

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
Morgan Stanley & Co. LLC (CRD No. 8209)

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

SD-2345

February 8, 2024

I. Introduction

On October 14, 2022, Morgan Stanley & Co. LLC, (“MS” 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 MS 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

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 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.

the Firm sent and received off-channel communications that related to the Firm's business, 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 Smith Barney 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

MS has been a FINRA member since June 1970.⁹ MS is headquartered in New York, New York,¹⁰ with thirty-seven branches with nineteen listed as offices of supervisory jurisdiction.¹¹ The Firm employs approximately 28,657 individuals, which includes 4006

³ See Exhibit 2 at p. 2.

⁴ *Id.*

⁵ *Id.* at p. 10. MS 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 pp. 1, Response 1 and FINRA p. 6.

⁶ See Exhibit 2 at pp. 6-10. MS 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 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 MS' CRD information, last performed on December 12, 2023.

registered representatives, 763 of whom are registered principals, 24,288 non-registered fingerprint employees, and 362 operations professionals.¹² MS does not employ any statutorily disqualified individuals.¹³

MS is approved to engage in the following lines of business:¹⁴ exchange member engaged in exchange commission business other than floor activities; exchange member engaged in 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); mutual fund underwriter or sponsor; mutual fund retailer; 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; put and call broker or dealer or option writer; broker or dealer selling tax shelters or limited partnerships in primary distributions; broker or dealer selling tax shelters or limited partnerships in secondary market; trading securities for own account; private placements of securities; broker or dealer selling interests in mortgages or other receivables; engages in other securities business – investment banking, including, underwriting and mergers and acquisitions; and, effects transactions in commodity futures, commodities, commodity options as broker for others or dealer for own account.

MS 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”) and Fixed Income Clearing Corporation - Mortgage Backed Securities Division (“FICC-MBS”),¹⁵ BOX Exchange LLC (“BOX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe BZX Exchange, Inc. (“BZX”), Cboe C2 Exchange, Inc. (“C2”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe Exchange, Inc. (“Cboe”), Investors Exchange LLC (“IEX”), The Long-Term Stock Exchange (“LTSE”), MEMX LLC (“MEMX”), MIAX Emerald, LLC (“MIAX Emerald”), MIAX Pearl, LLC (“MIAX Pearl”), Miami International Securities Exchange, LLC (“MIAX”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc. (“NYSE Chicago”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange (“NYSE”), Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq ISE, LLC (“ISE”), Nasdaq MRX, LLC (“MRX”), Nasdaq PHLX, LLC (“PHLX”), and The Nasdaq Stock Market (“Nasdaq”).¹⁶

¹² *Id.*

¹³ *Id.*

¹⁴ See MS 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 30, 2024.

¹⁶ See Exhibit 5 at pp. 3-4.

Recent Examinations

In the past two years, FINRA completed three routine examinations, one of which was conducted on behalf of other SROs including BOX, EDGA, EDGX, BYX, BZX, C2, IEX, BX, GEMX, ISE, Nasdaq PSX LLC (“PSX”), Nasdaq Options Market LLC (“NOM”), PHLX, Nasdaq, NYSE, NYSE Arca, NYSE American, NYSE Chicago, NYSE National, LTSE, MEMX, MIAX Emerald, and MIAX Pearl pursuant to Regulatory Service Agreements (“RSAs”), and six non-routine examinations of MS that had findings which resulted in Cautionary Action Letters (“CAL”).

A. FINRA Routine Examinations

The examination completed in June 2023¹⁷ resulted in a Cautionary Action for nine exceptions. The exceptions that resulted in a Cautionary Action pertained to: failure to implement a reasonable supervisory system with regard to the review and approval of customer’s options activity; failure to conduct timely enhanced due diligence reviews for five customer accounts; not enforcing its underwriting desktop procedures that include municipal offering commitment charges, and delay in taking an open contractual commitment charge for six days on offering; failure to have a supervisory system or procedures in place related to the chaperoning requirements of non-U.S. broker dealers introducing or selling foreign new issues to U.S. investors; failure to timely review outside employee brokerage accounts against the Firm’s watch and restricted lists; control weaknesses related to the Firm’s security based swaps; supervisory control weaknesses with respect to the Firm’s residual positions; failure to maintain an adequate supervisory system related to reporting to the MSRB; and, a failure to action ten municipal securities transactions that had a questionable trade condition.¹⁸ In response, MS automated manual processes that caused timely review failures, undertook the process of developing and implementing new reports, updated its policies and procedures, increased resources to deal with a backlog of review, implemented new technology solutions, and held training sessions for staff.¹⁹

The examination completed in August 2022²⁰, on behalf of BOX, EDGA, EDGX, BYX, BZX, C2, IEX, BX, GEMX, ISE, PSX, NOM, PHLX, Nasdaq, NYSE, NYSE Arca, NYSE American, NYSE Chicago, NYSE National, LTSE, MEMX, MIAX Emerald, and MIAX Pearl, resulted in a Cautionary Action for three exceptions and a referral to FINRA Enforcement (“DOE”) for four exceptions. The exceptions that resulted in a Cautionary Action pertained to: non-permissible off-floor position transfers; failure to codify

¹⁷ See Disposition Letter for Examination No. 20220734147 dated June 30, 2023, Examination Report dated April 21, 2023, and the Firm’s Responses dated May 19, 2023 and June 22, 2023, collectively attached as Exhibit 7.

¹⁸ See Disposition Letter at Exhibit 7, FINRA pp. 1, 6-11.

¹⁹ See Firm Responses at Exhibit 7, FINRA pp. 15-20, 24.

²⁰ See Disposition Letter for Examination No. 20210693303 dated August 25, 2022, Examination Report dated August 25, 2021, and the Firm’s Response dated January 14, 2022, collectively attached as Exhibit 8.

procedures regarding the process in place for the supervisory review of off-floor position transfers; and book and records exceptions for certain order routing.²¹ In response, the Firm will gain further clarification from the exchange which interprets types of permissible off-floor transfers differently than the rest of the exchanges, update its procedures, and conduct trainings.²² The exceptions referred to DOE pertained to: non-permissible off-floor position transfers; failure to codify procedures regarding the process in place for the supervisory review of off-floor position transfers; and, book and records exceptions for certain order routing.²³

The examination completed in June 2022²⁴ resulted in a Cautionary Action for fourteen exceptions, referral to FINRA Quality of Markets for one exceptions and referral to DOE for two exceptions. The exceptions that resulted in a Cautionary Action pertained to: failure to timely review surveillance alerts related to front running and watch lists; the Firm's errors and omissions in regard to open contractual commitments resulted in inaccurate net capital computations; failure to maintain an adequate process to timely capture, sign off and escalate operational risk incidents; failure to enforce procedures relating to the escalation of option customer complaints; in options complaint log, the Firm failed to identify the representative servicing the account and what action was taken with respect to the complaint; failure to maintain and/or implement a reasonable supervisory system with regard to the review and approval of the Firm's options activity; inaccurate TRACE reporting; inaccurate municipal securities transaction reporting to the Real-time Transaction Reporting System ("RTS"); failure to perform a timely review to address questionable trade conditions; certain reviews pertaining to the Consolidated Audit Trail ("CAT") were not properly reflected in the Firm's procedures; inadequate 606(a)(1) report disclosures for the fourth quarter of 2020; untimely execution of 606(b)(3) customer report requests; failure to have proper procedures in place to comply with SEC Rule 606(b); and, failure to close out fails to receive in municipal securities within the time allowed from the settlement date.²⁵ In response, the Firm cleared backlogs and enhanced processes to ensure timely processing in the future, developed reports, enhanced escalation protocols, updated its policies and procedures, update customer complaint intake forms, conducted trainings for employees, updated various systems, and updated disclosures.²⁶ The exception referred to FINRA Quality of Markets pertained to certain reviews regarding CAT not properly

²¹ See Disposition Letter at Exhibit 8, FINRA pp. 2, 7-10.

²² See Firm Response at Exhibit 8, FINRA pp. 13, 15-17.

²³ See Disposition Letter at Exhibit 8, FINRA pp. 2, 8-10. Certain exceptions for most exchanges were closed as cautionary actions; however, for a few other exchanges the same exceptions were referred to DOE. The exceptions referred to DOE are under review under the same matter number.

²⁴ See Disposition Letter for Examination No. 20210693301 dated June 28, 2022, Examination Report dated March 11, 2022, and the Firm's Response dated April 25, 2022, collectively attached as Exhibit 9.

²⁵ See Disposition Letter at Exhibit 9, FINRA pp. 1, 6-8, 13-15, 18.

²⁶ See Firm Response at Exhibit 9, FINRA pp. 20-23, 31.

reflected in the Firm's procedures.²⁷ The exceptions referred to DOE pertained to the Firm's procedures failing to describe the Firm's process for establishing reasonable 15c3-5 single order thresholds for MSET clients, and, the Firm's annual review of its market access program did not include an adequate process to ensure the reasonability of its MSET and equity cash desk's order thresholds.²⁸

B. FINRA Non-Routine Examinations

In July 2023, FINRA issued a Cautionary Action to the Firm for effecting short sale orders for a non-broker-dealer and a UK affiliate without documenting compliance with Rule 203(b)(1) of Regulation SHO.²⁹ In response, the Firm will implement new processes, procedures and surveillance in order to comply with Rule 203(b)(1).³⁰

In July 2023, FINRA issued a Cautionary Action to the Firm for miscalculating and inaccurately reporting to FINRA trading activity fees in equities, fixed income and options; and, failing to maintain a supervisory system reasonably designed to comply with trading activity fees rules and regulations.³¹ In response, the Firm updated its trading activities fees calculation in accordance with FINRA's guidance.³²

In July 2023, FINRA issued a Cautionary Action to the Firm for failing to report and inaccurate reporting to CAT.³³ In response, the Firm updated its procedures to capture meetings conducted for CAT compliance.³⁴

In May 2023, FINRA issued a Cautionary Action to the Firm for failure to report transactions in TRACE-eligible securitized products, overreporting of non-TBA securitized products, and failure to timely submit new issue offerings in non-TBA

²⁷ This exception was closed as a cautionary action. *See* Disposition Letter at Exhibit 9, FINRA pp. 1, 13-14.

²⁸ *See* Disposition Letter at Exhibit 9, FINRA pp. 1, 16-18. The exceptions referred to DOE are under review under the same matter number.

²⁹ *See* CAL for Matter No. 20200681013 dated July 24, 2023, and the Firm's Response dated September 6, 2023, attached as Exhibit 10.

³⁰ *See* Firm Response at Exhibit 10, FINRA p. 3.

³¹ *See* CAL for Matter No. 20210719504 dated July 18, 2023, and the Firm's Response dated August 4, 2023, attached as Exhibit 11.

³² *See* Firm Response at Exhibit 11, FINRA p. 3.

³³ *See* CAL for Matter No. 20220749951 dated July 18, 2023, and the Firm's Response dated August 4, 2023, attached as Exhibit 12.

³⁴ *See* Firm Response at Exhibit 12 at p. 3.

securitized products.³⁵ In response, the Firm conducted training and corrected operational errors.³⁶

In April 2023, FINRA issued a Cautionary Action to the Firm for failing to comply with the exception from trade reporting for transactions that are part of a Unregistered Secondary Distribution, and failing to maintain procedures and supervisory controls reasonably designed to comply with the trade reporting exception.³⁷ In response, the Firm updated its policies and conducted training with Firm personnel on the updated policies.³⁸

In March 2023, FINRA issued a Cautionary Action to the Firm for failure to report numerous transactions to Trade Reporting Facility and OTC Reporting Facility, and failing to maintain procedures and supervisory controls reasonably designed to comply with the trade reporting rules.³⁹ In response, the Firm implemented systemic solutions to address reporting issues and updated its procedures.⁴⁰

Regulatory Actions

MS has recently been the subject of ten disciplinary matters, besides the SEC Order at issue in this Notice. The Firm was subject to disciplinary matters brought by FINRA, the SEC, Commodities Futures Trading Commission (“CFTC”), ICE Futures U.S., Inc. (“ICE”), and the Bourse de Montreal Inc. (“Bourse”).

A. FINRA Actions

In September 2022, FINRA, and numerous other exchanges,⁴¹ accepted AWCs from MS to settle allegations that the Firm failed to submit, submitted untimely, and/or submitted inaccurate and/or incomplete required notifications to FINRA, and other exchanges, in connection with its participation in the distributions of securities, and the Firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with Regulation M related rules.⁴² The Firm consented to a censure and a fine of \$120,298

³⁵ See CAL for Matter No. 20210713874 dated May 17, 2023, and the Firm’s Response dated June 14, 2023, attached as Exhibit 13.

³⁶ See Firm Response at Exhibit 13 at p. 4.

³⁷ CAL for Examination No. 20200687013 dated April 24, 2023, and the Firm’s Response dated July 5, 2023, collectively attached as Exhibit 14.

³⁸ See Firm Response at Exhibit 14, FINRA p. 4.

³⁹ See CAL for Examination No. 20220737321 dated March 16, 2023, and the Firm’s Response dated April 17, 2023, collectively attached as Exhibit 15.

⁴⁰ See Firm Response at Exhibit 15, FINRA pp. 3-4.

⁴¹ The other exchanges that brought actions against the Firm were NYSE, NYSE Arca, NYSE American, NYSE Chicago, NYSE National, and Nasdaq.

⁴² See FINRA AWC No. 2018056929901 accepted on September 28, 2022 at FINRA p. 3; NYSE AWC No. 2018056929902 accepted on September 12, 2022 at FINRA p. 10; NYSE American AWC No.

to FINRA and to each of the other exchanges for a total fine of \$500,000.⁴³

In August 2022, FINRA accepted an AWC from MS to settle allegations that the Firm reported millions of transactions in National Market System (NMS) securities without a required short sale indicator in violation of FINRA rules and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable FINRA rules.⁴⁴ The Firm consented to a censure and a fine of \$250,000.⁴⁵

Also, in August 2022, FINRA accepted an additional AWC from MS to settle allegations that the Firm published equity research reports that included price charts with inaccurate historical stock ratings and failed to disclose required beneficial ownership information and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable FINRA rules.⁴⁶ The Firm consented to a censure and a \$325,000 fine.⁴⁷

In April 2022, FINRA accepted an AWC from MS to settle allegations that the Firm deleted expiring over the counter option positions, in violation of FINRA rules, from its reports to the Large Options Positions Reporting system (“LOPR”), and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with LOPR reporting obligations.⁴⁸ The Firm consented to a censure and a \$225,000 fine.⁴⁹

B. CFTC Action

On September 27, 2022, the CFTC issued an order finding that the Firm violated Section 4g of the Commodity Exchange Act, 7 U.S.C. § 6g, and Commission Regulations 1.35 and

2018056929903 accepted on September 12, 2022 at FINRA p. 18; NYSE Arca AWC No. 2018056929904 at FINRA p. 27; NYSE Chicago Order Instituting Proceedings, Accepting Settlement, Making Findings, and Imposing Sanctions Proceeding No. 2018056929905 at FINRA p. 37; NYSE National AWC No. 2018056929906 at FINRA p. 40; and, Nasdaq AWC No. 2018056929907 at FINRA pp. 49-50, collectively attached as Exhibit 16.

⁴³ See FINRA AWC at FINRA p. 4 at Exhibit 16. The fines were paid to FINRA and all of the exchanges on October 7, 2022 and October 10, 2022. See Exhibit 4 at FINRA pp. 2-3 and MSCO-2023-FINRA 000026-33, FINRA pp. 31-38.

⁴⁴ See FINRA AWC No. 201906150001 accepted on August 17, 2022, attached as Exhibit 17 at FINRA p. 3.

⁴⁵ *Id.* at FINRA p. 5. Per CRD, the fine was paid on September 2, 2022.

⁴⁶ See FINRA AWC No. 2020067484501 accepted on August 3, 2022, attached as Exhibit 18 at FINRA pp. 1-2.

⁴⁷ *Id.* at FINRA p. 6. Per CRD, the fine was paid on August 26, 2022.

⁴⁸ See FINRA AWC No. 20200671538 accepted on April 27, 2022, attached as Exhibit 19 at FINRA pp. 2-3.

⁴⁹ *Id.* at FINRA p. 4. Per CRD, the fine was paid on May 11, 2022.

166.3, 17 C.F.R. §§ 1.35 and 166.3 (2021).⁵⁰ These violations were based on the same misconduct underlying the SEC Order that is the subject of the Firm's Application. The Firm was ordered to cease and desist from violating the cited sections of the Commodity Exchange Act and Commission Regulations, to pay, jointly and severally, a \$75,000,000 civil penalty, and comply with various undertakings related to the Firm's preservation of records related to electronic communications.⁵¹

C. ICE

In June 2022, ICE imposed a fine of \$2,500 on MS for engaging in cross trading without utilizing a CO or waiting a full five second when in receipt of two client orders for different beneficial owners that allow for price and/or time discretion.⁵²

In October 2021, ICE imposed a fine of \$2,500 on MS for failing to affix necessary Authorized Trader Identifications on multiple orders.⁵³

D. Bourse

In December 2022, Bourse accepted an Offer of Settlement to settle allegations that the Firm's employees accessed the Bourse electronic trading system without obtaining approval and the Firm's employees accessing the Bourse through algorithms without prior approval.⁵⁴ The Firm was fined \$101,100.⁵⁵

E. SEC Action/Other Statutory Disqualifying Order

On January 12, 2024, the SEC issued an order finding that the Firm willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder and willfully violated Section 15(g) of the Exchange Act.⁵⁶ According to the order, from June 2018 through

⁵⁰ See CFTC Order, *In re Morgan Stanley & Co. LLC, et. al.*, CFTC Docket No. 22-44 (Sept. 27, 2022), attached as Exhibit 20.

⁵¹ *Id.* at pp. 9-15. The Firm represented that it paid the civil penalty on October 11, 2022. See Exhibit 4 at FINRA p. 2 and MSCO-2023-FINRA 000025, FINRA p. 30. Further, the Firm represented that it is in compliance with the ordered undertakings. See Exhibit 4 at FINRA pp. 1-2. FINRA has determined that this is not a disqualifying event.

⁵² See ICE Summary Fine Notice Case No. 2021-020 dated June 23, 2022, attached as Exhibit 21. Per CRD, the fine was paid on June 27, 2022.

⁵³ See ICE Summary Fine Notice Case No. 2021-003 dated October 14, 2021, attached as Exhibit 22. Per CRD, the fine was paid on October 14, 2021.

⁵⁴ See *In re Bourse de Montreal Inc. and Morgan Stanley & Co. LLC*, Canada Province of Quebec File No. EN-DC21003 dated December 21, 2022, attached as Exhibit 23.

⁵⁵ See Exhibit 23 at p. 9. The fine was paid on January 10, 2023. See Exhibit 4 at FINRA pp. 3 and MSCO-2023-FINRA 000046, FINRA p. 51.

⁵⁶ See *In re Morgan Stanley & Co. LLC*, Exchange Act Release No. 34-99336 (Jan. 12, 2024), attached as Exhibit 24. This order subjects the Firm to statutory disqualification as defined in Section 3(a)(39)F, incorporating by reference Section 15(b)(4)(D).

August 2021, two employees on Morgan Stanley’s Equity Syndicate Desk in the Americas (“Syndicate Desk”) disclosed to certain buy-side investors non-public, potentially market-moving information, concerning impending “block trades,” which the buy-side investors used such information to “pre-position”—or take a short position in—the stock that was the subject of the upcoming block trade.⁵⁷ These disclosures violated the selling shareholders’ expectations of, and, in certain instances, express requests for confidentiality, the representations of confidentiality by the Syndicate Desk, and the Firm’s policies regarding the treatment of confidential information.⁵⁸ The Firm also failed to enforce written policy and procedures reasonably designed, given the nature of its business, to prevent the misuse of material non-public information.⁵⁹ The firm was censured, ordered to cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder and Section 15(g) of the Exchange Act, and to pay disgorgement of \$138,297,046, plus prejudgment interest of \$28,057,775, for a total of \$166,354,821, and pay a civil money penalty in the amount of \$83 million.⁶⁰

In September 2020, the SEC issued an order finding that the Firm willfully violated Section 200(g) of Regulation SHO of the Exchange Act.⁶¹ According to the order, MS improperly used aggregation units in structuring the Firm’s prime brokerage swaps business in violation of Regulation SHO.⁶² The Firm was ordered to cease and desist violation Rule 200(g) of Regulation SHO, censured, an undertaking, and to pay a \$5,000,000 civil penalty.⁶³

V. Prior SEA Rule 19h-1 Notices

FINRA previously filed on August 10, 2015, February 7, 2007 and January 4, 2006 SEA Rule 19h-1 Notices approving MS continued membership.

⁵⁷ *Id.* at p. 2

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at pp. 15-16. FINRA staff confirmed that the Firm submitted an affirmation, on February 5, 2024, 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 Regulatory Notice 09-19](#) (June 15, 2009).

⁶¹ *See In re Morgan Stanley & Co. LLC*, Exchange Act Release No. 90046 (Sept. 30, 2020), attached as Exhibit 25. This order subjects the Firm to a statutory disqualification as defined in Exchange Act § 3(a)(39)(F), incorporating by reference Section 15(b)(4)(D).

⁶² *Id.* at p. 2.

⁶³ *Id.* at pp. 7-8. According to CRD, on January 8, 2021, 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 Regulatory Notice 09-19](#) (June 15, 2009).

On August 10, 2015, FINRA approved the Firm's continued membership after MS became subject to statutory disqualification resulting from a June 18, 2015 Commission order that found the Firm willfully violated Section 17(a)(2) of the Securities Act of 1933 ("Securities Act") due to a failure to conduct adequate due diligence when acting as an underwriter of municipal securities offerings.⁶⁴

On February 7, 2007, NYSE Regulation, Inc. approved the Firm's continued membership after MS became subject to statutory disqualification resulting from a Final Judgment entered in the United States District Court for the District of Columbia on May 12, 2006, which enjoined MS from violating Section 17(b) of the Exchange Act and Rule 17-a(4)(j) thereunder.⁶⁵

On January 4, 2006, NYSE approved the Firm's continued membership after MS became subject to statutory disqualification resulting from a Final Judgment entered in the United States District Court for the District of Columbia on February 4, 2005, which enjoined MS from violating Rule 101 of Regulation M of the Exchange Act.⁶⁶

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").⁶⁷

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

⁶⁴ See *In re the Continued Membership of Morgan Stanley & Co. LLC et. al.* (FINRA SD-MCDC-030) dated August 10, 2015, and the SEC's Letter of Acknowledgement dated August 20, 2015, collectively attached as Exhibit 26.

⁶⁵ See *In re Morgan Stanley & Co. Inc.* dated February 7, 2007, and the SEC's Letter of Acknowledgement dated February 28, 2007, collectively attached as Exhibit 27.

⁶⁶ See *In re Morgan Stanley & Co. Inc.* dated January 4, 2006, and the SEC's Letter of Acknowledgement dated February 7, 2006, collectively attached as Exhibit 28.

⁶⁷ See Executed Consent to Plan of Heightened Supervision dated November 28, 2023, attached as Exhibit 29.

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, MS 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 re 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, 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 MS' 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 MS' 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 MS 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.⁶⁸

⁶⁸ See Exhibit 4 at FINRA pp. 1-2.

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 Jan. 1, 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 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.

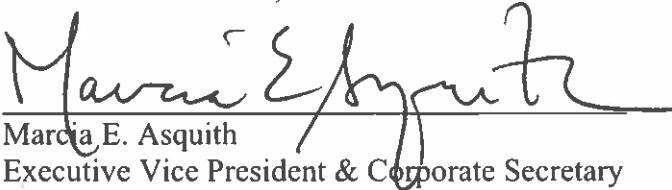
Thus, FINRA is satisfied, based on the foregoing representations made pursuant to the Supervision Plan, that the Firm's continued membership in FINRA is consistent with the

public interest and does not create an unreasonable risk of harm to the market or investors. Accordingly, FINRA approves MS' Application to continue its membership with FINRA.

FINRA certifies that the Firms meet all qualification requirements and represents that the MS is registered with several other SROs, including DTC, NSCC, FICC-Gov, FICC-MBS, BOX, BYX, BZX, C2, EDGA, EDGX, Cboe, IEX, LTSE, MEMX, MIAX Emerald, MIAX Pearl, MIAX, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, NYSE, BX, GEMX, ISE, MRX, PHLX, 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

EXHIBITS
SD-2345

1. MC-400A Application and related attachments compiled by CRED, with a cover memorandum dated October 27, 2022.
2. *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. MS CRD Excerpts: Types of Business and Other Business Descriptions.
7. Disposition Letter for Examination No. 20220734147 dated June 30, 2023, Examination Report dated April 21, 2023, and the Firm’s Responses dated May 19, 2023 and June 22, 2023.
8. Disposition Letter for Examination No. 20210693303 dated August 25, 2022, Examination Report dated August 25, 2021, and the Firm’s Response dated January 14, 2022.
9. Disposition Letter for Examination No. 20210693301 dated June 28, 2022, Examination Report dated March 11, 2022, and the Firm’s Response dated April 25, 2022.
10. Cautionary Action Letter for Matter No. 20200681013 dated July 24, 2023, and the Firm’s Response dated September 6, 2023.
11. Cautionary Action Letter for Matter No. 20210719504 dated July 18, 2023, and the Firm’s Response dated August 4, 2023.
12. Cautionary Action Letter for Examination No. 20220749951 dated July 18, 2023, and the Firm’s Response dated August 4, 2023.
13. Cautionary Action Letter for Examination No. 20210713874 dated May 17, 2023, and the Firm’s Response dated June 14, 2023.
14. Cautionary Action Letter for Examination No. 20200687013 dated April 24, 2023, and the Firm’s Response dated July 5, 2023.

15. 20220737321 dated March 16, 2023, and the Firm's Response dated April 17, 2023.
16. FINRA AWC No. 2018056929901 accepted on September 28, 2022 at FINRA p. 3; NYSE AWC No. 2018056929902 accepted on September 12, 2022 at FINRA p. 10; NYSE American AWC No. 2018056929903 accepted on September 12, 2022 at FINRA p. 18; NYSE Arca AWC No. 2018056929904 at FINRA p. 27; NYSE Chicago Order Instituting Proceedings, Accepting Settlement, Making Findings, and Imposing Sanctions Proceeding No. 2018056929905 at FINRA p. 37; NYSE National AWC No. 2018056929906 at FINRA p. 40; and, Nasdaq AWC No. 2018056929907 at FINRA pp. 49-50..
17. FINRA AWC No. 2019061500001 accepted on August 17, 2022.
18. FINRA AWC No. 2020067484501 accepted on August 3, 2022.
19. FINRA AWC No. 20200671538 accepted on April 27, 2022.
20. CFTC Order, *In re Morgan Stanley & Co. LLC, et. al.*, CFTC Docket No. 22-44 (Sept. 27, 2022).
21. ICE Summary Fine Notice Case No. 2021-020 dated June 23, 2022
22. ICE Summary Fine Notice Case No. 2021-003 dated October 14, 2021.
23. *In re Bourse de Montreal Inc. and Morgan Stanley & Co. LLC*, Canada Province of Quebec File No. EN-DC21003 dated December 21, 2022.
24. *In re Morgan Stanley & Co. LLC*, Exchange Act Release No. 34-99336 (Jan. 12, 2024).
25. *In re Morgan Stanley & Co. LLC*, Exchange Act Release No. 90046 (Sept. 30, 2020).
26. *In re Continued Membership of Morgan Stanley & Co. LLC et. al.* (FINRA SD-MCDC-030) dated August 10, 2015, and the SEC's Letter of Acknowledgement dated August 20, 2015.
27. *In re Morgan Stanley & Co. Inc.* dated February 7, 2007, and the SEC's Letter of Acknowledgement dated February 28, 2007.
28. *In re Morgan Stanley & Co. Inc.* dated January 4, 2006, and the SEC's Letter of Acknowledgement dated February 7, 2006.
29. Executed Consent to Plan of Heightened Supervision dated November 28, 2023.

Exhibit A

Plan of Heightened Supervision

Morgan Stanley & Co. LLC (the “Firm”) is subject to statutory disqualification pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, which incorporates by reference Sections 15(b)(4)(D) & (E), as a result of an order issued by the U.S. Securities and Exchange Commission (“SEC” or “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 (“SEC Order”). The SEC Order also found that the Firm failed reasonably to supervise its employees within the meaning of Section 15(b)(4)(E).

In consenting to this Supervision Plan¹ (“Supervision Plan”), the Firm agrees to the following:

1. The Firm shall comply with all the undertakings outlined in the 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 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.
4. 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 under paragraph 37 of the SEC Order.
5. This Supervision Plan shall take effect on the date the Firm executes its consent to this Supervision Plan. The Supervision Plan shall be in effect until FINRA’s receipt of the Firm’s final certifications required by the SEC Order, after which time the Supervision Plan and its provisions thereto will expire.
6. All requested documents and certifications under this Supervision Plan shall be sent directly to FINRA’s Statutory Disqualification Group at SDMailbox@FINRA.org.
7. The Firm shall obtain written approval from FINRA’s Statutory Disqualification Group prior to changing any provision of the Supervision Plan.

¹ This Supervision Plan supersedes the Firm’s previous Supervision Plan executed on November 21, 2023.

8. 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.