



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 4, 2005

David S. Royal, Esq.  
Kirkland & Ellis  
200 East Randolph Drive  
Chicago, Illinois 60601

**Re: Morgan Stanley & Co. Incorporated – Waiver Request under  
Regulation A and Rule 505 of Regulation D**

Dear Mr. Royal:

This is in response to your letter dated today, written on behalf of Morgan Stanley & Co. Incorporated (the "Firm") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of the injunction included in the Final Judgment in *Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated* (S.D.N.Y.) permanently restraining and enjoining the Firm from violations of Rule 101 of Regulation M under the Securities and Exchange Act of 1934 and ordering that the Firm pay a civil penalty of \$40 million (the "Final Judgment").

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Final Judgment. We have also assumed that the Firm will comply with the Final Judgment.

On the basis of your letter, I have determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Final Judgment. Accordingly, pursuant to delegated authority, the Firm is granted relief from disqualifications from exemptions otherwise available under Regulation A and Rule 505 of Regulation D that arise as a result of entry of the Final Judgment.

Very truly yours,

A handwritten signature in cursive script that reads "Gerald J. Laporte".

Gerald J. Laporte  
Chief, Office of Small Business Policy

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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February 4, 2005

## Via Overnight Courier

Gerald J. Laporte  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 5<sup>th</sup> Street, NW, Room 3501  
Washington, DC 20549-0310

**Re: In the Matter of Morgan Stanley & Co. Incorporated  
*Morgan Stanley & Co. Incorporated request for waivers of  
disqualifications from exemptions under Regulation A and  
Rule 505 under Regulation D***

Dear Mr. Laporte:

We submit this letter on behalf of our client, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), in connection with a settlement agreement (the "Settlement") arising out of an investigation by the Securities and Exchange Commission (the "Commission") into alleged violations of Rule 101 of Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Morgan Stanley hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to Morgan Stanley and any of its affiliates as a result of the entry of the Final Judgment (as defined below) of a court of competent jurisdiction as described below. Morgan Stanley further requests that these waivers be granted effective today, the date of entry of the Final Judgment. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers by the Division of Corporate Finance.

## BACKGROUND

The Commission has engaged in settlement discussions with Morgan Stanley in connection with an investigation into alleged violations of Rule 101 of Regulation M ("Regulation M") under the Exchange Act. As a result of these discussions, the Commission filed a complaint (the "Complaint") against Morgan Stanley in the United States District Court

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for the District of Columbia (the "District Court") in a civil action captioned Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated. The Complaint alleged that Morgan Stanley provided allocations of stock to institutional customers in hot initial public offerings it underwrote and that Morgan Stanley attempted to induce certain institutional customers to place orders for shares in the aftermarket of initial public offerings in violation of Rule 101 of Regulation M. Morgan Stanley executed a consent (the "Consent") in which Morgan Stanley neither admits nor denies any of the allegations in the Complaint, except as to jurisdiction, but consents to the entry of a final judgment against Morgan Stanley by the District Court (the "Final Judgment"). The Final Judgment, dated today, among other things, orders, adjudges, and decrees that Morgan Stanley, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with Morgan Stanley who receive actual notice of the Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 101 of Regulation M.<sup>1</sup> Additionally, the Final Judgment orders Morgan Stanley to pay a civil fine in the amount of \$40 million.

### DISCUSSION

Morgan Stanley understands that the entry of the Final Judgment may disqualify it and its affiliated entities from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Final Judgment may be deemed to cause Morgan Stanley to be subject to an order, judgment or decree of a court of competent jurisdiction enjoining Morgan Stanley from engaging in or continuing to engage in any conduct or practice in connection with the purchase or sale of a security or arising out of its conduct as an underwriter, broker or dealer. The Commission has the authority to waive the Regulation A and Rule 505 of Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C). Morgan Stanley requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of Regulation D with respect to Morgan Stanley or its affiliates on the following grounds:

1. Morgan Stanley's conduct addressed in the Final Judgment and alleged in the Complaint does not relate to offerings under Regulations A or D.
2. The disqualification of Morgan Stanley from the exemptions under Regulation A and Rule 505 of Regulation D would, we believe, have an adverse impact on third parties that have retained Morgan Stanley and its affiliates in connection with transactions that rely on these exemptions.

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<sup>1</sup> Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated, Final Judgment Against Morgan Stanley & Co. Incorporated, 05 CV 00166 (HHK) (D.D.C., filed February 4, 2005).

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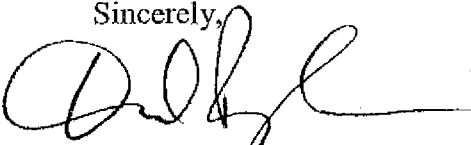
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3. The disqualification of Morgan Stanley from the exemptions available under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given the fact that the Commission staff has negotiated a settlement with Morgan Stanley and reached a satisfactory conclusion to this matter that will require Morgan Stanley to pay a civil fine of \$40 million.

In light of the foregoing, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that Morgan Stanley has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D, to waive, effective upon entry of the Final Judgment, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to Morgan Stanley and any of its affiliates as a result of the entry of the Final Judgment.<sup>2</sup>

Please do not hesitate to call Scott A. Moehrke at (312) 861-2199 or the undersigned at (312) 861-2107 regarding this request.

Sincerely,



David S. Royal

cc: James Cusick  
Stefanie Chang Yu  
Scott A. Moehrke

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<sup>2</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Credit Suisse First Boston Corporation, SEC No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, SEC No-Action Letter (pub. avail. June 11, 2001); In the Matter of Certain Market-Making Activities, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Stephens Incorporated, SEC No-Action Letter (pub. avail. Nov. 23, 1998).