

**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 PROCEEDINGS
No. 2012032019101

Hearing Officer – MAD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 1, 2017

INTRODUCTION

Disciplinary Proceeding No. 2012032019101 was filed on September 1, 2016 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Rafael Barela Jacinto submitted an Offer of Settlement (Offer) to Complainant dated May 16, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement) and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to

which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

In 1999, Barela first became registered with FINRA as a General Securities Representative ("GSR"). From February 2004 through June 2009, Barela was registered with Citigroup Global Markets, Inc. (BD No. 7059) ("Citigroup") as a GSR. As a result of a joint venture between Citigroup and Morgan Stanley (or the "Firm") in June 2009, Barela became registered as a GSR through Morgan Stanley.

On March 30, 2012, Morgan Stanley filed a Form U5 terminating Barela's registration with the Firm because he was found to have been "facilitating securities transactions for clients within accounts other than their own."

Between April 17, 2012 and October 18, 2016, Barela was registered as a GSR with another FINRA member firm. Barela is not currently associated with a FINRA member firm.

Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Barela because: (1) he was associated with a FINRA member and registered with FINRA when the Complaint was filed; and (2) the Complaint charges him with securities-related misconduct committed while he was associated with a FINRA member and registered with FINRA.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. From at least May 2011 through March 2012 (the "Relevant Period"), Morgan Stanley registered representative John Batista Bocchino ("Bocchino") circumvented

Morgan Stanley's policies restricting trading in Venezuelan bonds. In order to evade Firm policy, Bocchino used nominee accounts in the names of well-known U.S. financial institutions, booked hundreds of unauthorized trades in the nominee accounts, and created Firm documents that contained false information. As a result, Bocchino was able to trade approximately \$190 million in Venezuelan bonds in violation of the Firm's policies and avoid the Firm's supervision.

2. In furtherance of this activity, Respondent Barela created Firm documents that contained false information.
3. Based upon the foregoing, Barela violated NASD Rule 3110 and FINRA Rules 4511 and 2010.

A. DURING THE RELEVANT PERIOD, BOCCHINO, WITH BARELA'S ASSISTANCE, WAS ONE OF THE LARGEST PRODUCERS IN HIS BRANCH, PRIMARILY DUE TO HIS VENEZUELAN BOND SALES

4. From in or about June 2009 through March 2012, Bocchino was a registered representative in Morgan Stanley's branch office on Madison Avenue in New York City (the "New York Branch").
5. During this period, Bocchino's business was largely comprised of transactions in government and sovereign debt bonds issued by South American countries, including, principally, Venezuela. Bocchino also had a significant number of clients located in South America.
6. Bocchino was one of the largest producers in the New York Branch, and received gross compensation from the Firm of approximately \$2.3 million in 2011 and approximately \$2.26 million for the period between January and March 2012.

7. Barela has worked with Bocchino since January 2004. From June 2009 through March 2012, Barela worked in the New York Branch, and functioned as Bocchino's primary sales assistant.
8. At the New York Branch, Barela performed multiple tasks for Bocchino. He assisted in the opening of new accounts by completing and submitting new account documents, completed order tickets to initiate securities trades, and was the liaison between Bocchino and the Firm's "back office" for the purposes of settling trades.

B. VENEZUELAN BONDS AND CURRENCY CONVERSION TRANSACTIONS

9. In or about June 2010, the Central Bank of Venezuela created the Sistema de Transacciones con Titulos en Moneda Extranjera ("SITME") (a/k/a System of Foreign Currency Transactions) to facilitate the conversion of its local currency, the Venezuelan bolivar, to U.S. dollars. Throughout the Relevant Period, and until it was dismantled by the Venezuelan government in February 2013, SITME functioned as a currency exchange market that operated through sales of Venezuelan bonds.
10. Under SITME, the Venezuelan government issued U.S. dollar-denominated bonds to select Venezuelan banks.¹ Individuals and entities seeking to convert bolivars to dollars could purchase the Venezuelan bonds from a Venezuelan bank in bolivars. The Venezuelan bank would then deposit the bonds with a U.S. broker-dealer for sale. The U.S. broker-dealer would sell the Venezuelan bonds and, typically, wire the proceeds (in U.S. dollars) to a third-party financial institution on behalf of the customer.

¹ The bonds were issued by the Venezuelan government or PDVSA, which is the Petroleos de Venezuela, S.A., a Venezuelan state-owned oil and natural gas company.

C. MORGAN STANLEY RESTRICTS BROKERS FROM EXECUTING VENEZUELAN BOND TRANSACTIONS

11. Morgan Stanley's AML and compliance departments identified Venezuelan bond transactions (particularly those resulting in currency conversion transactions) as presenting regulatory, AML, and reputational risk to the Firm. As a result, in 2010, the Firm began imposing restrictions upon Venezuelan bond trades.
12. In or about October 2010, the Firm enacted a policy that prohibited representatives from effecting currency conversion transactions for certain customers. The Firm defined currency conversion transactions as the free delivery of Venezuelan bonds into an account, the sale of the bonds for U.S. dollars, followed by the transfer of the U.S. dollars from the account.
13. By April 2011, the Firm implemented a more restrictive policy prohibiting registered representatives from effecting sales of Venezuelan bonds unless they could provide the Firm with buy-side confirmations at the time of sale to evidence that the customer had purchased the bonds in U.S. dollars. By providing buy-side confirmations at the time of sale, the Firm could confirm that the transactions were not being effected for the purposes of converting currency.
14. The requirement that representatives obtain buy-side confirmations applied to all customer accounts engaged in Venezuelan bond trading, regardless of the type of account (individual or institutional) or where the account was domiciled (U.S. or foreign).
15. Morgan Stanley's restrictions on Venezuelan bond trading had a negative impact on Bocchino's business.

16. Because of the negative impact of these policies on his business, in or about June 2011, Bocchino requested permission from his managers to sell Venezuelan bonds for foreign customers without obtaining proof that those bonds had been purchased in U.S. dollars.
17. Morgan Stanley denied Bocchino's request.
18. Although Morgan Stanley denied Bocchino's request, the Firm did permit Bocchino to engage in *proprietary* Venezuelan bond trading on behalf of one U.S. financial institution, PL, based on Bocchino's false representation that PL intended to trade Venezuelan bonds for its own account.
19. In or about January 2012, Morgan Stanley issued a compliance notice prohibiting all of its registered representatives, including Bocchino, from engaging in any "Venezuelan Security Transaction" with any financial institution except in limited circumstances. The policy provided that registered representatives could engage in a "Venezuelan Security Transaction" "if, [p]rior to agreeing to accept free delivery of Venezuelan Securities into a Financial Institution's account at the Firm, branch management has received and approved a written trade confirmation evidencing that the Financial Institution purchased the Venezuelan Securities in U.S. dollars through [Morgan Stanley] or a reputable U.S. or European third party broker-dealer or bank."

D. BOCCHINO'S CIRCUMVENTION OF THE FIRM'S RESTRICTIONS ON VENEZUELAN BOND TRADES

20. During the Relevant Period, Bocchino circumvented Morgan Stanley's restrictions on Venezuelan bond trading. As alleged below, to evade Firm policy, Bocchino used at least five different nominee accounts, booked hundreds of unauthorized trades in those accounts, and created hundreds of Firm documents that contained false

information. In addition, Barela created Firm documents that contained false information. As a result of this activity, Bocchino was able to trade approximately \$190 million worth of Venezuelan bonds in violation of the Firm's policies and without the appropriate scrutiny of the Firm.

The Nominee Accounts

21. Bocchino used accounts in the names of five well-known U.S. financial institutions and brokerage firms (collectively, the "Nominee Accounts") to execute Venezuelan bond trades without those institutions' knowledge or consent.
22. During the Relevant Period, Bocchino executed approximately 300 Venezuelan bond trades totaling approximately \$190 million (the "Venezuelan Bond Transactions") in the Nominee Accounts for the benefit of thirteen concealed entities (the "Concealed Customers"). By placing the Venezuelan Bond Transactions through the Nominee Accounts, Bocchino made it appear to Morgan Stanley that he was complying with the Firm's procedures, thereby avoiding the requirement to produce buy-side confirmations, and concealed the true identities of the underlying customers.
23. None of the U.S. financial institutions associated with the Nominee Accounts authorized Bocchino to open an account at the Firm to execute trades on behalf of third parties. Similarly, none of these U.S. financial institutions were aware that Bocchino was conducting Venezuelan Bond Transactions in their name on behalf of the Concealed Customers.
24. Bocchino used the following Nominee Accounts to execute Venezuelan Bond Transactions on behalf of the Concealed Customers:

- i. A nominee account in the name of PL, a U.S. financial institution, which was opened on May 18, 2011 (the “PL Nominee Account”);
 - ii. A nominee account in the name of TPFS, a U.S. financial institution, which was opened on August 2, 2011 (the “TPFS Nominee Account”);
 - iii. A nominee account in the name of PFS, a U.S. financial institution, which was opened June 24, 2011 (the “PFS Nominee Account”);
 - iv. A nominee account in the names of both PFS and ACM, a U.S. financial institution, which was opened on April 20, 2010 (the “PFS/ACM Nominee Account”); and
 - v. A nominee account in the name of DSL, a U.S. financial institution, which was opened on April 22, 2010 (the “DSL Nominee Account”).
25. The majority of the Venezuelan Bond Transactions were effected in the PL Nominee Account.
26. Bocchino falsely represented in new account documentation for each of the five Nominee Accounts that the trading to be conducted in those accounts would be “proprietary.”

The Concealed Customers

27. Bocchino executed Venezuelan Bond Transactions within the Nominee Accounts for the benefit of the following Concealed Customers:
- a. CBU, a foreign bank domiciled in Venezuela;
 - b. LW, a foreign regional investment bank headquartered in Lima, Peru;
 - c. MCL, a U.S. broker-dealer located in Florida;

- d. MWM, a foreign institution located in Barbados that provides asset management services to individual investors;
 - e. VGWMG, a wealth management company headquartered in Miami, Florida, with offices in Colombia, Chile and Ecuador;
 - f. BDV, an international bank based in Caracas, Venezuela;
 - g. GSI, a FINRA member with its principal place of business in Miami, Florida. In 2015, GSI was sanctioned and fined by FINRA for AML violations in connection with Venezuelan bond currency conversion transactions;
 - h. CGL, a FINRA member with its principal place of business in Charlotte, North Carolina. In 2015, CGL was sanctioned and fined by FINRA for AML violations in connection with Venezuelan bond currency conversion transactions;
 - i. MGL, a FINRA member and investment banking, securities and wealth management firm headquartered in New York;
 - j. AS, an investment firm headquartered in Buenos Aires, Argentina;
 - k. DMB, an investment management firm headquartered in London;
 - l. SFSC, a financial institution located in Sao Paulo, Brazil; and
 - m. PSC/ACM, a FINRA member headquartered in New York.
28. Several of the Concealed Customers presented regulatory concerns and at least three of the thirteen Concealed Customers – CBU, AS, and DMB – were not customers of Morgan Stanley and were not approved to trade through the Firm.

Bocchino Concealed the Trades from Morgan Stanley

29. Bocchino typically executed the concealed Venezuelan Bond Transactions through the following steps:
- a. Bocchino would contact a Concealed Customer using the instant message (“IM”) feature available through the Firm’s Bloomberg terminal;
 - b. Bocchino would confirm the trade terms with the Concealed Customer through IMs in the Firm’s Bloomberg terminal;
 - c. Bocchino would generate a trade confirmation through the Bloomberg system and send it electronically to the Concealed Customer;
 - d. Bocchino, or Barela at his direction, would then contact the Firm’s trading desk to have the trade executed using the Nominee Account in place of the Concealed Customer; and
 - e. Bocchino, or Barela at his direction, would prepare an order ticket falsely memorializing the trade as having been executed on behalf of the Nominee Account. This order ticket was submitted to the Firm and became a record.
30. After Bocchino entered a Venezuelan Bond Transaction and caused it to be executed by the trading desk, but prior to settlement of the trade, Bocchino, or Barela at his direction, would instruct the Firm’s settlement desk to replace the Euroclear² number (if one existed) for the Nominee Account with the Euroclear number associated with the Concealed Customer’s clearing firm, thereby redirecting the trade from the Nominee Account to the Concealed Customer.

² Euroclear is a Belgium-based financial services company that specializes in the settlement of securities transactions as well as the safekeeping and asset servicing of these securities. <http://www.euroclear.com>.

The Concealed Trades

31. As summarized in Exhibit A attached hereto, during the Relevant Period, Bocchino placed a total of approximately 300 Venezuelan Bond Transactions totaling approximately \$190 million on behalf of the Concealed Customers in the Nominee Accounts.
32. As a result of Bocchino having concealed the identities of the Concealed Customers from Morgan Stanley, the Firm was unable to conduct an appropriate suitability and/or AML review of the Concealed Customers' transactions.
33. The Firm's inability to conduct such a review is even more critical in the case of the Concealed Customers who were never customers of the Firm. Those entities, all of which were foreign, would have been subject to enhanced scrutiny from Morgan Stanley's AML department had their identities not been concealed by Bocchino.
34. One of the Concealed Customers, SFSC, had a preexisting account at Morgan Stanley, which Morgan Stanley froze in October 2011 because SFSC failed to provide the Firm with certain Customer Identification Program documentation.
35. Between November 2011 and December 2011, during the time in which the SFSC freeze was in place, Bocchino circumvented the freeze restriction by executing four transactions on behalf of SFSC (consisting of both Argentine and Venezuelan bonds) totaling approximately \$1,255,650 through the PL Nominee Account.

False Records

(Violation of NASD Rule 3110 and FINRA Rules 4511 and 2010)

36. FINRA Rule 4511 (formerly NASD Rule 3110) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Exchange Act Rule 17a-3 requires a firm to

make and keep current certain books and records relating to its businesses, including memoranda of each brokerage order. Inherent in this recordkeeping requirement is the obligation to maintain *accurate* records.

37. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.
38. As discussed more fully above, Bocchino created Firm records which contained false information, including but not limited to:
 - a. new account documentation;
 - b. trade tickets;
 - c. order confirmations;
 - d. customer account statements;
 - e. Firm blotters; and
 - f. Firm reports.

39. By this misconduct, Bocchino violated NASD Rule 3110 (for conduct before December 5, 2011) and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be:

- Suspended from association with any FINRA member in any and all capacities for one year; and

- Fined \$10,000.

The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



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