

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

IN THE MATTER OF:

**HILARY J. ZIMMERMAN
CRD # 2191841**

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

RESPONDENT

CONSENT ORDER

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

WHEREAS, the Division has conducted an investigation into certain activities occurring in the Ridgeland, Mississippi branch office of Morgan Stanley during the period of December 2007 through June 2012 where Hilary J. Zimmerman (“Respondent” or “Zimmerman”) was and currently is employed as a broker-dealer agent and investment advisor representative; and

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

WHEREAS, Respondent, 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 Consent Order (“Order”); and

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 with respect to this Order; and

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

I. FINDINGS OF FACT

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

2. Morgan Stanley Smith Barney LLC (“Morgan Stanley” or the “Firm”)¹, Central Registrations Depository (“CRD”) #149777, maintains and operates a branch office located at 1018 Highland Colony Parkway, Ridgeland, Mississippi 39157.

3. Zimmerman (CRD # 2191841) has been employed at Morgan Stanley’s branch office located at 1018 Highland Colony Parkway, Suite 105 in Ridgeland, Mississippi since December 2007. He is currently registered with the Division as a broker-dealer agent and investment adviser representative (collectively, the “MS Registrations”).

4. Zimmerman was previously registered with Smith Barney, Inc., (“Smith Barney”) now known as Citigroup Global Markets, CRD Number 7059, from July 1993 to December 2007 and worked at its branch office located at 4450 Old Canton Road in Jackson, Mississippi.

5. Smith Barney had a fee-based managed portfolio program. While at Smith Barney, for approximately ten years (1997-2007), Zimmerman had a partnership and revenue sharing arrangement with another broker-dealer agent/investment adviser representative, Steven M. Wyatt (CRD number 2522129) (“Wyatt”). Wyatt researched and managed the investments in the portfolio program and Zimmerman serviced the clients.

¹ 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.

6. In late 2007, the Firm recruited Zimmerman and Wyatt to join its Ridgeland Office.

7. In recruiting Wyatt and Zimmerman, the Firm hoped that they would move their client's managed and brokerage accounts from Smith Barney to Morgan Stanley. Morgan Stanley had a Custom Portfolio Program (which was similar to the managed portfolio at Smith Barney).

8. Wyatt and Zimmerman began the transition to Morgan Stanley in or around December 2007, and began soliciting clients to transfer their accounts from Smith Barney.

9. Before leaving Smith Barney, Zimmerman accessed Smith Barney's internal client records and altered the phone numbers of some of their largest accounts (both managed and brokerage accounts) on one of the systems maintaining client records. Zimmerman altered the numbers to impede Smith Barney's ability to promptly contact clients before the clients transferred their accounts to Morgan Stanley. These actions were discovered quickly, and Zimmerman immediately acknowledged his mistake in engaging in this conduct.

10. Zimmerman and Wyatt had a revenue sharing arrangement with regard to certain accounts (including managed accounts) that were transferred to Morgan Stanley. Zimmerman managed client relationships and recruited new clients into Wyatt's CP program.

11. Zimmerman invested in the CP program. However, after experiencing losses and due to personal financial concerns, he closed his CP accounts and transferred the funds to accounts which Wyatt did not manage.

12. Zimmerman, as a fiduciary to the clients in the CP program, owed them his utmost loyalty and their best interest over that of his own.

13. Zimmerman was aware that the CP program was a higher-risk investment. Zimmerman recommended that a handful of clients participate in, and recommended some others to remain in, the CP program. Zimmerman recommended and facilitated other customers to withdraw their moneys from the CP program depending upon his understanding of their circumstances.

II. APPLICABLE LAW

1. The Division is authorized to regulate the sale of securities in Mississippi and has jurisdiction over this matter. *See* Miss. Code Ann. §§ 75-71-601; 75-71-610. The current version of the Act became effective January 1, 2010. The previous version of the Act continues to govern proceedings that may be initiated “on the basis of conduct occurring before January 1, 2010.” *See* Miss. Code Ann. § 75-71-701.

2. As the actions of Respondent took place prior to January 1, 2010, the Predecessor Act applies. Citations to Mississippi Statutes and Rules in this Order refer to the Predecessor Act and former Rules for the relevant time period referenced herein.

3. Former Mississippi Securities Act Rule 523(B) which was in effect prior to 2010 required each broker/dealer agent to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Violating any rules of a national securities association of which it was a member was considered contrary to such standards and constituted grounds for imposition of fines, or such other action authorized by statute.

4. Former Rule 623 which was in effect prior to 2010 provided that investment adviser representatives are fiduciaries and have a duty to act primarily for the benefit of their clients.

5. In 2007 FINRA was NASD, and as such had NASD rules in place, which are now FINRA rules. Rule 2110 in effect during 2007 provided as follows: “2110. Standards of Commercial Honor and Principles of Trade. A member, in the conduct of business, shall observe high standards of commercial honor and just and equitable principles of trade.”

6. Section 75-71-715 of the Predecessor Act authorized the Secretary of State to (among other remedies) issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense whenever it appeared that a person engaged in any act or practice that constituted a violation of any provision of the Predecessor Act or any Predecessor Act rule.

III. ACTIONS BASED UPON FINDINGS, APPLICABLE LAW AND AGREEMENT

1. This Order is appropriate, in the public interest and consistent with the proper intent of the Act.

2. The undersigned Respondent agrees that 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 that this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

3. Based upon the foregoing Findings of Fact, and consistent with the consent of the Respondent, the Division makes the following:

IV. CONCLUSIONS OF LAW

Solely for the purpose of this Consent Order, Respondent consents to the Division making the following Conclusions of Law:

1. The previous paragraphs are incorporated by reference.

2. Some of the conduct described above violated Former Mississippi Securities Act Rules 523(B) and Rule 623.

V. ORDER

IT IS HEREBY ORDERED:

1. This Order concludes the open matter with the Division with respect to Respondent's conduct and activities described in this Order. 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 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 by Respondent or by any other person who is not a respondent in this Order.

3. Respondent shall fully and fairly comply with all of the following requirements:

a. Respondent shall retire from the Firm effective January 31, 2017 and shall voluntarily surrender his MS Registrations on the date of such retirement from the Firm.

b. Respondent shall permanently refrain from all registration with the Division following the surrender of the MS Registrations.

c. Respondent shall, upon request by the Administrator, provide all documentation and information reasonably necessary for the Administrator to verify compliance with this Order.

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.

5. Respondent shall fully cooperate with the Division and shall fully, fairly, and truthfully disclose all information and produce all records and other evidence in his 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. Any failure by Respondent follow the terms of this Order shall be considered a violation of this Order, authorizing the Administrator in his sole discretion to either vacate this Order 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(a) of the Act; or to enforce this Order as provided in Section 75-71-604(g) of the Act. In addition, the Division may impose additional sanctions and seek other appropriate relief for violations of this Order.

7. 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.

8. This Order is not intended to indicate that Respondent shall be subject to any disqualifications contained in the federal securities laws, 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 disqualifications.

DATED, this the 16th day of November 2016.

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

BY: 

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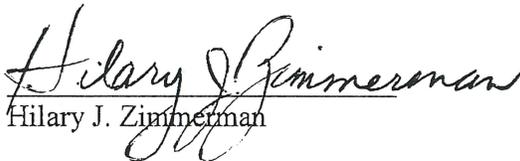
CONSENT TO ENTRY OF FINAL ORDER

Hilary J. Zimmerman acknowledges that he has been served with a copy of this 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, and that he has received independent legal advice with respect to the advisability of executing this Order.

Hilary J. Zimmerman 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.

Hilary J. Zimmerman 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 15 day of November 2016.


Hilary J. Zimmerman

STATE OF

COUNTY OF

SUBSCRIBED AND SWORN TO before me this 15th day of November 2016.

Notary Public
My commission expires:

