

**Disciplinary Panel
American Stock Exchange, LLC**

IN THE MATTER	:	Case No. 03-01
	:	
OF	:	Disciplinary Panel Decision
	:	
MORGAN STANLEY & CO., INC.	:	Hearing Officer – JN
AND	:	
ALIMOHAMMED AGBOATWALLA	:	October 3, 2003
	:	

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Morgan Stanley violated Article V, Section 4(h) of the Exchange Constitution, and Agboatwalla violated Exchange Rule 345(a)(4). As a penalty, the Panel imposed a censure and a joint and several fine of \$100,000 upon the firm and Agboatwalla. The Panel further suspended Agboatwalla for ten business days. It also required that the firm engage in undertakings involving an educational session and a compliance bulletin.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Morgan Stanley & Co., Inc., a Regular Member organization of the Exchange, and Alimohammed Agboatwalla, an off-floor trader employed by Morgan Stanley. A Disciplinary Panel held a hearing on September 12, 2003, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (attached) entered into between the Exchange, Morgan Stanley, and Agboatwalla for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against the firm and Agboatwalla based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Without admitting or denying liability, Morgan Stanley and Agboatwalla stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

As recited in the Stipulation, on August 21, 2002, Morgan Stanley received a “Not Held” customer order to buy 2,000 Safeway, Inc. (“SWY”) September 27.50 puts. The order was given to Agboatwalla, who executed 1,563 contracts of the 2,000 contract order on the open market. In attempting to execute the remaining balance of 437 contracts, Agboatwalla contacted an Exchange floor broker, who subsequently informed Agboatwalla that the SWY trading crowd offered to sell 100 SWY September 27.50 puts to Agboatwalla’s Morgan Stanley customer at a price of \$1.05. Thereafter, Agboatwalla contacted a Philadelphia Stock Exchange, Inc. (PHLX) floor broker in an attempt to cross the remaining 437 contracts. Agboatwalla instructed the PHLX floor broker to execute the trade at \$1.10 and to allow the PHLX SWY trading crowd to participate in a maximum of 37 contracts.

After Agboatwalla gave the order to the PHLX floor broker, but before it was executed on the PHLX, the Exchange floor broker contacted Agboatwalla and again related to him that the Exchange SWY trading crowd was offering to sell 100 contracts at \$1.05. Agboatwalla acknowledged the quote and dismissed it.

III. Violation

Morgan Stanley violated Article V, Section 4(h) of the Exchange Constitution, and Agboatwalla violated Exchange Rule 345(a)(4), in that both Morgan Stanley and Agboatwalla failed to exercise due diligence in handling a customer order to purchase 437 options contracts. After obtaining from the AMEX SWY trading crowd an offer to sell 100 contracts at \$1.05,

Morgan Stanley and Agboatwalla subsequently allowed 400 contracts from the Morgan Stanley customer's order to be traded in the PHLX SWY trading crowd at a price of \$1.10, which resulted in an execution price less favorable to the customer. (These events stemmed from an apparent attempt by Respondents to cross the customer's entire order, with the firm's proprietary account acting as the seller.)

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose the following penalties upon Morgan Stanley and Agboatwalla:

- (a) a censure; and
- (b) a fine of \$100,000 to be paid jointly and severally by Morgan Stanley and Agboatwalla to the Exchange and the PHLX.

For Agboatwalla, the Stipulation further proposes a suspension for ten business days from employment or association in any capacity with any Exchange member or member organization;

For Morgan Stanley, the Stipulation further proposes an agreement to perform the following undertakings:

- (a) to have outside counsel conduct an educational session, acceptable to the staff from the Exchange and the PHLX, regarding (i) the Firm's best execution obligations, (ii) Exchange and PHLX rules related to best execution, and (iii) Exchange and PHLX rules related to the internalization of orders; the educational session must be attended by all members of the Firm's Listed Derivatives Options Department, Equity

Derivative Sales and Trading Desks, and Equity Options Trading Desk;
and

- (b) to issue a compliance bulletin, acceptable to the staff from the Exchange and PHLX, to all members of the Firm's Listed Derivatives Options Department, Equity Derivatives Sales and Trading Desks, and Equity Options Trading Desk, explaining in detail the procedure set forth by the Firm to ensure compliance with the Firm's best execution obligations to its customers, and setting forth each individual's responsibility to strictly follow the aforementioned procedures.

At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalties as appropriate to the facts and circumstances of this case. The Stipulation notes that “[i]n entering into this Stipulation with Morgan Stanley and Agboatwalla, the Exchange considered the Firm's cooperation with the Exchange and the PHLX throughout the Enforcement investigations, and the Firm's restitution to its customer” (at p. 6), and the Panel gave weight to that statement. After consideration of the Stipulation and the agreed-upon penalties, the Disciplinary Panel finds that they are at the appropriate level to be imposed in this proceeding and therefore accepts the penalties proposed in the Stipulation.

The Disciplinary Panel further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.¹

¹ Rule 12 exempts from publicity those cases where the Panel finds that the offense “related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” Those exemptions do not apply to the facts of this case.

V. Conclusion

By unanimous vote, the Disciplinary Panel accepts the Stipulation of Facts and Consent to Penalty and hereby imposes the following penalties:

- (a) as to Morgan Stanley and Agboatwalla, a censure and a fine of \$100,000 to be paid jointly and severally by Morgan Stanley and Agboatwalla to the Exchange and the PHLX;
- (b) as to Agboatwalla, a suspension for ten business days from employment or association in any capacity with any Exchange member or member organization;
- (c) as to Morgan Stanley, a duty to perform the following undertakings:
 - (1) to have outside counsel conduct an educational session, acceptable to the staff from the Exchange and the PHLX, regarding (i) the Firm's best execution obligations, (ii) Exchange and PHLX rules related to best execution, and (iii) Exchange and PHLX rules related to the internalization of orders; the educational session must be attended by all members of the Firm's Listed Derivatives Options Department, Equity Derivative Sales and Trading Desks, and Equity Options Trading Desk; and
 - 2.) to issue a compliance bulletin, acceptable to the staff from the Exchange and PHLX, to all members of the Firm's Listed Derivatives Options Department, Equity Derivatives Sales and Trading Desks, and Equity Options Trading Desk, explaining in detail the procedure set forth by the Firm to ensure compliance

with the Firm's best execution obligations to its customers, and setting forth each individual's responsibility to strictly follow the aforementioned procedures.²

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: October 3, 2003
Washington, DC

Copies to: Ted Helwig, Esq. (*via facsimile and first class mail*)
Eric S. Brown, Esq. (*via facsimile and first class mail*)

² The parties agreed that the Stipulation of Facts and Consent to Penalty "is conditioned upon the acceptance by the Business Conduct Committee of the PHLX (the "PHLX Proceeding") of a related Offer of Settlement, Stipulation of Facts and Consent to Sanctions submitted by Respondent at the PHLX in *In the Matter of Morgan Stanley & Co., Inc. and Alimohammed Agboatwalla* ("Offer"). If the Offer is not accepted at the conclusion of the PHLX Proceeding, then Respondent may withdraw this Stipulation of Facts and Consent to Penalty" (Stipulation, p. 6). The Panel adopts that agreed-upon condition.

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	
OF	X	STIPULATION OF FACTS
MORGAN STANLEY & CO. INC.	X	AND
AND	X	CONSENT TO PENALTY
ALIMOHAMMED AGBOATWALLA	X	
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against MORGAN STANLEY & CO., INC. (“Morgan Stanley” or the “Firm”) (CRD # 8209), a Regular Member organization of the Exchange, and ALIMOHAMMED AGBOATWALLA (“Agboatwalla”) (CRD # 2734578), an employee of Morgan Stanley. This Stipulation of Facts and Consent to Penalty is entered into with Morgan Stanley pursuant to Article V, Section 2 of the Exchange Constitution, and Agboatwalla pursuant to Exchange Rule 345(k), in order to settle and conclude all disciplinary actions by the Exchange against Morgan Stanley and Agboatwalla based upon or arising out of the facts hereinafter stipulated. Morgan Stanley and Agboatwalla, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consent to the findings of violations of the Exchange Constitution and Rules and to the imposition of the penalties hereinafter provided. Morgan Stanley and Agboatwalla understand that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision that may not be appealed by the parties. Morgan Stanley and Agboatwalla understand and acknowledge that the Disciplinary Panel’s decision in this matter will become part of their respective

disciplinary records and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS

- 1.0 During all relevant periods herein, Agboatwalla was employed as an off-floor trader for Morgan Stanley's Equity Options Desk.
- 1.1 During all relevant periods herein, Morgan Stanley was a Regular Member organization of the Exchange, and was also a member organization of the Philadelphia Stock Exchange, Inc. ("PHLX").
- 2.0 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that a member organization which engages in conduct inconsistent with just and equitable principles of trade may be suspended or expelled from membership unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.
- 2.1 During all relevant periods herein, Exchange Rule 345(a)(4) provided that the Exchange may disapprove or suspend or withdraw its approval of the employment of an employee of a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specified capacities; and/or (c) assess a fine against him if the Exchange determines that such employee has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade.

- 3.0 At approximately 9:46 a.m. on August 21, 2002, Morgan Stanley received a “Not Held” customer order to buy 2,000 Safeway, Inc. (“SWY”) September 27.50 puts. The order was given to Agboatwalla, who executed 1,563 contracts of the 2,000 contract order on the open market.
- 3.1 In an attempt to execute the remaining balance of 437 contracts, Agboatwalla, at approximately 10:02 a.m., contacted an Exchange floor broker.
- 3.2 Agboatwalla thereafter gave explicit instructions to the Exchange floor broker to execute the trade at \$1.10, and to allow the Exchange SWY trading crowd to participate in a maximum of 37 contracts. The floor broker represented the order, as communicated by Agboatwalla, to the SWY trading crowd. The floor broker informed Agboatwalla that the SWY trading crowd offered to sell 100 SWY September 27.50 puts to Agboatwalla’s Morgan Stanley customer at a price of \$1.05. The floor broker also informed Agboatwalla that the SWY trading crowd would not allow Morgan Stanley to cross a minimum of 400 contracts at \$1.10. Upon being informed of the SWY trading crowd’s conditions to allow Morgan Stanley to facilitate any portion of the order, Agboatwalla cancelled the order.
- 3.3 At approximately 10:09 a.m., Agboatwalla contacted a PHLX floor broker in an attempt to cross the remaining 437 contracts. Agboatwalla instructed the PHLX floor broker to execute the trade at \$1.10 and to allow the PHLX SWY trading crowd to participate in a maximum of 37 contracts.

- 3.4 After Agboatwalla gave the order to the PHLX floor broker, but before it was executed on the PHLX, the Exchange floor broker contacted Agboatwalla and again related to him that the Exchange SWY trading crowd was offering to sell 100 contracts at \$1.05. Agboatwalla acknowledged the quote and dismissed it.
- 3.5 The order was executed on the PHLX at approximately 10:10 a.m., with Morgan Stanley crossing the entire 437 contracts at \$1.10.
- 3.6 After the trade was executed on the PHLX, upon Agboatwalla's request, the quantity of the execution was reduced to 400 contracts. Agboatwalla then contacted the Exchange floor broker and traded 37 contracts in SWY September 27.50 puts on the Amex at \$1.05.

CONCLUSION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 4.0 Morgan Stanley violated Article V, Section 4(h) of the Exchange Constitution, and Agboatwalla violated Exchange Rule 345(a)(4), in that both Morgan Stanley and Agboatwalla failed to exercise due diligence in handling the customer order referred to in above paragraph 3.0, whereby after obtaining from the Exchange SWY trading crowd a price to buy 100 contracts at \$1.05, Morgan Stanley and Agboatwalla subsequently allowed 400 contracts from the Morgan Stanley customer's original 2,000 contract order to be traded in the PHLX SWY trading

crowd at a price of \$1.10, which resulted in an execution price less favorable to the customer, as stated in above paragraphs 3.0 through 3.6.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalties upon Morgan Stanley and Agboatwalla:

- (a) a censure;
- (b) a fine of \$100,000 to be paid jointly and severally by Morgan Stanley and Agboatwalla to the Exchange and the PHLX.

A Disciplinary Panel may further impose the following additional penalties:

For Agboatwalla, a ten (10) business day suspension for employment or association in any capacity with any Exchange member or member organization; and

For Morgan Stanley, an agreement to perform the following undertakings:

- (a) to have outside counsel conduct an educational session, acceptable to the staff from the Exchange and the PHLX, regarding (i) the Firm's best execution obligations, (ii) Exchange and PHLX rules related to best execution, and (iii) Exchange and PHLX rules related to the internalization of orders; the educational session must be attended by all members of the Firm's Listed Derivatives Options Department, Equity Derivative Sales and Trading Desks, and Equity Options Trading Desk; and
- (b) to issue a compliance bulletin, acceptable to the staff from the Exchange and PHLX, to all members of the Firm's Listed Derivatives Options Department, Equity Derivatives Sales and Trading Desks, and Equity Options Trading Desk, explaining in detail the procedure set forth by the Firm to ensure compliance with the Firm's best execution obligations to its customers, and setting forth each individual's responsibility to strictly follow the aforementioned procedures.

In entering into this Stipulation with Morgan Stanley and Agboatwalla, the Exchange considered the Firm's cooperation with the Exchange and the PHLX throughout the Enforcement investigations, and the Firm's restitution to its customer.

Additionally, this Stipulation of Facts and Consent to Penalty is conditioned upon the acceptance by the Business Conduct Committee of the PHLX (the "PHLX Proceeding") of a related Offer of Settlement, Stipulation of Facts and Consent to Sanctions submitted by Respondent at the PHLX in *In the Matter of Morgan Stanley & Co., Inc. and Alimohammed Agboatwalla* ("Offer"). If the Offer is not accepted at the conclusion of the PHLX Proceeding, then Respondent may withdraw this Stipulation of Facts and Consent to Penalty.

AMERICAN STOCK EXCHANGE LLC

By: _____
Glen Barrentine
Senior Vice President

Agreed to this _____ day of July, 2003.

Morgan Stanley & Co., Inc.

Alimohammed Agboatwalla

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	
OF	X	STATEMENT OF CHARGES
MORGAN STANLEY & CO. INC.	X	Case Number 03-01
AND	X	March 27, 2003
ALIMOHAMMED AGBOATWALLA	X	
.....	X	

Charges are hereby preferred (i) pursuant to Article V, Section 1(b)(6) of the Constitution of the American Stock Exchange LLC (the “Exchange”) against MORGAN STANLEY & CO. INC. (“Morgan Stanley”) (CRD # 8209), a Regular Member organization of the Exchange, and (ii) pursuant to Exchange Rule 345(d) against ALIMOHAMMED AGBOATWALLA (“Agboatwalla”) (CRD # 2734578), an employee of Morgan Stanley.

STATEMENT OF FACTS:

- 1.0 During all relevant periods herein, Agboatwalla was employed as a registered representative for Morgan Stanley.
- 1.1 During all relevant periods herein, Morgan Stanley was a Regular Member organization of the Exchange.
- 2.0 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that a member organization which engages in conduct inconsistent with just and equitable principles of trade may be suspended or expelled from membership unless the offense is the violation of a provision, rule

or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.

- 2.1 During all relevant periods herein, Exchange Rule 345(a)(4) provided that the Exchange may disapprove or suspend or withdraw its approval of the employment of an employee of a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specified capacities; and/or (c) assess a fine against him if the Exchange determines that such employee has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade.
- 3.0 At approximately 9:46 a.m. on August 21, 2002, Morgan Stanley received a “Not Held” customer order to buy 2,000 Safeway, Inc. (“SWY”) September 27.50 puts. The order was given to Agboatwalla, who filled 1,563 contracts of the 2,000 contract order on the open market.
- 3.1 In an attempt to complete the remaining balance of 437 contracts, Agboatwalla, at approximately 10:02 a.m., contacted an Exchange floor broker to attempt the execution.
- 3.2 Agboatwalla gave explicit instructions to the Exchange floor broker to execute the trade at \$1.10, and to allow the Exchange SWY trading crowd to participate in a maximum of 37 contracts. The floor broker represented the order, as communicated by Agboatwalla, to the SWY trading crowd. The floor broker informed Agboatwalla that the SWY trading crowd offered to sell 100 SWY September 27.50 puts to Agboatwalla’s Morgan Stanley customer at a price of \$1.05. The floor broker also informed

- Agboatwalla that the SWY trading crowd would not allow Morgan Stanley to cross a minimum of 400 contracts at \$1.10. Upon being informed of the SWY trading crowd's conditions to allow Morgan Stanley to facilitate any portion of the order, Agboatwalla cancelled the order.
- 3.3 At approximately 10:09 a.m., Agboatwalla contacted a Philadelphia Stock Exchange, Inc. ("PHLX") floor broker in an attempt to cross the remaining 437 contracts. Agboatwalla instructed the PHLX floor broker to execute the trade at \$1.10 and to allow the PHLX SWY trading crowd to participate in a maximum of 37 contracts.
- 3.4 After Agboatwalla gave the order to the PHLX floor broker, but before it was executed on the PHLX, the Exchange floor broker contacted Agboatwalla and again related to him that the Exchange SWY trading crowd was offering 100 contracts at \$1.05. Agboatwalla acknowledged the quote and dismissed it.
- 3.5 The order was executed on the PHLX at approximately 10:10 a.m., with Morgan Stanley crossing the entire 437 contracts at \$1.10.
- 3.6 After the trade was executed on the PHLX, upon Agboatwalla's request, the quantity of the execution was reduced to 400 contracts. Agboatwalla then contacted the Exchange floor broker and traded 37 contracts in SWY September 27.50 puts on the Amex at \$1.05.

CHARGES PREFERRED:

4.0 Morgan Stanley violated Article V, Section 4(h) of the Exchange Constitution, and Agboatwalla violated Exchange Rule 345(a)(4), in that both Morgan Stanley and Agboatwalla failed to exercise due diligence in handling the customer order referred to in above paragraph 3.0, whereby after obtaining from the Exchange SWY trading crowd a price to buy 100 contracts at \$1.05, Morgan Stanley and Agboatwalla subsequently allowed 400 contracts from the Morgan Stanley customer's original 2,000 contract order to be traded in the PHLX SWY trading crowd at a price of \$1.10, which resulted in an execution price less favorable to the customer, as stated in above paragraphs 3.0 through 3.6.

* * * * *

Morgan Stanley and Agboatwalla shall have 20 days from the date of service of this Statement of Charges to answer such Charges in accordance with the provisions of the Exchange Constitution and Rules thereunder. The answer shall specifically indicate which statements, or portions thereof, are admitted and which are denied. Any statement, or portion thereof, not specifically denied shall be deemed admitted.

AMERICAN STOCK EXCHANGE

By: _____

Glen Barrentine
Senior Vice President