

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
)

MORGAN STANLEY CAPITAL)
GROUP INC.,)

Respondent.)

CFTC Docket No. 19-44

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

8:01 pm, Sep 30, 2019

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that during the period from in or about November 2013 to at least November 2014 (“Relevant Period”), Morgan Stanley Capital Group Inc., (“Morgan Stanley” or “Respondent”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(a)(5)(C) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Morgan Stanley, by and through one of its traders (“Trader A”), engaged in the disruptive trading practice of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) with respect to certain futures products in gold and other precious metals (“Precious Metals”) traded on the Commodity Exchange, Inc. (“COMEX”), a designated contract market and “registered entity” as defined by the Act.² This spoofing conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

* * * * *

In accepting Respondent’s Offer, the Commission recognizes the Respondent’s significant cooperation with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission notes that Respondent’s cooperation and remediation is reflected in the form of a reduced civil monetary penalty.

B. RESPONDENT

Morgan Stanley is a global banking and financial services company headquartered in New York. Throughout the Relevant Period, Morgan Stanley maintained its principal office in New York, New York and, in the course of its business activities, traded futures contracts in the United States. Morgan Stanley has been provisionally registered as a Swap Dealer since 2012.

C. FACTS

1. Morgan Stanley’s Disruptive Trading

During the Relevant Period, Morgan Stanley employed a number of traders, including Trader A, in its New York office. As part of Trader A’s duties, Trader A placed orders and entered into transactions for futures contracts in Precious Metals, which were traded on the COMEX, a futures exchange and designated contract market which is owned and operated by CME Group Inc. (“CME”).

On multiple occasions during the Relevant Period, Trader A placed an order for futures contracts in Precious Metals, with the intent to cancel the order before its execution. Trader A’s spoofing strategy generally involved placing a relatively small bid or offer with the intent to execute that order (the “Genuine Order”) and, prior to the execution of the Genuine Order, placing a larger order (or multiple orders), which Trader A intended to cancel before execution, on the opposite side of the same market (the “Spoof Order”). Typically, Trader A received a partial or complete fill of the Genuine Order and then cancelled the Spoof Order before it was filled.

² 7 U.S.C. § 1a(40)(A) (2012).

2. Morgan Stanley's Cooperation and Remediation

During the course of the Division's investigation, Morgan Stanley promptly commenced an internal review of trading activity for potential spoofing activity. Morgan Stanley provided full cooperation to the Division and produced information relevant to the Division's investigation. This cooperation and information materially assisted the Division in efficiently and effectively carrying out its investigation.

Morgan Stanley also engaged in proactive remedial efforts to address the misconduct and prevent similar misconduct in the future. Morgan Stanley has represented that it also updated its policies and procedures, training practices, and its monitoring and surveillance practices to detect and deter potential spoofing misconduct and manipulative trading.

III. LEGAL DISCUSSION

A. Spoofing in the Precious Metals Futures Markets, in Violation of Section 4c(a)(5)(C) of the Act

Section 4c(a)(5)(C) of the Act makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” 7 U.S.C. § 6c(a)(5)(C) (2012). *See, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, on numerous occasions during the Relevant Period, Trader A entered bids or offers on a registered entity with the intent to cancel the bids or offers before execution, in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”).

B. Respondent Morgan Stanley Is Liable for the Acts of Its Agent

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), provide that “[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.” Pursuant to Section 2(a)(1)(B) of the Act and Commission Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Trader A engaged in the conduct described herein within the course and scope of Trader A's employment; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2,

Respondent is liable for the acts, omissions, and failures of Trader A in violation of the provisions of the Act and Commission Regulations cited above.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent, by and through its agent, Trader A, violated Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt.148 (2019), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, 110 Stat. 847, 857-74 (codified in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including the Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and

- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that: Respondent, by and through its agent, Trader A, engaged in spoofing in the futures markets, in violation of Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
 2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000) within ten days of the date of entry of this Order, plus post-judgment interest, if applicable;
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order; and
- F. Represents that Respondent proactively engaged in remedial measures relating to the trading of Precious Metals spot, futures, and options contracts and related supervision of the desks engaged in such trading activity, including updating and enhancing its compliance program and internal controls designed to detect and deter potential spoofing and manipulative conduct through, among other things:
1. Updated policies and procedures related to prohibited conduct such as spoofing, market manipulation, and other forms of market abuse;
 2. Updated routine and ongoing training regarding disruptive trade practices;
 3. Improved transaction monitoring and surveillance systems;
 4. Invested in enhanced transaction monitoring technology; and
 5. Dedicated significant resources to improving its systems and controls.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty of one million five hundred thousand dollars (\$1,500,000), within ten days of the date of the entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

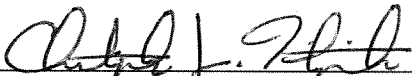
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate with the Commission in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
5. Remediation: As set forth above, Respondent represents that it has already undertaken and continues to undertake remedial measures to implement and strengthen its internal controls and procedures relating to the trading of Precious Metals spot, futures, and options contracts and related supervision of the desks engaged in such trading activity. Respondent shall maintain and update its compliance program as appropriate to effectively detect and deter violations of the Act.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 30, 2019