

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES DIVISION**

IN THE MATTER OF:

STEVEN M. WYATT

**ADMINISTRATIVE CONSENT ORDER
NO. LS-12-0454-A**

Respondent

CONSENT ORDER

WHEREAS, the Securities Division of the Mississippi Secretary of State (“Division”), having the authority to administer and provide for the enforcement of all provisions of the Mississippi Securities Act (“Act”) codified at Mississippi Code Annotated Sections 75-71-101, *et. seq.*;

WHEREAS, the Division has conducted an investigation into certain activities occurring in the Ridgeland, Mississippi branch office of Morgan Stanley Smith Barney during the years 2007 through 2012 when Steven M. Wyatt (“Wyatt” or “Respondent”) acted as a broker-dealer agent and investment adviser representative;

WHEREAS, Respondent has cooperated with the Division’s investigation by responding to inquiries, making himself available for interviews, and providing the Division with access to facts relating to the investigation;

WHEREAS, Respondent has advised the Division of his agreement to resolve the matter without the expense and delay that formal proceedings would involve;

WHEREAS, Respondent elects to permanently waive any right to a hearing and appeal under the Act in Sections 75-71-604 and 75-71-609 and under Section 75-71-604(b) and (c) of the Mississippi Securities Act (Rev. 2009)(repealed 2010) (“Predecessor Act”) with respect to this Order; and

WHEREAS, Respondent, solely for the purpose of concluding this open matter with the Division, without admitting or denying the Findings of Fact and Conclusions of Law contained herein, agrees to take certain actions described herein, consents to the Division making the Conclusions of Law set forth herein, and consents to the terms and conditions of this Administrative Consent Order (“Order”). This Order, or any acts performed and documents executed in furtherance of this Order, are not intended for use by any person or entity not a party to this proceeding as an admission of, or evidence of, any fault or omission of Respondent in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. This Order is not intended to confer any rights upon any person or entities who are not a party to this proceeding;

NOW, THEREFORE, the Division, as Administrator of the Act, hereby enters this Order:

I. FINDINGS OF FACT

1. Respondent admits the jurisdiction of the Division in this matter.
2. The Act was revised in 2009, and the Predecessor Act was repealed in 2010. As the alleged actions of Respondent took place prior to January 1, 2010 and after January 1, 2010, both the Predecessor Act and the current Act apply. However, as the two are substantially the same for the relevant time period of the alleged actions, all further citations are to the current Act.

Parties

3. The Secretary of State has the authority pursuant to the Act to administer and enforce the Act and regulate the offer and sale of securities in Mississippi including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

4. Respondent is an individual with a last known residence at 2354 Wild Valley Drive in Jackson, Mississippi. The Central Registration Depository (“CRD”) number for Respondent is 2522129.

5. From December 14, 2007 to June 22, 2012, Respondent was registered with the Division as a broker-dealer agent and investment adviser representative for Morgan Stanley & Co., Inc. and then Morgan Stanley Smith Barney (collectively “Morgan Stanley”). Respondent is no longer employed by Morgan Stanley, nor is he registered with the Division in any capacity.

Events

6. Prior to 2007, Wyatt was a “Guided Portfolio” manager, managing discretionary, fee-based investment accounts for clients. Wyatt worked in partnership with Hilary Zimmerman (“Zimmerman”): Wyatt researched and managed the investments within the Guided Portfolio and Zimmerman serviced the clients.

7. In 2007, Morgan Stanley recruited Wyatt, Zimmerman, and their administrative assistant to join its Ridgeland, Mississippi office.

8. When Wyatt moved his book of business, Morgan Stanley paid up-front signing bonuses of \$1.8 million to Wyatt and \$1.4 million to Zimmerman which were tied to forgivable promissory notes and future production. When asked about the move Wyatt told clients that he

was afraid of CitiGroup (who owned Smith Barney) due to cut-backs at Smith Barney. He did not disclose the significant bonus to clients or potential clients.

9. Morgan Stanley had a managed portfolio program called “Custom Portfolio” or “CP.” Wyatt and Zimmerman initially opened 246 CP accounts at Morgan Stanley. In order to transfer the accounts, new client information had to be entered into Morgan Stanley’s system. This information included client investment objectives, risk tolerances, financial and other personal information used to determine whether the CP program was a suitable investment for the client. Morgan Stanley brought in a “transition team” to assist setting up the new accounts. In many instances, inaccurate and internally inconsistent client data was entered. The information was provided by Wyatt and Zimmerman.

10. As part of the CP approval process, Wyatt completed a brief handwritten application in which he described his investment strategy and security selection process. Wyatt made various representations in the application about his strategy. For example, Wyatt represented in his application that for all mid to small capitalization companies he would speak to an officer of the company and make “copious” notes on all purchases of them. Even though Wyatt made these representations, he was often able to obtain the needed information from other sources and did not adhere to his stated strategy.

11. The Wyatt Group provided a marketing brochure to clients which contained certain representations regarding the manner in which the custom portfolio would be managed. The marketing brochure represented that Wyatt and Zimmerman followed a disciplined trading strategy to preserve capital and to avoid undue risk. The custom portfolio lacked any defined form and involved very aggressive short-term trading with rapid turn-over. It was actually a high-risk investment based on market timing that was unsuitable for most investors. The

irregular and often inconsistent information contained in the investor documentation indicates that Wyatt's clients did not fully understand the program.

12. In June 2009 and continuing through 2011, Wyatt traded in low-priced securities, including PMI and RITT. The trading included mismarking orders, failure to abide by concentration limitations in certain low-priced securities, selling away, and unauthorized trades. Wyatt's trading in low-priced securities resulted in losses for customers, including senior investors.

13. In or around, May 2011, Wyatt's trading abruptly stopped. Clients were not notified of this change in trading strategy.

14. In 2012, CP clients filed a Statement of Claim with FINRA, Case No. 12-02257, which included an allegation that Wyatt had solicited clients in violation of industry rules to purchase unauthorized and unregistered securities away from Morgan Stanley through a private placement. In July 2014 FINRA imposed a four (4) month suspension and a \$12,500 deferred fine on Wyatt.

II. APPLICABLE LAW

15. Miss. Code Section 75-71-102(1) states, "'Administrator' means the Secretary of State."

16. Section 75-71-601(a) of the Act states, "The administrator shall administer this chapter."

17. Miss. Code Ann. § 75-71-412(b) and (c) sets forth:

Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

(a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an

order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, or a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not:

...

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

18. Miss. Code Ann. § 75-71-412(d)(2) and (d)(5) set forth:

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

* * * *

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years.

* * * *

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(C) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization.

19. Miss. Code Ann. § 75-71-604 of the Act sets forth:

Administrative enforcement.

(a) Issuance of an order or notice. If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or

(3) Issue an order:

(A) Under Section 75-71-204;

(B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment adviser, agent, investment adviser representative, or other person who violated this chapter;

(C) Barring or suspending the person from association with a broker-dealer or investment adviser registered in this state; or

(D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

* * *

(d) Civil penalty. In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

20. Miss. Code Ann. § 75-71-613(d) sets forth:

(d) Amount of civil penalty and further civil penalty under Section 75-71-604--administrative enforcement.

- (1) The amount of the civil penalty described in Section 75-71-604(d) is a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each violation, provided that an additional civil penalty may be imposed up to a maximum of Fifteen Thousand Dollars (\$15,000.00) for violations of the chapter committed against elders or disabled persons.

21. Miss. Code Ann. § 75-71-605(a)(1) states the administrator may issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

22. Rule 5.21(A) of the Rules enacted by the Administrator under the Act sets forth:

Standards of Conduct:

Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other action authorized by statute.

(A) Broker Dealers

* * *

3. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other relevant information known by the broker-dealer;
4. Executing a transaction on behalf of a customer without authorization to do so;
5. Marking any order tickets or confirmations as unsolicited when in fact the transaction is solicited;
6. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

* * *

23. Violating any laws or rules of the SEC or a national securities exchange or national securities association of which it is a member, or violating any federal or state securities law or any rule or regulation promulgated thereunder.

23. Rule 5.21 (B) of the Rules enacted by the Administrator under the Act sets forth:

(B) Agents

* * *

2. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

* * *

6. Engaging in conduct specified in subsection (a) 1, 2, 3, 4, 5, 6, 8, 11, 12, 16, 17, 18, 19, 23 of this Rule.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration, or imposition of fines.

24. Rule 6.25 of the Rules sets forth:

Standards of Conduct. A person who is an investment adviser, an investment adviser representative or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. Acts and practices, including, but not limited to, the following, are considered contrary to such duty and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other action authorized by statute:

A. Recommending to a client to whom investment advisory, supervisory, management, or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the

client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, and needs, and any other information known or acquired by the investment adviser investment adviser representative or federal covered investment adviser.

- B. Placing an order to purchase or sell a security for the account of a client without authority to do so.

* * *

- R. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

- 1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

- 2. Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative or federal covered investment adviser or its employees, or affiliated persons.

* * *

The conduct set forth in the Rules above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure, or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration, or imposition of fines.

- 25. Miss. Code Ann. § 75-71-501 states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of 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 were made, not misleading; or

- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

III. ACTION NECESSARY TO PROTECT THE PUBLIC

26. Action by the Division to halt further conduct by Respondent in violation of the Act is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

27. Respondent, by execution of this Order, affirmatively states that he has freely agreed to the signing of this Order, and that no threats, promises, representations, or inducements of any kind, other than as stated in this document, have been made by the Division or any member of the staff of the Division, or any agent or employee of the Division in connection with the signing of this Order. Based upon the foregoing Findings of Fact, and consistent with the consent of Respondent, the Division makes the following:

IV. CONCLUSIONS OF LAW

28. The Administrator, after consideration of the facts set forth above and on the consent of Respondent and the Division, finds and concludes that the Secretary has jurisdiction over Respondent and this matter and that the following is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by the Act.

29. Respondent recommended unsuitable purchases of securities in violation of Mississippi Securities Act Rule 5.21(A)(3) and therefore in violation of Rule 5.21(B)(6).

30. Respondent executed a trade on behalf of a customer without authorization to do so in violation of Mississippi Securities Act Rule 5.21(A)(4) and therefore in violation of Rule 5.21(B)(6).

31. Respondent mismarked tickets or confirmations as unsolicited when in fact the transaction was solicited in violation of Mississippi Securities Act Rule 5.21(A)(5) and therefore in violation of Rule 5.21(B)(6).

32. Respondent effected securities transactions not recorded on the regular books of Morgan Stanley in violation of Mississippi Securities Act Rule 5.21(B)(2).

33. Respondent recommended unsuitable purchases of securities in violation of Mississippi Securities Act Rule 6.25(A).

34. Respondent failed to disclose the substantial signing bonus that could arguably be expected to impair the rendering of objective advice in violation of Mississippi Securities Act Rules 6.25(R).

V. ORDER

IT IS HEREBY ORDERED:

1. This Order concludes the open matter with the Division with respect to Respondent's conduct and activities as a broker-dealer agent and investment adviser representative with Morgan Stanley. However, nothing herein limits the ability of the Division, individually or jointly with other agencies, in pursuing any investigation with respect to any other securities-related matter involving Respondent.

2. This Order is entered into solely for the purpose of resolving the previously referenced allegations and is not intended to be used for any other purpose.

3. Respondent's registration with the Division is expired. Respondent shall permanently refrain from seeking any registration with the Division

4. Respondent shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and

5. Respondent shall fully, fairly, and truthfully disclose all information and producing all records and other evidence in its possession, custody, or control relevant to all inquiries made by the Division concerning the subject matter of this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges.

6. If Respondent defaults in any of his obligations set forth in this Order, the Division may vacate this Order, at its sole discretion, upon fifteen (15) days' notice to Respondent and without opportunity for administrative hearing and refer this matter for enforcement as provided in Section 75-71-604 (g) of the Act.

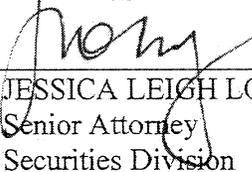
7. This Order is not intended to indicate that Respondent shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws. In addition, this Order is not intended to form the basis for any such disqualifications.

8. This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

9. In the event that one or more provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

Date: *March 31, 2016*

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

By: 
JESSICA LEIGH LONG
Senior Attorney
Securities Division

CONSENT TO ENTRY OF FINAL ORDER

Steven M. Wyatt hereby acknowledges that he has been served with a copy of this Administrative Consent Order ("Order") has read this Order, is aware of his right to a hearing and appeal in this matter, and has waived the same.

Steven M. Wyatt admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Division solely for purposes of settlement.

Steven M. Wyatt states that no promise of any kind or nature whatsoever was made to him to induce him to enter into this Order and that he has entered into this Order voluntarily.

Dated this the 24th day of April 2016.

Steven M. Wyatt



STATE OF MS

COUNTY OF Hinds

SUBSCRIBED AND SWORN TO before me this 24th day of April 2016.



Notary Public

My commission expires: 12/30/2016

