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

DIVISION OF
TRADING AND MARKETS

May 12, 2009

Lanny A. Schwartz, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Re: Morgan Stanley and Citigroup Inc. – No-Action Request – Regulation T

Dear Mr. Schwartz:

In your letter dated May 7, 2009, on behalf of Morgan Stanley and Citigroup Inc. ("Citigroup"), you request assurance that the staff of the Division of Trading and Markets ("Division") would not recommend enforcement action to the Securities and Exchange Commission ("Commission" or "SEC") under Regulation T[1] against Morgan Stanley, Citigroup, Morgan Stanley Smith Barney Holdings LLC ("Holdings"), any Foreign Subsidiary[2] or any of their respective affiliates or controlling or associated persons on the basis that any such Foreign Subsidiary constitutes a "creditor" for the purposes of Regulation T and has not complied with the provisions of Regulation T applicable to creditors.[3]

Based on your letter, we understand the facts to be as follows:

Pursuant to a Joint Venture Contribution and Formation Agreement dated as of January 13, 2009 ("Contribution Agreement") by and between Citigroup and Morgan Stanley, and subject to the completion of a definitive limited liability company agreement to be entered into at the closing under the Contribution Agreement, Citigroup and Morgan Stanley have agreed to form a joint venture and contribute certain assets and businesses to it. With certain exceptions, the businesses to be contributed by Citigroup include (but are not limited to) Citigroup's retail brokerage and futures business operating under the name "Smith Barney" in the United States and Australia, and under the name "Quilter" in the

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1 12 CFR Part 220, *et seq.*

2 Any initial or future subsidiaries of Holdings or entities controlled by Holdings which are: (1) organized outside the United States, and (2) not registered or required to be registered as broker-dealers with the Commission ("Foreign Subsidiary" or "Foreign Subsidiaries").

3 Unless otherwise noted, each defined term in this letter has the same meaning as defined, directly or by reference, in your letter.

United Kingdom, Ireland and the Channel Islands. With certain exceptions, the businesses to be contributed by Morgan Stanley include (but are not limited to) Morgan Stanley's Global Wealth Management business and its private wealth management business on a worldwide basis.

In the United States, the Citigroup contributed businesses are conducted principally within Citigroup Global Markets, Inc. ("CGMI") and the Morgan Stanley contributed businesses are conducted within Morgan Stanley & Co. Incorporated ("MS&Co."). CGMI and MS&Co. are both broker-dealers registered with the Commission. It is the intention of Citigroup and Morgan Stanley that, following the closing of the transaction, the contributed businesses currently conducted by CGMI and MS&Co. in the United States will be conducted by Morgan Stanley Smith Barney LLC ("MSSB"), which is currently pursuing registration as a broker-dealer with the Commission and membership in FINRA, the NYSE and other self-regulatory organizations.

Outside the United States, the contributed businesses will initially be conducted in several foreign entities, including a Swiss bank, a newly formed U.K. broker-dealer and existing subsidiaries in the U.K. and Australia. These entities are not currently subsidiaries of MS&Co., CGMI or any other registered broker-dealer. It is currently expected that MSSB, other domestic entities, and the foreign entities forming part of the joint venture in which the contributed businesses will be principally conducted will be owned, directly or indirectly, by Holdings. In turn, it is currently expected that Holdings will initially be indirectly owned 51% by Morgan Stanley and 49% by Citigroup. Morgan Stanley and Citigroup currently intend to hold their interests in Holdings through MS&Co. and CGMI.[4]

Regulation T generally regulates extensions of credit by brokers and dealers (referred to as "creditors").[5] Under Section 220.2 of Regulation T, a "creditor" includes not only a broker, dealer or a member of national securities exchanges, but also "any person associated with a broker or dealer..." except for business entities controlling or under common control with a creditor.[6] Section 3(a)(18) of the Exchange Act defines a person associated with a broker-dealer as "...any person directly or indirectly controlling, controlled by or under common control with such broker or dealer...."[7]

Because Holdings will be a subsidiary of two registered broker-dealers (MS&Co. and CGMI), Holdings would appear to be a person associated with a

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4 You state in your letter that the reasons for holding the interests in the joint venture under CGMI and MS&Co. include primarily tax, accounting, as well as other considerations.

5 12 CFR Part 220.

6 12 CFR 220.2.

7 15 USC 78c(a)(18).

broker-dealer and thus a "creditor" within the definition of Regulation T.[8] As such, the Foreign Subsidiaries would also fall within the definition of "creditor" under Regulation T. You state, however, that you do not believe that the Foreign Subsidiaries should be treated as "creditors" under Regulation T.

By its terms, the definition of "creditor" applies to any "broker" or "dealer" as defined by the Exchange Act, whether or not registered or required to be registered as such under that Act. On its face, the definition would appear to apply to among others, foreign broker-dealers, at least insofar as they effect transactions within the United States or with U.S. investors. Nevertheless, you state that the Federal Reserve Board takes the position that a foreign broker-dealer not required to be registered under the Exchange Act is not a "creditor" subject to the restrictions of Regulation T.[9] In addition, you state that foreign broker-dealers not required to be registered under the Exchange Act and other foreign entities controlled by registered broker-dealers should, likewise, not be treated as creditors under Regulation T, notwithstanding that the definition of "creditor" also includes business entities controlled by a registered broker-dealer.[10]

You state that treating foreign subsidiaries of broker-dealers, such as the Foreign Subsidiaries, as being outside of Regulation T does not compromise the protection of U.S. policy interests, which are adequately protected by other rules, including Regulation X.[11] Specifically, under Regulation X, United States persons (and foreign persons controlled by or acting on behalf of or in conjunction with such persons), when obtaining secured purpose credit in respect of United States securities outside the United States, must generally conform such borrowings in relation to United States securities to what is permitted under Regulation T or Federal Reserve Regulation U.[12] Therefore, you state that you do

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8 Section 7(a) of the Exchange Act grants authority to the Federal Reserve to regulate the use of margin credit for the purchase or carrying of securities. Pursuant to this authority, the Federal Reserve promulgated Regulation T to govern extensions of credit by brokers and dealers. The Commission, however, enforces Regulation T.

9 *See, e.g.*, 60 FR 33763, 33765 (June 29, 1995). This release states in part that "[a]ny entity required to register as a broker or dealer with the SEC under section 15(a) of the Securities Exchange Act of 1934 (the Act) is a creditor under Regulation T. Although the definitions of 'broker' and 'dealer' in the Act do not refer to nationality, the SEC's policy is to require registration of foreign broker-dealers only when they are physically operating in the United States. (footnote omitted) The Board generally follows the SEC in this area and does not consider foreign broker-dealers not required to register with the SEC as creditors under Regulation T."

10 We note that Section 220.1(b)(3)(iv) of Regulation T provides that Regulation T does not apply to "[f]inancial relations between a foreign branch of a creditor and a foreign person involving foreign securities." 12 CFR 220.1(b)(3)(iv).

11 12 CFR Part 224.

12 12 CFR Part 221.

not believe that the interpretation that you propose would create a loophole for subversion of the margin rules by the Foreign Subsidiaries.

You also specifically note that Regulation X was amended in 1983 to provide that credit obtained by covered borrowers from foreign branches of U.S. broker-dealers would need to conform to Regulation T, whereas such credit obtained from foreign subsidiaries of U.S. broker-dealers would need to conform to the lesser requirements of former Federal Reserve Regulation G (which is now part of Regulation U).[13] You state this distinction between branches and subsidiaries is a highly logical one, since branches of U.S. broker-dealers must comply with the vast majority of SEC and self-regulatory organization requirements applicable to the firm as a whole. By contrast, however, subsidiaries or other affiliates of broker-dealers registered with the Commission are generally permitted to operate under the rules in effect where they are located and operate.

Finally, you state that if the Foreign Subsidiaries were required to be treated as Regulation T creditors, then the parties might need to engage in a costly and unnecessary restructuring of the proposed joint venture and the potential loss of anticipated benefits afforded by the parties' decision to hold their interests under MS&Co. and CGMI.

Response

On the basis of your representations and the facts presented in your letter, the staff of the Division will not recommend enforcement action to the Commission under Regulation T against Morgan Stanley, Citigroup, Holdings, any Foreign Subsidiary or any of their respective affiliates or controlling or associated persons on the basis that a Foreign Subsidiary constitutes a "creditor" for the purposes of Regulation T and has not complied with the provisions of Regulation T applicable to creditors.[14]

This response is conditioned on your representations and the facts presented, and particularly on the fact that the Foreign Subsidiaries will continue to be subject to Regulation X, as applicable.[15]

This position concerns enforcement action under Regulation T only and is based solely upon the representations you have made and is limited strictly to the facts and conditions described in your letter. Any different facts or circumstances

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13 48 FR 56571 (December 22, 1983).

14 12 CFR Part 220. In granting this no-action request, the Division staff also has consulted with the staff of the Federal Reserve Board.

15 We also note that MS&Co., CGMI, and MSSB will be subject to the requirements of Regulation T, including the arranging provisions of 12 CFR 220.3(g).

may require a different response. Finally, we express no view with respect to other questions the proposed activities of the joint venture may raise, including the applicability of any other federal or state laws or the applicability of any self-regulatory organization rules.

Sincerely,

Michael A. Macchiaroli
Associate Director

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May 7, 2009

Michael Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N. E.
Washington, DC 20549

Re: Request for No-Action Position – Regulation T

Dear Mr. Macchiaroli:

This letter is submitted on behalf of Morgan Stanley ("Morgan Stanley") and Citigroup Inc. ("Citigroup"), and requests confirmation that the staff (the "Staff") of the Division of Trading and Markets of the Securities and Exchange Commission (the "Commission" or the "SEC") would not recommend to the Commission that it take enforcement action against Morgan Stanley, Citigroup, Morgan Stanley Smith Barney Holdings LLC ("Holdings"), any Foreign Subsidiary (as defined below) or any of their respective affiliates or controlling or associated persons on the basis that any such Foreign Subsidiary constitutes a "creditor" for purposes of Regulation T under the Securities Exchange Act of 1934 (the "Exchange Act") and has not complied with provisions of Regulation T applicable to creditors.

I. Background

Pursuant to a Joint Venture Contribution and Formation Agreement dated as of January 13, 2009 (the "Contribution Agreement") by and between Citigroup and Morgan Stanley, and subject to the completion of a definitive limited liability company agreement to be entered into at the closing under the Contribution Agreement, Citigroup and Morgan Stanley have agreed to form a joint venture and contribute certain assets and businesses to it. With certain exceptions, the businesses to be contributed by Citigroup include (but are not limited to) Citigroup's retail brokerage and futures business operating under the name "Smith Barney" in the United States and Australia and under the name "Quilter" in the

United Kingdom, Ireland and the Channel Islands. With certain exceptions, the businesses to be contributed by Morgan Stanley include (but are not limited to) Morgan Stanley's Global Wealth Management business and its private wealth management business on a worldwide basis.

In the United States, the Citigroup contributed businesses are conducted principally within Citigroup Global Markets, Inc. ("CGMI"), a Citigroup subsidiary and a broker-dealer registered with the Commission under Section 15 of the Exchange Act (a "Registered Broker-Dealer"), and the Morgan Stanley contributed businesses are conducted within Morgan Stanley & Co. Incorporated ("MS&Co."), a Morgan Stanley subsidiary and a Registered Broker-Dealer. It is the intention of Citigroup and Morgan Stanley that, following the closing of the transaction, the contributed businesses currently conducted by CGMI and MS&Co. in the United States will be conducted by Morgan Stanley Smith Barney LLC, a Delaware limited liability company ("MSSB"), which is currently pursuing registration as a Registered Broker-Dealer and membership in the Financial Industry Regulatory Authority, the New York Stock Exchange and other self-regulatory organizations.

Outside the United States, the contributed businesses will initially be conducted in several foreign entities, including a Swiss bank, a newly formed U.K. broker-dealer and existing subsidiaries in the U.K. and Australia. These entities are not currently subsidiaries of MS&Co., CGMI or any other Registered Broker-Dealer.

It is currently expected that MSSB, other domestic entities, and the foreign entities forming part of the joint venture in which the contributed businesses will be principally conducted will be owned, directly and indirectly, by Morgan Stanley Smith Barney Holdings LLC, a Delaware limited liability company ("Holdings"). In turn, it is currently expected that Holdings will initially be indirectly owned 51% by Morgan Stanley and 49% by Citigroup. Morgan Stanley and Citigroup currently intend to hold their interests in Holdings through MS&Co. and CGMI.[1]

Holdings will be managed by a board of directors consisting of four Morgan Stanley designees, two Citigroup designees and the senior-most operating executive of Holdings. Board decisions will be made or delegated to Holdings'

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[1] Citigroup's reasons for holding its interest in the joint venture under CGMI include significant tax and accounting considerations. If CGMI were not the owner of Citigroup's interest in the joint venture, CGMI would lose substantial tax and accounting benefits otherwise available. Morgan Stanley's reason for holding its interest in the joint venture under MS&Co. is that removing MS&Co. from the indirect chain of ownership of Holdings would result in a tax-inefficient structure that could not be remediated absent a restructuring of MS&Co., itself. Such a restructuring could raise substantial non-tax considerations (including regulatory filings, operational and funding constraints) and, in any event, could not be accomplished in a reasonable time frame.

management by majority vote, provided that each of Morgan Stanley and Citigroup will have veto rights with respect to certain matters. Morgan Stanley will be provided with certain call rights exercisable following the third, fourth and fifth anniversaries of the closing or upon a change in control of Citigroup, which ultimately may give Morgan Stanley full control of Holdings. Citigroup will be provided certain put rights exercisable upon a change in control of Morgan Stanley, or, under certain circumstances, following the sixth anniversary of the closing.

II. Regulation T

Regulation T generally regulates financial relations between customers and "creditors." Under Section 220.2 of Regulation T, a "creditor" includes not only brokers, dealers and members of national securities exchanges, but also "any person associated with a broker or dealer ..." except for business entities controlling or under common control with a creditor. In turn, Section 3(a)(18) of the Exchange Act defines a "person associated with a broker or dealer" as "... any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer ...." Because Holdings will be a subsidiary of two Registered Broker-Dealers (MS&Co. and CGMI), Holdings would appear to be a "person associated with a broker or dealer," and so would any initial or future subsidiaries of Holdings or entities controlled by Holdings, including any entities organized outside the United States that are not registered or required to be registered as Registered Broker-Dealers ("Foreign Subsidiaries"). Notwithstanding this interpretation, we do not believe that the Foreign Subsidiaries should be treated as Regulation T creditors for the reasons set forth below.

Regulation T creditors are subject to variety of requirements and limitations with respect to all of their financial relations with customers, subject to a number of exceptions, including with regard to financial relations between foreign branches of creditors and foreign persons involving foreign securities. While the definition of "creditor" is not on its face strictly limited to broker-dealers registered with the SEC, it has long been the Federal Reserve's interpretive position not to treat as creditors foreign brokers or dealers that are not required to register with the SEC. *See, e.g.*, 60 Fed. Reg. 33,763, 33,765 (June 29, 1995).

In our view, this represents sound policy. Compliance with Regulation T potentially conflicts with local (*i.e.*, non-U.S.) requirements for account handling, settlement practices and other technical requirements, not to mention the limitations imposed on unsecured purpose credit and the specific requirements applicable to Regulation T margin accounts. Even if operation under Regulation T could be harmonized with local legal restrictions, it would make the credit operations of a foreign broker-dealer potentially commercially noncompetitive with other local firms that are not subject to Regulation T's requirements and limitations, particularly in relation to United States securities. This is true

regardless of whether a foreign broker-dealer is a parent, a sister company or a subsidiary of a Registered Broker-Dealer.

Treating bona-fide foreign subsidiaries of broker-dealers (such as the Foreign Subsidiaries) that are not Registered Broker-Dealers (or required to be so registered) as being outside of Regulation T does not compromise the protection of U.S. policy interests, which are adequately protected by other rules and regulations. Specifically, under Federal Reserve Regulation X ("Regulation X"), United States persons (and foreign persons controlled by such persons), when obtaining secured purpose credit in respect of United States securities outside the United States, must generally conform such borrowings in relation to United States securities to what is permitted under Regulation T and Federal Reserve Regulation U ("Regulation U"). Therefore, we do not believe that the interpretation that we propose would create a loophole for subversion of the margin rules by the Foreign Subsidiaries.

We note specifically that Regulation X was amended in 1983 to provide that credit obtained by covered borrowers from *foreign branches* of U.S. broker-dealers would need to conform to Regulation T, whereas such credit obtained from *foreign subsidiaries* of U.S. broker-dealers would need to be conformed only to the lesser requirements of former Federal Reserve Regulation G (the substance of which is now part of Regulation U), which applied to non-bank, non-broker-dealer lenders. 12 C.F.R. 224.3(a)(1) and (a)(3). *See* 1983-4 Transfer Binder CCH Federal Securities Law Reporter Para. 83, 471 (December 16, 1983). This distinction between branches and subsidiaries is a highly logical one, since branches of U.S. broker-dealers must comply with the vast majority of SEC and self-regulatory organization requirements applicable to the firm as a whole (in addition to applicable local requirements), and which are regulated by the SEC and self-regulatory organizations on an entity-wide basis. By contrast, however, subsidiaries or other affiliates of Registered Broker-Dealers are generally permitted to operate under the rules in effect where they are located and operate.

III. Conclusion

The application of Regulation T to the Foreign Subsidiaries would be unworkable for the Foreign Subsidiaries, since it would (i) raise potential conflicts with the local requirements in the foreign jurisdictions in which they operate, (ii) require the implementation of new and seemingly unnecessary compliance procedures and related systems changes which could not be accomplished in the proposed time frame for the closing of this transaction, and (iii) potentially render the Foreign Subsidiaries commercially non-competitive, particularly with regard to their margin lending practices involving United States securities. If the Foreign Subsidiaries were required to be treated as Regulation T creditors, then the parties might need to engage in a costly and unnecessary restructuring of the proposed joint venture and the potential loss of anticipated benefits afforded by the parties' decision to hold their interest in Holdings under MS&Co. and CGMI.

The relief requested is consistent with the current policy of the Federal Reserve and the SEC, which does not apply Regulation T to unregistered foreign broker-dealers, and with the substance of the 1983 amendments to Regulation X, cited above.

* * *

Should you have any questions, please do not hesitate to call me at (212) 450-4174, or Neal Sullivan, Michael Wolk or David Hwa of the Bingham McCutchen firm at (202) 373-6159, (202) 373-6249 and (703) 244-5628, respectively.

Sincerely,

Lanny A. Schwartz