

**CBOE BZX EXCHANGE, INC.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 20140430991-05**

TO: Cboe BZX Exchange, Inc.  
c/o Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Morgan Stanley & Co. LLC, Respondent  
Broker-Dealer  
CRD No. 8209

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX"), 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, BZX will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The Firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of BZX, or to which BZX 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 BZX:

**BACKGROUND**

The Firm is a U.S. broker-dealer and a member of multiple exchanges, including BZX. The Firm became a member of BZX on October 23, 2008, and its registration remains in effect. The Firm has no relevant disciplinary history.

**SUMMARY**

This matter involves three reviews conducted by the Market Analysis Section of FINRA's Department of Market Regulation (the "Staff"), on behalf of multiple self-regulatory organizations, including BZX, of the Firm's compliance with Securities Exchange Act of 1934 ("Exchange Act") Rule 611 of Regulation NMS and BZX rules governing the entry of Intermarket Sweep Orders ("ISOs") into BZX's system, and related supervision requirements during an overall period between April 2014 and November 2017 (the "ISO Review Period"). In Matter No. 20140430991, the Staff reviewed the Firm's activity during the second quarter of 2014, later expanded through April 2015. In Matter No. 20150468009, the Staff reviewed the Firm's activity during the period between January 2015 and September 2015, and identified an additional limited issue involving the Firm's incorrect programming of a single security during the period

between February 2015 and May 2017. In Matter No. 20180575199, the Staff reviewed the Firm's activity in connection with an issue that had resulted from an upgrade to the Firm's smart order router, which lasted for six weeks between September 21, 2017, and November 9, 2017; the Firm self-identified and self-corrected the issue prior to the Staff's review. As a result of its reviews, the Staff determined that during the ISO Review Period, the Firm violated Exchange Act Rule 611(c) of Regulation NMS and BZX Rules 11.9(d), 3.1, and 5.1.

### **FACTS AND VIOLATIVE CONDUCT**

1. Exchange Act Rule 611(c) of Regulation NMS requires broker dealers to take reasonable steps to establish that ISOs meet the requirements set forth in Regulation NMS Rule 600(b)(30). Exchange Act Rule 600(b)(30) of Regulation NMS defines an ISO as a limit order for an NMS stock that meets two requirements: (i) it is identified as an ISO; and (ii) the firm simultaneously routes additional limit orders, as necessary, to execute against the full displayed size of any protected quotes at a price that is superior to the limit price of the limit order.
2. During the ISO Review Period, MSCO failed to take reasonable steps to establish that ISOs it had routed met the definitional requirements set forth in Exchange Act Rule 600(b)(30) of Regulation NMS, primarily due to systems issues, as follows: (i) a system issue with the Firm's automated smart order router technology, which resulted in the Firm's failure to record certain superior quotes before routing ISOs; (ii) a technology change by a market data vendor which, unbeknownst to the Firm, resulted in the Firm's failure to capture in its protected quote snapshot certain top of book quotations from certain protected market centers; (iii) the Firm's programming of a single security with an incorrect lot size; and (iv) the Firm's update to a subset of its smart order router technology on September 21, 2017, which, unbeknownst to the Firm, resulted in a failure to embed an ISO indicator on a subset of orders it had routed to certain other exchanges, and potential trade throughs of protected quotations on those other exchanges. The Firm self-identified this issue on October 30, 2017, and corrected it on November 9, 2017, prior to the commencement of the Staff's review.
3. As a result of the foregoing systems issues, MSCO routed approximately 2,939 ISOs to BZX that potentially traded through protected quotations in NMS stocks on certain other exchanges. Such conduct violated Exchange Act Rule 611(c) of Regulation NMS and BZX Rule 11.9(d).
4. In addition, during the ISO Review Period, MSCO failed to establish, maintain, and enforce supervisory systems and written procedures reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within an applicable exception and to otherwise achieve compliance with respect to applicable securities laws and regulations and BZX rules concerning Exchange Act Rule 611(c) of Regulation NMS. Among other things, MSCO's ISO surveillance report failed to take into account whether the order was cancelled or executed. Such conduct violated BZX Rules 3.1 and 5.1.

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

- A censure and a total fine of \$62,300, of which \$8,900 is payable to BZX.<sup>1</sup>

Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: (i) FINRA; (ii) Cboe EDGA Exchange, Inc.; (iii) Cboe EDGX Exchange, Inc.; (iv) Cboe BYX Exchange, Inc.; (v) NYSE Arca, Inc.; (vi) the New York Stock Exchange LLC; and (vii) Investors Exchange LLC.

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by BZX.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under BZX Rules:

- A. To have a Statement of Charges issued specifying the allegations against the Firm;
- B. To be notified of the Statement of Charges 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 Appeals Committee of BZX's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO"), in connection with the CRO'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.

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<sup>1</sup> The balance of the fine will be paid to the self-regulatory organizations referenced in the following paragraph.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of BZX Rule 8.16, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to BZX Rule 8.3;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  1. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by BZX or any other regulator against the Firm;
  2. This AWC will be published on a website maintained by BZX in accordance with BZX Rule 8.18. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record; and
  3. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of BZX, or to which BZX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which BZX is not a party.
- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by BZX, nor does it reflect the views of BZX or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Sept 17, 2018  
Date

Morgan Stanley & Co. LLC  
Respondent

By: James J. Mangan  
Name: James J. Mangan  
Title: Counsel to Morgan Stanley & Co. LLC

Reviewed by:

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Counsel for Respondent

10/9/2018  
Date

Greg Hodgasian  
Greg Hodgasian  
Senior Vice President & Chief Regulatory Officer  
Cboe BZX Exchange, Inc.

**ELECTION OF PAYMENT FORM**

The Firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

- A Firm check or bank check for the full amount; or
- Wire transfer.

Respectfully submitted,

Sept 17, 2018  
Date

Respondent  
Morgan Stanley & Co. LLC

By: James J. Mangano  
Name: James J. Mangano

Title: Counsel to Mangano  
Stanley & Co. LLC