

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9998 / December 22, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 76729 / December 22, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4299 / December 22, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31947 / December 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-17016

In the Matter of

**MORGAN STANLEY
INVESTMENT
MANAGEMENT INC.
and
SHEILA HUANG**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e), 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Morgan Stanley Investment Management Inc. (“MSIM”), and pursuant to Section 8A of the Securities Act, Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against Sheila Huang (“Huang”) (together “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

1. These proceedings concern a series of unlawful prearranged trades conducted by a portfolio manager/trader formerly employed by registered investment adviser MSIM which resulted in the undisclosed favorable treatment of certain MSIM advisory clients over others, in violation of MSIM’s fiduciary duties to those clients. The prearranged trades involve MSIM and a former MSIM portfolio manager/trader, Sheila Huang, on one side of the trades, and a registered broker-dealer, SG Americas Securities, LLC (“SGAS”) and a former SGAS trader, Yimin Ge (“Ge”), on the other side of the trades. From late 2011 through early 2012, Huang engaged in a series of unlawful prearranged sales and buybacks of fixed-income securities with Ge. While effecting sales for accounts that needed to liquidate certain positions, Huang did not simply sell them into the open market or to other accounts advised by MSIM in accordance with the firm’s cross trade rules. Instead, Huang sold to and improperly prearranged a repurchase from SGAS at predetermined prices that were based on the initial sale price plus a minimal markup in order to “buyback” the positions into other accounts advised by MSIM. By engaging in trades between advisory accounts in this manner, she violated the antifraud provisions of the federal securities laws. In addition, by interposing SGAS to effectuate these cross trades, Huang evaded MSIM’s internal cross trade requirements and as a result, in certain instances, caused violations of regulatory prohibitions on cross trades.

2. For the first five sets of trades, the manner in which Huang effectuated the prearranged cross trades resulted in undisclosed favorable treatment to the purchasing client, which was often a certain unregistered fund sponsored and advised by MSIM (“Unregistered Fund”).

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Specifically, Huang arranged to sell the bonds to SGAS at the highest current independent bid price available for the securities, and executed the repurchase side of the cross trade at a small markup over the sales price. For these sets of trades, by not crossing these positions at the midpoint between best bid and offer, Huang generally allocated the full benefit of the market savings to its purchasing clients, even though both purchasing and selling clients were owed the same fiduciary duty. As a result of this conduct, Huang willfully violated Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and willfully aided and abetted and caused violations of Sections 206(1) and (2) of the Advisers Act. Also as a result of Huang's conduct, MSIM willfully violated Section 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act. In addition, because Huang crossed two securities from accounts for two registered investment companies ("RICs") to one RIC-affiliated client account, MSIM aided and abetted and caused the violation of Section 17(a)(2) of the Investment Company Act.

3. The conduct related to the sixth set of prearranged trades resulted in undisclosed favorable treatment to the selling clients and disadvantaged the Unregistered Fund. Huang and MSIM became aware that non-investment grade mortgage bonds had been purchased for certain accounts subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and that these may have been prohibited purchases for those accounts (MSIM ultimately concluded that the purchases were not prohibited). Huang also became aware that the ERISA accounts would incur a loss if the positions were sold. To avoid incurring a loss to the ERISA accounts, Huang orchestrated a scheme to sell those bonds at above-market prices to SGAS and, at the same time, sold two bonds from the Unregistered Fund to SGAS at below market prices for no legitimate business purpose in order to offset the above market prices of the bonds she was selling from the ERISA accounts. At the time of the sale to SGAS, Huang prearranged their repurchase by the Unregistered Fund. She repurchased bonds that had come from the ERISA accounts at slight markups from the sales prices, thus moving approximately \$600,000 in previously unrealized losses from the ERISA accounts to the Unregistered Fund. She repurchased the two bonds that had come from the Unregistered Fund at the same prices at which they were sold. As a result of this conduct, Huang willfully violated Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and willfully aided and abetted and caused violations of Sections 206(1) and (2) of the Advisers Act. Also as a result of Huang's conduct, MSIM willfully violated Section 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act.

4. MSIM failed to adopt adequate policies and procedures to prevent unlawful cross trading effectuated by Huang through these transactions with SGAS, and thus violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. MSIM also failed reasonably to supervise Huang within the meaning of Section 203(e)(6) of the Advisers Act.

Respondents

5. **Morgan Stanley Investment Management Inc.** is a Delaware corporation with its principal place of business in New York, New York. It is an investment adviser registered with the Commission and had between approximately \$175 to \$250 billion in assets under management from 2011 through 2014. Its clients include multiple registered investment companies, pooled

investment vehicles and separately managed accounts. It is wholly owned by Morgan Stanley, a public company.

6. **Sheila Huang** is 47 years old and a resident of New York. She was employed by MSIM starting in 2008 and was a Managing Director from 2010 until her departure from the firm in mid-2014. During the relevant time period she was the head of Mortgages (or the “Mortgage Team”) at MSIM, responsible for mortgage-backed and asset-backed securities trading and investment strategy. She was the lead portfolio manager for the Unregistered Fund.

Other Relevant Entity

7. **SG Americas Securities, LLC** is a broker-dealer registered with the Commission and is headquartered in New York, New York. It is 100% owned by Societe Generale, a foreign bank headquartered in Paris, France, indirectly through SG Americas Securities Holdings, LLC. SGAS and Ge are named as respondents in separate administrative and cease-and-desist proceedings relating to their conduct described in this Order.

Facts

8. MSIM’s Mortgage Team consisted of mortgage-backed and asset-backed securities traders and analysts. As head of MSIM’s Mortgage Team, Huang was responsible for mortgage-backed and asset-backed securities trading and investment decisions for MSIM’s advisory clients. The six sets of unlawful prearranged trades at issue were proposed by Huang and agreed to by Ge without any arm’s length negotiation.

9. Each set of MSIM/SGAS sell-buy trade pairs involved a package of bonds which were sold to SGAS and then repurchased by MSIM the next business day at the same price they were sold plus a small markup. There were a total of 81 individual positions traded in the six trades between MSIM and SGAS, which consisted of collateralized mortgage obligations (“CMOs”), commercial mortgage back securities (“CMBS”), and asset backed securities (“ABS”).

10. In the “buyback” trades that are at issue, Huang typically offered the positions to Ge at the best bid received from other broker-dealers and indicated that the bonds would be bought back at a small markup. Through this arrangement, Huang was able to repurchase positions at a price only slightly above the bid price, which was a more favorable price to the buying accounts than transacting at a price that incorporated the full market based bid-offer spread for these types of securities.

11. In each set of buyback trades, none of which was negotiated at arm’s length, there was an understanding between Huang and Ge that the positions would be repurchased at a slight markup. Huang and Ge expected the other to follow through with a reoffer and repurchase the next business day with a small markup. The understanding was that the securities would be temporarily held by SGAS, and that SGAS would be made whole on the buyback and would receive a slight markup.

12. Huang and Ge agreed to an identical markup across all positions reoffered, regardless of the individual characteristics or sizes of the positions. The small markup was primarily determined by the dollar amount required to cover SGAS's ticketing costs.

13. For the six sets of trades with SGAS between December 2011 and March 2012, Huang and the Mortgage Team, at Huang's direction, used "buyback" arrangements to cross bonds between accounts, rather than using MSIM's cross trade procedure as required by MSIM's policies. The prearranged nature of the six sets of buyback trades meant that risk never truly passed to SGAS. In practice, Huang was simply interposing SGAS to effect cross trades and avoid MSIM and regulatory requirements governing cross trades.

a. Cross Trading Regulations and MSIM Policies

14. Sections 17(a)(1) and 17(a)(2) of the Investment Company Act generally prohibit any affiliated person of a RIC or any affiliated person of the affiliated person, acting as principal, from knowingly selling a security to, or purchasing a security from the RIC unless the person first obtains an exemptive order from the Commission under Section 17(b).

15. Rule 17a-7 under the Investment Company Act exempts from these prohibitions certain purchases and sales between a RIC and its affiliated person where the affiliation arises solely because the two have a common investment adviser, directors and/or officers, provided that the transactions are effected in accordance with Rule 17a-7. Rule 17a-7 requires, among other things, that cross trades be executed at the "independent current market price," which, in relevant part, is defined as "the average of the highest current independent bid and lowest current independent offer, determined on the basis of reasonable inquiry." If the adviser pays a brokerage commission, fee, or other remuneration in connection with cross transactions, the transaction is not eligible for an exemption under Rule 17a-7.

16. The Commission has stated that interpositioning a dealer in cross transactions does not remove the cross transactions from the prohibitions of Section 17(a), and has emphasized that "to the extent these transactions are effected at the 'bid' or 'asked' price rather than at an average of the two prices, they would not be in compliance with the rule's pricing requirements." See Section 48(a) of the Investment Company Act; *Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof*, Investment Company Act Rel. No. 11136, at n.10 (Apr. 21, 1980) (the "17a-7 Release").

17. The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, also prohibits investment advisers, as fiduciaries, from engaging in cross trades with ERISA regulated accounts. See ERISA Section 406(b) (29 U.S.C. § 1106(b)). ERISA provides an exemption from the prohibition if, among other conditions, the transaction is effected at the independent current market price of the security, within the meaning of Rule 17a-7(b) under the Investment Company Act. See ERISA Section 408(b)(19)(B) (29 U.S.C. § 1108(b)(19)(B)).

18. MSIM's internal cross trading policies and procedures provided for even broader restrictions on trade execution. MSIM's policies prohibited cross trades involving ERISA accounts under any circumstances. MSIM's compliance manual required all other cross trades to be executed in compliance with Rule 17a-7, regardless of whether the accounts were RICs.

19. MSIM's compliance policies also addressed its best execution duties, specifying that MSIM must "use best efforts to obtain 'best execution' for all client transactions (i.e., the most favorable price and execution)." When executing trades, MSIM's policies required traders to obtain at least two additional comparable dealer quotes and document those quotes to evidence best execution. For cross trades, MSIM's procedures generally required traders to obtain at least three dealer quotes to determine the highest current independent bid and lowest current independent offer. During the relevant time period, the comparable quotes were required to be documented in MSIM's recordkeeping systems.

20. While MSIM had policies and procedures addressing wrongful conduct, MSIM did not have policies specifically addressing "parking" or prearranged trading, and did not conduct training on these specific topics during the relevant period.

b. First Five MSIM/SGAS Unlawful Prearranged Trade Sets

21. Huang placed the first five sets of buyback trades from December 2011 through February 2012 because certain MSIM client accounts wanted to liquidate certain mortgage securities and other asset backed security positions and she desired to purchase them for other clients. Huang obtained bids from broker-dealers through a competitive bidding process to determine the market price for the positions, and Huang arranged with Ge to park them with SGAS generally at the highest bid Huang had received.

22. Huang was motivated to prearrange a buyback of the positions because she believed the bid prices were favorable prices for the securities. Most of the first five sets of positions were repurchased into the Unregistered Fund advised by MSIM.

23. One of the trade sets included sales of two bonds from two separate RIC accounts advised by MSIM that were repurchased into the Unregistered Fund. The Unregistered Fund was an affiliate of the RICs, because the Unregistered Fund was a private fund sponsored and advised by MSIM. By knowingly prearranging purchases by the Unregistered Fund, a RIC affiliate, from the RICs, Huang caused the Unregistered Fund to engage in cross trades prohibited by Section 17(a)(2) of the Investment Company Act, without having obtained an exemptive order or being able to rely on an exemptive rule.

24. Section 17(a)(2) of the Investment Company Act did not apply to the transactions other than the two sales stated in paragraph 23. However, none of the transaction sets complied with MSIM's policies, which applied the requirements of Rule 17a-7 under Section 17 of the Investment Company Act for all cross trades regardless of whether a RIC was involved, because (i) they were crossed at the bid price, not the independent current market price or midpoint between bid and ask, and because (ii) they were conducted through a broker-dealer who received remuneration in connection with the transactions. By prearranging a sale and repurchase at predetermined price levels, Huang avoided paying the full bid/offer spread. However, by crossing securities at the bid price rather than at an average between the bid and the ask, Huang favored the purchasing clients over the selling clients, depriving clients of their share of the market savings, an amount totaling approximately \$387,186.

25. MSIM did not adequately implement compliance systems and controls to identify impermissible cross trading, *i.e.*, that Huang was selling and repurchasing for clients the same bonds, in the same sizes, and at identical markups across positions. These circumstances indicated that the series of trades were not separate and distinct arm's-length sale and repurchase transactions.

c. March 2012 ERISA-Related Trades

26. In March 2012, when implementing a new trading system, MSIM flagged certain mortgage and asset backed securities previously purchased in certain ERISA accounts that may have been ineligible for a common ERISA trading exemption because the securities were not investment grade. Although MSIM noted that the securities were within client guidelines, the Mortgage Team and MSIM management were concerned that the purchases might be considered trade errors under ERISA, which treatment would require MSIM to compensate clients for any losses. At issue were 29 securities held in five ERISA accounts. Over a period of a few weeks beginning in March 2012, the firm conducted a review of the ERISA issues with input from the legal and compliance departments, and ultimately concluded that there was no ERISA violation.

27. While the review of the ERISA issues in March 2012 was ongoing, Huang's supervisors directed her to sell the bonds out of the ERISA accounts. Huang then arranged for a buyback trade involving the positions, which were sold to SGAS on Friday March 23, and repurchased on Monday March 26, the next business day.

28. Huang knew that many of these positions were carried at a loss, because the day before she sold the positions, Huang asked a member of the Mortgage Team to pull the data comparing their purchase prices and current valuations. That analysis showed that 12 of the positions were currently valued lower than their initial cost, and were thus carried at a loss to those clients.

29. Instead of marketing the bonds widely to a number of broker-dealers, Huang arranged to park them with SGAS at prearranged prices that were the higher of MSIM's initial purchase price or the vendor-provided price. This transaction kept the ERISA accounts from realizing losses, but resulted in a package of bonds that was sold to SGAS for about \$600,000 above the current prices for the securities. To compensate SGAS for purchasing the bonds at above-market prices, Huang sold two bonds from the Unregistered Fund that were unrelated to the ERISA issue to SGAS as part of the package at prices well below market. The two Unregistered Fund bonds were valued near par (100) but sold by Huang to SGAS at prices of 70 and 80, for no legitimate business purpose. The total discount on these positions approximately offset the total premium on the other bonds that SGAS purchased at above market prices.

30. On the next business day, all of the positions were repurchased by the Unregistered Fund. Huang repurchased them from SGAS at a small markup over the initial sale price paid by SGAS except for the two positions sold from the Unregistered Fund. The Unregistered Fund purchased those two positions at the same prices at which they were sold (70 and 80), without any markup, resulting in no mark to market impact to the Unregistered Fund with respect to these two bonds. In this manner, the ERISA accounts were able to sell positions at artificially inflated prices, SGAS was made whole and received a small markup on the total package, and the two positions

sold from the Unregistered Fund were placed back into the Unregistered Fund, along with the ERISA-related bonds the Unregistered Fund had purchased at a premium.

31. Based on the difference between the trade prices and vendor prices, the Unregistered Fund purchased securities at prices that were \$656,697 above the pricing vendor's mid-market price.

d. Fabricated Dealer Quotes

32. MSIM's policies required traders to obtain at least two comparable dealer quotes and document those quotes to evidence best execution. When bonds were bought back from SGAS in the prearranged buyback transactions, competing offers generally were not obtained, so on the repurchase, Huang at times instructed a trader on the Mortgage Team to "make up" or fabricate comparable quotes from two randomly-selected dealers to input into MSIM's systems. For the period beginning at least January through March 2012, the trader on the Mortgage Team fabricated multiple quotes relating to the buyback trades with SGAS and entered them into MSIM's systems.

e. Red Flags and MSIM's Initial Internal Investigation

33. Within days after the March 2012 trades, MSIM compliance noticed the repurchase of the ERISA bonds and made several requests to Huang for additional information regarding the trades. MSIM compliance staff noted that some accounts were "crossing using a broker" and that the ERISA-related positions were sold and repurchased at identical markups, and notified MSIM's Chief Compliance Officer that there was a questionable sale and repurchase of the ERISA account positions. MSIM compliance staff later identified a prior pattern of matched sales and repurchases by the Mortgage Team.

34. On the date of the repurchase, MSIM's pricing team sent a form email indicating that some of the positions in Huang's trade with SGAS had traded greater than a 5% margin from the vendor price. The form email was of the sort the pricing team would distribute internally to give notice of pricing variances greater than a set threshold. Another internal form email from the pricing team used to indicate day to day price changes greater than a set threshold noted price changes for some positions, when the changes had resulted from the pricing vendor adjusting its prices in line with the MSIM/SGAS traded prices. Huang then instructed the pricing team to challenge the adjusted vendor prices for some of the bonds, indicating that she did not agree with the prices for trades she had executed.

35. Separately, an employee in MSIM risk management flagged for management that the Mortgage Team had sold two positions at 70 and 80 from the Unregistered Fund which were vendor priced around par (100), and then repurchased them from SGAS at the same prices.

36. MSIM compliance investigated the trades from a best execution standpoint, and asked Huang to provide comparable quotes for the March 23, 2012 sales. In response, Huang sent an email falsely stating that the positions were sold through a "competitive all-or-none" bidding process that SGAS had won by submitting the highest bids.

37. Huang also fabricated a list of bids to cover up her failure to obtain competitive bids pursuant to MSIM's best execution policy. Huang obtained a spreadsheet containing the previously-fabricated bids from MSIM's systems. Huang then added more fabricated bids to the spreadsheet to imply that all dealers had bid on each of the bonds, and provided that spreadsheet to an MSIM employee in risk management involved in the review for delivery of the spreadsheet to MSIM compliance.

38. Morgan Stanley's legal department was then notified of the potential problematic trades and conducted an internal investigation of the trades, including a privileged interview of Huang.

39. According to MSIM management, they relied on the investigation conducted by Morgan Stanley's legal department, which concluded that although the trades were questionable, they were not problematic. As a result, MSIM management reprimanded Huang in person and in writing for not escalating the trades internally. Huang remained in charge of the Mortgage Team and continued to raise hundreds of millions of dollars of investor funds for the Unregistered Fund. MSIM took no further action with respect to Huang's prearranged trades until approximately two years later when in 2014, after the Commission's staff asked MSIM for the voluntary production of policies and procedures concerning the parking of securities, Morgan Stanley re-opened the internal investigation, discovered Huang's misconduct and terminated her employment in May 2014.

Violations

40. As a result of Huang's trades with SGAS described above, MSIM willfully² violated Section 17(a)(3) of the Securities Act, which prohibits any person in the offer or sale of securities from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.³

41. As a result of Huang's trades with SGAS described above, MSIM willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client.⁴ Specifically, as a result of Huang's broker-dealer interposed cross transactions with SGAS, MSIM favored certain of its clients and failed to seek to obtain

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F. 3d 408, 414 (D.C. Cir. 2000)(quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

³ A violation of Section 17(a)(3) of the Securities Act does not require scienter, but may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980)).

⁴ A violation of Section 206(2) of the Advisers Act does not require scienter, but may rest on a finding of simple negligence. *Steadman*, 967 F.2d at 643 n.5 (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

best price and execution for certain of its clients in these cross-trades when it allocated the full market savings obtained in the cross transactions to the purchasing clients in the transactions over the selling clients and when it executed trades at off-market prices involving the Unregistered Fund in March 2012.

42. As a result of the conduct described above, MSIM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules. Specifically, MSIM failed to adopt policies addressing “parking” or unlawful prearranged trading and failed to implement its cross trading policies and best execution procedures, and, as a consequence, Huang executed cross transactions through SGAS in a manner that favored certain of its clients and failed to seek to obtain best execution for certain of its clients.

43. As a result of Huang's sales of two bonds from two RICs to the Unregistered Fund through SGAS as described above, MSIM willfully aided and abetted and caused a violation of Section 17(a)(2) of the Investment Company Act, which makes it unlawful for any affiliated person or promoter of or principal underwriter for a RIC or any affiliated person of such a person, promoter, or principal underwriter, acting as principal, knowingly to purchase from such RIC, or from any company controlled by such RIC, any security or other property (except securities of which the seller is the issuer), unless the transaction complies with the exemptive requirements of Rule 17a-7 under the Investment Company Act, or the adviser obtains an exemptive order under Section 17(b) of the Investment Company Act. MSIM did not seek an exemptive order for the cross transactions effected by MSIM when Huang sold two bonds from two RICs to the Unregistered Fund through SGAS, and these transactions were not exempt from the prohibition under Rule 17a-7 because the trades were not executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security, and were made through a broker-dealer who received remuneration in connection with the transactions.

44. As a result of the conduct described above, MSIM failed reasonably to supervise Huang within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing violations of the securities laws. Specifically, MSIM failed to adopt and implement procedures reasonably designed to detect or prevent Huang from violating Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and from aiding and abetting and causing violations of Sections 206(1) and 206(2) of the Advisers Act.

45. As a result of the conduct described above, Huang willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, and Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities, respectively.

46. As a result of the conduct described above, Huang willfully aided and abetted and caused violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

MSIM's Remedial Efforts

47. In determining to accept MSIM's Offer, the Commission considered remedial acts promptly undertaken by MSIM and cooperation afforded the Commission staff. In particular, MSIM enhanced its policies, procedures, controls and training, voluntarily retained a compliance consultant, and assisted the Commission's staff in its investigation.

Undertaking

48. MSIM undertakes to distribute, within 90 days of the date of this Order, a sum-total payment in the amount of \$857,534 (the "Distribution Fund") in satisfaction of this proceeding to compensate the pooled investment vehicles and separately managed accounts that were harmed as described in ¶ 49(a) below. The Distribution Fund represents the net amount by which these pooled investment vehicles and separately managed accounts would have benefited had MSIM crossed the bonds at an independent market price in the amount of \$774,272, plus reasonable interest thereon in the amount of \$83,262.

49. MSIM shall be responsible for administering the distribution of the Distribution Fund. MSIM:

- a. has submitted to the Commission staff a plan of allocation that identifies (1) each pooled investment vehicle and separately managed account that will receive a portion of the Distribution Fund ("Eligible Recipient"); (2) the exact amount of that payment as to each Eligible Recipient; and (3) the methodology used to determine the exact amount of that payment as to each Eligible Recipient;
- b. within ten (10) days of entry of this Order, shall deposit the full amount of the Distribution Fund into an escrow account acceptable to the Commission staff and in the name of and bearing the Employer Identification Number ("EIN") of the Distribution Fund, and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff; and
- c. within 90 days of the entry of this Order will complete transmission of the Distribution Fund to all Eligible Recipients.

50. The Distribution Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. Section 468B(g), and related regulations, 26 C.F.R. Sections 1.468B-1 through 1.468B-5. MSIM agrees to be responsible for all tax compliance responsibilities associated with distribution of the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by MSIM and shall not be paid out of the Distribution Fund.

51. Within 120 days after the date of the entry of the Order, MSIM shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount paid to each payee; (ii) the

date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned; (vi) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that the amount paid to the clients represents a fair calculation of the Distribution Fund. MSIM shall submit proof and supporting documentation of such payments in a form acceptable to Commission staff. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request. After MSIM has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any undistributed amount to the United States Treasury.

52. The Commission staff may extend any of the procedural dates for good cause shown. Deadlines for dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

53. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281, no later than sixty (60) days from the date of the completion of the undertakings. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e) and 203(k) of Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act with respect to MSIM, and pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act with respect to Huang, it is hereby ORDERED that:

A. Respondent MSIM cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, and Section 17(a)(2) of the Investment Company Act

B. Respondent Huang cease and desist from committing or causing any violations and any future violations of Sections 17(a)(1) and (3) of the Securities Act, Section 10(b) of the

Exchange Act and Rules 10b-5(a) and (c) thereunder, and Sections 206(1) and 206(2) of the Advisers Act

C. Respondent MSIM is censured.

D. Respondent Huang be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

E. Any reapplication for association by Respondent Huang will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any arbitration award related to the conduct that served as the basis for the Commission order; (b) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (c) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. Within ten (10) days of the entry of this Order, Respondent MSIM shall pay a civil money penalty in the amount of \$8,000,000 and Respondent Huang shall pay a civil money penalty of \$125,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with the Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways: (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying MSIM as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Marshall Sprung, Co-Chief Asset Management Unit, Division of Enforcement, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, Respondent shall not argue that Respondent is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that Respondent shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against one or more Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Huang, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Huang under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Huang of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary