DISCIPLINARY DECISION
Cboe Exchange, Inc.
Star No. 2015048329306/File No. USRI-7934
Morgan Stanley & Co. LLC

Pursuant to Exchange Rule 13.3, attached to and incorporated as part of this Decision is a Letter of Consent.

Applicable Rule(s)

- Exchange Rules 1.1(ggg) – Definitions (Professional), 4.2 – Adherence to Law, 4.22 – Communications to the Exchange or the Clearing Corporation, 4.24 – Supervision, 6.51 – Reporting Duties, and 15.1 – Maintenance, Retention and Furnishing of Books, Records and Other Information
- Section 17(a) of the Securities Exchange Act of 1934, as amended and Rule 17a-3 – Records to Be Made by Certain Exchange Members, Brokers and Dealers, thereunder

Sanction

A censure and a monetary fine in the amount of $325,780.

Effective Date

April 30, 2020

/s/ Greg Hoogasian

Greg Hoogasian, CRO, SVP

Cboe Exchange, Inc.
LETTER OF CONSENT
Star No. 2015048329306
File No. USRI-7934

In the Matter of:

Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

Respondent

Pursuant to the provisions of Cboe Exchange, Inc. ("Cboe" or the "Exchange") Rule 13.3 – Expedited Proceeding, Morgan Stanley & Co. LLC (the "Firm") submits this Letter of Consent for the purposes of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies the allegations of the Letter of Consent for Star No. 20150483293/File No. USRI-7934 and the stipulation of facts and findings described herein do not constitute such an admission.

BACKGROUND

1. During all relevant periods herein, the Firm was acting as a registered Broker-Dealer and was an Exchange Trading Permit Holder registered to conduct business on the Exchange. The Firm's registrations remain in effect.

2. This matter originated from a review by the Options Regulation and Trading and Financial Compliance Examinations sections of FINRA's Department of Market Regulation (the "staff") of the Firm's compliance with Cboe rules in connection with the Firm's use of Professional Customer origin codes on options orders.

VIOLATIVE CONDUCT

Applicable Rules

3. During all relevant periods herein, the following rules were in full force and effect: Exchange Rules 1.1(ggg) – Definitions (Professional) (as further described in SR-CBOE-2009-078), 4.2 – Adherence to Law, 4.22 – Communications to the Exchange or the Clearing Corporation, 4.24 – Supervision, 6.51 – Reporting Duties, and 15.1 – Maintenance, Retention and Furnishing of Books, Records and Other Information; and Section 17(a) of the Securities Exchange Act of 1934, as amended

(the "Exchange Act") and Rule 17a-3 – Records to Be Made by Certain Exchange Members, Brokers and Dealers, thereunder.[1]

4. During all relevant periods herein, Interpretation and Policy .02 to Exchange Rule 6.51 required each Trading Permit Holder, when entering orders on the Exchange, "to submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Clearing Corporation."

5. During all relevant periods herein, Exchange Rule 4.22 provided, in relevant part: "No Trading Permit Holder, person associated with a Trading Permit Holder or applicant to be a Trading Permit Holder shall make any misrepresentation or omission in any application, report or other communication to the Exchange, or to the Clearing Corporation with respect to the reporting or clearance of any Exchange Transaction. . ."

6. The term "Professional Customer" means a person or entity that (1) is not a broker or dealer in securities, but (2) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). To comply with exchange requirements, exchange members are required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as Professional Customer orders. Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.

Improper Marking and Execution of Orders as Professional Customer

7. From January 1, 2011 through April 27, 2017 (the "Review Period"), the Firm submitted an inaccurate origin code of Customer rather than Professional Customer on options orders for four of its customers. These orders were routed to and executed on thirteen exchanges, resulting in executions of 53,032 orders with a volume of 1,239,368 contracts, of which 611,950 contracts, or approximately 49.38 percent, traded on Cboe. The majority of the orders at issue were mismarked due to configuration issues in various of the Firm's order management systems, while other orders were mismarked due to coding errors related to the Firm's use of the Financial Information eXchange ("FIX") messaging protocol.

[1] Cboe amended and restructured its rulebook effective October 7, 2019. Because the conduct at issue in this matter occurred prior to October 7, 2019, this Letter of Consent will reference and cite the relevant Cboe rules in effect prior to that date.

8. During the Review Period, the Firm failed to maintain accurate books and records as a result of mismarking numerous orders with incorrect order origin codes.

9. The acts, practices and conduct described in Paragraph 7 constitute violations of Exchange Rules 1.1(ggg) (as further described in SR-CBOE-2009-078), 4.22 and 6.51 by the Firm, in that the Firm marked and executed numerous option orders on Cboe with an incorrect order origin code.

10. The acts, practices and conduct described in Paragraph 8 constitute violations of Exchange Rules 4.2 and 15.1; Section 17(a) of the Exchange Act and Rule 17a-3 thereunder by the Firm, in that the Firm failed to maintain accurate books and records.

Supervision

11. From January 1, 2011 through February 19, 2020, the Firm's written supervisory procedures ("WSPs") mandated that the proper origin code be affixed to all options orders at order entry and indicate the capacity in which such orders are entered. However, the Firm's WSPs and supervisory system applicable to the assignment of options origin codes were not reasonably designed. Specifically:

    a. the WSPs did not include a process for updating the Firm's order management systems, which had not been properly coded to ensure that "high-touch"[2] Professional Customer orders were tagged with the correct Professional Customer origin code;

    b. its WSPs and supervisory system did not include any post-order entry follow-up or review of high-touch Professional Customer options orders entered in the Firm's order management systems to determine whether such orders were tagged with the correct Professional Customer origin code;

    c. the WSPs and supervisory system were not reasonably designed in that they did not provide the Firm's Derivatives Sales Desk personnel with sufficient tools or guidance to ensure that high-touch Professional Customer options orders were marked with the Professional Customer origin code; and

    d. the Firm failed to supervise those personnel to determine whether high-touch Professional Customer options orders were properly marked.

12. From January 1, 2011 through the February 19, 2020, the Firm's WSPs and supervisory system required daily and quarterly Professional Customer reviews to be conducted by the firm's Regulatory Control Group (the "Daily RCG Review" and "Quarterly RCG Review", respectively) in order to determine whether options orders were marked with the correct origin code. However, these reviews were not

[2] "High-touch" orders are options orders that are manually entered by sales traders on the firm's Derivatives Sales Desk on behalf of the firm's customers.

reasonably designed. Because the Daily RCG Review was established to identify discrepancies between the execution and clearing capacities of options orders, it could not detect instances in which Professional Customer orders were mismarked and executed as Customer orders and then reported to the OCC in the "Customer" range. Furthermore, although the Quarterly RCG Review identified whether relevant client accounts were properly classified as Professional Customer accounts, it did not determine whether options orders for Professional Customer accounts were ultimately tagged with the correct origin code.

13. The acts, practices and conduct described in each of Paragraphs 11 and 12 above constitute violations of Exchange Rule 4.24 by the Firm, in that the Firm failed to establish, maintain and enforce WSPs and a supervisory system that were reasonably designed to assure compliance with Cboe rules and the Exchange Act as they relate to order origin codes.

SANCTIONS

14. The Firm does not have any prior relevant disciplinary history specifically related to incorrect order origin code usage and/or improper order origin code marking concerning the Professional Customer order origin code.

15. In light of the alleged rule violations described above, the Firm consents to the imposition of the following sanctions:

    a. A censure; and

    b. A monetary fine in the amount of $650,000, of which $325,780 shall be paid to Cboe.[3]

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 13.3, waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm 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 Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent.

The Firm agrees to pay the monetary sanction(s) upon notice that this Letter of Consent has been accepted and that such payment(s) are due and payable. The Firm specifically and voluntarily

[3] Although, as set forth in paragraph 7, the violations occurred on thirteen exchanges, the fine is allocated among six exchanges, including Cboe as set forth above, with the remainder of the fine total to be paid to NYSE American LLC, NYSE Arca, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, and Miami International Securities Exchange, LLC.

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 Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 13.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the Firm.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.

Date: 4/20/2020

Morgan Stanley & Co. LLC

By: [redacted]

Name: JAMES J. MANGAN

Title: COUNSEL TO MORGAN STANLEY & CO LLC