

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
25 CAPITOL STREET  
CONCORD, NH 03301

**CONSENT ORDER**  
**IN THE MATTER OF:**

**Morgan Stanley Smith Barney, LLC - CRD # 149777**

**C-2015-000021**

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, Morgan Stanley Smith Barney, LLC (hereinafter “Morgan Stanley”) has submitted an offer of settlement that the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, Morgan Stanley hereby consents to the following:

**THE FACTS**

1. Morgan Stanley is a broker-dealer and investment adviser with its principal place of business at 2000 Westchester Avenue, Purchase, NY 10577-2530. According to the Financial Industry Regulatory Authority’s (“FINRA”) Central Registration Depository (“CRD”), Morgan Stanley has been registered with the U.S. Securities and Exchange Commission (“SEC”) since May 19, 2009 and has been licensed in New Hampshire since May 22, 2009.
2. During the relevant period, Morgan Stanley or one of its predecessor firms employed Justin Amaral (CRD #4440980) as a registered representative. Justin Amaral joined the Smith Barney unit of Citigroup Global Markets (“CGMI”) in January 2007 and became an employee of Morgan Stanley when CGMI contributed its Smith Barney unit to a joint venture with Morgan Stanley in June 2009. According to CRD records, on May 1, 2014, Justin Amaral resigned while under investigation by Morgan Stanley for allegations related to his status as the executor and beneficiary of a client’s estate and his use of discretion in several client accounts. On June 19, 2015, FINRA permanently barred Justin Amaral from associating with any FINRA member firm in any capacity for refusing to appear before FINRA to provide on-the-record testimony.
3. While employed by Morgan Stanley and its predecessor firms, Justin Amaral was a registered representative for at least three New Hampshire residents. Investor #1 and Investor #2 are a married couple who reside in Fremont, New Hampshire and were clients of Justin Amaral from at least March 2007 until Justin Amaral’s resignation on May 1, 2014.

Investor #3 resides in Windham, New Hampshire and was a client of Justin Amaral from at least May 2007 until Justin Amaral's resignation on May 1, 2014.

4. Upon receiving a complaint from Investor #1 and Investor #2 in 2015, the Bureau commenced an investigation. Morgan Stanley cooperated fully with the Bureau's investigation by responding to inquiries and providing documentary evidence and other information requested by the Bureau.
5. During the course of its investigation, the Bureau determined that Justin Amaral engaged in several violations of New Hampshire's securities laws including excessive trading (otherwise known as "churning") and unsuitable switching of annuities. Additionally, the Bureau determined that Morgan Stanley and/or its predecessor firms failed to reasonably supervise Justin Amaral.
6. The Bureau reviewed the compliance systems used by Morgan Stanley and its predecessor firms during the relevant period and contends that there was a lapse in the supervision of Justin Amaral by his supervisors. Morgan Stanley and its predecessor firms maintain that their compliance systems were designed appropriately and that they highlighted accounts and trading patterns, and identified financial advisors that were further reviewed. Whether the systems operated as designed, the Bureau determined that Justin Amaral was engaged in excessive trading in the accounts of Investors #1 – 3, despite supervisory review.
7. As a result of Justin Amaral's unlawful activity and Morgan Stanley and its predecessor firms' failure to supervise, Investor #1 and Investor #2 suffered combined out-of-pocket losses and paid annuity surrender charges of approximately \$187,702.91 and Investor #3 suffered out-of-pocket losses and paid annuity surrender charges of approximately \$295,582.05.
8. As part of its continuous efforts to enhance its compliance systems and ensure that its employees handle alerts effectively, Morgan Stanley maintains that it has implemented additional alerts and processes during and after the relevant period including those designed to detect possible patterns of excessive or improper trading and a formal process and uniform minimum standards for quality assurance reviews, risk ranking, and escalation of certain high risk alerts.

#### **THE LAW**

1. Morgan Stanley is a "person" within the meaning of N.H. RSA 421-B:2, XVI, the law in effect during the violations alleged herein.
2. Morgan Stanley is a "broker-dealer" within the meaning of N.H. RSA 421-B:2, III, the law

in effect during the violations alleged herein.

3. Pursuant to N.H. RSA 421-B:10, I, the law in effect during the violations alleged herein, the secretary of state may take action and issue an appropriate order for relief if he finds that the order is in the public interest and if the person has failed to reasonably supervise his or her agents. Morgan Stanley is subject to this provision and failed to reasonably supervise Justin Amaral as outlined above.
4. Pursuant to N.H. RSA 421-B:10, VI, the law in effect during the violations alleged herein, in addition to other relief that may be ordered pursuant to N.H. RSA 421-B:10, the secretary of state may assess an administrative fine. Morgan Stanley is subject to this provision.
5. Pursuant to N.H. RSA 421-B:6, V(c)(2), the law in effect during the violations alleged herein, each broker-dealer and investment adviser shall establish and maintain supervisory procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes. Morgan Stanley is subject to this provision.
6. Pursuant to N.H. RSA 421-B:6-604(e), the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated N.H. RSA 421-B or a rule or order thereunder. Morgan Stanley is subject to this provision.
7. Pursuant to N.H. RSA 421-B:6-604(g), the secretary of state may charge the actual cost of an investigation or proceeding for a violation of N.H. RSA 421-B or an order issued thereunder. Morgan Stanley is subject to this provision.

II. In view of the foregoing, Morgan Stanley agrees to the following:

1. Morgan Stanley agrees that this Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Morgan Stanley that the Bureau has no knowledge of at the time of the final entry of this Consent Order.
2. Morgan Stanley agrees not to take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order, or to create the impression that this Consent Order is without factual basis. Nothing in this provision affects Morgan Stanley's testimonial obligations or right to take any legal positions in any litigations in which the State of New Hampshire is not a party.
3. Upon execution of this Consent Order Morgan Stanley agrees to pay restitution in the amount of \$187,702.91 to Investor #1 and Investor #2, collectively, and restitution in the amount of \$295,582.05 to Investor #3.

4. Upon execution of this Consent Order Morgan Stanley agrees to pay an administrative fine to the Bureau in the amount of \$450,000.00 and the Bureau's costs in the amount of \$50,000.00, for a total amount of \$500,000.00 to the Bureau. Payment must be 1) made by business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.
5. Morgan Stanley agrees pursuant to N.H. RSA 421-B:4-401(f)(3)(B) (previously N.H. RSA 421-B:6, V(c)(2)) to maintain supervisory procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes.

III. Based on the foregoing the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Morgan Stanley shall pay restitution to Investor #1 and Investor #2, collectively, in the amount of \$187,702.91.
2. Morgan Stanley shall pay restitution to Investor #3 in the amount of \$295,582.05.
3. Morgan Stanley shall pay an administrative fine to the Bureau in the amount of \$450,000.00 and costs to the Bureau in the amount of \$50,000.00, for a total payment to the Bureau in the amount of \$500,000.00.
4. Morgan Stanley shall comply with all other terms outlined herein.

Executed this 21 day of November 2018.

Harry Walters

on behalf of Morgan Stanley

(Please print name below)

Harry Walters

Entered this 27<sup>th</sup> day of November 2018.

Barry J. Glenn

Barry Glenn, Director  
N.H. Bureau of Securities Regulation