

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005000907401

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: Morgan Stanley DW Inc., Respondent
[CRD No. 7556]
and
Kenneth S. Carberry, III, Respondent
General Securities Representative and Equity Trader
[CRD No. 2717703]

Pursuant to Rule 9216 of NASD Code of Procedure, Morgan Stanley & Co. Incorporated, the successor to Morgan Stanley DW Inc. (the latter referred to herein as "MSDW" or the "firm"), and Kenneth S. Carberry, III ("Carberry"), submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Morgan Stanley & Co. Incorporated, MSDW, or Carberry alleging violations based on the same factual findings.

We understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. We 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. Nothing in this provision affects our testimonial obligations or right to take legal or factual positions in litigation or other proceedings in which NASD is not a party.

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We also understand that our experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

MSDW became a NASD member on January 26, 1937. During all periods mentioned herein, MSDW was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD, which registration and membership remain currently in effect.

MSDW has recently been the subject of a relevant formal disciplinary action:

On June 28, 2004, a Letter of Acceptance, Waiver and Consent was accepted whereby the firm was found to have violated Municipal Securities Rulemaking Board Rules G-17 and G-30(a) for having failed to ensure that customer municipal security liquidation transactions were liquidated at aggregate prices that were fair and reasonable when enlisting the services of a broker's broker. The firm was censured, fined \$20,000.00 and ordered to pay restitution in the amount of \$18,312.50 plus interest.¹

Carberry entered the securities business on October 23, 1996 as a General Securities Representative with a member of NASD. During all periods mentioned herein, Carberry was associated with member firm MSDW and was registered with NASD under Article V of the By-Laws as a General Securities Representative. Carberry remains with the firm's successor, Morgan Stanley & Co. Incorporated, and is currently registered as a General Securities Representative and as an Equity Trader. Carberry has not previously been the subject of a formal disciplinary action by any regulatory body.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- B. To be notified of the Formal Complaint 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

¹ NASD Case No. C05040040 (June 28, 2004).

- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, we specifically and voluntarily waive any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, 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 acceptance or rejection of this AWC.

We further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, 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.

II.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, prior to a hearing and without adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. Facts

From February 1, 2001, through June 22, 2001, ("the relevant period") corporate fixed income trader Kenneth S. Carberry, III, employed by MSDW in the firm's main office in New York, New York, purchased and sold Kemper Lumbermens Mutual Casualty Company Surplus 9.15% Notes, due July 1, 2026 ("9.15% Notes"), and Kemper Lumbermens Mutual Casualty Surplus 8.30% Notes due December 1, 2037 ("8.30% Notes") (collectively, "the Notes") through the firm's trading account.

During the relevant period, MSDW sold a total face value of \$36,012,000 of the 9.15% Notes to retail customers at prices ranging from \$98.50 to \$103.000. During the same period, MSDW maintained various levels of trading positions of these securities, with the firm's cost basis ranging from \$88.222 to \$93.227. The markups on these transactions -- measured as the percentage gross spread between the price at which a customer buy trade was executed (including both the trading desk spreads and sales commissions) and the firm's cost basis -- ranged from 6.19% to 16.18%. The total amount of such markups was \$4,095,499 on the sale of the 9.15% Notes. There were a total of 1,633 sale transactions with markups in excess of 5%, of which 1,221 had markups greater than 10%.

Also during the relevant period, MSDW sold a total face value of \$23,114,000 of the 8.30% Notes to retail customers at prices ranging from \$90.00 to \$95.50. During the same period, the firm maintained various levels of trading positions of these securities, with the firm's cost basis ranging from \$79.757 to \$87.476. The markups on these transactions ranged from 4.03% to 17.86%. The total amount of such markups was \$2,425,138 on the sale of the 8.30% Notes. There were a total of 1,174 sale transactions with markups in excess of 5%, of which 646 had markups greater than 10%.

The firm's total markups on the sale of the 9.15% Notes and the 8.30% Notes during the four-month period was \$6,520,638, of which \$3,927,646 represented the amount of the markups that exceeded 5%. Certain of the firm's purchases and the firm's sales to customers were same-day trades.

As the trader, Carberry established the price at which the Notes would be offered to the firm's retail customers. That offering price, to which a sales commission was added in most instances, was subject to the trading desk manager's approval. However, MSDW procedures failed to require the supervisor to review the mark-up using the prevailing market price, which in this case, was best evidenced by the firm's cost basis. Absent some proof that some other indicator better approximates the prevailing market price, mark-ups should be computed from the firm's own contemporaneous cost.² Moreover, the pricing of the subject securities was supervised by an individual who was not registered as a General Securities Principal.

2. Violations

- a. During the period from on or about February 1, 2001, through on or about June 22, 2001, MSDW, acting through Kenneth S. Carberry, III, executed 1,633 sales of Kemper Lumbermens Mutual Casualty Company Surplus 9.15% Notes, and 1,174 sales of Kemper Lumbermens Mutual Casualty Company Surplus 8.30% Notes to retail customers. These transactions were executed with mark-ups ranging from 5.88% to 17.86%, resulting in prices that were both excessive and unfair.

To the extent these mark-ups exceeded 10%, such acts, practices, and conduct constitute separate and distinct violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, and NASD Conduct Rules 2110, 2440 and IM-2440 by MSDW and Kenneth S. Carberry, III.

² In re Alstead, Dempsey & Co., 47 S.E.C. 1034, 1984 SEC LEXIS 3583; In re Century Capital Corp., 52 SEC Dock. 2023, Sec. Exch. Act. Rel. 31203 (September 21, 1992), aff'd, 22 F.3d 1184 (DC Cir. 1994); In re Michael Novick, 57 SEC Dock. 1416-781; Sec. Exch. Act. Rel. 34640, n.3, (September 2, 1994).

To the extent these mark-ups were 10% or less, such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110, 2440 and IM-2440 by MSDW and Kenneth S. Carberry, III.

- b. During the period from on or about February 1, 2001, through on or about June 22, 2001, MSDW failed and neglected to establish, maintain and enforce firm written supervisory procedures, reasonably designed to achieve compliance with the statutes and rules providing that the prices charged for corporate fixed income securities were fair and reasonable.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010(a) and (b) by MSDW.

- c. During the period from on or about February 1, 2001, through on or about February 23, 2005, MSDW permitted an individual to act in the capacity of a general securities principal without his being registered with NASD in that capacity. Specifically, MSDW allowed this individual to supervise the firm's trading activities in credit-sensitive taxable fixed income securities including: high yield bonds, convertible bonds, investment grade bonds and preferred securities.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Membership and Registration Rule 1022 and NASD Conduct Rule 2110 by MSDW.

- B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine in the amount of \$1,500,000 to be assessed against the firm's successor, Morgan Stanley & Co. Incorporated, of which \$40,000 is joint and several against Carberry. Additionally, Carberry is to be suspended for 15 business days from association with any member of NASD in any capacity.

An order for Morgan Stanley & Co. Incorporated to pay restitution to the customers listed on Attachment A hereto in the amount of \$3,927,646.89, plus interest in the amount of \$720,925.91 to June 1, 2007.

Provided, however, that as to any one or more of the customers for the transactions listed in Attachment A hereto, in lieu of the payment of restitution amounts ordered pursuant to this disciplinary action, Morgan Stanley & Co. Incorporated may submit proof of a settlement between the firm and such customer(s), of satisfaction of any arbitration awards or civil judgments in favor of such customer(s) and against the firm resulting from claims arising from or encompassing the matters addressed in this AWC. The imposition of a restitution order or any other monetary sanction herein does not preclude customers from pursuing their own actions to obtain restitution or other remedies. Satisfactory proof of payment of the restitution amounts, settlement

amounts, arbitration awards or civil judgments shall be provided to the NASD staff no later than 120 days after acceptance of this AWC. If for any reason Morgan Stanley & Co. Incorporated cannot locate any customer identified for restitution after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Morgan Stanley & Co. Incorporated shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 NASD, nor does it reflect the views of NASD or its staff.
- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

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Date

Morgan Stanley & Co. Incorporated

By: _____

[Name and Title]

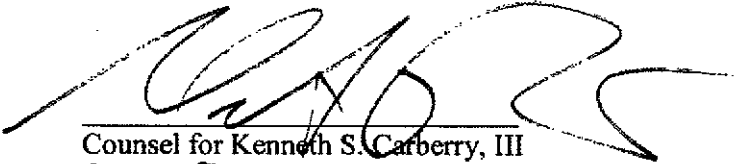
Reviewed by:

Counsel for Respondent
Morgan Stanley & Co. Incorporated

07-16-07
Date

K. S. Carberry, III
Kenneth S. Carberry, III, General Securities
Representative and Equity Trader

Reviewed by:



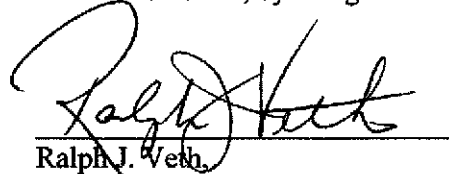
Counsel for Kenneth S. Carberry, III
Stein Riso Mantel, LLP

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Accepted by NASD:

August 1, 2007
Date

Signed on behalf of the
Director of ODA, by delegated authority



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NASD District Director
Keith E. Hinrichs
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Attachment: Election of Payment Forms