



DIVISION OF
CORPORATION FINANCE

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

October 31, 2003

Scott A. Moehrke, 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. Moehrke:

This is in response to your letter dated October 31, 2003, 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.) (the "Final Judgment"). You also requested relief under those provisions from disqualifications that arise by virtue of the entry of an order, judgment or decree of a U.S. state or territorial court addressing the same conduct and based on the same facts as the conduct and facts addressed in the complaint that resulted in the entry of the Final Judgment.

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Final Judgment and any such state or territorial court order, judgment or decree.

On the basis of your letter, the Commission, pursuant to delegated authority, has 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 or any state or territorial court injunction of the nature described above. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mauri Osheroff".

Mauri Osheroff
Associate Director, Regulatory Policy

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Scott A. Moehrke
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October 31, 2003

VIA E-MAIL AND FEDERAL EXPRESS

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
450 Fifth Street, N.W., Room 3501
Washington, D.C. 20549-0310

Re: In the Matter of Certain Analyst Conflicts of Interest, File No. HO-9479

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 a joint investigation by the Securities and Exchange Commission (the "Commission"), the New York Stock Exchange, Inc. (the "NYSE"), NASD Regulation, Inc. ("NASDR") and various U.S. state and territorial regulatory agencies (the "States") into research analyst conflicts of interest at Morgan Stanley and several other large investment banking firms.

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) and any related disqualifying order, judgment, or decree of a state or territorial court addressing the same conduct as addressed in the Complaint (as defined below). Morgan Stanley further requests that these waivers be granted effective upon entry of the Final Judgment or such state or territorial court order, judgment or decree. 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

On April 28, 2003, the Commission filed a complaint (the "Complaint") against Morgan Stanley in the United States District Court for the Southern District of New York (the "District Court") in a civil action captioned Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated, 03 Civ. 2948 (WHP) (the "Action") in connection with a joint SEC, NYSE, NASDR and state investigation into research analyst conflicts of interest at Morgan Stanley and

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several large investment banking firms. Morgan Stanley executed a consent and undertaking (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, among other things, enjoins Morgan Stanley, directly or through its officers, directors, agents and employees, from violating rules cited in the Final Judgment. Additionally, the Final Judgment orders Morgan Stanley to make payments of \$50 million for past conduct and \$75 million for the future procurement of independent research in settlement of the matters addressed in the Final Judgment, and to comply with the undertakings set forth in the Final Judgment.

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 Regulation A or D.
2. Morgan Stanley will undertake or has undertaken to improve and enhance its compliance and surveillance policies and procedures in a manner reasonably designed to ensure compliance with the provisions of the Final Judgment as outlined in the Term Sheet attached to the Final Judgment (the "Term Sheet").
3. 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.
4. 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 that: (i) the Final Judgment relates to activity which has already been addressed pursuant

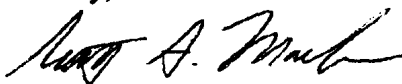
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to recently adopted rules of the Commission, NYSE and NASDR and pursuant to the Term Sheet and (ii) the Commission staff has negotiated a settlement with Morgan Stanley and reached a satisfactory conclusion to this matter that will require Morgan Stanley to make payments of \$50 million for past conduct and \$75 million for the future procurement of independent research in settlement of the matters addressed in the Final Judgment and will require Morgan Stanley to make certain structural changes pursuant to the Term Sheet, as well as to make available to Morgan Stanley customers certain research prepared by third party research providers.

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 or any related disqualifying order, judgment, or decree of a U.S. state or territorial court based on the same facts and addressing the same conduct as is addressed in the Complaint, 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 and any such order, judgment or decree.¹

Please do not hesitate to call the undersigned at (312) 861-2199 or Nabil Sabki at (312) 861-2369 regarding this request.

Sincerely,



Scott A. Moehrke

cc: James Cusick, Esq.
Frank Holozubiec, Esq.
Nabil Sabki, Esq.

¹ 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).