

**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

OFFER OF SETTLEMENT

I.

Respondent John Batista Bocchino (“Bocchino” or “Respondent”) makes this Offer of Settlement (Offer) to the Financial Industry Regulatory Authority (FINRA), with respect to the matters alleged by FINRA in Disciplinary Proceeding No. 2012032019101 filed on September 1, 2016 (Complaint), as amended by this Offer.

This Offer is submitted to resolve this proceeding and is made without admitting or denying the allegations of the Complaint. It is also submitted upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondent based on the allegations of the Complaint (as amended by this Offer), and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the National Adjudicatory Council (NAC) Review Subcommittee, pursuant to FINRA Rule 9270.

II.

ORIGIN OF DISCIPLINARY ACTION

FINRA staff opened an investigation of Bocchino following his termination for cause from Morgan Stanley Smith Barney (“Morgan Stanley” or the “Firm”). The Complaint in this matter was filed against Bocchino based on the findings of FINRA staff following that investigation.

III.

ALLEGED ACTS OR PRACTICES AND VIOLATIONS BY RESPONDENT

As alleged in the Complaint, as amended herein, Respondent engaged in the following acts, or failed to act as follows:

SUMMARY

1. From at least May 2011 through March 2012 (the “Relevant Period”), while registered with Morgan Stanley, Respondent 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, Bocchino’s sales assistant, Rafael Barela Jacinto (“Barela”), also created Firm documents that contained false information.
3. Based upon the foregoing, Bocchino violated NASD Rule 3110 and FINRA Rules 4511 and 2010.

RESPONDENT AND JURISDICTION

4. Bocchino first became registered with FINRA in July 1998. From February 2001 through June 2009, Bocchino was registered as a General Securities Representative through Citigroup Global Markets, Inc. (“Citigroup”). As a result of a joint venture between Citigroup and Morgan Stanley in June 2009, Bocchino became registered in the same capacity through Morgan Stanley.
5. On March 30, 2012, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form US) terminating Bocchino’s registration with the Firm because he was found to have been “engaging in securities transactions for clients within accounts other than their own.”
6. Between April 3, 2012 and October 11, 2016, Bocchino was registered as a General Securities Representative with another FINRA member firm. Bocchino is not currently associated with a FINRA member firm.
7. Under Article IV of the FINRA By-Laws, FINRA possesses jurisdiction over Bocchino 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.

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

8. 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”).

9. 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.
10. 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.
11. 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.
12. 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

13. In or about June 2010, the Central Bank of Venezuela created the Sistema de Transaccionnes 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.

14. 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.

C. MORGAN STANLEY RESTRICTS BROKERS FROM EXECUTING VENEZUELAN BOND TRANSACTIONS

15. 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.
16. 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.
17. 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

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.

time of sale, the Firm could confirm that the transactions were not being effected for the purposes of converting currency.

18. 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).
19. Morgan Stanley's restrictions on Venezuelan bond trading had a negative impact on Bocchino's business.
20. 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.
21. Morgan Stanley denied Bocchino's request.
22. 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.
23. 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

24. 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

25. 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.

26. 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.

27. 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.
28. 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").
29. The majority of the Venezuelan Bond Transactions were effected in the PL Nominee Account.
30. 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

31. 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.

32. 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

33. 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.

34. 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

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>.

(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.

The Concealed Trades

35. 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.
36. 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.
37. 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.
38. 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.
39. 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.

FIRST CAUSE OF ACTION
Unethical Conduct
(Violation of FINRA Rule 2010)

40. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”
41. As alleged above, Bocchino circumvented the Firm’s policies and procedures regarding Venezuelan bond trading.
42. To evade Firm policy, Bocchino used nominee accounts using the names of well-known U.S. financial institutions, hid the identities of customers selling Venezuelan bonds in violation of the Firm’s policies, entered false information into the Firm’s order entry system, provided false information to the Firm’s settlement desk, and created Firm documents that contained false information.
43. As a result of this misconduct, Bocchino was able to create the appearance of compliance with the Firm’s Venezuelan bond trading restrictions and trade approximately \$190 million worth of Venezuelan bonds in violation of the Firm’s policies and without the appropriate scrutiny of their supervisors and the Firm’s AML and compliance departments.
44. By this misconduct, Bocchino violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Unauthorized Activity
(Violation of FINRA Rule 2010)

45. As alleged above, Bocchino, while registered with Morgan Stanley, used the Nominee Accounts –accounts in the names of well-known financial institutions

without their consent – to effect approximately 300 Venezuelan Bond Transactions totaling approximately \$190 million.

46. The financial institutions whose names were associated with the Nominee Accounts – PL, TPFS, PFS, PFS/ACM and DSL – did not authorize the Venezuelan Bond Transactions.
47. By this misconduct, Bocchino violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

False Records

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

48. FINRA Rule 4511 (formerly NASD Conduct 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.
49. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.
50. 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.

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

IV.

Pursuant to the conditions set forth herein, Respondent consents to the issuance of an Order Accepting Offer of Settlement (Order) and disposing of this proceeding in the following manner:

- A. Without admitting or denying the allegations, 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 of facts and violations by Respondent as set forth above in Section III; and,
- B. Imposing the sanction of a bar from association with any FINRA member in any capacity.

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

The sanction herein shall be effective on a date set by FINRA staff. A bar or expulsion is effective upon approval or acceptance of this Offer.

V.

In connection with the submission of this Offer, and subject to the provisions herein, Respondent specifically waives the following rights provided by FINRA's Code of Procedure:

- A. any right to a hearing before an Adjudicator (as defined in FINRA Rule 9120(a)), and any right of appeal to the NAC, the U.S. Securities and Exchange Commission, or the U.S. Court of Appeals, or any right otherwise to challenge or contest the validity of the Order issued, if the Offer and the Order are accepted;
- B. any right to claim bias or pre-judgment by the Chief Hearing Officer, Hearing Officer, a hearing panel or, if applicable, an extended hearing panel, a panelist on a hearing panel, or, if applicable, an extended hearing panel, the General Counsel, the NAC, or any member of the NAC; and
- C. any right to claim a violation by any person or body of 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 the Offer and the Order or other consideration of the Offer and Order, including acceptance or rejection of such Offer and Order.

VI.

Respondent understands that:

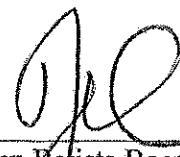
- A. the Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
- B. the Order will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

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

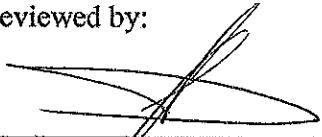
D. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in the Complaint (as amended herein) or create the impression that the Complaint (as amended herein) is without factual basis. Respondent 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 allegation in the Complaint (as amended herein). Nothing in this provision affects Respondent'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.

Respondent certifies that he has read and understands all of the provisions of this Offer and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily; and that no offer, threat, inducement or promise of any kind or nature, other than the terms set forth herein, has been made to induce him to submit it.

5/17/17
Date (mm/dd/yyyy)


John Belista Bocchino
Respondent

Reviewed by:



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