

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

**IN THE MATTER OF:**

**ADMINISTRATIVE PROCEEDING  
NO. LS-12-0454**

**MORGAN STANLEY SMITH BARNEY LLC  
RESPONDENT**

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**CONSENT ORDER**

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WHEREAS, the Securities Division of the Office of the Mississippi Secretary of State ("Division") has the authority to administer and enforce the provisions of the Mississippi Securities Act ("Act"), Miss. Code Ann. §§ 75-71-101 *et seq.*; and

WHEREAS, Morgan Stanley Smith Barney LLC ("Morgan Stanley" or the "Firm" or "Respondent")<sup>1</sup> is registered as a broker-dealer firm in the State of Mississippi and is notice-filed in Mississippi as an investment adviser firm registered with the United States Securities and Exchange Commission ("SEC"); and

WHEREAS, the Division has investigated certain investment recommendations and/or sales practices involving certain financial advisors in Morgan Stanley's Ridgeland, Mississippi branch office who were under the supervision of the Firm during December 2007 through June 2012; and

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<sup>1</sup> On June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. Incorporated, now known as Morgan Stanley & Co. LLC, and the Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney LLC. Morgan Stanley now owns, through its subsidiaries, 100% of Morgan Stanley Smith Barney LLC.

WHEREAS, Morgan Stanley has cooperated with the Division's investigation by responding to inquiries, providing documentary evidence and other materials, and providing the Division with access to facts relating to the investigation; and

WHEREAS, Morgan Stanley has updated its policies and procedures governing Custom Portfolio/Portfolio Management accounts, and has enhanced its technology since 2008; and

WHEREAS, Morgan Stanley has advised the Division of its agreement to resolve this matter without the expense and delay formal proceedings would involve; and

WHEREAS, Morgan Stanley elects to permanently waive any right to a hearing and appeal with respect to this Consent Order (the "Order"); and

WHEREAS, Morgan Stanley, solely for the purpose of concluding this open matter with the Division and without admitting or denying the Findings of Fact and Conclusions of Law set forth herein, agrees to take certain actions described herein, and consents to the terms and conditions of this Order; and

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

## **I. JURISDICTION**

1. The Division is authorized to administer the Act and to regulate the offer and sale of securities in Mississippi including the firms and persons who offer and sell securities or who provide investment advice regarding securities.

2. Morgan Stanley is subject to jurisdiction under the Act as a registered broker dealer and a notice-filed investment adviser firm.

## II. FINDINGS OF FACT

3. In response to customer complaints, the Division conducted a comprehensive, multi-year investigation into certain sales and investment practices involving certain financial advisors who were under the supervision of the Firm and who worked in the Ridgeland, Mississippi branch office (currently located at 1018 Highland Colony Parkway, Ridgeland Mississippi) during December 2007 through June 2012.

4. Fred E. Brister was the Branch Manager at Morgan Stanley's Ridgeland Office starting in March 2007. As the Branch Manager during the time in question, Brister was responsible for supervising the financial advisors at Morgan Stanley's Ridgeland Office. Brister has recently retired from the Firm.

5. In 2007, Brister recruited Steven Wyatt to join Morgan Stanley's Ridgeland Office. Brister also recruited Wyatt's partner Hilary Zimmerman and an administrative assistant of Wyatt and Zimmerman. Before joining Morgan Stanley, Wyatt and Zimmerman were registered broker-dealer agents and investment adviser representatives with Smith Barney in Jackson, Mississippi. Morgan Stanley and Smith Barney were separate firms in December 2007 at the time.

6. While at Smith Barney, Wyatt managed discretionary, fee-based investment accounts as well as non-discretionary, commission-based investment accounts. He was originally a "Guided Portfolio" manager and later became a portfolio manager in Smith Barney's "Portfolio Management" program in which he managed an aggressive growth portfolio which generated high returns for customers, particularly between 2002 and 2007. Wyatt and Zimmerman had a partnership and revenue sharing arrangement with regard to certain discretionary and non-discretionary accounts.

7. Brister expected Wyatt and Zimmerman to move their customer accounts from Smith Barney to Morgan Stanley. Morgan Stanley had a managed portfolio program described as "Custom Portfolio" ("CP") which was similar to the Smith Barney Portfolio Management program. When Mr. Wyatt joined Morgan Stanley in 2007, Brister was not a CP manager himself and had not previously supervised a CP manager. Mr. Brister received training and instructions on the CP program consisting of a conference call with the CP group and reviewing the CP policies and procedures before Wyatt joined the Firm. Mr. Brister also participated in ongoing conference calls and training courses. Mr. Brister became a CP manager in 2011.

8. Wyatt and Zimmerman were to continue in a revenue sharing arrangement with regard to certain accounts that were transferred to Morgan Stanley.

9. When they joined the Firm in December 2007, Wyatt and Zimmerman received substantial up-front money and executed promissory notes and bonus agreements. Wyatt and Zimmerman were eligible to receive additional promissory notes and bonus agreements based on their future production and assets under management.

10. Wyatt and Zimmerman initially opened 246 accounts within the CP program for former Smith Barney customers which Wyatt would manage using his stated strategy. These accounts were also referred to as Wyatt Group accounts.

11. In order to transfer the accounts from Smith Barney to Morgan Stanley, new customer information was required to be entered into Morgan Stanley's system. This information included customer investment objectives, risk tolerances, financial and other personal information used, in part, to aid in the determination of whether certain

investments and Wyatt's stated strategy were suitable for the customer. In some instances during the account opening process, customer information was entered that was inaccurate. The inaccurate customer information was not detected or questioned by the Firm at account opening although the Firm had systems in place to provide the profile information to the customers for them to review the information and correct any inaccuracies.

12. As part of the CP approval process, Wyatt completed an application in December 2007 in which he described his investment style, philosophy and process. At times between 2009 to 2011, Wyatt did not follow the description of the process described in this application. There were instances where the Firm did not verify or question how closely Wyatt was following his philosophy and process.

13. While at Morgan Stanley, Wyatt employed two portfolios in the CP program – an aggressive portfolio and a balanced/growth portfolio (the "Wyatt Group Portfolios"). Most investors invested in the aggressive growth portfolio, which involved very aggressive, short-term trading with high turn-over and may have been unsuitable for investors with low risk tolerances. Some customers did not fully understand the risks associated with the nature of Wyatt's trading strategy.

14. Wyatt was primarily responsible for managing the investments in the CP accounts. Zimmerman's role in the partnership was to manage some of the client relationships and to attract new customers in the CP program.

15. Wyatt's trading strategy and his misunderstanding of certain aspects of Morgan Stanley's trading platform resulted in compliance issues and problems with his trading activities primarily between 2009 to 2010. Wyatt's trading triggered numerous

exception reports, which regularly flagged his CP accounts for review for items such as turnover, trade errors and trade adjustments. While the Firm took steps to assist Wyatt and rectify these issues, it took some time for Morgan Stanley to adequately address certain issues concerning Wyatt's trading activity in his clients' CP accounts.

16. Pursuant to Morgan Stanley's policies, Brister delegated most of his day-to-day supervision functions within the Ridgeland Office, including supervision of Wyatt and other agents to the Complex Risk Officer. Although this person was not a CP manager, nor had she previously supervised a CP manager, she received training and instructions on the CP program consisting of a conference call with the CP group and reviewing the CP policies and procedures before Wyatt joined the Firm. She also participated in one-on-one training with the CP group and conferred with another Complex Risk Officer that had previously supervised CP accounts.

17. In early 2009 as a result of the 2008 market crash, Morgan Stanley sent letters to Wyatt's customers detailing the CP account losses and allegedly began an outreach to certain customers of the Firm that sustained losses in their managed accounts, as well as certain customers invested in Wyatt's CP portfolio. Morgan Stanley may have contacted certain customers to confirm the suitability of their investments, to verify that they understood the risks and losses in their accounts, and confirm that the investments were consistent with his or her financial situation and investment objectives. Several customers deny receiving any such outreach about their investments.

18. Starting in 2009, Wyatt's trading in his CP accounts triggered frequent turnover alerts, errors, and adjustments. At times, Wyatt's supervisors expressed a need to implement a plan of action to slow down his trading.

19. During 2010 Morgan Stanley had information Wyatt was experiencing personal issues. These concerns were escalated to Morgan Stanley's Human Resources Department. During this time Wyatt's supervisors continued to document issues in his accounts, including high turnover and trading through funds-on-hand restrictions. The Firm did not place Wyatt on heightened supervision.

20. On March 2, 2011, several Wyatt Group customers filed a claim with FINRA, Case No. 11-00932, alleging claims of excessive trading and unsuitable investments.

21. In December 2011, following an internal investigation, Wyatt was reprimanded by Morgan Stanley for executing trades in a customer's non-discretionary account without receiving concurrent verbal approval from the customer to proceed with the transactions.

22. In 2012, two (2) additional claims were filed with FINRA by other Wyatt Group customers, FINRA Case No. 12-00159 on January 10, 2012 and FINRA Case No. 12- 02257 on June 12, 2012. The Statement of Claim filed in Case No. 12-02257 included an allegation Wyatt had solicited customers, at times using his personal email (in violation of Firm policy and Industry rules) to communicate un-monitored by the Firm with customers to purchase unauthorized and unregistered securities through a private placement. Morgan Stanley had been unaware of such activity previously. The Firm required its employees to complete an annual questionnaire in which employees must disclose outside activities and private transactions. Wyatt did not disclose this alleged activity in his questionnaires, nor report it, and the customers did not inform the Firm of the alleged activity described in the Statement of Claim.

After learning about the outside private placement through the FINRA claim, Morgan Stanley terminated Wyatt's employment on June 22, 2012. The U-5 and CRD stated the reason for the termination was "for allegations relating to participation and solicitation of unapproved outside investments."

23. During the course of Wyatt's employment the Firm took two disciplinary actions against him- the reprimand and the termination.

24. Morgan Stanley has provided documentation to the Division that it has updated its policies and procedures governing CP and Portfolio Management accounts, and has enhanced its technology since 2008.

### **III. CONCLUSIONS OF LAW**

1. Under the Act, the Secretary of State is authorized to regulate and investigate the sale of securities in Mississippi. *See* Miss. Code Ann. §§ 75-71-101 to 701.

2. The Secretary of State has the authority under Section 604 of the Act to bring an administrative enforcement action if a person has engaged in or is engaging in any act or practice constituting a violation of Mississippi's securities laws or any laws or rules adopted thereunder and to impose a civil penalty for each violation of the Act as well as seek an order of restitution for any loss arising from a violation of the Act. Miss. Code Ann. § 75-71-604.

3. Section 412(c) and (d)(9) of the Act authorizes the Secretary of State to impose disciplinary penalties on a person who has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser or other individual was subject to the person's supervision and committed a

violation of this chapter or the predecessor act or a rule adopted under this chapter or the predecessor act within the previous ten (10) years.

4. Section 75-71-613 of the Act sets forth the maximum civil penalties which may be imposed for each violation.

5. The Secretary of State has issued rules which require broker-dealers to “establish and keep current a set of written compliance-supervisory procedures and a system for implementing such procedure, which may be reasonably expected to prevent and detect any violations of the Act and rules promulgated thereunder.” See Rule 5.19.

6. As a result of its investigation and on the basis of its findings of fact, the Division concludes that Morgan Stanley in some instances failed to reasonably supervise certain of its agents in the Ridgeland, Mississippi branch under the Act, as required by Section 412(d)(9), so as to prevent and detect violations of the Act, and failed in some instances to enforce supervisory procedures to comply with the requirements of Rule 5.19 sufficient to prevent and detect violations of the Act by certain of its agents in the Ridgeland, Mississippi branch.

7. The Division finds this Order is in the public interest, is necessary and appropriate for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

#### **IV. ORDER**

On the basis of the Division’s Findings of Fact and Conclusions of Law and Morgan Stanley’s representations and consent to the entry of this Order for the sole purpose of

resolving this matter prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes this open investigation with the Division of the Firm in this Consent Order in regard to the above matters. 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 the Firm or its agents.

2. This Order is entered into solely for the purpose of resolving the previously referenced allegations against the Firm only and is not intended to be used by the Firm or by the Division for any other purpose or by any other parties. The Division has previously entered into consent orders with Wyatt and Brister. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Morgan Stanley or create liability for Morgan Stanley or limit or create defenses of Morgan Stanley to any claims.

3. The Firm shall cease and desist from further violations of the Act.

4. Respondent is hereby ordered to pay an administrative penalty in the amount of \$100,000 and to reimburse the Division for its costs and expenses incurred in connection with the investigation in the amount of \$400,000. Respondent shall pay these amounts directly to the Division on or before thirty (30) calendar days from execution of this Order. Respondent agrees to pay all costs and expenses incurred by the Division, including reasonable attorney fees for the collection of these amounts upon default.

5. Customer Fund.

- a. Morgan Stanley is ordered to establish a Customer Fund and to offer to pay a partial reimbursement to each Eligible Customer (a) who had a CP investment account in the Wyatt Group Portfolios, and (b) who has neither litigated nor arbitrated his or her claims to an award or other final disposition, nor previously executed a release of claims by virtue of a settlement with Morgan Stanley. The account numbers of the Eligible Customers and the corresponding partial reimbursement amounts – which represent a reimbursement of approximately 20% of the Eligible Customer’s CP account losses – are identified in Exhibit A.<sup>2</sup> The Firm and the Division will mutually agree upon a protocol for notifying Eligible Customers.
- b. The Customer Fund will be administered by Trustmark National Bank (“Trustmark”) at the Firm’s expense. On or before thirty (30) calendar days from execution of this Order, Morgan Stanley shall deliver a check payable to “Trustmark National Bank FBO Morgan Stanley Settlement Escrow” in the amount of \$4,243,815.28, the full amount of the Customer Fund.
- c. Each Eligible Customer electing to receive a partial reimbursement shall execute a Specific Release and Settlement Agreement (“Release”) in the form attached as Exhibit B. Within thirty (30) calendar days of

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<sup>2</sup> In order to protect the personal financial information of the individual customers, the parties agree that Exhibit A to the extent it contains personal identifiable information of the customers shall be restricted from public access, provided however that the partial reimbursement amounts that do not identify the identity of the customer are not restricted from public access, as required by law.

Morgan Stanley's timely receipt of an Eligible Customer's Release and any documents required by the Release, Morgan Stanley shall direct Trustmark to make payment to the Eligible Customer in the amount specified on Exhibit A for that Eligible Customer. Eligible Customers shall have a minimum of one hundred twenty (120) days (referred to herein as the "Election Date Deadline") to elect to participate in the Customer Fund and deliver fully executed copies of the Release and any documents required by the Release.

d. After Morgan Stanley directs Trustmark to make the payment to the Eligible Customer, Morgan Stanley shall have fully satisfied its obligations to the Eligible Customer under this Order and shall have no further responsibility or liability with respect to the handling or distribution of the Customer Fund to the Eligible Customer.

e. To the extent any Eligible Customer receives notice by certified mail and does not deliver an executed Release and any documents required by the Release on or before the Election Date Deadline, then such funds will not be disbursed to the Eligible Customer and will revert to the Firm. Trustmark shall deliver a check payable to Morgan Stanley after the Election Date Deadline on a date agreeable to Morgan Stanley for the amount that will revert to the Firm. To the extent any Eligible Customers eligible for partial reimbursement under this Order cannot be located for notification purposes after diligent search and inquiry, then Trustmark shall deposit such funds with the unclaimed property authority in the

State of the customer's last known residence in accordance with its policies and procedures.

- f. Morgan Stanley will furnish the Division with the most recent contact information for the Eligible Customers in the Firm's possession, including mailing addresses, email addresses and telephone numbers. Morgan Stanley and the Division will provide to each other copies of any correspondence with the Eligible Customers.
- g. Morgan Stanley will furnish a monthly report listing all notices to Eligible Customers pursuant to this Order, including evidence of which Eligible Customers have chosen to participate in the Customer Fund and which Eligible Customers have expressly declined to participate. For Eligible Customers who have chosen to participate in the Customer Fund, Morgan Stanley or Trustmark will furnish the Division with copies of the Releases upon request and evidence that it directed Trustmark to make the reimbursement. A final report shall be issued by Morgan Stanley reflecting the receipt of the Releases and other documents required by this Section as of the Election Date Deadline by thirty (30) days after the last reimbursement.

6. The Division is satisfied that the reimbursement amount to Eligible Customers is appropriate and reasonable and the process described above is fair after conducting its investigation.

7. Morgan Stanley shall fully and fairly comply with all of the following requirements:
- a. Upon request by the Division, provide all documentation and information reasonably necessary for the Division to verify compliance with this Order.
  - b. The Firm 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 this Order is without factual basis. Nothing in this paragraph affects the Firm's (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Division is not a party; and
  - c. The Firm shall fully, fairly, and truthfully disclose all information and produce all records and other evidence in its possession, custody, or control relevant to all inquiries made by the Division concerning compliance with this Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges.
8. Jurisdiction shall be retained by the Administrator for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Order.
9. If Morgan Stanley defaults in any of its respective obligations set forth in this Order, then the Division, at its sole discretion, upon fifteen (15) days' notice, may seek to vacate this Order or enforce this Order as provided in Sections 75-71-412(d)(2), 75-71-603 or 75-71-604 of the Act. This Order shall not disqualify Morgan Stanley or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law.
10. This Order is not intended to indicate that Morgan Stanley 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, including, but not limited to, statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934. In addition, this Order is not intended to form the basis for any such disqualifications and, pursuant to Rule 506(d)(2)(iii) and Rule 262(b)(2), disqualification under Rule 506(d)(1) and Rule 262(a) under the Securities Act of 1933 should not arise as a consequence of this Order. This Order shall not disqualify Morgan Stanley from any business it otherwise is qualified to perform under applicable law.

11. To the extent applicable, this Order hereby waives any disqualification from relying upon the registration exemptions or registration safe harbor provisions that may be contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organization or any states or U.S. Territories' securities law.

12. 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 communications, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

13. In the event 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.

14. By its consent to and execution of this Order, Morgan Stanley affirmatively represents it freely agrees to the signing of this Order by the Division, and no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Division, any member of the staff of the Division, or any agent or employee of the Division in connection with the negotiations and signing of this Order.

15. This Order shall be binding on the Firm and its successors and assigns as well as to successors and assigns of relevant affiliates with respect to the conduct subject to the provisions above, and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events and conditions.

16. The Division shall make such public announcement regarding the settlement as it deems appropriate with reasonable advance notice to the Firm.

ISSUED, this the 9<sup>th</sup> day of August, 2016.

BY ORDER OF  
C. DELBERT HOSEMANN, JR.  
MISSISSIPPI SECRETARY OF STATE

C. Delbert Hosemann, Jr.

**CONSENT TO ENTRY OF CONSENT ORDER**

Morgan Stanley, by and through its authorized representative, by signing below, agrees to the entry of this Consent Order, and waives any right to a hearing or to judicial review.

Morgan Stanley by and through its authorized representative states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Scott Tucker (name) represents that he or she has been authorized to enter into this Consent Order on behalf of Morgan Stanley.

Morgan Stanley

By:   
Title: Global Head of Litigation  
Date: 8-8-16

  
STEPHEN L. THOMAS, ESQ.  
Bradley Arant Boult Cummings LLP  
One Jackson Place  
188 East Capitol Street, Suite 400  
Jackson, Mississippi 39201  
*Attorney for Respondent Morgan Stanley*

Date: 8/8/16

Exhibit A

Account#, Last 4	Digits	\$Amount
	4038	\$ 6,574.48
	4043	\$ 32,376.53
	4048	\$ 42,898.37
	4302	\$ 2,987.72
	4303	\$ 40,049.69
	4304	\$ 5,608.19
	4305	\$ 40,486.15
	4582	\$ 26,053.61
	3846	\$ 7,326.61
	4591	\$ 10,955.65
	4852	\$ 5,571.09
	3449	\$ 5,634.81
	4168	\$ 24,894.74
	4893	\$ 10,218.60
	4894	\$ 9,193.53
	4631	\$ 20,787.65
	3623	\$ 8,953.04
	3624	\$ 20,740.80
	3625	\$ 12,655.02
	3626	\$ 8,182.51
	3419	\$ 11,034.87
	4120	\$ 2,630.80
	3331	\$ 31,078.68
	5146	\$ 2,736.69
	3332	\$ 13,386.25
	3357	\$ 45,580.54
	4124	\$ 547.66
	3670	\$ 12,032.97
	3672	\$ 39,949.82
	3412	\$ 51,027.35
	4333	\$ 916.77
	7210	\$ 4,743.45
	4827	\$ 5,438.93
	6071	\$ 11,611.68
	6073	\$ 31,091.55
	3431	\$ 17,933.56
	4990	\$ 8,730.61
	3683	\$ 28,590.05
	0496	\$ 893.30
	3477	\$ 12,092.06

Exhibit A

<b>Account#, Last 4 Digits</b>	<b>\$Amount</b>
4104	\$ 80,082.33
4105	\$ 5,400.87
5406	\$ 5,189.80
3575	\$ 8,738.47
4695	\$ 34,571.06
0125	\$ 1,999.88
3690	\$ 27,338.97
3836	\$ 9,179.69
7549	\$ 1,594.19
9504	\$ 2,025.16
3562	\$ 7,376.86
9470	\$ 2,066.74
3307	\$ 50,015.65
5023	\$ 9,049.02
3791	\$ 79,911.86
3792	\$ 30,594.02
3795	\$ 16,840.43
3796	\$ 82,226.73
4579	\$ 5,398.73
4696	\$ 8,445.35
4235	\$ 10,543.35
9963	\$ 1,215.39
3573	\$ 10,899.69
3444	\$ 2,494.48
4241	\$ 12,333.95
4245	\$ 7,572.80
4077	\$ 18,464.78
4590	\$ 29,067.66
3422	\$ 16,407.12
4123	\$ 23,101.68
9529	\$ 1,449.07
4558	\$ 65,029.81
0440	\$ 1,507.60
0441	\$ 2,810.74
3505	\$ 21,184.44
3687	\$ 14,282.50
3495	\$ 7,637.79
4219	\$ 14,765.46
3506	\$ 29,406.96
3519	\$ 28,526.61

Exhibit A

<b>Account#, Last 4 Digits</b>	<b>\$Amount</b>
9530	\$ 9,832.45
6662	\$ 6,166.70
9492	\$ 17.83
9486	\$ 2,234.70
4220	\$ 5,871.03
4661	\$ 32,373.02
4925	\$ 13,695.41
4407	\$ 1,334.93
4101	\$ 13,603.38
4103	\$ 4,844.97
4088	\$ 5,764.95
4093	\$ 3,529.79
4108	\$ 29,130.98
9345	\$ 2,086.79
9951	\$ 1,215.99
4213	\$ 4,109.49
3582	\$ 8,724.14
3554	\$ 3,069.23
5854	\$ 11,482.69
4507	\$ 7,223.03
3676	\$ 138,616.00
4847	\$ 8,297.41
5005	\$ 17,894.72
1914	\$ 3,252.74
4189	\$ 17,024.89
4972	\$ 5,594.70
4766	\$ 16,008.56
8474	\$ 97.51
9420	\$ 2,404.63
4437	\$ 9,830.92
4339	\$ 6,233.79
4786	\$ 7,237.02
4603	\$ 10,671.73
4605	\$ 44,211.57
4994	\$ 5,828.39
4288	\$ 14,565.75
4290	\$ 8,231.64
4339	\$ 9,579.97

Exhibit A

<b>Account#, Last 4 Digits</b>	<b>\$Amount</b>
4550	\$ 31,836.58
4412	\$ 7,291.83
4409	\$ 9,648.96
4410	\$ 10,084.15
4181	\$ 11,554.53
4137	\$ 24,320.82
4138	\$ 15,326.22
4282	\$ 32,965.24
3697	\$ 5,342.21
4147	\$ 4,360.21
4164	\$ 13,464.04
4338	\$ 6,344.74
3454	\$ 23,491.74
6109	\$ 3,815.94
4149	\$ 34,655.07
4152	\$ 14,742.68
4578	\$ 7,203.22
4187	\$ 8,881.35
4188	\$ 15,366.32
5136	\$ 4,944.85
4408	\$ 13,540.34
3390	\$ 3,355.06
3460	\$ 825.44
3784	\$ 4,978.85
8675	\$ 9,987.82
4753	\$ 28,902.59
4752	\$ 5,276.08
4413	\$ 3,014.63
9962	\$ 971.40
3783	\$ 55,021.41
4003	\$ 11,432.89
4008	\$ 277.94
4937	\$ 6,411.49
4944	\$ 8,339.68
9986	\$ 2,113.75
0539	\$ 1,949.95
0541	\$ 1,383.91
3698	\$ 7,756.05
4214	\$ 10,221.60

Exhibit A

Account#, Last 4 Digits	\$Amount
8903	\$ -
3724	\$ 13,358.04
4974	\$ 5,326.52
5160	\$ 5,797.67
4248	\$ 11,340.37
4249	\$ 8,773.50
4541	\$ 2,745.24
4463	\$ 6,073.94
4139	\$ 219.87
3769	\$ 14,735.32
4554	\$ 9,247.68
3740	\$ 4,662.45
3310	\$ 39,015.29
4218	\$ 12,975.36
4966	\$ 5,972.35
4606	\$ 4,798.19
4233	\$ 12,676.88
4234	\$ 10,634.70
3750	\$ 11,414.30
3763	\$ 1,100.25
0141	\$ 2,410.17
0201	\$ 1,075.01
4376	\$ 8,245.64
4923	\$ 8,100.84
3299	\$ 9,292.95
3308	\$ 9,312.91
4991	\$ 11,825.70
0415	\$ 826.11
0416	\$ 1,090.95
4316	\$ 3,874.72
4373	\$ 45,633.13
4414	\$ 10,998.17
4466	\$ 4,151.23
4110	\$ 11,798.17
4209	\$ 9,266.26
3867	\$ 28,604.09
3888	\$ 10,260.65
4950	\$ 5,612.03
3570	\$ 18,764.15

Exhibit A

Account#, Last 4 Digits	\$Amount
3588	\$ 9,632.34
3589	\$ 29,412.15
3590	\$ 38,426.21
4998	\$ 7,830.87
4360	\$ 11,098.11
4364	\$ 18,009.58
4366	\$ 23,618.77
5027	\$ 4,853.34
4810	\$ 10,987.42
3727	\$ 10,992.81
3730	\$ 11,335.27
4473	\$ 34,101.39
3527	\$ 14,033.34
5257	\$ 24,597.60
4985	\$ 5,900.66
4458	\$ 19,903.62
4459	\$ 4,460.21
3785	\$ 34,218.50
4755	\$ 13,634.47
0644	\$ 328.99
4286	\$ 11,130.69
4501	\$ 9,707.64
3620	\$ 63,158.23
3621	\$ 5,604.70
4447	\$ 10,828.48
4327	\$ 19,365.25
6013	\$ 5,234.70
0528	\$ 4,283.18
5008	\$ 6,118.86
5407	\$ 8,017.59
4283	\$ 11,650.28
0215	\$ 12,775.09
0218	\$ 6,442.40
0944	\$ 961.33
3569	\$ 21,344.45
3731	\$ 11,085.93
3738	\$ 14,358.20

Exhibit A

Account#, Last 4	Digits	\$Amount
	3680	\$ 6,432.86
	4952	\$ 21,880.75
	4598	\$ 1,337.72
	5965	\$ 19,003.29
	5031	\$ 1,328.78
	4624	\$ 19,824.58
	4625	\$ 11,733.44
	3856	\$ 6,446.13
	3778	\$ 99,986.63
	3780	\$ 28,900.91
	3893	\$ 117,879.73
	3894	\$ 118,628.07
	4252	\$ 14,584.22
	4253	\$ 12,270.43
	4359	\$ 2,157.70
	4574	\$ 24,624.99
	4853	\$ 71,070.39
	5775	\$ 96,601.88
	5781	\$ 96,825.79
	6067	\$ 18,001.93
	6849	\$ 80,986.34
	7280	\$ 1,080.86
	9484	\$ 5,384.62
	9485	\$ 12,926.32
	9499	\$ 7,984.77
	9603	\$ 239.61

## **EXHIBIT B TO CONSENT ORDER**

### **RELEASE AND SETTLEMENT AGREEMENT**

THIS RELEASE AND SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between \_\_\_\_\_ (the foregoing party shall be referred to herein as "Claimant"), on the one hand, and MORGAN STANLEY SMITH BARNEY LLC<sup>1</sup> ("MSSB"), on the other hand.

#### **RECITALS**

A. The Securities Division of the Office of the Mississippi Secretary of State ("the "Division") initiated an investigation concerning MSSB styled *In the Matter of: Morgan Stanley & Co., LLC and Morgan Stanley Smith Barney, LLC*, Administrative Proceeding No. S-12-0454 (the "Investigation").

B. MSSB and the Division settled and resolved the Investigation by entering into a Consent Order on August 9, 2016.

C. Pursuant to the Consent Order, Morgan Stanley agreed to establish a Customer Fund for the benefit of Eligible Customers who (a) had a Custom Portfolio/Portfolio Management investment account with the Wyatt Group at MSSB between December 2007 and June 2012 and (b) neither litigated nor arbitrated his or her claims to an award or other final disposition, nor previously executed a release of claims through a settlement agreement with MSSB.

D. Claimant is an Eligible Customer pursuant to the Consent Order for the Custom Portfolio/Portfolio Management account(s) of \_\_\_\_\_.

E. To be eligible to participate in the Customer Fund, the Consent Order requires Claimant to voluntarily execute this Agreement, which resolves any actual, pending or potential disputes, claims, or actions Claimant has or may have against MSSB relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group.

F. Claimant agrees to be bound by and subject to the terms of the Agreement.

#### **AGREEMENT**

Accordingly, in consideration of the foregoing promises, conditions and covenants, the Parties stipulate and agree as follows:

##### **1. Consideration**

Claimant shall provide MSSB's counsel with (i) a fully executed copy of this Agreement, (ii) Claimant's Social Security Number(s) or Tax Identification Number(s), and (iii) completed

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<sup>1</sup> On June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. Incorporated, now known as Morgan Stanley & Co. LLC, and the Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney, LLC. Morgan Stanley now owns, through its subsidiaries, 100% of Morgan Stanley Smith Barney LLC.

most recent Form W-9 (items (i), (ii) and (iii) shall hereinafter collectively be referred to as the "Settlement Documents"). Claimant's signature on this Agreement shall be notarized. These items shall be mailed to: Trustmark National Bank, Attention Sandy Carter, PO Box \_\_\_ Jackson, Mississippi, \_\_\_\_\_ or delivered to street address of \_\_\_\_\_. Within thirty (30) calendar days of the receipt by its counsel of the Settlement Documents, MSSB shall direct Trustmark National Bank ("Trustmark") to pay to Claimant the sum of \_\_\_\_\_ and \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_) (the "Settlement Funds") by delivering to Claimant's home address (certified mail, return receipt requested) listed on Claimant's Form W-9 a check payable to "\_\_\_\_\_". In the alternative, the Claimant may instruct, in writing (on a form acceptable to Trustmark), alternative deposits, wirings of funds, or such other transfer acceptable to Trustmark and the Claimant. Once MSSB directs Trustmark to pay Claimant, Claimant acknowledges that MSSB shall have no responsibility or liability with respect to the handling or distribution of the Settlement Funds.

## **2. Release of Respondent**

Upon receipt of the funds listed in Paragraph 1, Claimant fully and forever releases and discharges MSSB, Morgan Stanley & Co. Incorporated, Morgan Stanley & Co. LLC, Morgan Stanley DW Inc., Citigroup Global Markets, Inc., and Trustmark National Bank, together with their present and former employees, officers, directors, principals, agents, heirs, executors, administrators, predecessors, successors, assigns, representatives, parents, subsidiaries, affiliates, and attorneys (collectively, the "Releasees"), and each of them, from any and all claims, demands, actions, causes of action, contracts, obligations, suits, debts, costs, or liabilities (collectively, "Claims"), whether known or unknown, whether anticipated or unanticipated, whether foreseen or unforeseen, whether accrued or unaccrued, which Claimant ever had, now has, or may hereafter claim to have, against any of the Releasees on or before the last date of execution of this Agreement relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group. This release includes, but is not limited to, any such rights, claims, or causes of action that relate in any way to dealings of any kind between Claimant and any of the Releasees relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group on or before the last date of execution of this Agreement. This Release does not include any rights, claims, or causes of action that relate to any account(s) other than Claimant's Custom Portfolio Management account(s).

## **3. Dismissal of Action**

Contemporaneously with the execution of this Agreement, Claimant shall cause any lawsuit, arbitration or other action (if any) relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group against MSSB and/or their employees to be dismissed with prejudice. To the extent any such lawsuit, arbitration or other action includes any Claim(s) relating to, arising out of or connected in any way to any account(s) other than Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group, and Claimant chooses to proceed with such Claim(s), Claimant agrees to file a partial dismissal with prejudice as to any specific Claim(s) and/or damages relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group. Claimant and/or Claimant's counsel shall provide evidence of that dismissal to

MSSB's counsel by sending it to Trustmark National Bank, Attention: Sandy Carter [addresses]. Such partial dismissal shall not affect any claim(s) and/or damages relating to any account(s) other than Claimant's Custom Portfolio/Portfolio Management account(s).

**4. Unknown Facts or Claims**

It is the Parties' intent this Agreement shall apply to all claims, whether known, unknown, anticipated, unanticipated, foreseen, unforeseen, accrued, or unaccrued relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group. Furthermore, the release provided above shall remain in effect as a full and complete release relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group, notwithstanding the existence or subsequent discovery of any presently-unknown, different or additional facts or claims. Claimant expressly waives the right to argue or claim, under any statute, legal doctrine, or precedent, that this Agreement does not extend to matters that Claimant did not know about or suspect to exist in Claimant's favor relating to, arising out of or connected in any way to Claimant's Custom Portfolio/Portfolio Management account(s) with the Wyatt Group at the time the agreement was executed.

**5. Disputes**

The Parties agree any dispute arising out of the Agreement, including, but not limited to, whether Claimant's claim has been released and resolved and is subject to this Agreement and whether Claimant's claim can proceed under Paragraph 3, shall be resolved by the parties or if unable to be resolved by the parties, then by binding arbitration in the City of Jackson, Mississippi by a certified arbitrator, listed in the Mediators Directory of the Mississippi Bar Association, selected by the Claimant and MSSB. If the Parties cannot agree to an arbitrator then each party shall select an arbitrator who shall then select a final arbitrator for any dispute. The Parties agree that any dispute submitted to binding arbitration pursuant to this Paragraph will be decided within sixty (60) days of submission to the arbitrator.

**6. Tax Treatment**

Claimant acknowledges MSSB has made no representations regarding the tax treatment of the payment described in Paragraph 1 above and that Claimant is solely responsible for the tax consequences of such payment.

**7. No Admission of Liability**

The Parties agree that the fact that they are entering into this Agreement shall not be taken or construed to be an admission of liability on the part of any of them.

**8. Fees and Costs**

The Parties shall bear their own costs and attorneys' fees (if any) incurred in connection with this Agreement.

**9. Independent Advice**

Claimant understands and agrees that participation in the Customer Fund is entirely voluntary. Claimant has had the opportunity to seek independent legal advice and consultation in connection with this Agreement and any rights that may be relinquished hereby. Claimant has not relied upon any representations or statements made any representative of MSSB, the Secretary of State or Trustmark in executing this Agreement other than as stated expressly herein.

**10. Warranty of Authority**

Each signatory to this Agreement expressly warrants to the other parties that he, she, or it has the authority to execute this Agreement on behalf of the party or parties to be bound by his, her, or its signature and on behalf of each and every principal or other owner of a legal, equitable, or beneficial interest in such party or parties. Each signatory agrees that he, she, or it will indemnify the other parties to this Agreement from any loss or damage resulting from a breach of this warranty of authority.

**11. Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and is entered into voluntarily by the Parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. It is expressly understood and agreed that this Agreement may not be altered, amended, or otherwise modified in any respect except by a writing duly executed by all of the Parties.

**12. Construction**

Each party hereto and his, her, or its respective counsel or representatives, have had an opportunity to review and revise this Agreement and agree that the normal rules of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**13. Parties Bound**

The terms of this Agreement shall bind the Parties as well as their respective heirs, trustees, agents, beneficiaries, executors, administrators, predecessors, successors, and assigns.

**14. Confidentiality**

The Parties and their counsel and representatives represent and agree that they will not discuss or disclose (or cause or allow to be disclosed) the terms of this Agreement to any third party or entity without the prior written consent of the other Parties.

Notwithstanding the foregoing, Claimant may disclose the existence and/or terms of this Agreement: (1) to tax advisors to the extent that such disclosure is necessary in the preparation of Claimant's tax returns, provided that Claimant first inform those advisors of the confidentiality provisions of this Agreement and they agree to abide by those provisions; (2) to the Division for purposes of the Consent Order; (3) to immediate family members, provided that Claimant first

inform those family members of the confidentiality provisions of this Agreement and they agree to abide by those provisions; and (4) in response to a valid subpoena, or as otherwise required by law, provided that Claimant, at the earliest opportunity, notify MSSB of any such subpoena or legal requirement to disclose so as to give MSSB an opportunity to protect their interests.

In addition, any non-disclosure provision in this agreement does not prohibit or restrict Claimant (or Claimant's attorney) from initiating communications directly with, or responding to any inquiry from, or providing testimony before, the SEC, FINRA, the Division or any other self-regulatory organization or any other state or federal regulatory authority, regarding this settlement or its underlying facts or circumstances. Once provided to a regulatory agency or organization, MSSB is not in a position to prevent the further dissemination of the disclosed information.

**15. Non-Assignment**

Claimant represents, warrants, and certifies that there has been no transfer or assignment, or attempted transfer or assignment, of any right, title, or interest in or to any claim, action, or cause of action that is being released and discharged pursuant to the general release provided above.

**16. Counterparts**

This Agreement may be executed in one or more counterparts, all of which counterparts shall be deemed to be one instrument upon execution of a counterpart by all signatories to this Agreement.

**17. Provisions Severable**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement, or the application thereof to any person or circumstances, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to the unaffected persons or circumstances, shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

**18. Governing Law**

This Agreement shall be governed by the laws of the State of Mississippi applicable to agreements made, and to be performed, therein and without resort to that State's conflict of law provisions or rules.

Morgan Stanley Smith Barney LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Claimant

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, individually, on behalf of  
\_\_\_\_\_ and in all his/her other capacities

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_,  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public