

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL BRUCK, individually and on
behalf of all others similarly situated,
Plaintiff,

v.

MORGAN STANLEY SMITH BARNEY,
MORGAN STANLEY & CO., INC.,
Defendants.

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Michael Bruck ("Plaintiff"), alleges the following as against Defendants Morgan Stanley Smith Barney and Morgan Stanley & Co., Inc. (collectively, "Morgan Stanley" or "Defendants").

JURISDICTION AND VENUE

1. The claims asserted herein arise under the Investment Advisors Act of 1940 (the "IAA"), 15 U.S.C. §§ 80b-14 and 80b-15.
2. This Court has jurisdiction over the subject matter of this action pursuant to the IAA and 28 U.S.C. 1391(b).
3. Venue is proper in this District pursuant to the fact that many of the acts, transactions, and occurrences alleged herein took place in substantial part in this District.
4. In connection with the acts, conduct, and alleged wrongs alleged herein, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mail, interstate telephone communications and the facilities of national securities exchanges.

PARTIES

5. Plaintiff, Michael Bruck, is a resident of Boston, Massachusetts, who, at all times relevant herein, had an investment advisory relationship contract with Defendants to provide investment advisory services, and paid investment advisory fees and related fees and commissions to Defendants.

6. Defendant Morgan Stanley Smith Barney ("MSSB") is an investment banking and investment advisory firm, having its corporate headquarters in New York, New York, and maintaining branch offices in this District, including an office located at 125 High Street in Boston, where Plaintiff maintained his accounts and Plaintiff's investment advisors managed his investment portfolio.

7. Defendant Morgan Stanley & Co., Inc. ("MSCI") is an investment banking and investment advisory firm, which is the parent company of Defendant MSSB. MSCI also maintains its corporate headquarters in New York, and operates and controls MSSB branch offices throughout the United States and this District, including the Boston branch office where Plaintiff maintained his accounts and Plaintiff's investment advisors managed his investment portfolio.

8. At all times relevant herein, Defendants MSSB and MSCI maintained an investment advisory relationship and contract with Plaintiff to provide investment advisory services, and collected and retained investment advisory fees and related fees and commissions from Plaintiff.

SUBSTANTIVE ALLEGATIONS

9. Plaintiff first established an investment advisory relationship and contract with Defendants on or about March 1, 2007. At that time, Plaintiff retained the Defendants and the Defendants' investment advisor employees, Robert Ryan, Peter Grave and Craig Lewis (jointly

known as the "RGL Group") at Defendants' 125 High Street, Boston branch offices as his registered investment advisors to manage his assets and investment portfolio.

10. Since that time, and continuing through the present, Defendants have acted as Plaintiff's investment advisors within the meaning of the IAA, with respect to Plaintiff's assets and investment portfolio. In doing so, Defendants have charged annual management and advisory fees calculated as a percentage of Plaintiff's assets in connection with their investment advisory services. Defendants have been continually and consistently engaged in the business of providing investment advice to their clients, including the Plaintiff, through this time period.

11. During 2007, Plaintiff entrusted approximately \$6.5 million of assets to Defendants pursuant to their investment advisory relationship and contract.

12. During December 2007, as part of their ongoing investment advisory services, the Defendants advised and recommended an investment to Plaintiff in FrontPoint Onshore Enhanced Alpha Fund I, L.P. ("FrontPoint"), an investment fund managed and controlled by Defendants and their affiliates. Plaintiff invested \$500,000 into FrontPoint on or about December 19, 2007.

13. During June, 2009, as part of their ongoing investment advisory services, the Defendants advised and recommended an investment to Plaintiff in Morgan Stanley Investment Management TALF Fund ("TALF"), an investment fund managed and controlled by Defendants and their affiliates. Plaintiff invested \$300,000 into TALF on or about June 12, 2009.

14. In connection with FrontPoint and TALF, despite the fact that Defendants were in an established investment advisory relationship and contract with Plaintiff (and their other pre-existing investment advisory clients) and were advising and recommending FrontPoint and TALF as investments as part of their regular, ongoing investment advisory services, Defendants

nonetheless attempted to disavow, circumvent, and evade their duties and obligations as investment advisors under the IAA.

15. To this end, Defendants included the following provisions in investor letters to FrontPoint and TALF investors, including Plaintiff and other investment advisory clients:

I understand that in connection with this investment, Morgan Stanley is acting as placement agent for the Fund and is not acting as my adviser or fiduciary under the Investment Advisers Act of 1940, nor a "fiduciary" with respect to any employee benefit plan, individual retirement account or similar arrangement, as such term is used under the Employee Retirement Income Security Act of 1974, as amended, or section 4975 of the Internal Revenue Code of 1986, as amended, or comparable state or local pension or retirement laws, if applicable. I acknowledge that I alone made the investment decision to invest in the Fund in the amount set forth in the related subscription documents. I acknowledge that neither the Placement Agent, nor any employee of the Placement Agent, is recommending, or providing any investment advice with respect to my investment in the Fund, nor is the Placement Agent attesting to, or otherwise making any representation regarding, my legal qualification under the applicable laws and regulations to invest in the Fund.

16. Section 215 of the IAA states that "[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void."

17. Section 215 of the IAA mandates that any investment advisor contracts whose formation or performance would violate the provisions of the IAA shall be void.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) on behalf of a class consisting of himself and all others who (a) had an existing investment advisory relationship and contract with either or both of the Defendants under which Defendant(s) provided investment advice and charged or collected investment advisory fees, and (b) invested in FrontPoint and/or TALF (the "Class").

19. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Defendants, and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in investor class actions.

20. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein. Plaintiff and all other members of the Class had investment advisory relationships and contracts with Defendants, paid fees and related costs to Defendants pursuant to their investment advisory relationship, and invested in FrontPoint and/or TALF.

21. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

22. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. There will be no difficulty in the management of this action as a class action

23. Common questions of law and fact exist as to all members of the Class, including:
- a. Whether Defendants violated the IAA;
 - b. Whether Defendants should be enjoined from engaging in continued violations;

c. Whether Defendants' investment advisory contracts and agreements should be declared as void or voidable; and

d. Whether Defendants should make restitution to the class

24. Certification of the Class under Fed. R. Civ. P. 23(b)(2) is appropriate in this case as Defendants have acted in a manner that is generally applicable to the Class, thereby making injunctive or other relief appropriate to the Class as a whole.

COUNT I
(For Violation Of Investment Advisors Act Of 1940)

25. Plaintiff repeats and incorporates by reference herein each of the allegations contained in each of the paragraphs above.

26. The conduct of Defendants set forth in ¶¶ 9-17 constitutes violations of Section 215 of the Investment Advisors Act of 1940.

27. Defendants' provisions set forth in ¶15 above constitute a condition, stipulation or provision to waive compliance with the Investment Advisors Act of 1940, and, therefore, are void.

28. Defendants' aforesaid provisions, to the extent that they also falsely purport to preclude any legal rights or remedies under the IAA, are void or voidable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests relief and judgment, as follows:

- a) Declaring this action to be a class action properly maintained under Fed. R. Civ. P. 23(a) and 23(b)(2), certifying the Class, the Plaintiff as class representative, and his counsel as class counsel;

- b) Declaring that Defendants' conduct violated and continues to violate the IAA, and that Defendants' investment advisory contracts, in whole or in part, are void;
- c) Ordering injunctive relief in order to cease further violations of the IAA by Defendants in the formation or performance of their investment advisory contracts;
- d) Ordering restitution of all applicable fees paid to, and unjustly collected and retained, by Defendants, their employees and affiliates, including , but not limited to, such fees relating to (i) FrontPoint, (ii) TALF, (iii) investment advisory agreements between Defendants and Plaintiff and other members of the proposed Class, and (iv) other securities sold to Plaintiff by Defendants pursuant to said investment advisory agreements;
- e) Awarding Plaintiff and the other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, and other reasonable and necessary costs and disbursements; and
- f) Awarding Plaintiff and the Class such other and further relief as may be just and proper under the circumstances.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

Dated: December 17, 2010

/s/ Peter A. Lagorio _____
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