

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Morgan Stanley Dean Witter, Inc.

)
) ORDER TO CEASE AND DESIST
)
) COM03-018, COM 03-018A,
) INV03-027

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 421-B:26-a.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10, I(b)(2), the Secretary of State has the authority to deny, suspend, or revoke any license or application of a broker-dealer if he finds that it is in the public interest and that the broker-dealer has willfully violated or failed to comply with any provisions of RSA 421-B, or the Securities Act of 1933, the Securities Exchange Act of 1934, or any rule under any of such statutes.

COPY

Pursuant to RSA 421-B:10, I(a) and RSA 421-B:10, I(b)(2), the Secretary of State has the authority to deny, suspend, or revoke any license or application of a broker-dealer if he finds that it is in the public interest and that the broker-dealer has failed to reasonably supervise its agents.

Pursuant to RSA 421-B:10, VI, the Secretary of State may, upon hearing and in lieu of, or in addition to any order to suspend or revoke any license, assess an administrative fine up to \$2,500.00 for each violation of the New Hampshire Securities Act.

Pursuant to RSA 421-B:26, V, the Secretary of State may, in addition to any other penalty provided by RSA 421-B, upon notice and hearing, enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B.

NOTICE OF RIGHT TO REQUEST A HEARING

The above named respondent has the right to request a hearing on this order to cease and desist, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the respondent, or by the duly authorized agent of the above named respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:23, I, if respondent fails to request a hearing relative to this order within 30 calendar days of receipt of this order, respondent shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, and within a reasonable time after such hearing, the

Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstances require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated June 17, 2004 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

It is hereby ORDERED, that:

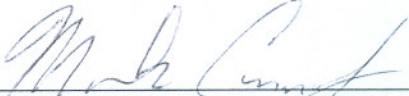
1. The Respondent is hereby ordered to immediately cease and desist from further violations of RSA 421-B;
2. The Respondent shall show cause why its New Hampshire broker-dealer license should be suspended or revoked;
3. The Respondent shall pay an administrative fine in the amount of \$500,000;
4. The Respondent shall make a written offer to repurchase from investors, the securities described in the Staff Petition, and in such manner as described in said Petition.
5. The Respondent shall amend its account arbitration provisions to comply with RSA 421-B.

6. The Respondent shall retain an independent consultant to review Respondent's compliance and policy procedures currently in place at all N.H. branch office locations, and conduct said review in accordance with the requirements described in the Staff Petition.
7. The Respondent shall pay the Bureau of Securities for all costs associated with its investigation.

Failure on the part of the Respondent to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondent.



SIGNED,
WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:



MARK CONNOLLY, DEPUTY
SECRETARY OF STATE, AND
DIRECTOR, BUREAU OF SECURITIES

Dated: 6/18/04

**STATE OF NEW HAMPSHIRE
BUREAU OF SECURITIES REGULATION
DEPARTMENT OF STATE
CONCORD, NEW HAMPSHIRE**

_____)	
)	
STAFF PETITION FOR RELIEF)	
IN THE MATTER OF:)	
)	
MORGAN STANLEY DEAN WITTER, INC.)	COM03-018, 03-018A
)	INV03-027
)	
RESPONDENT)	
_____)	

STATEMENT OF FACTS

I. The Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as "the Bureau"), hereby petitions the Director, and makes the following statements of fact:

1. MSDW, is a broker-dealer firm with an address on record with the Bureau of 1601 Broadway, New York, New York 10019. MSDW is engaged in the business of buying and selling securities for the accounts of others. MSDW is registered with the Securities and Exchange Commission ("SEC"), is a member of the National Association of Securities Dealers ("NASD"), and New York Stock Exchange ("NYSE"), and many of its broker-dealer registration records are kept on the NASD's Central Registry Depository system ("CRD"). MSDW's CRD number is 7556. Agent, (hereinafter referred to as "Agent"), was employed as a registered representative of MSDW from 1998 to the time of his termination in 2001, (hereinafter the "relevant time period"). Agent was an associated person of the NASD during the relevant time period.

2. According to MSDW records, Agent was hired by MSDW as an Account Executive, (hereinafter referred to as "AE"). Upon his hiring, Agent signed a MSDW statement confirming that he reviewed and would comply with the MSDW Account Executive Compliance Guide. Agent worked out of the Manchester, New Hampshire branch office which was designated as branch 419. Branch office 419 was considered part of MSDW's northeast region which was designated region 8. The Manchester branch office had approximately 20 broker-dealer agents in its employ. The Manchester branch office was supervised by the Manchester branch manager who in turn was supervised by the Portsmouth, New Hampshire branch manager. The Portsmouth branch office had approximately 27 broker-dealer agents, and was

designated branch 418. Both managers were under the supervised of regional directors who were under the supervision of national directors. Branch offices were required to operate in accordance with the MSDW Branch Manager's Manual.

3. Central to MSDW's written compliance policies was the premise that MSDW AEs have a reasonable basis to recommend the purchase of stocks. AEs were to recommend only those stocks that were suitable for trading and properly blue skied. A stock that was blue skied would meet the regulatory requirements in the state with jurisdiction over the transaction. Clients wanting to make trades in penny stocks, (stocks having a price of \$2.00 or less), were to be questioned by the AE, and if the client persisted, the AE was to receive the approval of management. When a AE placed a stock order, the computerized order screen would indicate to the AE if the stock order was restricted. Stocks that were not followed by MSDW research were not flagged by the ordering system. A separate screen accessed by a AE referred to as the AdvantageE Workstation would indicate to the AE if that stock was blue skied, but that information was not automatically provided to the AE. The AE had to take affirmative steps to determine whether the stock was blue skied. An order for an unregistered non-exempt stock could be executed by the AE without accessing the AdvantageE Workstation. MSDW policy required that the solicited or unsolicited nature of each trade transaction had to be properly reflected on the company's books and records, and all order tickets completed by AEs had to be truthful and accurate. MSDW policy was that trades entered by the AE, on the accounts of the AE, had to be deemed solicited. CAR (Customer Activity Report) and TAR (Trade Activity Reports) are tools used by managers to regularly monitored client accounts for trading tolerances such as number of trades, commissions, average equity, average market value, turnover, commissions verses equity, margin interest, and commission and margin as a percent of average equity.
4. During the relevant time period, Agent, solicited his customers to purchase unregistered nonexempt stocks such as Viewcast.com, Inc., Ivoice.com, Inc., CT Holdings, Inc, and Illinois Superconductor Corp., that were not suitable for trading. During the relevant time period, Agent executed at least 35 trades of the aforementioned stocks. Some of the trades were executed when these stocks were penny stocks, and were executed without management approval. Upon information and belief, Agent marked order tickets as unsolicited trades when in fact they were solicited. Through out the year 1999, MSDW management became aware of instances when Agent's trading activity was not in compliance with firm policy, and Agent was warned about excessive trading and free riding in his own accounts and in accounts held jointly with his wife, and his trading was restricted in April of 2000. Despite these events, and the generation of CAR reports which identified the improper stock trading, MSDW management continued to allow Agent to execute stock trades that were unsuitable, unregistered and nonexempt, and in violation of firm policy and procedure. Further, in the summer of 2000, the Manchester branch office manager signed an accession agreement with an issuer as custodian for one of Agent's clients, and that transaction was later rescinded as unregistered and nonexempt.

5. During 2002, MSDW embarked upon an effort to increase sales by setting national sales goals for certain proprietary funds and variable annuity contracts. Branch manager compensation was tied directly to the profitability of their branches. As a result of the pressure for increased sales, managers devised contests with names such as "Find The Right Fit", "The Steak-a-thon", and "Mid-year Marathon" to promote the sale of proprietary funds and products. These contests offered and distributed cash and non-cash compensation to MSDW agents not based on total sales, and not equally weighted for all products. Upon information and belief, the Manchester and Portsmouth branch offices each received \$10,000 in business development awards. The New Hampshire branch offices of MSDW not only participated in these contests, but in particular, the Manchester and Portsmouth branch offices devised and requested authority from regional managers to conduct their own contest termed, "The Steak-a-thon", whereby agents located in those branches were awarded steaks based on the dollar volume of sales of these certain MSDW proprietary products. Proprietary products of \$10,000 were worth one steak, proprietary products of \$30,000 were worth two steaks, and proprietary products of \$100,000 were worth three steaks. During its investigation, the Bureau discovered at least 35 instances of steak awards to New Hampshire MSDW broker-dealer agents. Further, MSDW sought to hide the activity of these contests from the public by instructing their agents to not put any communication about the contests in writing. Further, MSDW failed to disclose these illegal contests which was material information for customers to have when making their decision to buy the proprietary products versus some other non-proprietary product. These contests were in violation of NASD Rules 2820 and 2830.
6. Incumbent upon every broker-dealer is the obligation to reasonably supervise their agents, and establish and maintain a system to supervise the activities of the dealership to ensure compliance with applicable securities laws and regulations. MSDW failed to adequately supervise its New Hampshire broker-dealer agents by allowing Agent's improper trading, by allowing the sale of securities that were not properly blue skied, by failing to devise a system of compliance for sales contests, and by secreting and deliberately failing to act to prohibit the illegal contest activity in the New Hampshire branch offices.
7. In opening a brokerage account with MSDW, a New Hampshire client is required to fill out account opening forms and agree to the arbitration of controversies between the client and MSDW. MSDW has thousands of New Hampshire customer accounts. In its account opening forms, MSDW required its New Hampshire clients to agree to provisions which waived the application of New Hampshire securities laws in arbitration hearings, and instead required that New York law apply to those hearings. This provision is not binding as New Hampshire law prohibits provisions which waive the application of and compliance with RSA 421-B.

STATEMENTS OF LAW

II. The Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder (hereinafter referred to as the Act):

1. MSDW and its agents are persons within the meaning of RSA 421-B:2,XVI.
2. MSDW is a broker-dealer within the meaning of RSA 421-B:2,III.
3. The above mentioned stocks, and mutual funds products, are securities as defined by RSA 421-B:2.
4. Agent was a registered person associated with a broker-dealer within the meaning of RSA 421-B:2,II.
5. Pursuant to RSA 421-B:3, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: to employ any device, scheme, or artifice to defraud; to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. MSDW violated this section with respect to the illegal and unregistered stock trading and the illegal sales contests.
6. Pursuant to RSA 421-B:8,X, persons licensed under RSA 421-B to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers ("NASD"), national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. MSDW is subject to this section for failing to abide by NASD Rules and federal securities law regarding sales contests, non-cash compensation, suitability, and supervision.
7. RSA 421-B:10,I(a) and (b)(2) allows the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer has willfully violated or failed to comply with any provision of RSA 421-B, or the Securities Act of 1933, the Securities Exchange Act of 1934, or any rule under any of such statutes. MSDW is subject to this provision for violating and failing to abide by NASD Rules and federal securities law regarding sales contests, non-cash compensation, suitability, and supervision.
8. RSA 421-B:10,I(a) and (b)(2) allows the secretary of state to deny, suspend, or revoke any license or application if he finds that it is in the public interest and that the broker-dealer has failed to reasonably supervise its agents. MSDW is subject to this provision.

9. RSA 421-B:10,III, provides that the Secretary of State may issue an order requiring the persons to whom any license has been granted to show cause why the license should not be revoked. MSDW is subject to this provision.
10. RSA 421-B:10,VI provides that the secretary of state, may upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition to, an order to revoke or suspend any license or application. MSDW is subject to an administrative fine under this section.
11. Pursuant to RSA 421-B:11, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempt under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed as required. MSDW has violated this section.
12. Pursuant to RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule under this chapter, he shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. MSDW is subject to this section.
13. Pursuant to RSA 421-B:25, any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or any rule or order under this chapter in the purchase or sale of any security is void.
14. Pursuant to RSA 421-B:26,III, any person who, either knowingly or negligently, violates any provisions of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. MSDW is subject to a suspension, revocation, or denial, and a fine.
15. Pursuant to RSA 421-B:26,III-a, every person who directly or indirectly controls a person liable under paragraph III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided by law, be subject to such suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed

pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. MSDW is subject to this section.

16. Pursuant to RSA 421-B:26, V, after notice and hearing, the Secretary of State may enter an order of rescission, restitution, or disgorgement directed to a person who has violated RSA 421-B. MSDW is subject to this section.

RELIEF REQUESTED

III. The Bureau makes the following requests for relief in the above-referenced matter as permitted under the Act.

1. Respondent cease and desist from further violations of the act.
2. Respondent pay an administrative fine in the amount of five hundred thousand (500,000) dollars.
3. Respondent pay the cost of the investigation.
4. Respondent be ordered to show cause why its broker-dealer license should not be suspended or revoked.
5. Respondent amend its account arbitration provisions.
6. Respondent complies with the following listed undertakings:
 - A. MSDW shall at its own expense, with the approval of the Bureau, retain, within 60 days from the date of Order, an independent consultant to review the current compliance and policy procedures as implemented in the Firm's New Hampshire branch offices. The consultant shall focus on the following: (a) procedures for the solicitation of stocks; (b) procedure for designation of order tickets as solicited or unsolicited; (c) procedure for ordering stock trades; (d) identify unregistered nonexempt securities under New Hampshire law bought or sold during the period January 1st, 1999 to the present; (e) review of account arbitration provisions. The consultant shall also review the adequacy of supervision in the Manchester office. The consultant shall make written findings and recommendations within one hundred twenty (120) days from the date of retention. The consultant shall contemporaneously provide a copy of all written reports to the Bureau and MSDW. MSDW shall be subject to an annual follow-up review for a two year period from the date of

execution of the Order.

B. Within thirty days of the finding and recommendations, MSDW shall send notification of rescission via certified mail, return receipt requested, to the last known address of each purchaser of the aforementioned four stocks from a New Hampshire branch office from the period from January 1st, 1999 to the present. The notice of rescission shall be pre-approved by the Bureau. MSDW will offer rescission of the purchase price plus interest at New Hampshire statutory rate at the time of the transaction, less any sale proceeds and dividends. MSDW shall bear the costs associated with the rescission. This provision shall not apply to any client of MSDW who has, at the time of the rescission offer, settled their claim against MSDW for the sale of the aforementioned four stocks. No rescission will be made to Agent. This Order shall not preclude the Bureau from requiring rescission for any other stocks identified as unregistered and nonexempt by the consultant or the Bureau.

7. Take any other just and equitable relief as permitted under the Act including but not limited to rescission, restitution, or disgorgement.

RIGHT TO AMEND

The Bureau's staff reserves the right to amend this Petition for Relief and requests that the Director of Securities Regulation take further enforcement action.

Respectfully submitted by:



Jeffrey D. Spill
Deputy Director

6/17/04
Date