

**NASDAQ BX, Inc.**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. 2021.11.363**

TO: Nasdaq BX, Inc.  
Nasdaq Enforcement Department

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

Pursuant to Rule 9216 of Nasdaq BX, Inc. (“BX” or the “Exchange”) Code of Procedure, Morgan Stanley & Co, LLC (the “Firm” or “Respondent”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below.<sup>1</sup> This AWC is submitted on the condition that, if accepted, BX 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 BX, or to which BX 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 BX:

**BACKGROUND AND RELEVANT DISCIPLINARY HISTORY**

The Firm has been a BX Options member since June 29, 2012. The Firm provides services to corporate broker-dealer clients and institutional investors, operating thirty-eight branch offices and employing approximately 4,300 registered representatives.

On April 27, 2022, the Firm consented to a censure and a \$225,000 fine where it deleted approximately 28,109 expiring over the counter (“OTC”) options positions from its reports to the Large Options Positions Report (“LOPR”) and because its Written Supervisory Procedures (“WSPs”) did not include testing for the deletion of expiring OTC options positions in violation of FINRA Rules 2360(b)(5), 3110, and 2010 (FINRA Matter No. 2020067153801).

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<sup>1</sup> Series 9000 of The Nasdaq Stock Market LLC (“Nasdaq”) Rules are incorporated by reference into BX Rule General 5, Section 2, and are thus BX Rules and thereby applicable to BX members, member organizations, persons associated with member organizations, and other persons subject to the Exchange’s jurisdiction. Securities Exchange Act Release No. 88938 (May 15, 2020), 85 FR 33235 (May 26, 2020) (SR-BX-2020-009).

## SUMMARY

Between January 1, 2020 and December 31, 2021 (the “Review Period”), on 5,063 occasions, the Firm failed to provide information in its LOPR submissions that matched the Options Clearing Corporation’s (“OCC”) options contracts positions. The Firm also failed to establish adequate supervisory systems and controls that were reasonably designed to prevent and detect, insofar as practicable, violations of BX Rules concerning LOPR reporting. Based on the foregoing, the Firm violated BX Rule Options 9, Section 16 and BX Rule General 9, Sections 1(a) and 20.

## FACTS AND VIOLATIVE CONDUCT

1. LOPR data is used extensively by self-regulatory organizations to identify holders of large options positions who may be, among other things, attempting to manipulate the market or otherwise violate securities laws and regulations.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking the close, among other things.
3. In addition, during the Review Period, BX Rule Options 9, Section 16 required broker dealers to “maintain and furnish to BX Regulation all reports required by the applicable rule of any Options Exchange of which it is a Member with respect to reports related to position limits.”
4. In April 2018, the firm implemented a new LOPR system, but the system improperly deleted certain expiring options positions on their expiration dates. As a result, during the Review Period, the Firm failed to provide accurate LOPR data because the information in its LOPR submissions did not match the OCC options contracts positions in 5,063 instances.
  - a. These discrepancies were caused because the Firm’s reporting logic was not set to identify positions that were taken down following the close of business on expiration and, as a result, the Firm failed to report 5,063 long-side listed options positions with daily, weekly, and flex expiration dates.
5. The conduct described in paragraph 4 constitutes violations of BX Rule Options 9, Section 16.
6. BX Rule General 9, Section 20, required members to establish and maintain WSPs, and a system for applying such procedures that is reasonably designed to ensure compliance with applicable securities laws, regulations, and exchange rules.
7. BX Rule General 9, Section 1(a), required members to engage in conduct consistent with just and equitable principles of trade.
8. During the Review Period, the Firm failed to establish adequate supervisory systems and

controls that were reasonably designed to prevent and detect, insofar as practicable, violations of BX rules concerning LOPR reporting. Although the Firm had WSPs and a supervisory system in place with respect to LOPR reporting, it did not review for long options positions with daily, weekly or flex expiration controls and did not detect the discrepancies described in paragraph 4 above.

9. The conduct described in paragraph 8 constitutes violations of BX Rule General 9, Sections 20 and 1(a).

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

1. A censure;
2. A total fine of \$47,000 (consisting of a \$30,000 fine for options reporting violations and a \$17,000 fine for supervision violations).<sup>2</sup>

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

Respondent 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 BX Enforcement Department staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under BX's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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
- D. To appeal any such decision to the Exchange Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

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<sup>2</sup> The Firm entered into a separate settlement agreement for violations arising from the same conduct on Nasdaq Phlx, LLC ("Phlx"). The Firm consents to a fine payable to Phlx and BX totaling \$70,000.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, 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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of BX Rule 9143 or the separation of functions prohibitions of BX 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.

### **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 BX Enforcement Department and the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to BX Rule 9216;
- 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 BX or any other regulator against the Firm;
  2. BX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with BX Rule 8310 and IM-8310-3;<sup>3</sup> 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 BX, or to which BX is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions in litigation or other legal

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<sup>3</sup> On May 1, 2020, Series 8000 of Nasdaq Rules were incorporated by reference into BX Rule General 5, Section 1, and are thus BX Rules and thereby applicable to BX members, associated persons, and other persons subject to BX's jurisdiction.

proceedings in which BX 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 BX, nor does it reflect the views of BX 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.

5/6/24  
Date

Morgan Stanley & Co, LLC  
Respondent

By: [Signature]  
Print Name: Samuel Schmeider  
Title: authorized signatory

Reviewed by:

\_\_\_\_\_  
[insert signatory name]  
[insert signatory title]

Accepted by Nasdaq BX, Inc.:

5/7/24  
Date

[Signature]  
Ann Brickley  
Senior Enforcement Counsel  
Nasdaq BX, Inc. Enforcement Department

Signed on behalf of Nasdaq BX, Inc., by  
delegated authority from the Director of  
ODA