

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

)	
IN THE MATTER OF:)	
)	
MORGAN STANLEY SMITH BARNEY LLC,)	
)	
RESPONDENT.)	Docket No. E-2016-0055
)	

CONSENT ORDER

I. INTRODUCTION

This Consent Order (“Order”) is entered into by the Massachusetts Securities Division (“Division”) and Respondent Morgan Stanley Smith Barney LLC (hereinafter “Morgan Stanley” or “Respondent”) with respect to the administrative complaint (“Complaint”) filed by the Enforcement Section of the Division on October 3, 2016 that alleged violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”).

On April 7, 2017, Respondent submitted an Offer of Settlement (“Offer”) to the Division. Respondent neither admits nor denies the Statement of Facts set forth in Section V and the Violations of Law set forth in Section VI herein, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the Complaint (Docket No. E-2016-0055) hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities. The Act authorizes the Division to regulate: 1) the offers and/or sales of securities; 2) those individuals offering and/or selling securities within the Commonwealth; and 3) broker-dealers transacting business within the Commonwealth.

2. The Offer was made in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated by the Division took place in Massachusetts and were directed toward Massachusetts residents while Morgan Stanley was registered in Massachusetts as a broker-dealer.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of September 1, 2013 and April 30, 2015 (the "Relevant Time Period").

IV. RESPONDENT

4. Morgan Stanley Smith Barney LLC (hereinafter "Morgan Stanley") is a Delaware limited liability company with a principal place of business located at 2000 Westchester Avenue, Purchase, New York 10577-2530. According to the Delaware Division of Corporations, Morgan Stanley first incorporated on February 2, 2009. Morgan Stanley has a Financial Industry Regulatory Authority Central Registration Depository number of 149777. Morgan Stanley has been registered as a broker-dealer in the Commonwealth of Massachusetts since May 22, 2009.

V. STATEMENT OF FACTS

A. Morgan Stanley Encouraged Cross-Selling Banking & Lending Products

5. In the wake of the 2008 Financial Crisis, Morgan Stanley placed a greater emphasis on the retail side of its business, wealth management.

6. Morgan Stanley enters into arrangements with Morgan Stanley Private Bank, National Association (“MSPB”) to assist in offering certain banking and lending related products and services.

7. MSPB lends money to Morgan Stanley’s brokerage and advisory clients.

8. Morgan Stanley’s business model encouraged the sale of MSPB products and services to Morgan Stanley customers, including Massachusetts residents.

9. Morgan Stanley placed particular emphasis on securities-based lending, including a form of securities-based loan known as a Portfolio Loan Account (“PLA”).

10. PLAs allow Morgan Stanley customers to borrow money against the value of the securities in their investment accounts, with the customer’s securities serving as collateral for the loan.

11. Morgan Stanley’s banking and lending focus quickly paid dividends – in 2014, Morgan Stanley drove new production records in securities-based lending.

12. In 2013, 9% of Morgan Stanley’s Wealth Management clients had a securities-based loan at Morgan Stanley.

13. In 2014, 12% of Morgan Stanley’s Wealth Management clients had a securities-based loan at Morgan Stanley.

14. In the third quarter of 2015, 15% of Morgan Stanley’s Wealth Management clients had a securities-based loan at Morgan Stanley.

a. **Morgan Stanley Developed the “System” to Promote Banking & Lending Products to Clients**

15. Morgan Stanley Financial Advisors (“Financial Advisors” or “FAs”) are responsible for managing Morgan Stanley client relationships.
16. Morgan Stanley hired Private Bankers to work with Financial Advisors to introduce, among other things, securities-based lending capability to clients.
17. In an effort to boost lending production, Morgan Stanley Private Bankers developed and employed the “System,” which aimed to introduce securities-based lending to the entire client base of assigned Financial Advisors.
18. One MetroWest-RI Complex (“MetroWest”) Private Banker described the “System” as a process-based sales approach vs. a need-based approach to securities-based lending.
19. Morgan Stanley sales assistants inserted securities-based lending materials with account opening paperwork to ensure the introduction of securities-based lending capability and prompt client response during every new account opening.
20. Morgan Stanley marketed PLAs to its clients as a way to “Unlock the Value of Your Portfolio.”
21. Morgan Stanley’s internal-use materials recommended that Financial Advisors look for specific triggers as catalysts to offer clients securities-based lending products.
22. These triggers included “bridge loans for mortgage funding,” “tax liabilities or obligations,” “weddings, graduations, etc.,” and “purchasing a luxury item like a car or yacht.”
23. One internal-use document also contained a section on how to overcome certain client objections to securities-based lending, including the objection, “I don’t borrow.”

24. Morgan Stanley internal-use materials instructed Financial Advisors to encourage their clients to open a line of credit that would permit a client to borrow money in the future even if the client had no current intent to draw on the line of credit. There was no charge for opening a line of credit.

25. One internal document used by MetroWest Private Bankers quoted the movie *Field of Dreams*, “If you build it, they will [come],” thus illustrating that Morgan Stanley clients increasingly utilized their Morgan Stanley lines of credit the longer they remained open.

26. For example, this document illustrates that 25% of Morgan Stanley clients utilized their securities-based loan within a month of its opening, while 37% of Morgan Stanley clients utilized their securities-based loan within eighteen months of its opening.

27. Internal-use materials highlighted the benefits of securities-based lending.

b. Morgan Stanley Compensated and Incentivized Financial Advisors to Cross-Sell

28. Morgan Stanley changed its Financial Advisor Compensation Plan to promote the sale of lending products and services, including securities-based lending products.

29. According to the Banking & Lending Award Grid of Morgan Stanley’s 2014 Financial Advisor Compensation Plan, Financial Advisors could receive a net award between 35 and 50 basis points of their banking and lending growth if they reached certain thresholds.

30. At all times during the Relevant Time Period, Morgan Stanley sales assistants received \$50 for each processed PLA application.

31. The MetroWest Complex Manager (the “Complex Manager”) received twenty-five basis points on the profitability of the overall business in MetroWest on a quarterly basis.

B. MetroWest Created an Incentive Program in Response to Firm-Wide Cross-Selling Emphasis

a. Structure of Incentive Program

32. To incentivize Financial Advisors to offer securities-based lending products to clients, the Complex Manager developed an incentive program, referred to internally as a business development pilot program, for thirty MetroWest Financial Advisors in late 2013 (the “Incentive Program”).

33. The Financial Advisors participating in the Incentive Program were located at five Morgan Stanley branch offices: Springfield, Massachusetts; Waltham, Massachusetts; Wellesley, Massachusetts; Worcester, Massachusetts; and Providence, Rhode Island.

34. The Complex Manager oversaw all of the Morgan Stanley branches and employees involved in the Incentive Program.

35. The Associate MetroWest Manager and three MetroWest Private Bankers assisted in the development and implementation of the Incentive Program.

36. The Complex Manager, with the assistance of MetroWest Private Bankers, implemented the Incentive Program in the first quarter of 2014.

37. The Incentive Program covered banking and lending products, including PLAs, mortgages, and tailored loans.

38. The Incentive Program set sales goals and established an incentive structure that promoted the opening of MSPB accounts to Morgan Stanley customers by Financial Advisors and Private Bankers.

39. The Incentive Program gave additional business development allowances (“BDAs”) to participating Financial Advisors for meeting preset banking and lending production thresholds.

40. As part of Morgan Stanley’s Financial Advisor Compensation Plan, Financial Advisors received BDAs at the beginning of each year for business development purposes.

41. BDA allocations are generally based on a Financial Advisor’s gross revenue from the prior year.

42. According to Morgan Stanley’s 2014 Financial Advisor Compensation Plan, Financial Advisors earned between \$250 and \$25,000 in BDAs depending on their gross revenue from the prior year. Morgan Stanley’s BDA funds are available “for business development purposes such as client entertainment, seminars, and/or marketing materials.”

43. Financial Advisors participating in the Incentive Program would earn \$1,000 in additional BDA if they initiated ten lending relationships during 2014, \$3,000 if they initiated twenty lending relationships in this period, and \$5,000 if they initiated thirty or more lending relationships in this period.

44. If awarded, the \$5,000 available under the Incentive Program would represent a significant percentage of the BDA allocated to each Financial Advisor as part of Morgan Stanley’s 2014 Financial Advisor Compensation Plan.

45. For example, a Morgan Stanley Financial Advisor whose gross revenue for the prior year falls between \$2,500,000 and \$5,000,000 earns \$15,000 in BDAs; the \$5,000

available under the Incentive Program would lead to an increase of over 33% in BDA available for use by the Financial Advisor in the relevant year.

46. On February 25, 2014, MetroWest held a kick-off webinar for the Incentive Program (“Incentive Program Kick-Off”) and congratulated participating Financial Advisors via e-mail on being selected for the Incentive Program.

47. The Incentive Program Kick-Off informed participating Financial Advisors of the resources available to them during the Incentive Program, including, “Access to resources for planning/funding client events,” “Access to specialized training and resources,” “Dedicated access” to Private Banking Advisory Associates and “Priority Access” to Private Bankers, and “BDA incentive[.]”

48. As part of the Incentive Program Kick-Off, MetroWest Private Bankers requested that Financial Advisors draft a list of their clients to be contacted about securities-based loans.

49. MetroWest also made available to participating Financial Advisors copies of a book, titled “The Value of Debt,” by former Morgan Stanley Financial Advisor Thomas Anderson.

b. Morgan Stanley Management had Knowledge of the Incentive Program

50. Internal e-mails show that the Regional Director for Morgan Stanley’s New England Region (the “Regional Director”) had an opportunity to learn of the Incentive Program as early as January 28, 2014, when the New England Business Development Officer mentioned certain aspects of the Incentive Program in an e-mail.

51. The Regional Director, in response to this email, stated “Nice recap. How do you recommend we reiterate/reinforce?”

52. Additional internal e-mails stated that the Regional Director knew of and approved the Incentive Program.

53. In a March 27, 2014 e-mail, one MetroWest Private Banker stated, “B&L [banking and lending] for BDA Pilot: Created in conjunction with [Complex Manager] and [Business Development Manager]. Each banker identified 3 high opportunity FAs. To incent FAs to do the business [Complex Manager] has agreed to give them additional BDA for hitting unit goals. [Regional Director] ok’d during our [Quarterly Business Review.]” The Regional Director was not copied on this e-mail.

54. In response to an e-mail asking him to participate in a call to pitch the “System” to Incentive Program Financial Advisors, the Head of National Sales for MSPB responded, “Wow. Big commitment by the region. I’ll absolutely do it.”

c. The Incentive Program Created Financial Advisor Incentives

55. The Complex Manager built the Incentive Program on financial incentives.

56. The Complex Manager utilized BDA as an incentive to ensure the success of the Incentive Program.

57. Some Participating Financial Advisors were excited about and responded to the BDA incentive offered under the Incentive Program.

58. In a February 25, 2014 e-mail sent immediately following the Incentive Program Kick-Off, one Financial Advisor asked, “Does the bonus stop at 30 PLA’s? What if we do 60?? Does that double the bonus to our team??? You know how we are about BDA money!!!”

59. In a January 30, 2014 e-mail, one MetroWest Private Banker, while referring to the additional BDA as a “bonus,” stated, “Let’s do our best to max this out. I want to make a big splash here to encourage [Complex Manager] to continue these initiatives.”
60. Sales assistants within MetroWest also benefited from the banking and lending business generated by the Incentive Program.
61. In a March 12, 2014 e-mail, a MetroWest Private Banker informed Incentive Program participants, “[sales assistants] can now earn unlimited compensation for PLAs.”
62. The MetroWest Private Banker further stated, “I’d love to see you receive the max BDA award while getting [sales assistant] \$1500+ in comp from the bank!”
63. In a March 11, 2014 e-mail, sent two weeks after the Incentive Program Kick-Off, one participating Financial Advisor asked, “Have I or my admin won anything[?]. We have done a ton of pla’s [.]”
64. The Financial Advisor was looking for his \$1,000 in BDA “to do some entertaining.”
65. During the Incentive Program, a total of \$21,000 in supplemental BDA was allocated to Financial Advisors and approximately \$10,000 was ultimately used by them. Approximately 97% was used to entertain clients, including such items as Boston Celtics tickets, client drinks, client gifts, and client meals.
66. Morgan Stanley did not disclose the BDA incentive to clients, although it disclosed that Financial Advisors received compensation in connection with portfolio loan accounts and that the amount they earned fluctuated with the applicable interest rate and outstanding balance.

d. Morgan Stanley Encouraged Financial Advisors to Cross-Sell, and Closely Tracked Results

67. In addition to the BDA incentive, the Complex Manager and MetroWest monitored and tracked the banking and lending business of participating Financial Advisors and Private Bankers.

68. MetroWest Private Bankers reviewed their assigned Financial Advisors' books of business in order to target high opportunity clients for securities-based loans.

69. One MetroWest Private Banker communicated such a review to a participating Financial Advisor in a March 5, 2014 e-mail, stating, "Per our meeting last week please find attached a complete PLA book review for all you [sic] clients. You have approximately 115 existing PLA opportunities within your book, so there is no reason we shouldn't be able to knock this out of the park and get you over the 30 unit count[.]"

70. The Complex Manager received frequent updates from MetroWest Private Bankers on the banking and lending business generated under the Incentive Program.

71. On March 5, 2014, one MetroWest Private Banker sent the Complex Manager an update on one participating Financial Advisor, stating, "[Financial Advisor] has committed to me that we will reach 30 units this year. If we can get him to accomplish it will go a long way to driving the rest of Fas in Worcester to get on board."

72. In response, the Complex Manager stated, "Agreed, keep me posted regularly on this thx [.]"

73. On April 3, 2014, one MetroWest Private Banker sent an update on one participating Financial Advisor via e-mail, stating, "he went from 0 [banking and lending] deals in 3+ years to 4 PLAs booked in Q1," which was the first quarter in which the Incentive Program ran.

74. The MetroWest Private Banker further stated that he was taking steps to “ensure we are giving [Financial Advisors] every opportunity to move the needle.”
75. The Complex Manager applied additional pressure in a September 30, 2014 e-mail, asking, “Any thoughts on sending out the ranking to all pilot [FAs]?”
76. The Complex Manager added to the competitive environment fostered by the Incentive Program.
77. When one Springfield-based Financial Advisor participating in the Incentive Program was trailing his peers in banking and lending business, the Complex Manager stated in a May 9, 2014 e-mail, “Ouch, I know you are competitive [FA] so I am sending [the numbers showing FA trailing his peers].”
78. The Financial Advisor responded, “I’m pushing. Springfield will be at goal!”
79. The same Springfield-based Financial Advisor followed up with his team in an August 27, 2014 e-mail, stating, “More PLA’s = more \$\$ in our BDA account. This is very easy to do. [Sales Assistant] is good processing them. Let’s try and finish the year strong!”
80. A MetroWest Private Banker sent another update to a participating Financial Advisor in a May 30, 2014 e-mail, stating, “The [client] PLA gets you to 10 deals YTD. A little behind pace to get to 30, but I’m confident we’ll get there.”
81. The Financial Advisor responded, “Game on.”
82. The Complex Manager also tracked the production of MetroWest Private Bankers under the Incentive Program.

83. In a May 8, 2014 e-mail, one MetroWest Private Banker sent a quarterly update of banking and lending business generated by the MetroWest Private Bankers, which showed one Private Banker trailing others.

84. After the trailing MetroWest Private Banker expressed frustration to a fellow Private Banker via e-mail, that Private Banker responded, "You know...that pisses me off for you. The only reason he [MetroWest Private Banker] sent that is bc he is at the top."

85. Under the Incentive Program, MetroWest Private Bankers were similarly focused on their banking and lending numbers.

e. The Incentive Program Increased Banking & Lending Business

86. The Incentive Program proved successful for MetroWest and Morgan Stanley, as indicated by one Private Banker's December 3, 2014 e-mail, which included the following table:

Team	2013 Units	2014 Units	Year/Year change	New Balances
Team 1	6	24	400%	\$1,094,458.00
Team 2	10	22	220%	\$3,127,864.00
Team 3	23	21	91%	\$8,884,563.00
Team 4	4	19	475%	\$866,330.00
Team 5	4	18	450%	\$4,143,806.00
Team 6	2	14	700%	\$536,375.00
Team 7	3	12	400%	\$2,236,537.00
Team 8	3	11	367%	\$1,380,836.00
Team 9	0	11		\$1,097,916.00
Team 10	5	6	120%	\$353,697.00
Team 11	0	5		\$162,304.00
Totals	60	163	272%	\$23,884,686.00

87. Financial Advisors participating in the Incentive Program increased the number of banking and lending accounts they opened by approximately 172% from 2013 to 2014. One participating team increased the number of banking and lending units they opened by 600% over the same time period.

88. In response to a September 30, 2014 update from the Complex Manager regarding the Incentive Program, the Regional Director stated, "Impressive [.]"

89. The Incentive Program generated new loan balances totaling approximately \$24,000,000.

90. In a December 2, 2014 e-mail regarding the Incentive Program, the Complex Manager stated, "Phenomenal. Assuming a profit of 150 [basis points] on the 24mm--we

have 360k in new revenue minus the BDA \$ (1 time) and FA comp. very very profitable
[.]”

C. **Morgan Stanley Failed to Detect, Monitor, Prevent, and/or Terminate the Incentive Program**

a. **Morgan Stanley’s Prohibition Against Sales Contests**

91. Morgan Stanley has an internal policy titled “Prohibition Against Sales Contests,” (“Prohibition”) which was in effect during the entirety of the Incentive Program.

92. The Prohibition “completely prohibits participation in sales contests, unless the contest under consideration is a national sales contest.”

93. The Incentive Program was a Complex-sponsored program, not a nationally sponsored program.

94. In a March 12, 2014 e-mail to participating Financial Advisors, one MetroWest Private Banker, while referring to the BDA incentive as a “\$1k award,” stated, “This is a complex vs a firm initiative so we’re defining the rules as we go along here...”.

95. The Prohibition states, “National sales contests may be eligible for a **limited** exemption with prior written approval by the Head of U.S. Wealth Management [.]” (Emphasis in original.)

96. The Incentive Program received no prior written approval.

97. The Prohibition defines a “sales contest” as “an arrangement that offers associated persons or their supervisors additional compensation in the form of bonus payments, incentives, or non-cash compensation to promote the sale or achievement of a specified level of sales over a specified period of time.”

98. The Incentive Program offered additional incentives in the form of BDAs, preconditioned on the establishment of specified numbers of new portfolio loan accounts or other credit lines over the course of 2014.

99. The Prohibition does not permit “product-specific sales contest[s],” which “refers to sales contests designed to promote the sale of specific categories of products[.]”

100. The Incentive Program was specific to banking and lending products, and promoted PLAs in particular.

101. The Prohibition further prohibits sales contests “having an impact on an FA’s independent judgment in providing financial services and advice to his or her clients or could give rise to, or create an appearance of, a conflict of interest with clients.”

102. Under the Incentive Program, Financial Advisors could receive a significant increase in their BDA funds.

103. The Incentive Program could impact a Financial Advisor’s independent judgment, thereby creating a conflict of interest.

b. Compliance and Risk Discovered the Incentive Program

104. The Incentive Program ran undetected by Compliance and Risk in MetroWest for nearly the full calendar year of 2014.

105. On December 3, 2014, more than eleven months into the Incentive Program, one MetroWest Private Banker touted the success of the Incentive Program in an e-mail to other private bankers within New England, stating, “YTD we’ve paid out \$15,000 in extra BDA incentive, but will probably end the year at about \$23,000 paid out. So, **in theory**, the one-time \$23k BDA investment should produce \$515k in annual revenue.” (Emphasis in original.)

106. The December 3, 2014 e-mail prompted one or more private bankers, including some within New England, to consider implementing similar programs within their Complexes.

107. Based on this December 3, 2014 e-mail, a Greater Pittsburgh Private Banker (“Pittsburgh PB”) sought the approval of his Senior Complex Risk Officer (“SCRO”) prior to implementing a similar incentive program.

108. Pittsburgh PB’s December 14, 2014 e-mail to SCRO reads, in relevant part, “Hi [SCRO] – Remember about a year and a half ago we ran a campaign in the complex where each new PLA opened translated to \$50 in BDA ? I think it was during the summer of 2013 for two months? We are about to run something similar with the following criteria : \$ 500 in BDA for 10 new PLA’s (per team or person) [,] \$1,500 in BDA for 20 new PLA’s (per team or person) [.] From a risk perspective, is there any reason that we couldn’t do this or any concerns you can think of?”

109. The next morning, SCRO began the process of consulting with individuals in Compliance and Risk, including the Associate Regional Risk Officer for New England (“ARRO”), and an Associate Business Service Manager, who stated, “This does not sound right to me. Seems like a sales contest. Would need to run by Compliance.”

110. SCRO then followed up with Pittsburgh CM, stating, “No, [Pittsburgh PB]. We can’t do that. That would be considered a sales contest.”

111. After receiving some pushback, SCRO followed up with Pittsburgh PB again, stating, “[Pittsburgh PB], I can’t support this. I agree with you that it looks like it worked beautifully for Metro West, but at the same time, it resembles too closely to a sales contest (I fail to see how it doesn’t meet the description of a sales contest) [.]”

112. The New England Regional Compliance Officer (“RCO”) relayed the same message via e-mail on December 15, 2014 and also received some pushback, “I called and said no – it is a contest but they are saying others are doing it and it is not a contest b/c everyone is a winner.”

113. After reviewing the situation, RCO informed SCRO and ARRO of the Compliance opinion in a December 15, 2014 e-mail, which reads, in relevant part, “I also reviewed this with other folks who agreed [] – this would be a sales contest and should not be allowed unless done nationally. [ARRO] – I would advise all to have conversations with their branches, letting them know these types of contest (incentives) should not be happening.”

114. After receiving the Compliance determination, ARRO followed up with her boss, the New England Regional Risk Officer (“RRO”), via e-mail on December 15, 2014.

115. ARRO’s December 15, 2014 e-mail to RRO included a draft e-mail to inform those Complexes interested in implementing similar programs that such incentive programs, unless nationally approved, are not permitted at Morgan Stanley: “Good Afternoon – With banking and lending being a major focus of the firm, we understand that you and your teams are trying to be creative in gaining participation in the different programs. Recently, we’ve learned of a few complexes who are offering extra BDA incentives upon FA’s opening a certain number of PLAs. After a review with our friends in Compliance, this is unfortunately viewed as a contest and is not permitted.”

c. Morgan Stanley Failed to Terminate the Incentive Program Immediately

116. ARRO's draft e-mail was never sent, however, because, as RRO testified, "We discussed it, [ARRO] and I, and decided that it would be better for us to talk about it verbally as opposed to putting it out in an E mail format."

117. RRO took no steps to terminate the Incentive Program immediately.

118. RRO testified that she waited approximately four weeks before discussing the Incentive Program with the Regional Director.

119. During this time, MetroWest had initiated a similar incentive program, which was to run for the calendar year of 2015.

120. After discussing the Incentive Program with the Regional Director, RRO testified to the Division that she verbally instructed the Complex Manager to terminate the Incentive Program in January 2015, approximately four weeks after RRO became aware of the Incentive Program's existence.

121. RRO testified to the Division that she did not follow up with the Complex Manager after their January 2015 call because, "I had asked him to stop, and I – I – usually when I ask the complex managers to do something it's done."

122. RRO also testified that she did not follow up to confirm that the Complex Manager terminated the Incentive Program because, "I assumed it was. I can't tell you for certain that it was."

123. RRO further testified that it was her expectation, after instructing the Complex Manager to terminate the Incentive Program, that it would be done, "pretty quickly – within a month."

124. However, the Incentive Program continued in MetroWest until at least the first quarter of 2015.

125. The Complex Manager, on the other hand, testified to the Division that the Regional Director instructed him to terminate the Incentive Program for the first time in April 2015 and that he promptly did so.

126. Morgan Stanley knowingly allowed the Incentive Program to continue for at least four months after it was discovered and deemed impermissible under Morgan Stanley policy by Compliance and Risk.

VI. VIOLATIONS OF LAW

Count I – Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(B)

127. The Division's Regulations at 950 MASS. CODE REGS. 12.204(1)(a) require broker-dealers to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

128. Section 204 of the Act provides, in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-

(B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter or any rule or order under this chapter or a predecessor chapter.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(B).

129. By engaging in the conduct described herein, Morgan Stanley failed to observe high standards of commercial honor and just and equitable principles of trade in the

conduct of its business as required by 950 MASS. CODE REGS. 12.204(1)(a), resulting in a violation of Section 204(a)(2)(B) of the Act.

Count II – Violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

130. Section 204(a)(2)(J) of the Act provides:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:-

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter
[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

131. The conduct of Morgan Stanley, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VII. ORDER

IT IS HEREBY ORDERED:

- A. Morgan Stanley is censured by the Division;
- B. Morgan Stanley shall, within ten (10) business days of the entry of the Order, pay a civil penalty in the amount of one million dollars (\$1,000,000) to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division's instructions; and (4) submitted under cover letter

or other documentation that identifies that Morgan Stanley is making the payment and the docket number of the proceedings. Additionally, Morgan Stanley shall provide the Division with notice twenty-four (24) hours prior to the payment;

C. Morgan Stanley shall provide, within 120 days of the signed Order, a written report to the Division (the "Report"):

- i. Certifying that Morgan Stanley conducted a review of its policies and procedures related to sales contests; and
- ii. Identifying the changes or enhancements to Morgan Stanley practices, policies, and procedures that have been, or will be made, a result of the review described in Paragraph C. i. above. In the event that Morgan Stanley has already implemented changes or enhancements to its policies and procedures related to sales contests, Morgan Stanley shall provide such information to the Division in the Report. The foregoing paragraphs obligate Morgan Stanley to review and report as stated, and do not obligate Morgan Stanley to undertake particular changes or enhancements beyond those identified in the review described above.

D. For good cause shown, the Enforcement Section may agree to extend any of the procedural deadlines set forth above;

E. Morgan Stanley shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amounts that Morgan Stanley shall pay pursuant to the Division's Order;

F. Morgan Stanley shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any amounts that Morgan Stanley shall pay pursuant to the Division's Order; and

G. Upon the issuance of the Order, if Morgan Stanley fails to comply with any of the terms set forth in the Order, the Enforcement Section may take all appropriate action. Additionally, after a fair hearing and the issuance of an order finding that Morgan Stanley has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against Morgan Stanley.

VIII. DISQUALIFICATIONS

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions to which Morgan Stanley or any of its affiliates may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. In addition, this Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934, Rule 506 of Regulation D under the Securities Act of 1933, Section 204(a)(2) of the Uniform Securities Act of 1956, or Section 412(d) of the Uniform Securities Act of 2002.

Except in an action by the Division to enforce the obligations of this Order, any acts performed or documents executed in further of this Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing,

liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of Morgan Stanley in any civil, criminal, arbitration, administrative proceeding in any court, administrative agency, or other tribunal.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 

Bryan J. Lantagne
Director
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: April 7, 2017