

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20070094283**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Morgan Stanley & Co. Incorporated ("MS"), Respondent  
BD No. 8209

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, MS submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against MS alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. MS hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

MS is a registered broker-dealer with its principal office located in New York, New York. MS is a member organization of FINRA, which is the designated examining authority and regulator of MS. MS is a wholly owned subsidiary of Morgan Stanley, a publicly traded holding company, and a member of various domestic and foreign securities and commodities exchanges. On April 1, 2007, Respondent MS became the successor in interest to Morgan Stanley DW Inc. (BD No. 7556) ("MSDW" or the "Firm"). Prior to that date, both firms were under common ownership. At all times relevant to this AWC, MSDW, a successor firm to the former Dean Witter Reynolds broker-dealer, was a full-service broker-dealer maintaining retail branch offices around the United States.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

In NYSE Hearing Panel Decision 04-184 (the "December 2004 Settlement"), MS and MSDW consented to a penalty of a censure and \$13 million fine and an offer of opportunity to clients to rescind certain purchases of securities for failing to

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ensure delivery of prospectuses in connection with certain sales of securities, failing to timely and accurately file Daily Program Trading Reports, erroneously executing certain sell orders on a minus tick for securities in which the Firm held a short position, failing to timely submit Forms RE-3 in connection with certain matters, failing to comply with requirements concerning certain Market-on-Close and Limit-on-Close orders, failing to supervise certain incoming and/or outgoing communications and failing to reasonably supervise certain activities. MSDW consented to a finding that between October 2001 and August 2004, it hired four individuals subject to statutory disqualification and failed to file *fingerprint* cards for approximately 1,500 non-registered employees, which is a related finding to the matter involved in this AWC.

### **OVERVIEW**

Despite MSDW policies and procedures regarding fingerprinting, conducting background checks and screening for statutory disqualification for its permanent employees, of approximately 6,921 permanent employees who required screening for statutory disqualification between September 2004 and March 31, 2006, MSDW failed to timely fingerprint approximately 427.

In addition, as a result of only limited policies and procedures related to screening temporary workers, consultants or interns for statutory disqualification (collectively, "temporary workers"), MSDW cannot assess how many of the approximately 1,021 temporary workers hired in its branch offices and how many of the more than 541 temporary workers hired for its non-branch locations during the years 2004 and 2005 were subject to statutory disqualification, and failed to timely fingerprint 379 interns and 57 consultants of the approximately 2,024 interns and consultants who required screening for statutory disqualification between January 2005 and March 2006.

Upon discovering these failings, MSDW updated its policies and procedures to ensure that all classes of temporary workers are fingerprinted, where required, and that those workers are timely screened for statutory disqualification. MSDW also fingerprinted any permanent or temporary workers who remained at the Firm, but had not been fingerprinted previously. The Firm did not find that any of these temporary workers were statutorily disqualified.

### **FACTS AND VIOLATIVE CONDUCT BY RESPONDENT**

Section 3(a)(39)(F) and 15(b)(4)(B) of the Securities Exchange Act of 1934 ("the Exchange Act") provides that an individual is subject to a statutory disqualification if convicted, within the previous ten years, of any felony or a misdemeanor involving, inter alia: "larceny, theft, robbery . . . fraudulent conversion, or misappropriation of funds."

Section 17(f) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17f-2(a) thereunder, requires that member organizations submit or cause to be submitted, the fingerprints of its employees and temporary workers to the Attorney General of the United States or its designee for identification and appropriate processing. Section 17(a) of the Exchange Act and Rule 17a-3(a)(12)(i)(g) requires that member organizations, among other things, make and keep current a record of any arrest or indictment for any felony or certain misdemeanor convictions and the disposition of any such arrest, indictment or conviction for each associated person of the member organizations.<sup>1</sup>

Article III, Section 4 of the NASD By-Laws requires that member determine whether a prospective employee is subject to a statutory disqualification. Pursuant to NASD Rule 3010(b), each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.

#### **Hiring of Permanent Employees**

MSDW had policies and procedures regarding fingerprinting, conducting background checks and screening for statutory disqualification for its permanent employees. Despite such policies and procedures, of approximately 6,921 permanent employees who required screening for statutory disqualification between September 2004 and March 31, 2006, MSDW failed to timely fingerprint approximately 427.

#### **Hiring of Temporary Workers**

The Firm had limited policies and procedures related to conducting background checks, fingerprinting, submitting the fingerprints to the U.S. Attorney General or a designee, or screening temporary workers for statutory disqualification.

As a result, during the years 2004 and 2005, MSDW failed to fingerprint, failed to submit fingerprints to the U.S. Attorney General or a designee, and failed to ensure that background checks were conducted for the approximately 1,021 temporary workers hired in its branch offices. Accordingly, MSDW cannot determine how many of these workers were subject to statutory disqualification.

Similarly, although MSDW's practice required fingerprinting temporary workers hired for its non-branch locations, MSDW did not have adequate policies and procedures related to screening them for statutory disqualification. As a result, the Firm had no way of assessing how many of the more than 541 temporary workers

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<sup>1</sup> Section 17(a) of the Exchange Act and Rule 17a-3(a)(12)(ii) defines an "associated person" as a partner, officer, director, salesman, trader, manager or any other temporary worker handling funds or securities or soliciting transactions or accounts for such member, broker or dealer.

hired for its non-branch locations during the years 2004 and 2005 were subject to statutory disqualification.

#### **Hiring of Interns and Consultants**

MSDW issued written policies in February 2005 that required that interns and consultants be fingerprinted. However, it did not have written procedures related to background checks or determining whether interns and consultants were subject to statutory disqualification. As a result, MSDW failed to timely fingerprint 379 interns and 57 consultants of the approximately 2,024 interns and consultants who required screening for statutory disqualification between January 2005 and March 2006.

#### **VIOLATIVE CONDUCT BY RESPONDENT**

1. The Firm violated Sections 17(a) and 17(f) of the Securities Exchange Act of 1934 and Rule 17a-3(a)(12)(i) and 17f-2 thereunder, and Article III, Section 4 of the NASD By-Laws in that the Firm failed to submit or cause to be submitted the fingerprints of certain permanent employees, temporary workers, interns and consultants and failed to investigate the previous records of those individuals.

2. Violated NASD Rule 3010(b), in that the Firm failed to provide for, establish, and maintain adequate procedures to ensure compliance with NASD rules and federal securities laws relating to the employment of certain permanent employees, temporary workers, interns and consultants who may have been subject to statutory disqualification.

B. MS consents to the imposition of the following sanctions:

A censure and payment of a \$425,000 fine.

MS agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. MS has submitted an Election of Payment form showing the method by which MS proposes to pay the fine imposed.

MS specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

#### **II.**

#### **WAIVER OF PROCEDURAL RIGHTS**

MS specifically and voluntarily waives the following rights granted under FINRA's Code of

**Procedure:**

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, MS specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

MS further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

**III.**

**OTHER MATTERS**

MS understands that:

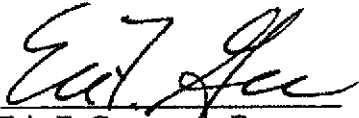
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of

the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against MS; and
- C. If accepted:
  - 1. this AWC will become part of MS's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against MS;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about MS's disciplinary record;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
  - 4. MS may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. MS may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects MS's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. MS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. MS understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

MS certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that MSDW has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

Morgan Stanley & Co. Incorporated

By:   
Eric F. Grossman, Esq.  
Legal & Compliance Division  
Morgan Stanley  
1633 Broadway  
25<sup>th</sup> Floor  
New York, New York 10019

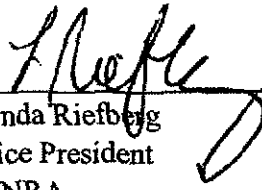
Dated Apr. 12, 2008

EEG by ZS

Accepted by FINRA:

Date 5/19/08

Signed on behalf of the  
Director of ODA, by delegated authority

  
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Linda Riefberg  
Vice President  
FINRA  
Department of Enforcement  
14 Wall Street  
14<sup>th</sup> Floor  
New York, New York 10005  
Office: (646) 315-7395  
Fax: (646) 315-7442