

**NASDAQ PHLX LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

TO: Morgan Stanley & Co. LLC  
Belinda Blaine, Chief Compliance Officer  
1633 Broadway  
New York, New York 10019

FROM: Nasdaq PHLX LLC (“Phlx”)  
c/o Financial Industry Regulatory Authority (“FINRA”)  
Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, New York 10281

DATE: February 18, 2020


RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 2017053128502

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on February 18, 2020 by the Phlx Review Council’s Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Phlx Review Council, pursuant to Phlx Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration (“Form BD”) to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Phlx if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC you required to notify the Compliance Assistant, Department of Enforcement, 15200 Omega Drive, Suite 300, Rockville, MD 20850, of completion of the undertaking.

If you have any questions concerning this matter, please call me at 646-430-7059

  
\_\_\_\_\_  
Steven Tanner  
Senior Counsel  
Department of Enforcement, FINRA  
Signed on behalf of Phlx

Enclosure

cc: Christian T. Kemnitz  
Counsel for Respondent  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661  
christian.kemnitz@katten.com

Jeffrey Fortune  
Risk Monitoring Director  
(via email)

Kristyn Obsuth  
Risk Monitoring Analyst  
(via email)

Carla Madeo  
Risk Monitoring Analyst  
(via email)

**NASDAQ PHLX LLC**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
NO. 2017053128502

**TO:** Nasdaq PHLX LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

**RE:** Morgan Stanley & Co. LLC, Respondent  
Member Firm  
CRD No. 8209

Pursuant to Rule 9216 of Nasdaq PHLX LLC ("Phlx") Code of Procedure, Morgan Stanley & Co. LLC ("MSCO" or 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, Phlx will not bring any future actions against the Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent 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 Phlx, or to which Phlx 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 Phlx:

**BACKGROUND**

The firm became a member of Phlx on June 3, 1970, and a member of FINRA on June 5, 1970. Its registrations remain in effect. MSCO, a subsidiary of Morgan Stanley Domestic Holdings, Inc., is a Delaware limited liability company headquartered in New York, New York. The firm, which has approximately 4,010 registered representatives in 39 branch offices, provides services to corporate and broker-dealer clients and institutional investors, and acts as an agency broker-dealer, providing market access and execution services to market participants for a wide variety of products.

The firm does not have any relevant disciplinary history.

**SUMMARY**

1. The Financial Industry Regulatory Authority's ("FINRA") Trading and Financial Compliance Examinations staff (the "Staff") within the Department of Market Regulation, on behalf of Phlx and other options exchanges, conducted a review of the manual options order tickets handled by the firm during the period between July 17, 2017 and July 21, 2017 (the "Exam Review Period").

2. During the Exam Review Period, MSCO failed to accurately record the order receipt and order transmission times, and the accurate exchange of execution, of manual options orders it had routed to Phlx and various other national securities exchanges for execution in violation of Rule 17a-3(a)(6)(i) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Phlx Rule 760. During the Exam Review Period, MSCO also failed to accurately record the exchange of execution of facilitation orders in violation of Exchange Act Rule 17a-3(a)(6)(i) and Phlx Rule 760.
3. From July 2017 through the present (the "Supervisory Review Period"), the firm also violated Phlx Rule 748(h) by failing to establish, maintain and enforce written supervisory procedures ("WSPs") and a system of supervision that were reasonably designed to achieve compliance with, and to detect and prevent violations of, the applicable federal securities laws and Phlx rules that require the accurate documentation of the order receipt and transmission times, and exchange of execution, of options orders.

#### **FACTS AND VIOLATIVE CONDUCT**

4. The recordkeeping provisions of the federal securities laws and Phlx rules are designed to ensure that regulators have access to certain basic information about securities transactions. Access to transaction records serves as an essential component for effective surveillance and examination of broker-dealers by Phlx and other self-regulatory organizations.
5. Section 17 of the Exchange Act and Exchange Rule 17a-3(a)(6)(i) promulgated thereunder require broker-dealers, such as MSCO, to create a brokerage order ticket of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. In relevant part, the rule requires the brokerage order ticket to show, among other things, the terms and conditions of the order or instructions, the time the order was received, the time the order was entered, and the time of execution or cancellation. Such records must be accurate.
6. Phlx Rule 760 requires member firms to make, keep current, and preserve books and records as prescribed by the Exchange Act.
7. Phlx Rule 748(h) requires member organizations to establish, maintain and enforce WSPs, and a system of supervision for applying such procedures, that are reasonably designed to supervise the types of businesses and activities in which they and their associated persons engage in order to achieve compliance with, and to prevent and detect violations of, applicable securities laws and regulations, including the By-Laws and Rules of the Exchange.
8. During the Exam Review Period, the firm handled approximately 1,176 manual options orders, approximately 20% of which (237) were manual customer options orders routed to certain option exchanges. Forty-eight manual customer options

orders routed to these options exchanges during the Exam Review Period were reviewed for timestamp accuracy, and 156 were reviewed for venue of execution accuracy.

9. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain an accurate record of the order receipt time for eight (approximately 17%) of the sampled orders.
10. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain an accurate record of the order transmission time for 30 (approximately 63%) of those orders. Of these 30 orders, three were executed on Phlx.
11. From the 48 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm did not maintain any record of the order transmission time for ten (approximately 21%) of those orders.
12. From the 156 manual customer options orders routed to various options exchanges for execution during the Exam Review Period, the firm's records contained the incorrect execution venue for five (approximately 3%) of those orders.
13. In addition, 72 facilitations were reviewed for the accuracy of the firm's records of the execution venue. Of those, the firm's records contained the incorrect execution venue for ten (approximately 14%) of those orders. Of those ten orders, three were executed on Phlx.
14. As a result of the firm's inaccuracies, the firm violated Rule 17a-3(a)(6)(i) promulgated under the Exchange Act and Phlx Rule 760.
15. During the Supervisory Review Period, the firm failed to establish and maintain WSPs and a supervisory system applicable to the Firm's Derivatives Trading Desk (the "Desk") that were reasonably designed to achieve compliance with, and to detect and prevent violations of, the recordkeeping provisions of the federal securities laws and Phlx rules that require the accurate documentation of the order receipt and transmission times and execution venues of options orders. During the Supervisory Review Period, the firm's WSPs and supervisory system did not include a supervisory review of the accuracy of order receipt and order transmission times of options orders handled by the Desk.
16. The conduct described in paragraph 15 constitutes a violation of Phlx Rule 748(h).

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

- 1. A censure;**
- 2. A fine of \$120,000, of which \$40,000 (\$35,000 for the books and records violations, and \$5,000 for the supervision violations) shall be paid to the Exchange<sup>1</sup> and;**
- 3. An undertaking requiring the firm to address the deficiencies discussed in paragraph 15 of the AWC. Within 60 days of the date of this AWC, MSCO shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 15200 Omega Drive, Suite 300, Rockville, MD 20850-3241, a written report, certified by a senior management firm executive, to MarketRegulationComp@finra.org that provided the following information:**
  - (i) a reference to this matter;**
  - (ii) a representation that the firm addressed each of the deficiencies described above, including the specific measure or enhancements taken to address those deficiencies; and**
  - (iii) the date the measures or enhancements were implemented.**

**Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the firm and NYSE Arca, Inc. and NYSE American LLC.**

**Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted a Payment Information form showing the method by which it proposes to pay the fine imposed.**

**Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.**

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

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

**Respondent specifically and voluntarily waives the following rights granted under Phlx's Code of Procedure:**

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

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<sup>1</sup> The balance of the fine shall be paid to NYSE Arca, Inc. and NYSE American LLC.

- B. To be notified of the Formal 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 Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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

Respondent 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 FINRA's Department of Enforcement and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Phlx 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 Respondent; and
- C. If accepted:
  - 1. This AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;
  - 2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and
  - 3. 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 finding in this AWC or create the impression

that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent's right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Phlx, nor does it reflect the views of Phlx 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 the Firm 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.

1/13/2020  
Date

Morgan Stanley & Co. LLC  
Respondent

By: [Signature]  
Name: JAMES MANGAN  
Title: Counsel to M&CO

Reviewed by:  
[Signature]  
Counsel for Respondent  
Christian T. Kermnitz  
Katten Muchin Rosenman  
525 W. Monroe  
Suite 1900  
Chicago, IL 60661  
312-902-5379

Accepted by Phlx:  
2/18/2020  
Date

[Signature]  
Steven M. Tanner  
Senior Counsel  
Department of Enforcement

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

**PAYMENT INFORMATION**

The fine amount will be reflected on an upcoming invoice and will be direct debited from the account for your firm that Nasdaq currently has on file. *Please DO NOT submit payment at this time.*


Please inform your finance or applicable department of this forthcoming debit.

If you need to arrange for an alternative method of payment, please contact Nasdaq at (301) 978-8310 by no later than the last business day of the month in which the Notice of Acceptance of the AWC was issued. *Otherwise, a direct debit will process from the account for your firm that Nasdaq currently has on file.*

Respectfully submitted,

Morgan Stanley & Co. LLC

1/13/2020  
Date

By:   
Name: JAMES MANGANO  
Title: Counsel to MSCO