**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 101842 / December 9, 2024**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 6782 / December 9, 2024**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-22339**

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| **In the Matter of**<br><br>**Morgan Stanley Smith Barney LLC,**<br><br>**Respondent.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER** |

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Morgan Stanley Smith Barney LLC ("Morgan Stanley Smith Barney" or "Respondent").

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940,

Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

## III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

### Summary

1. These proceedings arise out of Morgan Stanley Smith Barney's failure to adopt and implement policies and procedures reasonably designed to prevent Morgan Stanley Smith Barney personnel from misusing and misappropriating funds from advisory client and brokerage customer accounts. Morgan Stanley Smith Barney applied the same policies, procedures, and systems to both brokerage and advisory accounts with respect to third-party disbursements. Morgan Stanley Smith Barney's inadequate policies and procedures and systems to implement them led to its failure reasonably to supervise four of its investment adviser and registered representatives, which Morgan Stanley Smith Barney referred to as financial advisors ("FAs"), who misappropriated funds from client and customer accounts while employed at Morgan Stanley Smith Barney: Michael Carter ("Carter"), Chingyuan "Gary" Chang ("Chang"), Douglas McKelvey ("McKelvey"), and Jesus Rodriguez ("Rodriguez").[2]

2. Until at least December 2022, Morgan Stanley Smith Barney failed to adopt and implement policies and procedures reasonably designed to prevent and detect misappropriation from client and customer accounts by its FAs by means of unauthorized Automated Clearing House ("ACH") payments that were externally initiated. Morgan Stanley Smith Barney did not have any policy or procedure that screened the ACH payment instructions Morgan Stanley Smith Barney received from the originating financial institution for the name of the beneficiary of the ACH payments, which allowed Rodriguez, McKelvey and Chang to initiate ACH payments to pay their own credit card bills or otherwise improperly transfer funds for their own benefit.

3. In addition, from October 2015 to at least February 2021, Morgan Stanley Smith Barney failed to implement policies and procedures reasonably designed to prevent and detect misappropriation by its FAs using unauthorized cash wire transfers from multiple unrelated customer or client accounts of the same FA to the same third-party external account. Although Morgan Stanley Smith Barney understood such activity was a red flag and in 2015 implemented a third-party fraud detection software system that Morgan Stanley Smith Barney mistakenly believed

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] The Commission has filed or instituted actions against each of these FAs. *See SEC v. Michael Barry Carter*, No. 20-cv-02112-CCB (D. Md.) (filed July 20, 2020; final judgment entered June 30, 2021); *SEC v. Douglas McKelvey*, No. 23-cv-00564-O (N.D. Tex.) (filed June 6, 2023; final judgment entered April 26, 2024); *In the Matter of Chingyuan "Gary" Chang*, Exch. Act Rel. No. 99239 (Dec. 26, 2023) (settled order); *SEC v. Jesus Rodriguez* (24-cv-00027) (W.D. Texas) (pending).

would, among other things, monitor for such activity, the system had not in fact been designed to detect when such patterns of wire activity had occurred. Moreover, Morgan Stanley Smith Barney did not perform testing to validate the use of the system for that purpose at any time over the course of the next five years. Morgan Stanley Smith Barney's failure reasonably to monitor for this risk allowed Carter and Rodriguez to misappropriate from the Morgan Stanley Smith Barney accounts of their customers and clients without detection.

4. By failing to adopt and/or implement written policies and procedures reasonably designed to prevent misappropriation by its FAs using unauthorized externally-initiated ACH payments and unauthorized cash wires from multiple unrelated client accounts of the same FA to the same third-party account, Morgan Stanley Smith Barney willfully[3] violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

5. Further, Morgan Stanley Smith Barney's inadequate supervisory policies, procedures, and systems for implementation led to its failure to prevent and detect violations of the antifraud provisions of the Exchange Act and/or Advisers Act by Carter, Chang, McKelvey, and Rodriguez. As a result, Morgan Stanley Smith Barney failed reasonably to supervise Carter, Chang, McKelvey and Rodriguez within the meaning of Section 15(b)(4)(E) of the Exchange Act and/or Section 203(e)(6) of the Advisers Act.

## Respondent

6. **Morgan Stanley Smith Barney** is a Delaware limited liability company with its principal place of business in Purchase, New York. Morgan Stanley Smith Barney has been registered with the Commission as both a broker-dealer and investment adviser since May 2009. Morgan Stanley Smith Barney is an indirect wholly-owned subsidiary of Morgan Stanley, a Delaware Corporation that has a principal office in New York, New York. On June 29, 2018, the Commission issued a settled Order Instituting Administrative and Cease-and-Desist Proceedings against Morgan Stanley Smith Barney finding that Morgan Stanley Smith Barney willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt policies and procedures reasonably designed to prevent Morgan Stanley Smith Barney's personnel from misusing and misappropriating funds in client accounts and that Morgan Stanley Smith Barney failed reasonably to supervise former Morgan Stanley Smith Barney FA Barry Connell within the meaning of Section 203(e)(6) of the Advisers Act, who had initiated over $7 million in unauthorized transactions out of advisory client accounts primarily by making false attestations that he had

[3] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

received verbal requests from the clients for third-party wires and cash journals in approximately 90 instances between December 2015 and November 2016. *See In the Matter of Morgan Stanley Smith Barney LLC*, Exch. Act Rel. No. 83571 (June 29, 2018) (the "2018 Morgan Stanley Smith Barney Order").

## Facts

7. Morgan Stanley Smith Barney's FAs provide services to both Morgan Stanley Smith Barney's investment advisory clients and its brokerage customers. Morgan Stanley Smith Barney applies the same policies, procedures, and systems to both brokerage and advisory accounts with respect to third-party disbursements. Carter, Chang, McKelvey and Rodriguez, collectively, misappropriated millions of dollars from customer and client accounts primarily through two forms of third-party disbursements: unauthorized ACH payments and unauthorized wire transfers.

8. As a registered investment adviser, Morgan Stanley Smith Barney is subject to Rule 206(4)-7 under the Advisers Act, known as the compliance rule. Among other things, the compliance rule requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the firm and its supervised persons. As noted in the adopting release for the compliance rule, the Commission stated its expectation that an adviser's policies and procedures at a minimum would address a number of items, including "[s]afeguarding of client assets from conversion or inappropriate use by advisory personnel."

9. In addition, the Commission has repeatedly emphasized that the duty to supervise for broker-dealers and investment advisers is a critical component of the federal regulatory scheme. *In the Matter of Signator Investors, Inc., et al*., Exch. Act Rel. No. 75670, 2015 WL 4760909 at *8 (August 13, 2015) (settled order).

### *Morgan Stanley Smith Barney Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent and Detect Unauthorized Externally-Initiated ACH Payments*

10. Morgan Stanley Smith Barney offers its brokerage customers and advisory clients the ability to transfer cash from their Morgan Stanley Smith Barney accounts to outside parties using a variety of methods, including ACH payments. The ACH system is a nationwide payment network through which financial institutions accumulate and send each other electronic cash transfers. The ACH system is commonly used to allow customers of financial institutions to transfer cash for such purposes as online bill payments and money transfers. In simple terms, an externally-initiated ACH payment involves a customer of another financial institution (the "originating financial institution") initiating payment instructions to request and obtain payment from a particular account at the financial institution receiving the payment instruction (the "receiving financial institution"). The originating financial institution transmits the payment instructions to the receiving financial institution as part of batches using the ACH system. Morgan Stanley Smith Barney failed to adopt and implement policies and procedures reasonably designed to prevent and detect unauthorized ACH payments from client and customer accounts where Morgan Stanley Smith Barney was the receiving financial institution in an externally-initiated ACH transaction.

11. ACH payments, like other methods of transferring funds to outside parties, pose fraud risks to broker-dealers and investment advisers that offer the service, including the risk of misappropriation by supervised persons. Morgan Stanley Smith Barney FAs assigned to Morgan Stanley Smith Barney customer and client accounts have ready access to all the account information necessary to initiate unauthorized externally-initiated ACH payments to debit those customer or client accounts, such as name of the account owner, routing number and account number. However, Morgan Stanley Smith Barney's fraud prevention procedures were not reasonably designed to address this risk of misappropriation.

12. ACH payment instructions from an originating financial institution to Morgan Stanley Smith Barney as the receiving financial institution include details such as dollar amount to be credited or debited, account and routing numbers at the receiving financial institution, and in many instances, the name of the beneficiary of the account at the originating financial institution. Morgan Stanley Smith Barney had no procedures for monitoring externally-initiated ACH payment instructions for indications of internal fraud, and did not take steps to screen ACH payment instructions it received from originating financial institutions to detect instances in which a Morgan Stanley Smith Barney FA servicing the account was the beneficiary of the ACH payment it debited from a Morgan Stanley Smith Barney customer or client account.

13. Morgan Stanley Smith Barney's failure to adopt and implement policies and procedures reasonably designed to address externally-initiated ACH payments led to its failure to prevent and detect misappropriation by three FAs: Rodriguez, McKelvey, and Chang. Over a seven-year period, these three FAs misappropriated a total of more than $1.7 million through unauthorized externally-initiated ACH payments. In hundreds of instances between May 2015 and July 2022, Morgan Stanley Smith Barney debited its brokerage customer and advisory client accounts for unauthorized externally-initiated ACH payments based on the ACH payment instructions it received that included a payment beneficiary name that matched the name of one of these FAs assigned to the Morgan Stanley Smith Barney account. These ACH payments were typically to pay the FA's credit card bill or to transfer funds to the FA's account at an online payment application. Specifically:

a. Between November 2018 and July 2021, Rodriguez made approximately 185 unauthorized ACH payments from accounts of his Morgan Stanley Smith Barney clients and customers while he was employed as a registered representative and investment adviser representative in Morgan Stanley Smith Barney's El Paso, TX office. These transfers totaled over $575,000 and were primarily to make payments to his credit cards, car loan and online payment accounts. For approximately 83 of these unauthorized ACH payments, the ACH payment instructions received by Morgan Stanley Smith Barney identified Rodriguez or some similar variant of his name as the beneficiary of the payment.

b. Between May 2015 and February 2022, McKelvey made more than 250 unauthorized ACH payments from the Morgan Stanley Smith Barney accounts of two elderly relatives who were brokerage customers while he was employed as a registered representative and investment adviser representative in Morgan Stanley Smith Barney's Southlake, TX office. These transfers totaled over $1.15 million and were primarily to pay his and his wife's credit cards. For virtually all of these unauthorized ACH payments, the ACH payment instructions received by Morgan Stanley Smith Barney identified McKelvey or his wife as the beneficiary of the payment.

c. Between September 2021 and July 2022, Chang made approximately 40 unauthorized ACH payments from four customer and/or client accounts while employed as a registered representative and investment adviser representative in Morgan Stanley Smith Barney's Cupertino, CA office. These transfers totaled over $58,000 and were primarily issued to online payment application accounts belonging to Chang. For virtually all of these unauthorized ACH payments, the ACH payment instructions received by Morgan Stanley Smith Barney identified Chang as the beneficiary of the payment.

14. Through their misappropriation of advisory client and brokerage customer funds using unauthorized externally-initiated ACH payments, each of the three former Morgan Stanley Smith Barney FAs violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and/or Sections 206(1) and (2) of the Advisers Act. Morgan Stanley Smith Barney's failure to adopt and implement policies and procedures reasonably designed to address externally-initiated ACH payments led to Morgan Stanley Smith Barney's failure to prevent and detect these FAs' misappropriation for years.

15. As discussed in paragraph 25 below, in February 2022 Morgan Stanley Smith Barney began a retroactive review of externally-initiated ACH payments, which ultimately identified the unauthorized ACH payments by McKelvey and Chang.

***Morgan Stanley Smith Barney Failed to Implement Policies and Procedures Reasonably Designed to Prevent and Detect Unauthorized Cash Wires***

16. From at least October 2015 to at least February 2021, Morgan Stanley Smith Barney failed to implement policies and procedures reasonably designed to prevent and detect misappropriation by its FAs using unauthorized cash wire transfers from multiple unrelated client or customer accounts of the FA to the same third-party external account.

17. In June 2015, the Financial Industry Regulatory Authority ("FINRA") issued a Letter of Acceptance, Waiver and Consent[4] in which it found that from at least June 2009 through November 2014, Morgan Stanley Smith Barney had failed to establish, maintain and enforce supervisory systems and written procedures that were reasonably designed to review and monitor the transmittal of funds from customer accounts, including by failing to review and monitor outgoing wire transfers and branch checks disbursed from multiple customer accounts to the same third-party account. FINRA found further that as a result, between October 2008 and June 2013, three Morgan Stanley Smith Barney registered representatives in two different branch offices were able to convert, collectively, almost $500,000 from thirteen brokerage customer accounts through fraudulent wires and branch checks sent from the customers' accounts to third-party accounts. Morgan Stanley Smith Barney represented to FINRA that it implemented a manual report to address those deficiencies in December 2014.

18. Morgan Stanley Smith Barney ran and reviewed this manual report monthly for both client advisory and customer brokerage accounts from December 2014 until October 2015. In October 2015, Morgan Stanley Smith Barney began using third-party fraud detection software to

[4] Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent, No. 2011025479301 (June 19, 2015).

monitor wires to external accounts in real time for potential fraud by assigning a risk score to each wire. Based on a calibration report it received from the third-party software provider, Morgan Stanley Smith Barney believed that the software would detect and alert Morgan Stanley Smith Barney personnel to suspicious cash transfers from multiple unrelated brokerage customer or advisory client accounts to single third-party accounts, and based on this belief, Morgan Stanley Smith Barney discontinued running the manual report at that time. However, the software was not in fact calibrated to detect this pattern of activity, and Morgan Stanley Smith Barney's own compliance documentation from 2019 did not indicate that this pattern of activity was a parameter included among the payment activities the software was configured to monitor. Moreover, Morgan Stanley Smith Barney never conducted any testing of the software system's performance in monitoring this pattern of wire activity in the years that followed, which might have alerted Morgan Stanley Smith Barney to the fact that the system was not performing such surveillance. In fact, Morgan Stanley Smith Barney did not identify this gap in its surveillance procedures until February 2021 after the Commission staff's inquiry.

19. Morgan Stanley Smith Barney's failure to implement policies and procedures reasonably designed to monitor this known risk led to its failure to prevent and detect Carter's and Rodriguez's misappropriation through unauthorized wires from multiple brokerage and advisory accounts to single external accounts at a third-party financial institution for their own benefit for a period spanning years. Specifically:

a. Between October 2007 and May 2019, Carter misappropriated over $6 million dollars from four brokerage customers and an investment advisory client while he was employed as a registered representative and investment adviser representative at Morgan Stanley Smith Barney. Of that amount, Carter issued at least 54 unauthorized cash wires totaling over $4.5 million from four unrelated Morgan Stanley Smith Barney advisory and brokerage accounts to the same external account at a third-party bank during the time in which Morgan Stanley Smith Barney failed to implement procedures reasonably designed to prevent and detect this pattern of fraudulent wire activity.

b. In addition to the amounts that Rodriguez misappropriated via unauthorized ACH payments described in paragraph 13 above, between March 2014 and July 2021, Rodriguez also misappropriated or misused a total of at least $3 million from the accounts of his Morgan Stanley Smith Barney brokerage customers and advisory clients using unauthorized third-party wires and cash journal transfers (i.e., internal cash movements between Morgan Stanley Smith Barney accounts). Of that amount, between April 2014 and May 2019, Rodriguez issued at least 18 unauthorized cash wires totaling over $300,000 from four unrelated Morgan Stanley Smith Barney brokerage and advisory accounts to the same external third-party bank account during the time in which Morgan Stanley Smith Barney failed to implement procedures reasonably designed to prevent and detect this pattern of fraudulent wire activity.

20. In addition, prior to the Commission's 2018 Morgan Stanley Smith Barney Order, both Carter and Rodriguez misused or misappropriated significant amounts from their respective customers and clients via unauthorized wires and/or journals in which they falsified that the customer or client had verbally requested the wire or journal. The 2018 Morgan Stanley Smith Barney Order found that Morgan Stanley Smith Barney did not take steps to reasonably monitor its FAs initiating third-party wires and journals from client and customer accounts of up to $100,000

per day per account based on the FA's attestation of having received a verbal request from the client or customer or to detect unauthorized or unusual activity in client accounts under this threshold. Morgan Stanley Smith Barney's failure to do so in the period prior to the 2018 Morgan Stanley Smith Barney Order led to its failure to prevent and detect their misappropriation through these unauthorized wires and/or journals. Morgan Stanley Smith Barney implemented certain enhancements to its policies and procedures in 2018.

21. Through their misappropriation, Carter and Rodriguez violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and (2) of the Advisers Act. Morgan Stanley Smith Barney's failure reasonably to implement policies and procedures to monitor the foregoing types of disbursements from client and customer accounts to external accounts led to Morgan Stanley Smith Barney's failure to prevent and detect their misappropriation for years.

***Morgan Stanley Smith Barney's Discovery of Misappropriation and Remedial Steps***

22. In July 2019, a relative of an advisory client of Carter contacted Morgan Stanley Smith Barney raising questions about the client's account. Morgan Stanley Smith Barney promptly investigated the matter, discovered Carter's misappropriation from the client's accounts and the accounts of certain of his brokerage customers, terminated Carter, and reported the misappropriation to the Commission staff and other law enforcement agencies. Morgan Stanley Smith Barney subsequently entered into settlement agreements with the victimized client and customers and compensated them for their losses.

23. However, it was not until February 2021, after inquiries by Commission staff concerning Morgan Stanley Smith Barney's procedures for detecting unauthorized wires from multiple unrelated client and customer accounts to single external third-party accounts, that Morgan Stanley Smith Barney discovered that the fraud detection software it began using in October 2015 had never been calibrated to monitor this pattern of wire activity. Morgan Stanley Smith Barney reported that discovery to the Commission staff in February 2021.

24. In July 2021, one of Rodriguez's brokerage customers reported unauthorized activity in the customer's account. Morgan Stanley Smith Barney promptly began investigating the matter and discovered misappropriation from that account as well as misappropriation from multiple other brokerage customers and advisory clients for whom Rodriguez was the FA. In August 2021, Morgan Stanley Smith Barney terminated Rodriguez and reported Rodriguez's misappropriation to the Commission staff and other law enforcement agencies. Morgan Stanley Smith Barney has subsequently entered into settlement agreements with the victimized clients and customers, and has compensated them for their losses.

25. In February 2022, following Morgan Stanley Smith Barney's discovery of Rodriguez's misappropriation, Morgan Stanley Smith Barney began a retroactive review of the payment instructions for externally-initiated ACH payments from the previous five years to identify any instances where the beneficiary's name in the ACH payment instructions matched the name of a Morgan Stanley Smith Barney FA. Morgan Stanley Smith Barney's retroactive review led to the identification of unauthorized ACH payments and other misconduct by McKelvey and Chang, as described in paragraph 13. Morgan Stanley Smith Barney terminated them and reported

their misconduct to the Commission staff. Beginning in December 2022, Morgan Stanley Smith Barney instituted a written procedure to review externally-initiated ACH payments for name matches of FAs on a scheduled basis going forward.

26. In addition, in July 2022 Morgan Stanley Smith Barney retained an outside compliance consultant (the "Consultant") on a non-privileged basis to perform a review and assessment of Morgan Stanley Smith Barney's control environment and anti-fraud controls for third-party payments, identify gaps in its procedures, and recommend enhancements to mitigate the risk of internal fraud and ensure compliance with relevant rules and regulations. After completing its review and assessment, in April 2023 the Consultant issued a written report that included findings and recommendations for improvements to Morgan Stanley Smith Barney's control environment. Morgan Stanley Smith Barney reports that it has implemented all of the Consultant's recommended enhancements with the exception of a limited number of remaining enhancements, for which it has provided Commission staff with a detailed plan and schedule for their implementation.

## Violations and Failure to Supervise

27. As a result of the conduct described above, Morgan Stanley Smith Barney willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

28. As a result of the conduct described above, Morgan Stanley Smith Barney failed reasonably to supervise Carter, Rodriguez, and Chang, within the meaning of Section 203(e)(6) of the Advisers Act and Section 15(b)(4)(E) of the Exchange Act, with a view to preventing and detecting their violations of Sections 206(1) and 206(2) of the Advisers Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Morgan Stanley Smith Barney also failed reasonably to supervise McKelvey, within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing his violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

## Morgan Stanley Smith Barney's Remedial Efforts

29. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

## Undertakings

30. Respondent has undertaken to:

a. Retention of Compliance Consultant. Within sixty (60) days after the entry of this Order, Morgan Stanley Smith Barney shall engage a consultant not unacceptable to the Commission (the "Compliance Consultant"), and provide a copy of this Order to the Compliance Consultant. For purposes of this paragraph 30, the Commission deems the Consultant described in paragraph 26 is acceptable to serve as the Compliance Consultant. No later than ten (10) days

following the date of the Compliance Consultant's engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include the reviews and reports to be made by the Compliance Consultant as set forth in this Order. The Compliance Consultant's compensation and expenses shall be borne exclusively by the Respondent.

b. Compliance Consultant's Reviews. Respondent shall require the Compliance Consultant to:

(1) Conduct a comprehensive review of all available forms of third-party cash disbursements from customer and client accounts and Morgan Stanley Smith Barney's policies, procedures and controls for preventing and detecting conversion of client advisory or brokerage customer funds by its supervised persons through each available form, including but not limited to Morgan Stanley Smith Barney's implementation of recommendations from the Consultant's April 2023 report described in paragraph 26, and assess whether Morgan Stanley Smith Barney is complying with its policies, procedures and controls in effect as of the start date of the Compliance Consultant's engagement, and whether such policies, procedures and controls are effective in achieving their stated purpose;

(2) Submit a written report to Morgan Stanley Smith Barney and the Commission staff of its findings and recommendations for changes or enhancements to the policies, procedures and controls described in paragraph 30.b.1 and a procedure for implementing the recommended changes and enhancements (the "First Report");

(3) One year from the date of the issuance of the Compliance Consultant's First Report, conduct an annual review ("Annual Review") to assess whether Morgan Stanley Smith Barney is complying with its then-current policies, procedures and controls, including Morgan Stanley Smith Barney's implementation of recommendations from the Compliance Consultant's First Report, and assess whether Morgan Stanley Smith Barney's then-current policies, procedures and controls are effective in achieving their stated purpose; and

(4) Submit a written report to Morgan Stanley Smith Barney and to the Commission staff of its findings and recommendations, if any, for additional changes and enhancements to the policies, procedures and controls, and a procedure for implementing the changes and enhancements (the "Second Report").

c. Compliance Consultant's Reports. Morgan Stanley Smith Barney shall require the Compliance Consultant to complete its review and issue its First Report within one hundred and twenty (120) days after the date of the engagement. Morgan Stanley Smith Barney shall require the Compliance Consultant to issue the Second Report within one hundred and twenty (120) days after beginning the Annual Review.

d. Morgan Stanley Smith Barney shall, within ninety (90) days of receipt of each of the Compliance Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Compliance Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. In the

event Respondent determines that it is impracticable to adopt a recommendation within ninety (90) days solely due to timing, Respondent shall in writing advise the Compliance Consultant and the Commission staff as to the reason why timing is impracticable and propose an alternative schedule for implementation. With respect to any recommendation that Respondent otherwise considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but shall instead propose in writing an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Compliance Consultant. Respondent shall engage in good faith negotiations with the Compliance Consultant in an effort to reach agreement on any recommendations objected to by Respondent. In the event that Respondent and the Compliance Consultant are unable to agree on an alternative proposal within thirty (30) days, Respondent shall abide by the determinations of the Compliance Consultant.

e. From the date the Order is instituted and for a period of two years from completion of the engagement described in this paragraph 30, Respondent shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order, and excepting for this purpose for any other existing professional services for which the Compliance Consultant has already been retained as of the date of the Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

f. The reports by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

g. Morgan Stanley Smith Barney Certification. Morgan Stanley Smith Barney shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Morgan Stanley Smith Barney agrees to provide such evidence. The certification and supporting material shall be submitted to Wendy Tepperman, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

h. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

## IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Morgan Stanley Smith Barney's Offer.

Accordingly, pursuant to Sections 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in paragraph 30, above.

D. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $15,000,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways: (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Morgan Stanley Smith Barney as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tejal Shah, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money

penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary