. Cautionary Action Letters for Matter Nos. 20210692083 dated June 7, 2022 and 20200653189 dated June 17, 2022, and the Firm Response for Matter No. 20210692083 dated July 6, 2022.

16. Disposition Letter for Matter No. 20180592582 dated December 14, 2021.
17. FINRA AWC No. 2021069495301 accepted on December 22, 2022.
18. Correspondence from W. Hardy Callcott to FINRA dated June 22, 2023.
19. FINRA AWC No. 2016051634802 accepted on November 21, 2022.
20. *In re Morgan Stanley Smith Barney LLC*, Exchange Release Act No. 95832 (Sept. 20, 2022).
21. *In re Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 88856 (May 12, 2020).
22. *In re Morgan Stanley Smith Barney LLC*, Securities Act Release No. 10726 (Nov. 7, 2019).
23. *In re Morgan Stanley Smith Barney LLC*, Exchange Act Release No. 86988 (Sept. 17, 2019).
24. *In Re: Morgan Stanley Smith Barney LLC* (Maine No. 2023-35) dated August 14, 2023.
25. *In re the Continued Membership of Morgan Stanley Smith Barney, LLC* (FINRA SD-2147) dated November 28, 2017, and the SEC's Letter of Acknowledgement dated February 1, 2018.
26. Executed Consent to Plan of Heightened Supervision dated November 28, 2023.