FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080151992-01

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Morgan Stanley & Co. LLC[1]
Broker-Dealer
CRD No. 8209

Pursuant to FINRA Rule 9216 of FINRA's 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, FINRA 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm has been a member of FINRA since June 5, 1970, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On May 17, 2011, FINRA accepted an AWC in connection with 20070113472 in which the firm was fined $110,000, of which $30,000 was for short interest reporting violations that occurred from April 13, 2007 through October 15, 2007.

[1] Until April 16, 2008, the firm was registered as "Morgan Stanley & Co., Incorporated"; from April 17, 2008 to June 29, 2011 it was registered as "Morgan Stanley & Co. Incorporated"; from June 30, 2011 to the present it has been registered as "Morgan Stanley & Co. LLC."

SUMMARY

In connection with 20080151992, the Short Interest staff of FINRA's Department of Market Regulation ("Market Regulation") reviewed the firm's short interest reporting during the period February 15, 2007 through October 30, 2009 ("Short Interest Review #1").[2]

In connection with 20100247285, the Short Interest staff of Market Regulation reviewed the firm's short interest reporting during the period December 31, 2009 through September 14, 2012 ("Short Interest Review #2").

In connection with 20130395613, the Short Interest staff of Market Regulation reviewed the firm's short interest reporting during the period May 15, 2012 through November 29, 2013 ("Short Interest Review #3").

In connection with 20140428681, the Short Interest staff of Market Regulation reviewed the firm's self-reported disclosure that it has not included in its short interest reporting the firm's short positions for securities that trade on a foreign exchange and for which a United States trading symbol exists ("Short Interest Review #4").

In connection with 20110264768, the Short Sales staff of Market Regulation reviewed the firm's compliance with short sale requirements during the period January 1, 2005 through December 31, 2011 ("Short Sale Aggregation Unit Review").

Based on the foregoing reviews, the staff determined that the firm violated FINRA Rule 4560, NASD Rule 3360, NYSE Rule 421, FINRA Rule 2010, NASD Rule 2110, NASD Rule 3010, and SEC Rule 200(f). Specifically, the staff determined the firm failed to submit accurate short interest reports during certain short interest reporting periods and failed to provide a supervisory system reasonably designed to achieve compliance with short interest reporting requirements. Additionally, the staff determined the firm improperly included positions of customer accounts in determining the net positions of its aggregation units, that the firm's written plan of authorization improperly permitted this inclusion, and that the firm failed to provide a supervisory system reasonably designed to achieve compliance with requirements relating to aggregation units and short sales.

[2] The short interest rules cited below require firms to maintain a record of short interest positions in all customer and proprietary firm accounts in all equity securities (with certain exceptions), and regularly report such positions to FINRA or other self-regulatory organization ("SRO") in the manner prescribed by FINRA or the appropriate SRO. For further information, see FINRA Notice to Members 12-38.

FACTS AND VIOLATIVE CONDUCT

20080151992 (Short Interest Review #1)

1. For settlement dates from February 15, 2007 through November 30, 2008, the firm submitted to FINRA its short interest position reports. The firm over-reported positions by including 381 short interest positions for certain Nasdaq and OTC equity securities totaling 365,469,262 shares, when the firm should have reported 342 short interest positions totaling 365,280,102 shares for these securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360 which, in part, required FINRA members to periodically report short interest positions held in OTC equity securities and securities listed on a national securities exchange to FINRA unless reported to another self-regulatory organization.

2. For settlement dates from February 15, 2007 through November 30, 2008, the firm submitted to the New York Stock Exchange ("NYSE") its short interest position reports. The firm over-reported positions by including 4,042 short interest positions for certain NYSE, NYSE Amex, and NYSE Arca securities totaling 2,750,356,420 shares, when the firm should have reported 1,876 short interest positions totaling 2,745,856,053 shares for these securities. The conduct described in this paragraph constitutes separate and distinct violations of Incorporated NYSE Rule 421, which required NYSE members to periodically report short interest positions held in securities listed on the NYSE.

3. For settlement dates December 15, 2008 through October 30, 2009, the firm submitted to FINRA its short interest position reports. The firm over-reported positions by including 3,235 short interest positions for certain Nasdaq, NYSE, NYSE Amex, NYSE Arca, and OTC equity securities totaling 1,789,997,798 shares, when the firm should have reported 1,461 short interest positions totaling 1,785,629,230 shares for these securities. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560, which incorporated and superseded NASD Rule 3360 and NYSE Rule 421 effective December 15, 2008.

20100247285 (Short Interest Review #2)

4. For 45 settlement dates from December 31, 2009 through September 14, 2012, the firm submitted to FINRA its short interest position reports. These reports included 50,789 short interest positions totaling 54,996,211,023 shares when the firm should have reported 50,786 positions totaling 58,994,913,505 shares; thus, the firm under-reported its short interest by approximately 4 billion shares, or 6.8 percent. The firm also failed to report 1,000 short interest positions totaling 18,423,118 shares. Specifically,

   a. Certain short positions held for other broker-dealers were inadvertently coded as Proprietary Account of an Introducing Broker ("PAIB") and were incorrectly determined not to be reportable. As a result, during a 13-month sample period reviewed by the staff, the firm under-reported 741 short positions by approximately 165 million shares and failed to report 19 short interest positions totaling 681,895 shares.

   b. The firm treated certain proprietary accounts of its foreign affiliates as not reportable. As a result, during a 13-month sample period reviewed by the staff, the firm under-reported 30,686 short interest positions by approximately 3.8 billion shares.

   c. The firm inaccurately reported certain short interest positions accumulated in connection with syndicate offerings or covered by an overallotment option, as well as failed to report short interest positions that resulted from sales in excess of the overallotment. As a result, during a 14-month sample period reviewed by the staff, the firm over-reported five positions by approximately 5.8 million shares and failed to report four positions totaling approximately 219,000 shares.

   d. The firm included sales of restricted stock (or "deemed to own") stock in its short interest reports that should have been excluded. As a result, for settlement dates April 15, 2011, April 29, 2011, and May 31, 2011, the firm over-reported three short interest positions totaling approximately 3 million shares.

   e. The firm's short interest reporting was affected by two programs that updated overnight and thus caused reporting errors on settlement dates. One program, called the "MTJ" program segregated Type 2 positions in omnibus accounts from Type 3 short positions; the other program, called the "TSL" program, ran its own process that netted Type 2 and Type 3 positions in certain omnibus accounts. Moreover, certain omnibus accounts were excluded from the MTJ program or from some other part of the overnight adjustment process. As a result, during the 15-month sample period reviewed by the staff, the firm under-reported 19,354 short interest positions totaling approximately 90

million shares, and failed to report 43 short interest positions totaling approximately 333,000 shares.

The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

20130395613 (Short Interest Review #3)

5. For 38 settlement dates from May 15, 2012 through November 29, 2013, the firm submitted to FINRA its short interest position reports. As a result of a coding error, the firm over-reported positions by including 492 short interest positions totaling 2,202,375,190 shares when the firm should have reported 69 short interest positions totaling 2,918,616 shares. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 4560.

20140428681 (Short Interest Review #4)

6. During at least the periods under review herein, the firm failed to include in its short interest position reports certain short interest positions for securities that trade on a foreign exchange and for which a United States trading symbol also exists. As a result, the firm failed to report numerous short interest positions amounting to on average over a billion shares per reporting cycle. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 3360 and NYSE Rule 421 (for conduct prior to December 15, 2008), and FINRA Rule 4560 (for conduct on or after December 15, 2008).

20100247285, 20130395613, and 20140428681 (Supervision of Short Interest Reporting)

7. The firm's supervisory system, including the firm's written supervisory procedures ("WSPs"), did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, and/or FINRA Rules, concerning short interest reporting. As a result, the firm failed to detect and prevent the short interest reporting violations described above. This constitutes a violation of NASD Rule 3010 and FINRA Rule 2010.

20110264768 (Short Sale Aggregation Unit Review)

8. *Improper inclusion of non-broker-dealer affiliates' positions in AGUs.* Rule 200(f) of Regulation SHO provides that

> In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if: (1) the broker-dealer has a written plan of authorization that identifies each aggregation unit, specifies its trading objectives, and supports its

independent identity; (2) each aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades; (3) all traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and (4) individual traders are assigned to only one aggregation unit at any time.

Rule 200(f) does not permit the inclusion of the securities positions of a broker-dealer's non-broker-dealer affiliates in calculating the net securities positions of the independent trading units of a broker-dealer.

From January 1, 2005 through at least December 31, 2011 (the "Short Sale review period"), the firm's trading desks were organized into separate aggregation units ("AGUs") for purposes of compliance with SEC Rule 200(f) and pre-existing guidance concerning the proper use of AGUs. Each of the separate AGUs contained numerous trading books, for which securities positions were netted together to determine the total net position of that AGU and, accordingly, whether the AGU's orders should be marked long or short. In addition to the firm's proprietary positions, the AGUs also improperly included the trading positions of non-broker-dealer affiliates in determining the AGU's net positions.[3] As a result, the firm's AGUs failed to reflect the correct positions within the appropriate trading books, in violation of SEC Rule 200(f).

9. *Inadequate written plan of authorization.* During the Short Sale review period, the firm's written plan of organization for its AGUs failed to accurately provide for the overall net position of the securities that were traded and maintained by the firm's AGUs. More specifically, the firm's written plan of organization for its AGUs improperly permitted the inclusion of securities positions of non-broker-dealer affiliates in determining the net position of the firm's AGUs, in violation of SEC Rule 200(f).

10. *Inadequate WSPs.* The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with the applicable securities laws and regulations, including SEC and FINRA Rules, concerning aggregation of positions in a security to determine the net positions of the firm's AGUs. Specifically, the firm's WSPs improperly permitted the inclusion of non-broker-dealer affiliates' trading positions in determining the net positions of the firm's AGUs. The conduct described in this paragraph constitutes a violation of NASD Rules 2110 and 3010 (for conduct prior to December 15, 2008), and FINRA Rule 2010 and NASD Rule 3010 (for conduct on or after December 15, 2008).

[3] The non-broker-dealer affiliates' trading positions were incorporated into ten separate AGUs maintained by the firm during the relevant period.

OTHER FACTORS

The firm retained an independent consultant on three occasions during the time periods described above to review the firm's short interest reporting processes. The firm addressed the issues identified by the consultants that contributed to the short interest reporting violations described herein. In addition, in connection with these reviews, the firm identified and self-reported certain of the short interest reporting violations at issue in 20100247285 and all of the short interest reporting violations at issue in 20140428681. By self-reporting these violations and by providing extraordinary cooperation, the firm provided substantial assistance to FINRA's investigation. Accordingly, the sanction reflects significant consideration given to these actions taken by the firm.

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

- A censure;

- A fine of $2,000,000 ($1,400,000 for the short interest reporting violations; $250,000 for the short interest supervision violations; $250,000 for the short sale violations; and $100,000 for the short sale supervision violations); and

- An undertaking to revise the firm's WSPs, as warranted, with respect to the areas described in paragraphs A.7 and A.10 above. Within 120 days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), an Executive Officer of the firm shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an email from a work-related account of the Executive Officer to **MarketRegulationComp@finra.org**, providing the following information: (1) a reference to this matter; (2) a representation that the firm has addressed and corrected the deficiencies described in Section A above and a detailed description of all changes made to the firm's supervisory system and WSPs, as well as any changes the firm intends to make as a result of the issues identified above; and (3) the date the deficient procedures were addressed and corrected by the firm.

For good cause shown and upon receipt of a timely application from the firm, FINRA staff may extend the deadlines set forth in the undertakings described above.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are 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(s) 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 FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against the firm;

B. To be notified of the 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 National Adjudicatory Council ("NAC") 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 Legal Officer, the NAC, or any member of the NAC, 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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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 the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA 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 FINRA or any other regulator against the firm;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. 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 FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. 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 FINRA 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 FINRA, nor does it reflect the views of FINRA 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.

April 6, 2015
Date

Respondent
Morgan Stanley & Co. LLC

By: _____

Name: Scott Tucker

Title: Global Head of Litigation

Reviewed by:

_____
Counsel for Respondent
Susan L. Merrill

Accepted by FINRA:

5/13/15
Date

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

_____
Robert A. Marchman
Executive Vice President
Department of Market Regulation