

STATE OF NEW JERSEY  
BUREAU OF SECURITIES  
P.O. Box 47029  
Newark, New Jersey 07101  
Telephone (973) 504-3600

IN THE MATTER OF:

MORGAN STANLEY SMITH BARNEY,  
LLC  
(CRD# 149777)

Respondent.

**CONSENT ORDER**

Pursuant to the authority granted to Abbe R. Tiger, Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law"), including N.J.S.A. 49:3-59(b) and N.J.S.A. 49:3-70.1, and certain regulations, and based on a review of the relevant facts, including documents obtained during the investigation by the New Jersey Bureau of Securities ("Bureau"), the Bureau Chief hereby finds that there is good cause and it is in the interest of preserving resources and without prejudicing the public interest, and Morgan Stanley Smith Barney, LLC ("MSSB") agrees to resolve any and all issues in controversy in this matter on the terms set forth in this Administrative Consent Order ("Consent Order").

**WHEREAS**, the Bureau is the State agency with the responsibility to administer and enforce the Securities Law; and

**WHEREAS**, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Securities Law; and

**WHEREAS**, the Bureau has conducted an investigation into certain activities occurring in the Short Hills, New Jersey branch office of MSSB during the period of January 2008 through April 2009; and

**WHEREAS**, MSSB and the Bureau Chief wish to resolve these issues without the expense and delay that formal administrative proceedings would involve; and

**WHEREAS**, MSSB consents to the form and entry of this Consent Order. Accordingly, MSSB waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and
- b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order; and

**WHEREAS**, MSSB without admitting or denying the facts or findings herein, agrees that solely for the purposes of settling this matter, or any future proceedings by the Bureau, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to N.J.S.A. 52:14B-1 et seq.; and

**WHEREAS**, this Consent Order concludes the investigation and action by the Bureau Chief and any civil or administrative action that could be commenced, pursuant to the Securities Law, on behalf of the Bureau Chief, as it relates to seeking civil monetary penalties or other relief against MSSB for the conduct described herein.

#### **FINDINGS OF FACT**

1. MSSB (CRD# 149777) has been registered with the Bureau as a broker-dealer since May 2009 and notice filed as an investment adviser with the Bureau since June 2009.<sup>1</sup> MSSB is headquartered in New York.
2. Stephen Sussman (CRD# 2954472), residing in Springfield, New Jersey, has been registered with the Bureau as an agent

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<sup>1</sup> As of June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co., Incorporated and the Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney Holdings, LLC, a new joint venture. The joint venture owns Morgan Stanley Smith Barney LLC ("MSSB") which is a newly formed registered investment adviser and broker-dealer.

and/or investment adviser representative of MSSB and its predecessor companies since 1999.

3. H.M. and A.M. ("the Ms"), husband and wife, are an elderly couple who divide their time between their residences in New Jersey and England. The Ms receive all mail, including all account statements from MSSB at their home in New Jersey. No mail is forwarded to their home in England. The Ms have been MSSB clients for more than 30 years.

4. In January 2008, Sussman was assigned the Ms' accounts.

5. In April 2008, the Ms provided MSSB copies of durable Power of Attorney ("POA") each had executed. Both POAs assigned their son, H.M. Jr., broad power over their affairs. The POAs were originally signed in 2005 as a precaution against sudden death or incapacity of the Ms.

6. In early March 2009, while in New Jersey and reviewing their account statements, the Ms discovered what they believed to be unauthorized trades made between January 2008 and March 2009.

7. On March 17, 2009, Sussman received a complaint via email from H.M. Jr. alleging unauthorized trades in his parents' accounts.

8. MSSB and Sussman contend that all transactions were authorized by H.M. Jr. pursuant to the POA.

9. During the relevant period, MSSB's Compliance Manual

§7.4.2.2.1, "Third Party Agent Trading Authority," provided that: "When a client seeks to grant trading authority to a third party agent, such as... a family member... the Trading Authorization: Non-Morgan Stanley Financial Advisor Form must be signed and dated by the client and the third party agent and approved by you before the Firm may accept orders from the third party agent."

10. During the relevant period, MSSB Compliance Manual §7.4.2.2.2, "Powers of Attorney," provided that: "The Firm will not accept a power of attorney from a client as a grant of trading authority if the client is capable of signing a Trading Authorization: Non-Morgan Stanley Financial Advisor Form. A  *durable*  (italics in the original) power of attorney is permissible only if the client is already incapacitated and cannot execute the Trading Authorization Form".

11. During the relevant period, MSSB's Compliance Manual §7.5.8.2, "Powers of Attorney," provided that: "The Firm will not accept a power of attorney if a client is capable of signing an Authorization of Agent (Non-Morgan Stanley Employee) Form".

12. MSSB did not obtain the required Trading Authorization Form from the Ms. No evidence of incapacity by either of the Ms was demonstrated or presented to MSSB. MSSB failed to comply with its own written policies and procedures from the relevant time period for accepting and transacting business pursuant to a

POA.

**CONCLUSIONS OF LAW**

Solely for the purpose of this Consent Order, Morgan Stanley Smith Barney, LLC consents to the Bureau Chief making the following Conclusions of Law:

1. Morgan Stanley Smith Barney, LLC did not make and keep accurate books and records, in violation of N.J.S.A. 49:3-59(b) by failing to obtain signed "Trading Authorization: Non-Morgan Stanley Financial Advisor Forms" and "Trading Authorization: Non-Morgan Stanley Financial Advisor Forms" as required by the MSSB Compliance Manual §7.4.2.2.2 and §7.4.2.2.1 respectively.

**REMEDIAL MEASURES**

1. MSSB fully cooperated with the Bureau's investigation. As part of the cooperation, MSSB settled the complaint brought by the M's and paid to them \$115,384.62 in restitution.
2. MSSB has revised its supervisory procedures with respect to powers of attorney to avoid future occurrence of this type of incident.

THEREFORE, it is on this 12<sup>TH</sup> day of ~~March~~ <sup>APRIL</sup> 2012, hereby **AGREED AND ORDERED** that, MSSB will CEASE AND DESIST from future violation of the Securities Law; and it is further **ORDERED** that, MSSB is assessed a civil monetary penalty in the amount of \$40,000 with \$10,000 of this amount suspended based upon the remedial measures above. The remaining civil penalty of \$30,000 is due and payable by check or wire transfer within ten days of the entry of this Consent Order to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6<sup>th</sup> Floor, Newark, New Jersey 07102, or to be received at "Bureau of Securities," P.O. Box 47029, Newark, New Jersey 07101. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

#### **GENERAL PROVISIONS**

1. Pursuant to N.J.A.C. 1:1-19.1(d) this Consent Order shall be deemed the final decision as to MSSB.
2. MSSB shall cooperate fully and promptly with the Bureau and the Office of the Attorney General in any pending or subsequently initiated inquiry, investigation, proceeding or other process relating to the subject of this Consent Order, which shall, without respect to registration status with the

Bureau, voluntarily include production of documents, appearance at times and locations requested by the Bureau, and disclosure of any information relevant to the subject matter of the Consent Order. Failure to perform under the conditions of this Consent Order shall be deemed a failure to cooperate under the Securities Law, and/or entitle the Bureau to specific performance, and any other available remedies.

3. Nothing in this Consent Order is intended to limit or supersede any authority or remedy available to the Bureau Chief under the Securities Law.
4. No employee or official of, or person representing, the Bureau or the State of New Jersey has made any additional promise or representation to MSSB regarding this Consent Order.
5. This Consent Order shall not bind any person not a party thereto. Each of the undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.
6. MSSB agrees that solely for the purpose of this matter or future proceedings to enforce this Consent Order that this Consent Order shall have the same effect as if proven and ordered after a full hearing pursuant to N.J.S.A. 52:14B-1 et seq.

NEW JERSEY BUREAU OF SECURITIES

BY: Abbe R. Tiger 4/12/12  
Abbe R. Tiger  
Chief

The undersigned counsel for  
MSSB consents to the  
form and entry of this Consent Order.

By:  Dated: 4/4/12  
Karl Marquardt  
Morgan Stanley Smith Barney  
485 Lexington Avenue  
11<sup>th</sup> Floor  
New York, NY 10017