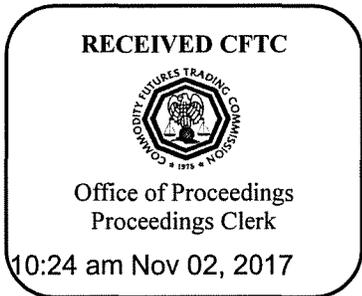


**UNITED STATES OF AMERICA**  
Before the  
**COMMODITY FUTURES TRADING COMMISSION**



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)  
**In the Matter of:** )  
)  
**Morgan Stanley and Co. Incorporated,** ) **CFTC Docket No.: 18 – 02**  
)  
)  
**Respondent.** )  
\_\_\_\_\_)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTION 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT,  
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Morgan Stanley and Co. Incorporated (“Morgan Stanley” or “Respondent”) violated Section 4g(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6g(a) (2012), and Commission Regulation (“Regulation” or “Regulations”) 17.00, 17 C.F.R. § 17.00 (2017), from at least 2007 through March 2016 (the “Relevant Period”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.

<sup>1</sup> Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy, or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulation 17.00, 17 C.F.R. § 17.00 (2017), along with the definitions and specifications set forth in Regulations 15.00-15.004, 17 C.F.R. §§ 15.00-15.004 (2017), require Futures Commission Merchants (“FCMs”) to report to the Commission certain data regarding futures and options transactions. The reports made pursuant to these regulations, commonly called, “Large Trader reports” are used by the Commission to evaluate potential market risks and monitor compliance with Commission requirements.

During the Relevant Period, Morgan Stanley, a registered FCM, omitted mandatory futures and options data from its Part 17 Large Trader reports.

Morgan Stanley's Large Trader reports were generated by its proprietary, in-house software. The software converted Morgan Stanley's customers' futures and options positions into the Large Trader report. The quantity of position data and, accordingly, the amount of data submitted in the reports to the Commission, was substantial. As of September, 2015, its daily reports consisted of approximately 25,000 line items of reportable information from 8.3 million underlying positions.

During the Relevant Period, however, Morgan Stanley omitted required data regarding futures and options transactions from its Large Trader reports to the Commission. These omissions were the result of four distinct problems with Morgan Stanley's proprietary reporting software. Each one of these software issues caused required data to be omitted.

Morgan Stanley's reporting deficiencies were centered on two Designated Contract Markets: (1) the Chicago Mercantile Exchange (“CME”), and (2) the Minneapolis Grain Exchange (“MGEX”). In September 2015, after Commission staff flagged inconsistencies in Morgan Stanley's Large Trader reports, Morgan Stanley identified two software issues affecting the accuracy of its reporting of CME and MGEX positions. Morgan Stanley self-reported the CME reporting issue to the CME, fixed both issues, and enhanced its systems with additional controls to prevent future errors. In 2016, Morgan Stanley identified a third software glitch after Commission staff, again, identified anomalies in Morgan Stanley's data submissions. Again, Morgan Stanley promptly addressed this issue. Finally, in 2017, Morgan Stanley on its own identified a fourth issue, involving incorrect coding of Morgan Stanley client accounts, which caused certain positions to not be correctly aggregated in Large Trader reports to the Commission. Morgan Stanley self-reported this issue to the Commission and promptly addressed the problem.

In accepting the Respondent's Offer, the Commission recognizes that throughout the Division of Enforcement's (“Division”) investigation, Morgan Stanley has provided substantial cooperation. Notably, with respect to certain reporting deficiencies, after Morgan Stanley became aware of them, it proactively provided substantial and detailed information regarding the

scope and duration of the deficiencies. During the course of its own internal investigation, Morgan Stanley became aware of an additional deficiency, and self-reported that deficiency to the Commission. Morgan Stanley promptly remediated these reporting deficiencies, and proactively implemented processes to ensure similar problems will not recur. The civil monetary penalty imposed has been significantly reduced on account of this cooperation.

## **B. RESPONDENT**

Morgan Stanley is a registered FCM and, as such, is required under Part 17 of the Regulations, 17 C.F.R. pt. 17 (2017), to report futures and options positions that exceed certain thresholds.

## **C. FACTS**

### **1. Morgan Stanley's Part 17 Reporting Problems Relating to Certain CME Contracts**

On September 15, 2015, as a result of inquiries from Commission personnel regarding its data submissions, Morgan Stanley identified a software problem causing omissions from its Large Trader reports. The omissions were caused by reporting software that, in some instances, failed to account for reportable positions in futures or options that, considered in isolation, would have been below the threshold for required reporting. However, these positions were, in fact, reportable because of their linked transactions (e.g., other transactions in the same commodity) above the reportable threshold.

This issue affected reporting of transactions in CME contracts between at least January 2009 and September 2015. In total, reporting regarding at least 28 CME contracts were affected by this software error. During the Relevant Period, thousands of line items of information were omitted, or inaccurately reported, to the Commission. As a result, Morgan Stanley failed to report, on a daily basis, futures and options transactions that should have been reported.

### **2. Morgan Stanley's Part 17 Reporting Problems Relating to MGEX Contracts**

In 2015, Morgan Stanley also discovered, and reported to the Commission, an additional software problem causing a failure to report transactions in MGEX contracts. As with the CME software failure, this issue was discovered by Morgan Stanley as a result of inquiries by Commission staff. The MGEX glitch caused Morgan Stanley to fail to report any of its customers' reportable MGEX contract transactions between 2007 and 2015, including reportable transactions in wheat and apple juice futures and apple juice options.

As a result, during the eight years proceeding September 2015, when this software issue was finally corrected, there were hundreds of days on which reportable MGEX wheat and apple juice transactions were not reported.

### **3. Morgan Stanley's Part 17 Reporting Problems Relating to Certain Incorrectly Aggregated Positions**

In 2016, after the CME and MGEX reporting issues had been corrected, Commission personnel identified another software failure causing omissions in Morgan Stanley's Large Trader reports.

Specifically, Morgan Stanley's reporting software did not aggregate certain options, exercising into the same future, held by the same account, as required under Commission rules. Under the applicable Commission rules, such options should have been aggregated and, if they exceeded the reportable threshold, reported. During 2016, this software glitch caused data to be incorrectly reported to the Commission.

In addition, in 2017, Morgan Stanley discovered, and self-reported to the Commission, a further problem involving incorrect coding of 212 active client accounts. As a result of this coding error, certain positions held in these client accounts were not correctly aggregated and, consequently, were not reported consistent with Part 17 requirements.

#### **IV.**

### **LEGAL DISCUSSION**

The Act and the accompanying Regulations require registered FCMs such as Morgan Stanley to report certain futures and options positions to the Commission. *See* Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulations 15.00-15.04 and 17.00, 17 C.F.R. §§ 15.00-15.04, 17.00 (2016). Reports made by FCMs pursuant to these regulations, commonly referred to as "Large Trader" reports, are used by the Commission to evaluate potential market risks and monitor compliance with Commission requirements.

Specifically, pursuant to Section 4g(a) of the Act and Regulations 15.00-15.04 and 17.00(a), FCMs are required to submit a report for each business day regarding futures and options positions that exceed specified, reportable thresholds. The Regulations in particular delineate (1) what positions should be reported and (2) when a position is reportable.

Additionally, the Regulations 15.00(p) and 15.04 specify that when a futures or options position is reportable, all related futures and or options positions in the applicable trading account must also be reported by the FCM, even if the size of these related positions is below the normal threshold for required reporting.

The Regulation 15.00(p), also provides guidance regarding how positions in options, that exercise in the reportable futures contracts held by the same account, should be aggregated for reporting purposes.

Inherent in these requirements is the fundamental notion that all reports made to the Commission pursuant to Section 4g(a) must be accurate. *See, e.g., In re J.P. Morgan Securities LLC*, [2014-2015 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 33, 209, at 76,107 (CFTC July 29, 2014) (consent order); *In re Bielfeldt*, CFTC No. 96-1, 1999 WL 68636, at \*8 (CFTC Feb.

12, 1999). The accuracy of the reports is critical to the Commission's mission for numerous reasons, including surveillance of the markets to detect disruptions to market integrity, enforcement and calculating statistics that the Commission publishes to enhance market transparency. *See, e.g., In re Interactive Brokers LLC*, [2012 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶32,253, at 70,316 (CFTC July 25, 2012) (consent order); *In re Newedge USA, LLC*, [2014-2015 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶33,206, at 76,088 (CFTC Jan. 9, 2012) (consent order).

During the Relevant Period, Morgan Stanley failed to accurately report transactions in CME and MGEX contracts and also, at times, failed to correctly aggregate certain options that were exercising in the same future. Accordingly, Morgan Stanley violated Section 4g(a) of the Act and Regulation 17.00.

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulation 17.00, 17 C.F.R. § 17.00 (2017).

## VI.

### OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a violation of or enforcement of this Order;
- C. Waives:
  - (1) the filing and service of a complaint and notice of hearing;
  - (2) a hearing;
  - (3) all post-hearing procedures;
  - (4) judicial review by any court;
  - (5) any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - (6) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated

by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2017), relating to, or arising from, this proceeding;

- (7) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, (“SBREFA”), Pub. L. No. 104-121, §§ 201-53, 110 Stat 847-874 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  - (8) any claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
- (1) makes findings by the Commission that Respondent violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulation 17.00, 17 C.F.R. § 17.00 (2017);
  - (2) orders Respondent to cease and desist from violating Section 4g(a) of the Act and Regulation 17.00;
  - (3) orders Respondent to pay a civil monetary penalty in the amount of three hundred and fifty thousand dollars (\$350,000), plus post-judgment interest; and
  - (4) orders Respondent to comply with the conditions, undertakings, and representations consented to in the Offer and set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VII.

### ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondent shall cease and desist from violating Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulation 17.00, 17 C.F.R. § 17.00 (2017).
- B. Civil Monetary Penalty
  1. Respondent shall pay a civil monetary penalty in the amount of three hundred and fifty thousand dollars (\$350,000) (the “CMP Obligation”). If the CMP Obligation is not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the

Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

2. Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, Respondent shall make the payment payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov

If payment is to be made by electronic transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

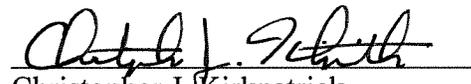
- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
  1. Public Statements: Respondent agrees that neither Respondent nor any of Respondent's successors, assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under their authority or control understand and comply with this agreement.
  2. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division"), and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter

of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to:

- a. preserve and produce to the Commission in a responsive and prompt manner, as requested by the Division's staff, all non-privileged documents, information, and other materials wherever located, in the possession, custody, or control of Respondent;
  - b. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;
  - c. appoint Respondent's attorney as agent to receive service of such notices and subpoenas; and
  - d. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff;
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**The provisions of this Order shall be effective on this date.**

By the Commission.

  
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Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: November 2, 2017