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

DIVISION OF
CORPORATION FINANCE

July 20, 2009

Mr. Nabil Sabki
Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654

Re: In the Matter of Morgan Stanley & Co. Incorporated, (HO-10196)
Morgan Stanley – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Sabki:

This is in response to your letter dated July 17, 2009, written on behalf of Morgan Stanley (Company) and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on July 20, 2009, of a Commission Order (Order) pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), naming the Company's wholly-owned subsidiary, Morgan Stanley & Co. Incorporated (MS&Co.), as a respondent. The Order, among other things, requires that MS&Co. cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(2) of the Advisers Act, and Rule 204-2 thereunder.

Based on the facts and representations in your letter, and assuming the Company and MS&Co. comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

Mary J. Kosterlitz

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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July 17, 2009

<u>VIA FEDERAL EXPRESS AND EMAIL</u>

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporate Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Morgan Stanley (File No. HO-10196)
Request for Waiver of Any Disqualification from
Exemption under Rule 405 of Regulation C

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client, Morgan Stanley, in connection with a settlement agreement arising out of an investigation by the Securities and Exchange Commission (the "Commission") into alleged violations by Morgan Stanley & Co. Incorporated ("MS&Co."), a subsidiary of Morgan Stanley, of Sections 204 and 206(2) of the Investment Advisers Act of 1940, as amended (the "Advisers Act") and Rule 204-2 thereunder.

Morgan Stanley hereby requests, pursuant to Rule 405 of Regulation C promulgated under the Securities Act of 1933, as amended (the "Securities Act"), a waiver of "ineligible issuer" status under Rule 405 that may be applicable to Morgan Stanley as a result of the entry of the Settlement Order (as defined below). Morgan Stanley further requests that these waivers be granted effective upon entry of the Settlement Order. 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 Division of Enforcement and MS&Co. have engaged in settlement discussions regarding the above-referenced matter. In connection with these discussions, MS&Co. has submitted to the Commission an offer of settlement in which, for the purpose of this administrative proceeding, it consents to the entry of an order by the Commission (the "Settlement Order") without admitting or denying the matters set forth in the Settlement

Order (except as to the jurisdiction of the Commission and the subject matter of the administrative proceeding).

In the Settlement Order, the Commission makes findings, without admission or denial by MS&Co. (apart from jurisdiction), that MS&Co. violated Sections 204 and 206(2) of the Advisers Act and Rule 204-2 thereunder. The Commission's findings allege that from 2000 through at least April 2006, MS&Co. recommended to certain advisory clients of its Nashville, Tennessee branch office certain money managers who were not on a pre-approved list of money managers, contrary to the procedures described in disclosure materials provided to clients. The Commission found that recommendation of such money managers was in contravention of MS&Co.'s disclosure materials and that a financial adviser in the Nashville office who serviced the clients, and consequently MS&Co., had an economic incentive to recommend such non-approved money managers, thus creating a conflict of interest which MS&Co. failed to disclose to its advisory clients. The Commission also found that MS&Co. failed to supervise the financial adviser in its Nashville office with a view to preventing the abovementioned violations and failed to maintain the proper paperwork reflecting its written agreements and communications with its advisory clients relating to the recommendations of money managers.

Based on the above findings, pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Sections 203(e) and 203(k) of the Advisers Act, the Settlement Order censures MS&Co., requires MS&Co. to cease and desist from committing or causing any current or future violations of Sections 204 and 206(2) of the Advisers Act and Rule 204-2 thereunder, and requires MS&Co. to pay a civil money penalty of $500,000.

Morgan Stanley is a publicly traded company listed on the New York Stock Exchange and is a reporting company under the Exchange Act. In its most recently filed Form 10-K, Morgan Stanley self identified as a well-known seasoned issuer. MS&Co. is a wholly-owned subsidiary of Morgan Stanley and is registered with the Commission as a broker-dealer and investment adviser. Morgan Stanley currently is the only issuer parent of MS&Co.

DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.[1] As part of its reform, the Commission added a new category of issuer (*i.e.*, a well-known seasoned issuer). The Commission defined a well-known seasoned issuer as an issuer that is required to file reports pursuant to Section 13(a) or Section 15(d) of the Exchange Act and that satisfies other requirements, including the requirement that the issuer not be an ineligible issuer. The Commission also adopted rules

[1] *See Securities Offering Reform*, Final Rule, Securities Act Release No. 8591, Exchange Act Release No. 52056, 70 Fed. Reg. 44722 (July 19, 2005).

permitting the use of free-writing prospectuses in registered offerings by issuers, including, but not limited to, well-known seasoned issuers and other offering participants. Pursuant to Rules 164 and 433 of the Securities Act, an issuer may use a free-writing prospectus only if it is not an ineligible issuer.[2]

Rule 405 of Regulation C of the Securities Act makes an issuer an "ineligible issuer" if, during the past three years, the issuer or any entity that at the time was a subsidiary of the issuer "was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws." *See* 17 C.F.R. §§ 230.405.

Morgan Stanley understands that the entry of the Settlement Order could be construed to render it an "ineligible issuer" under Rule 405. The Commission has the authority to waive the "ineligible issuer" status upon a showing of good cause that it is not necessary under the circumstances that the issuer be considered an ineligible issuer. *See* 17 C.F.R. §§ 230.405. Morgan Stanley respectfully requests that the Commission waive any disqualifying effect the Settlement Order may have on Morgan Stanley or any other offering participant pursuant to Rule 405 on the following grounds:

1. **The Settlement Order does not pertain to disclosures by Morgan Stanley as an issuer of securities**

The conduct addressed in the Settlement Order does not pertain to activities undertaken by Morgan Stanley or MS&Co. in connection with their own disclosure as an issuer of securities in their filings with the Commission.

2. **Morgan Stanley has a strong record of compliance**

Morgan Stanley has a strong record of compliance with the securities laws and MS&Co. has fully cooperated with the Division of Enforcement with respect to this matter.

3. **Applying a disqualification to Morgan Stanley would be disproportionately and unduly severe**

Applying the designation of "ineligible issuer" would be unduly and disproportionately severe, given the fact that the Commission staff has negotiated a

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[2] This request for relief is being made not only for the purpose of continuing to qualify as a well-known seasoned issuer, but for all purposes of the definition of "ineligible issuer" in Rule 405, *i.e.*, for whatever purpose the definition may now or hereafter be used under the federal securities laws, including Commission rules.

settlement with MS&Co. and reached a satisfactory conclusion to this matter that will require MS&Co. to pay a civil money penalty of $500,000.

* * *

In light of the foregoing, we believe that disqualification of Morgan Stanley as an eligible issuer is not warranted as it is not necessary to serve the public interest or for the protection of investors, and that Morgan Stanley has shown good cause that the Relief should be granted. Accordingly, we respectfully request that the Commission, pursuant to Rule 405, determine that it is not necessary under the circumstances that Morgan Stanley be an "ineligible issuer."

Please do not hesitate to contact me at (312) 862-2369 regarding this request.

Sincerely,

Nabil Sabki

cc: Matthew Morningstar
Andrew M. Genser
Omar Akbar
Benjamin M. Harell