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Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Regulation Best Interest (File No. S7-07-18); Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles (File No. S7-08-18); Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation (S7-09-18)

Dear Mr. Fields:

Morgan Stanley appreciates the opportunity to comment on the Commission's proposed Regulation Best Interest; proposed rule regarding "Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles"; and "Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation."

I. MORGAN STANLEY BACKGROUND INFORMATION

Morgan Stanley is a leading full-service global financial services firm.[1] Since our founding in 1935, Morgan Stanley has been a client-focused organization providing a range of financial services and advice to individuals, corporations and institutions. Our employee code of conduct stresses the primacy of client interests over those of the

[1] Morgan Stanley (NYSE: MS) is a global financial services firm that, through its subsidiaries and affiliates, provides products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley Smith Barney LLC (doing business as "Morgan Stanley Wealth Management") is registered as a broker-dealer and investment adviser with the SEC and a member of FINRA. Morgan Stanley & Co. LLC is registered as a broker-dealer with the SEC, and a member of FINRA and NYSE, among others.

company or individual employees, and four "Core Values" guide our business approach, the first of which is "Putting Clients First."[2]

Morgan Stanley's wealth management division, Morgan Stanley Wealth Management ("Wealth Management"), has approximately 15,600 financial advisers throughout the United States, servicing approximately 5.7 million wealth management accounts with approximately $2.4 trillion in client assets. Wealth Management provides services through both brokerage accounts with transaction-based pricing (e.g., commissions, selling concessions), and investment advisory accounts where clients pay an annual fee based on the value of the assets in the account.

In accordance with our Core Values, Morgan Stanley strongly supports the development of a "best interest" of the customer standard when making investment recommendations to retail customers. Morgan Stanley also firmly supports transparency regarding financial firms' relationships with their clients and efforts to clarify the standard of conduct applicable to investment advisers.

II. <u>SUMMARY OF CONTENTS</u>

We applaud the Commission's adoption of a principles-based approach to Regulation Best Interest ("Reg BI"). The Conflict of Interest Obligations under Reg BI should focus on conflicts that are material, and eliminate the distinction between financial and non-financial conflicts. Morgan Stanley suggests that for the purposes of Reg BI, the Commission adopt the materiality standard articulated in *TSC Industries v. Northway, Inc.*[3] That long-standing precedent provides clear guidance and would eliminate potential confusion (e.g., regarding what is an "unconscious" conflict) by focusing on those conflicts that a reasonable retail investor would want to know and understand.

To address their material conflicts of interest, broker-dealers should have the ability to apply a risk-based approach to appropriately implement effective client disclosure and consent processes, implement mitigation processes, eliminate conflicts, or a combination of the foregoing. While certain material conflicts should altogether be eliminated and others require mitigation in addition to disclosure, there may be circumstances where clear and effective disclosure alone is sufficient to address a particular material conflict. In addition, there are operational and logistical reasons why most material conflicts should be defined and disclosed at the firm level, as opposed to at the associated person level or CUSIP level.

Morgan Stanley also believes that retail investors would benefit if the Disclosure Obligation can be satisfied with a four-layer construct that leverages how many retail broker-dealers currently communicate with their clients: (1) disclosure in connection with account opening; (2) disclosure in an annual client communication; (3) post-trade

[2] The remaining Core Values are "Doing the Right Thing," "Leading with Exceptional Ideas," and "Giving Back."

[3] *See TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

disclosures where currently permissible under existing law, e.g., trade confirmation disclosures; and (4) website disclosure where clients can readily obtain information regarding the scope of the relationship, fee information by product and account type and material conflicts of interest. We further note that point-of-sale disclosures pose operational issues and may not afford clients sufficient time to adequately consider and understand them.

Under the Care Obligation, Morgan Stanley seeks guidance regarding the scope of "reasonably available alternatives" that must be considered when making a recommendation. In a situation where the universe of similar products can be very broad (e.g., mutual funds), firms need guidance or reasonable limiting principles to guide their processes and policies.

Morgan Stanley further proposes that the definition of "retail customer" under Reg BI and the definition of "retail investor" under Form CRS be conformed to the FINRA definition. Likewise, Reg BI builds off of FINRA's existing suitability framework, and thus it makes sense for Reg BI's standard of conduct and the FINRA suitability rule to apply to the same group of retail investors. Form CRS should similarly apply to that same group of investors.

We also advocate that, consistent with FINRA Rule 2111(b), Reg BI exclude those natural persons with $50 million or more in assets who are able to exercise independent judgment and make an affirmative representation that they are doing so. This ensures that the exclusion applies only to those who are financially sophisticated. It also preserves these clients' choice by allowing such individuals opportunities to invest in certain unique investments they would not otherwise have access to.

With regard to Form CRS, the form should be a clear and concise document with available links to a firm's website to allow for additional detail. To best inform retail investors, firms should be able to draft language specific to their business models and to discuss additional topics important to retail investors such as the firm's capital, its cybersecurity protections or the extent of a firm's risk and compliance program. Form CRS should be made available on a public website and in connection with account openings.

In addition, we believe that registered representatives of dual registrant firms like Morgan Stanley who have completed firm training on handling advisory accounts should be able to use the titles "advisor" or "adviser." This practical approach would permit registered representatives who are starting out, or who are fully capable of but not currently handling advisory clients, to hold themselves out to the public as advisers. Furthermore, it would avoid otherwise burdensome and expensive revisions to client-facing materials for those firms that historically have used the terms in their client documentation.

Morgan Stanley fully supports the proposed enhancements regarding the regulation of investment advisers. Regarding the standard of conduct for investment advisers, long-standing precedent permits investment advisers to address conflicts with clear disclosure and informed client consent. We respectfully ask that the SEC confirm this foundational principle in the final release.

III. COMMENTS ON REGULATION BEST INTEREST

a. The Conflict of Interest Obligations Should Focus on Materiality

i. *Regulation Best Interest Should Use the Materiality Standard Set Forth in TSC Industries*

Morgan Stanley agrees that firms should identify and appropriately address material conflicts of interest. Under Reg BI, a broker-dealer is required to "reasonably disclose" the "material facts" about the scope and terms of the relationship and the "material conflicts of interest" that are associated with a recommendation.

What is "material" is not defined in the rule. In the Reg BI proposing release, however, the Commission defines a material conflict of interest as a conflict that "a reasonable person would expect might incline a broker-dealer—consciously or unconsciously—to make a recommendation that is not disinterested."[4] While the proposed interpretation is based upon existing precedent regarding the fiduciary duty under Section 206(1) and (2) of the Investment Advisers Act (the "Advisers Act"), its breadth and potential ambiguity when applied to the different duty owed under proposed Reg BI could undercut the SEC's intention that the Disclosure Obligation apply only to truly material conflicts of interest,[5] and prompt firms to over-disclose in an attempt to sufficiently identify all *potential* conflicts, including those that could possibly arise from "unconscious inclinations" not to provide disinterested recommendations. A foreseeable consequence of the SEC's proposed interpretation is thus "disclosure creep," which could interfere with the investing public's right under the securities laws to full and fair disclosure of *material* facts.[6]

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[4] Regulation Best Interest, Exchange Act Release No. 83062, 83 Fed. Reg. 21574, 21602 (May 9, 2018), *available at* https://www.gpo.gov/fdsys/pkg/FR-2018-05-09/pdf/2018-08582.pdf (hereinafter, "Reg BI Proposing Release").

[5] *Id.*

[6] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Release No. 8998, 74 Fed. Reg. 4546, 4551 (Jan. 13, 2009) (the SEC expressing concern regarding summary sections of prospectuses tending to expand to become longer over time, possibly undermining its usefulness); Registration Form Used by Open-End Management Investment Companies, Securities Act Release No. 7512, 63 Fed. Reg. 13916, 13941 (Mar. 13, 1998) ("The Commission acknowledges that some interpretations relating to Form N-1A disclosure taken by the staff in the past have contributed to fund prospectuses becoming dense and less inviting to read by shareholders.") (citing "Taking the Mystery Out of Mutual Funds," Remarks by Arthur Levitt, Chairman, SEC, before the Boston Citizens Seminar, Boston, Mass. (Feb. 25, 1997) ("We recognize that we share responsibility for the state of the modern prospectus. Our passion for full disclosure has resulted in fact - bloated reports, and prospectuses that are more redundant than revealing.")); Guidance Regarding Mutual Fund Enhanced Disclosure, IM Guidance Update No. 2014-08, Division of Investment Management, SEC (June 2014), *available at* https://www.sec.gov/investment/im-guidance-2014-08.pdf.

Morgan Stanley therefore requests that the Commission adopt the standard set forth in SIFMA's comment letter; that is, to incorporate the well-established materiality standard under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"), which the Supreme Court established in *TSC Industries v. Northway, Inc.*[7] and reaffirmed in *Basic, Inc. v. Levinson*[8] and most recently in *Halliburton Co. v. Erica P. John Fund, Inc.*[9] In *TSC Industries'* proxy solicitation context:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. ... What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.[10]

This is the same test that the SEC has made clear applies to materiality determinations under the Advisers Act.[11] Where the event (or in the context of Regulation Best Interest, the conflict or its materiality) is contingent, materiality should depend on "a balancing of both the indicated probability that the event (or conflict or its materiality) will occur and the anticipated magnitude of the event (or conflict) in light of the totality of the" circumstances.[12]

Adopting this standard instead of a standard requiring firms to determine conscious and unconscious motivations is consistent with long-standing interpretations of "materiality" under the federal securities laws, and should more effectively serve the SEC's goal of ensuring that retail customers receive the targeted disclosures about material conflicts that they need to make well-informed investment decisions.

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[7] *See TSC Indus.*; *see also Basic, Inc. v. Levinson*, 485 U.S. 224 (1988); *Halliburton Co. v. Erica P. John Fund, Inc.*, 173 S. Ct. 2398 (2014).

[8] *See Basic*, 485 U.S. 224.

[9] *See Halliburton*, 173 S. Ct. 2398.

[10] *TSC Indus.*, 426 U.S. at 449.

[11] *See* SEC, Amendments to Form ADV, Advisers Act Release 3060 (July 28, 2010) (adopting amendments to Form ADV and stating, "The standard of materiality under the Advisers Act is whether there is a substantial likelihood that a reasonable investor (here, client) would have considered the information important. [] This is a facts and circumstances test, requiring an assessment of the 'total mix of information,' in the characterization of the Supreme Court." (internal citations omitted)).

[12] *See Basic*, 485 U.S. at 238, 250 (quoting *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968)) (adopting the standard from *Texas Gulf Sulphur* regarding materiality in the merger context).

ii. *The Conflict Obligations Should Eliminate the Distinction Between Financial and Non-Financial Conflicts*

Morgan Stanley believes that Reg BI should focus on materiality as defined above, as opposed to distinguishing between financial and non-financial conflicts. Proposed Reg BI's Conflict Obligations distinguish between material conflicts of interest associated with a recommendation and material conflicts of interest arising from "financial incentives" associated with a recommendation.[13] Material conflicts must be identified and either disclosed or eliminated, whereas material conflicts arising from financial incentives are subject to a more rigorous requirement that they be identified, and either disclosed and mitigated, or eliminated altogether. In creating this two-tiered conflict management regime, the SEC has inadvertently established a standard for broker-dealers that is arguably more stringent than that of investment advisers, the latter of which may rely on disclosure as an appropriate means of addressing material conflicts of interest.[14]

Removing the distinction between financial and non-financial material conflicts would permit firms to focus on materiality and determining the most appropriate means to address each material conflict, and not on making a nuanced determination about what type of conflict it might constitute. Morgan Stanley respectfully requests that the SEC amend the proposed Conflict Obligations to eliminate the distinction between material conflicts of interest and material conflicts of interest arising from financial incentives and to create a harmonized requirement for firms to establish, maintain, and enforce written policies and procedures reasonably designed to identify and disclose all material conflicts of interest, and, where appropriate, to mitigate them.[15]

iii. *Firms That Have Reasonable Policies and Procedures in Place Should Be Able to Determine the Appropriate Handling of Material Conflicts of Interest*

Harmonizing the requirements would also allow firms to determine the most effective approach for addressing a material conflict of interest based upon its unique characteristics, rather than on whether it is categorized as financial or non-financial. Conflicts of interest can vary significantly, and the ways to effectively address them can and should vary as well. Using a reasonably designed, risk-based approach, firms should

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[13] Reg BI Proposing Release, 83 Fed. Reg. 21617.

[14] In interpreting an adviser's fiduciary duty under Section 206(1) and (2) of the Advisers Act, the Supreme Court has not required that an adviser avoid or mitigate conflicts of interest, but rather has required that the adviser provide appropriate disclosure of conflicts of interest so that clients can evaluate those conflicts. "An investor seeking the advice of a registered investment adviser must, if the legislative purpose [of the Advisers Act] is to be served, be permitted to evaluate such overlapping motivations, through appropriate disclosure, in deciding whether an adviser is serving 'two masters' or only one, 'especially . . . if one of the masters happens to be economic self-interest.'" *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 196 (1963) (quoting *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 549 (1961)).

[15] As under the current proposal, firms electing instead to eliminate a material conflict of interest would not be required to disclose it.

be permitted to assess whether disclosure about a specific conflict that is understandable and allows the retail customer to provide informed consent would suffice without the need for other mitigation. This approach is supported by both FINRA's 2013 Conflicts of Interest Report, which noted that disclosure can be a potentially effective mitigation practice, and long-standing interpretations of the Advisers Act.

Reg BI requires that firms maintain and enforce written policies and procedures "reasonably designed" to identify and disclose and mitigate, or eliminate, material conflicts of interest. We approve of the "reasonableness" standard that is applied to this important obligation. Indeed, the Reg BI proposing release states that the mitigation policies and procedures would offer a "principles-based approach" that "leave[s] broker-dealers with flexibility to develop and tailor reasonably designed policies and procedures . . . based on each firm's circumstances." However, despite reference to a principles-based approach, other prescriptive language in the proposing release about what constitutes sufficient mitigation creates the possibility that broker-dealers could be found to be in violation of the rule despite good-faith efforts at compliance.

For example, the SEC indicates that one method firms can use to manage conflicts of interest is by "establishing differential compensation criteria based on neutral factors (e.g., the time and complexity of the work involved)."[16] The "neutral factors" test was included in the Best Interest Contract Exemption of the U.S. Department of Labor's Conflicts of Interest Rule ("DOL Fiduciary Rule"). In addressing the DOL's neutral factors requirement, many commenters to the DOL Fiduciary Rule noted that the test is susceptible to ambiguity and different interpretations, and is unnecessarily prescriptive. For the SEC to endorse such a test would depart from the principles-based approach the Commission has stated should apply. The reference to a neutral factors test may result in firms limiting product choices solely to mitigate what could be an unknown or unknowable risk. As a result, we urge the SEC to omit the neutral factors reference from its adopting release. We further encourage the SEC to work collaboratively with broker-dealers to provide guidance on the appropriateness of firms' conflict mitigation policies and procedures as they are developed.

iv. *Generally, Material Conflicts Should Be Identified at the Firm Level as Opposed to at the Associated Person or CUSIP Level*

Morgan Stanley requests that the Commission clarify that, absent unique circumstances, the Conflict Obligations (and the related Disclosure Obligation) would apply to firm-level conflicts (e.g., principal trading, proprietary products, variable compensation paid to associated persons), and to confirm that a broker-dealer's conflicts disclosure obligation may be satisfied through use of a firm-level material conflicts disclosure document. By defining a material conflict of interest as one that is associated with the "recommendation" itself, Reg BI could otherwise be interpreted to require CUSIP or associated person-specific disclosure (e.g., "your financial advisor currently owns Coca-Cola"). If proposed Reg BI were interpreted to require broker-dealers to make real-time

[16] Reg BI Proposing Release, 83 Fed. Reg. at 21621.

disclosures specific to each associated person and each CUSIP recommended, it could result in a conflicts management regime that would pose substantial operational and compliance challenges on firms without providing commensurate benefits to retail customers.

Broker-dealers would be obligated to monitor, identify, and, where required, mitigate conflicts at the employee or CUSIP level and then create and continually update an extensive inventory of customized disclosures of such conflicts for use in connection with each possible recommendation. In some cases, this obligation would duplicate existing disclosure requirements, such as for Rule 10b-10 trade confirmations. In addition, notwithstanding the SEC's stated objective that firms determine for themselves the appropriate timing of disclosures, the requirement to disclose material conflicts associated with a specific recommendation "prior to or at the time of such recommendation" could also have the unintended effect of mandating a point-of-sale disclosure.

The following illustration demonstrates the benefits of a firm-level approach to disclosure. A broker-dealer, in connection with its capacity as a dealer, maintains an inventory of long and short positions in securities and frequently engages in trading of such securities. Separately, an associated person of the broker-dealer with no knowledge of firm inventory may recommend to a retail investor the purchase or sale of a security that is held long or short in the firm's inventory. While this type of situation arguably presents a material conflict of interest between the firm and the investor for which Regulation Best Interest would appear to require disclosure, a CUSIP-level disclosure of the conflict would be impractical given the wide range and ever-changing positions dealers typically hold in their inventory and could, in certain circumstances, reveal material nonpublic information. Under a firm-level disclosure construct, the broker-dealer could disclose the general fact that it maintains an inventory of long and short positions and that its trading may conflict with the trading of investors, and could then implement and enforce policies and procedures to mitigate that potential conflict, including information barriers, email surveillance and other controls.

Focusing the rule's Conflict Obligations at the firm level, rather than the employee or CUSIP level, will provide retail customers with the information they need to understand the material conflicts that may affect a product, transaction or strategy recommended to them without overwhelming investors with lengthy disclosure documents containing complex or granular information.

v. *Offering Documents Should Satisfy Regulation Best Interest's Material Conflicts Disclosure Obligation for Recommendations Related to Initial Public Offerings and Similar Offerings*

In connection with a recommendation that a retail customer participate in an initial public offering ("IPO") and similar offerings made pursuant to a prospectus or other offering document, Reg BI would appear to require that a broker-dealer disclose that the firm or its affiliate is an underwriter or other distribution participant, given that this could be a material conflict of interest. Because this disclosure would need to be made in writing prior to or at the time of the recommendation, Morgan Stanley requests that the Commission confirm that a broker-dealer may satisfy the Disclosure Obligation by providing a preliminary prospectus or final prospectus for SEC-registered offerings addressing, *inter alia*, underwriter material conflicts, including compensation and dealer selling concessions. For exempt offerings of securities, this obligation similarly should be satisfied by providing offering documentation that addresses these aspects.

In the alternative, we suggest that the firm may satisfy its obligations by providing a stand-alone written disclosure concerning its or its affiliate's involvement in the distribution that is provided to the customer prior to the time of the recommendation, which may, but is not required to, accompany the offering document for the securities. If the Commission would view this communication as a prospectus, the SEC should consider providing an exemption or other guidance to permit firms to use such communications in furtherance of Reg BI compliance.[17] In addition to permitting firms to use offering documents in furtherance of the their conflicts disclosure obligations related to IPOs, Morgan Stanley also requests that the SEC confirm that delivery of the offering document during the time period currently required under existing regulations, and not earlier, would satisfy Reg BI.

b. <u>Suggestions to Clarify the Disclosure Obligation</u>

i. ***A Four-Layer Disclosure Regime is Beneficial to Retail Clients***

Morgan Stanley concurs with the SEC's proposed "layered" approach to disclosure of material facts regarding the scope of the relationship with the client and fees, as well as material conflicts of interest associated with the recommendation. Indeed, the securities laws and FINRA rules already require firms to provide significant disclosures to clients at natural touchpoints in the client relationship, such as in connection with account opening, in annual client communications, and in trade confirmations and client account statements.[18] In addition, Morgan Stanley and other broker-dealer firms already provide

[17] Additional disclosures may be needed to the extent that there are material conflicts of interest unique to the broker-dealer recommending participation in the IPO that are not captured in the prospectus or other offering document.

[18] *See, e.g.*, Exchange Act Rule 10b-10 (requiring broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or municipal securities, to provide a confirmation, at or before the completion of each transaction, disclosing certain basic terms of the transaction); Exchange Act Rule 17a-3(a)(17)(i)(B) (requiring, among other things, that broker-dealers furnish to customers within 30 days of account opening and at least every 36 months thereafter (subject to exceptions) an "account record" that includes customer information such as name, tax identification number, address, date of birth, employment status, annual income, net worth, and investment objectives); Exchange Act Rule 17a-5(c) (regarding sending customers audited financial statements within 105 days after the end of a broker-dealer's fiscal year-end); NASD Rule 2340 (requiring firms to send account statements to customers not less than quarterly); FINRA Rule 2232 (requiring, among other things, that confirmations be sent pursuant to Exchange Act Rule 10b-10); FINRA Rule 2266 (requiring certain SIPC members to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also to provide the Web site address and telephone number of SIPC, and to provide all customers with the same information, in writing, at least once each year).

various information to clients via our websites. This well-established foundation, which is both feasible and can provide meaningful information to clients at numerous intervals, should form the basis of a workable and effective Disclosure Obligation.

Accordingly, Morgan Stanley proposes a four-layer Disclosure Obligation: (1) disclosure in connection with account opening; (2) disclosure in an annual client communication; (3) post-trade disclosures where permissible under existing law, e.g., trade confirmations disclosing whether a trade was made on a principal or agency basis and mark-ups on fixed income transactions; and (4) website disclosure where clients can easily access documentation setting forth the scope of the relationship, fee information by account type and asset class, product information, and disclosure of material firm-level conflicts of interest including those applicable by product class.[19] Such website disclosures should be permissible under Reg BI even if a client has not elected e-delivery of client documents. Website disclosure benefits investors by enabling them to drill down on issues based on their desired level of detail, as well as by facilitating firms' ability to update information in an expedited manner that best serves clients. In addition, each firm should have the ability to include a link on its trade confirmations or account statements to the disclosures website to remind clients where this information can be accessed.

ii. *Point-of-Sale Disclosures Pose Significant Compliance and Operational Challenges*

For the reasons set forth in SIFMA's comment letter, we concur with the position that point-of-sale ("POS") disclosures may hinder timely trade execution, which can adversely affect clients, especially when markets move quickly. In addition, POS disclosures regarding material conflicts of interest would be costly and difficult to implement. As SIFMA pointed out in its October 1, 2008 comment letter to the International Organization of Securities Commissions Point of Sales Disclosure Issues Paper: "There are a number of costs and practical considerations associated with point of sale disclosures, particularly where such disclosure is defined as an event occurring prior to the execution of a transaction. Issues . . . include costs associated with producing and maintaining the currency of point of sale information, the promptness of trade execution and the difficulties of monitoring compliance with point of sale requirements." SIFMA pointed out that making POS disclosures "through websites and applying an access equals delivery standard with respect to such disclosure may go a long way to addressing these concerns." Morgan Stanley endorses this solution.

Finally, due to their timing, POS disclosures may be less helpful to clients than disclosures made when clients have the time to fully consider them. Since POS disclosures are made when the client is poised to transact, there is little time for the client to judge the information in deciding whether to act on a recommendation. Disclosures made earlier in time – such as in connection with account opening or pursuant to an annual client communication – are more valuable since the client can thoughtfully

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[19] For the small universe of clients without internet access, broker-dealers could provide upon request hard copies of the disclosure documents on its website.

consider them, as opposed to being presented with such information just as the client may be poised to place an order.

c. Suggestions to Clarify the Care Obligation

i. *Factors to Consider When Making a Recommendation*

Morgan Stanley strongly supports the Commission's approach to the Care Obligation as principles-based, requiring broker-dealers and their associated persons to use reasonable diligence, care, skill and prudence in recommending a securities transaction or investment strategy that is in the best interest of its retail customers. This approach would allow firms to develop compliance frameworks tailored to their particular business models while continuing to provide retail customers the products and services that are best suited for them given their investment profile and needs.

In forming a reasonable basis for a recommendation, the Reg BI proposing release states that a broker-dealer should consider the "reasonably available alternatives" it offers.[20] Large firms with an open architecture like Morgan Stanley offer an enormous range of products to their clients. To take but one example, Morgan Stanley offers approximately 300 large capitalization equity mutual funds to its retail customers. Accordingly, it would be helpful for broker-dealers to receive clarification from the SEC on what would constitute acceptable consideration of "reasonably available alternative[s]" in such a scenario.

Similarly, with respect to cost, while the Reg BI proposing release would not require firms to recommend the least expensive (or remunerative) option, firms would need to have a reasonable basis to believe that a higher-cost investment was justified based on other factors, such as the product's investment objectives, characteristics, liquidity, potential risks and benefits, volatility and likely performance, and the client's investment profile. To facilitate compliance with the Care Obligation, Morgan Stanley requests that the SEC provide additional guidance regarding the review that firms and their associated persons would be expected to undertake in fulfilling the Care Obligation.

ii. *Recommendations Not Involving Compensation*

Additionally, as a matter of scope, Morgan Stanley respectfully requests that the Commission clarify that the obligations of Reg BI apply only to recommendations made *for compensation*. This clarification would be consistent with FINRA's guidance regarding the scope of the current suitability obligation[21] and would avoid inadvertent

[20] *See, e.g.,* Reg BI Proposing Release, 83 Fed. Reg. at 21588.

[21] FINRA Rule 2111 (Suitability) FAQ, at FAQ 2.1, *available at* http://www.finra.org/industry/faq-finra-rule-2111-suitability-faq ("for purposes of the suitability rule, the term customer includes a person who is not a broker or dealer who opens a brokerage account at a broker-dealer or purchases a security for which the broker-dealer receives or will receive, directly or indirectly, compensation even though the security is held at an issuer, the issuer's affiliate or a custodial agent (*e.g.*, 'direct application' business, 'investment program' securities, or private placements), or using another similar arrangement").

informal "cocktail party" conversations from triggering the requirements of Reg BI when there is no reasonable expectation that a firm would be making a "best interest" recommendation that takes into account an individual's investment profile and all other aspects of Reg BI. Furthermore, a "for compensation" threshold under proposed Reg BI would align the proposed rule with the Advisers Act, which applies only when the firm or its associated person receives direct or indirect compensation for investment advice.

iii. *Securities Research Reports*

Finally, with respect to securities research, Morgan Stanley urges the SEC to adopt the approach set forth in SIFMA's comment letter, which would exclude research reports subject to regulation under FINRA Rules 2241 and 2242 from Reg BI requirements.

d. **The Recordkeeping Obligations Associated with Reg BI Should Be Conformed with Current Recordkeeping Requirements**

We concur with SIFMA's observations regarding recordkeeping under Reg BI and therefore respectfully request that the Commission clarify that the recordkeeping requirement applies to customer profile information, and not all of the related and underlying communications that may convey such customer profile information. In addition, we request that the SEC clarify that, except with respect to the specific recordkeeping requirements set forth in the proposed rule text, Reg BI does not require an additional set of records to demonstrate best interest determinations.

e. **Regulation Best Interest and Form CRS Should Apply to the Same Universe of Investors**

Morgan Stanley strongly supports the SEC's initiative in seeking to enhance the protections to retail customers under Reg BI and Form CRS. As proposed, Reg BI would impose a substantive duty to make recommendations that are in a "retail customer's" "best interest," while Form CRS would couple that with a disclosure obligation about a "retail investor's" relationship with a firm. The SEC has stated its belief that the two initiatives work together to protect investors.[22] Given the complementary relationship between Reg BI and Form CRS, both requirements should apply to the same common core of retail clients. Indeed, the Reg BI proposing release itself emphasizes the need for consistency.[23]

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[22] *See* Reg BI Proposing Release, 83 Fed. Reg. at 21576 (noting that Regulation Best Interest "would improve disclosure about the scope and terms of the broker-dealer's relationship with the retail customer, which would foster retain customer awareness and understanding of their relationship with the broker-dealer, which aligns with our broader effort to address retail investor confusion through our separate concurrent rulemaking [concerning Form CRS]").

[23] *See, e.g.*, Reg BI Proposing Release, 83 Fed. Reg. at 21583 ("We sought to avoid a lack of clarity or consistency in the applicable standards and a lack of coordination among regulators, which could ultimately undermine investor choice and access and create legal uncertainty in developing effective compliance programs").

f. Reg BI and Form CRS Would Work in Better Harmony by Conforming Their Definitions of "Retail Customer" and "Retail Investor" to the FINRA Definition of "Retail Investor"

The complementary relationship of Reg BI and Form CRS is undermined, however, by the different definitions of a "retail customer" and "retail investor." A "retail customer" under Reg BI is defined as a person or that person's legal representative (such as a trust that represents the assets of a natural person) who receives a recommendation and uses it primarily for "personal, family or household purposes." By contrast, the requirements of Form CRS apply to "retail investors," defined as natural persons and entities such as trusts that represent them without Reg BI's purpose prong.[24]

The definitions of "retail customer" under Reg BI and "retail investor" under Form CRS overlap but are not identical, and the benefits to investors from applying the separate definitions are unclear. Morgan Stanley proposes to harmonize the two rules by applying a common definition to both. Morgan Stanley concurs with SIFMA's comment letter proposing the reformation of these terms under Reg BI and Form CRS to comply with the well-established definition of a "retail investor" under FINRA Rule 2210, which defines "retail investor" as any person other than an "institutional investor," which includes, among others, any institutional account under FINRA Rule 4512(c).[25]

As the SEC explicitly acknowledges, Reg BI builds upon FINRA's suitability rule and the supervision and compliance framework that broker-dealers have created in response. For example, the SEC states:

> The Commission believes that the determination of whether a recommendation has been made to a retail customer that triggers the best interest obligation *should be interpreted consistent with existing broker-dealer regulation under the federal securities laws and SRO rules, which would provide clarity to broker-dealers and maintain efficiencies for broker-dealers with established infrastructures that already rely on this term.*[26]

The same logic dictates the adoption of the long-established definition of "retail investor" under FINRA's rules.

Applying the FINRA definition of "retail investor" to Reg BI and Form CRS will not unduly limit the scope of persons who will benefit from those proposed rules. The FINRA definition of "retail investor" is, in fact, broader in certain ways than the

[24] We acknowledge that the SEC may have used two different terms to draw the distinction that Regulation Best Interest applies only to certain brokerage customers whereas Form CRS would go to all "retail customers," whether they have a brokerage or an advisory account. That distinction, while well-meaning, is a very subtle one with the potential to sow further confusion among clients.

[25] *See* FINRA Rule 2210(a)(4), (6) (defining "institutional investor" and "retail investor," respectively).

[26] Reg BI Proposing Release, 83 Fed. Reg. at 21593 (emphasis added).

definition of a "retail customer" under Reg BI, in that the FINRA definition includes, for example, business and charitable entities with total assets of less than $50 million. By contrast, the definition of "retail customer" under Reg BI, by adding the requirement that the recommendation be used for "personal, family or household purposes," subjectively narrows the scope of clients who can avail themselves of Reg BI's protections.[27] Similarly, the definition of "retail investor" under Form CRS encompasses only natural persons and trusts and similar entities that represent such natural persons; it does not encompass small businesses, even when the owners of such businesses may benefit from the Form CRS disclosure regime as much as a natural person might.

Given that Reg BI incorporates and enhances the FINRA suitability framework, it is logical to adopt the FINRA definition of "retail investor" for both Reg BI and Form CRS purposes. As SIFMA's comment letter points out, firms have constructed their systems and supervision around the FINRA definition for many years. To now add two different definitions would create unnecessary cost and complexity where continued use of an already defined term would serve the SEC's goal of investor protection.

g. Reg BI Should Include an Institutional Carve-Out

Reg BI's definition of "retail customer" should not include those natural persons who would meet the institutional account "carve-out" of FINRA Rule 2111(b), [28] which provides that:

> A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in Rule 4512(c), if (1) the member or associated person has *a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities* and (2) the institutional customer *affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations* (emphasis added).

[27] The subjective nature of Regulation Best Interest's purpose prong is itself potentially problematic. When making a recommendation to a natural person, for example, a broker-dealer may not know at the time whether that person is using that recommendation for "personal, family or household purposes," or for business purposes. The clearest example would be that of a client who owns accounts in his own name, some of which are for his personal finances and some of which are for his sole proprietorship. In addition, it is hardly inconceivable that an individual may make investments in a personal account with an eventual business purpose in mind. For example, the individual may seek to invest in a personal account with the eventual goal of using the account proceeds to fund a start-up. Linking the "best interest" obligation to such a subjective determination makes it unclear when that obligation attaches to a recommendation, particularly since a broker-dealer may not be able to divine that ultimate purpose.

[28] As the Commission acknowledges, the Proposal "differs from the approach taken under current FINRA suitability obligation, which as discussed below, provide an exemption to broker-dealers from the customer-specific suitability obligation with respect to 'institutional accounts', including very high net worth natural persons." Reg BI Proposing Release, 83 Fed. Reg. at 21596, n.159.

Under FINRA Rule 4512(c), an institutional account means the account of:

> (1) a bank, savings and loan association, insurance company or registered investment company;
>
> (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
>
> (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

The SEC and FINRA have affirmed in various rules and guidance that certain duties owed to the general retail public should not apply, or should only be applied in modified form, to institutional-type investors, including ultra-high-net-worth natural persons.[29]

We advocate, consistent with FINRA Rule 2111(b), that institutional accounts for Reg BI purposes be defined not only by total assets of at least $50 million, but also by the requirements that the client (i) is able to exercise independent judgment and (ii) makes an affirmative representation that it is doing so. This construct avoids any concern that the client would incorrectly be assumed to be sophisticated based solely on the client's wealth.

Not only is recognizing an institutional exclusion important for uniformity with FINRA rules, it also protects and promotes investor choice.[30] For example, one of the significant benefits of FINRA's determination that customers with assets of $50 million or more can, in most instances, evaluate investment risks independently is that it encourages broker-dealers to present investment opportunities to such ultra-high-net-worth persons that broker-dealers would otherwise only make available to institutional investors. Firms such as Morgan Stanley may offer such individuals the opportunity to co-invest with their institutional clients in unique private fund investments. Often, these investments require investors or their advisors to conduct their own due diligence (such as by accessing a data room) and have short time periods for investment decisions. Given these characteristics, firms rely on the client's own diligence, outside advisors, and sophistication for their sale and may ask the client to confirm their independent diligence and investment sophistication by entering into an agreement commonly known in the industry as a "big boy letter."

[29] *See, e.g.*, Rules 501 and 506 Regulation D under the Securities Act (relating to offers of privately placed securities to accredited investors); Sections 2(a)(51)(A) and Section 3(c)(7) of the Investment Company Act of 1940, as amended (permitting exemptions relating to securities that are owned exclusively by qualified purchasers); Section 205(a)(1) and Rule 205-3(a) of the Advisers Act (exempting qualified clients from prohibitions on performance fees); Rule 144A of the Securities Act (permitting resales of restricted securities to qualified institutional buyers); FINRA Rule 2124 (imposing less restrictive disclosure and consent requirements on a member with respect to "net" trading with "institutional customers," as defined in FINRA Rule 4512(c)).

[30] *See* 83 Fed. Reg. at 21575 (noting that one of the key goals under Reg BI is to "preserve retail customer choice of the level and types of advice provided and the products available").

Without a formal institutional exclusion, firms could be considered not to have satisfied their duty of care under Reg BI, regardless of any "big boy" representations, particularly where there is an existing relationship with the client. These investments can benefit ultra-high-net-worth investors by providing diversification and non-correlated returns. The potential impact of no institutional exclusion is that firms may refrain from presenting these opportunities even to their ultra-high-net-worth clients, thus narrowing investor choice.

h. The Institutional Account Carve-Out Is Already Incorporated in Firms' Supervisory Systems

Firms have constructed their existing supervision systems around the institutional account carve-out. Morgan Stanley, like other large firms, identifies such accounts for supervisory, surveillance, product eligibility and other purposes and has structured its existing controls consistent with the carve-out. The definition is therefore already embedded in such firms' systems. The SEC has acknowledged the need to leverage existing compliance systems.[31] To exclude the carve-out from Reg BI will require a substantial revamping of these systems without a commensurate benefit to ultra-high-net-worth investors.

IV. COMMENTS ON FORM CRS

Morgan Stanley supports the delivery of a client relationship summary, but believes that firms should be permitted to leverage their existing disclosure regimens and draft disclosure language appropriate to each firm's business. Firms currently make multiple written disclosures to clients in connection with account opening and via annual client communications, trade confirmations, account statements, Form ADV deliveries, and websites. Consistent with the SEC's concept of layered disclosure, Form CRS should build upon and leverage this already-extant disclosure regimen. Rather than attempt to set forth all material aspects of the client relationship in one short document, firms should be permitted to create a document that briefly summarizes the relationship and refers clients to a website and other written disclosure documents where clients can seek more detailed information about their accounts.

a. Form CRS Should Be Delivered by Maintaining It on a Public Website, in Connection with Account Opening and When It Is Updated

Morgan Stanley believes that firms should be permitted to maintain Form CRS on a public website so that both prospective and actual clients can access it on an on-demand basis. Such posting would need to be a compliant disclosure even absent election of e-delivery since, for example, prospective clients would not be in a position to make an e-delivery election. For actual clients, Form CRS should also be delivered in connection

[31] *See, e.g.*, Reg BI Proposing Release, 83 Fed. Reg. at 21593 (noting the need "maintain efficiencies for broker-dealers with established infrastructures that already rely" on the defined term "recommendation" under FINRA rules).

with account opening, in an annual account communication, and when it is updated based on information that has become materially inaccurate.[32] Given that clients of dual-hatted registrants like Morgan Stanley will be informed of the difference between brokerage and advisory accounts at these key points, dual-registrants should not be required to redeliver Form CRS when a client requests additional brokerage or advisory services.

b. Form CRS Should Be a Clear And Concise Document with Website Links to More Detailed Information

In terms of format, Morgan Stanley believes that the Form CRS models proposed by SIFMA are clear and effective examples of what a potential Form CRS should look like,[33] subject of course to the ability of each firm to draft specific disclosure language and provide clients with additional website disclosures.

c. Firms Should Tailor Form CRS Language to Their Business Models

The highly prescriptive content of Form CRS in the proposing release poses particular challenges for firms that offer an extensive range of products and services, in that a form with prescriptive content may not be able to adequately address the nuances of all of their businesses. A principles-based approach would afford each firm the ability to draft Form CRS language customized to each firm's particular business models. Rather than require particular language and questions as set forth in the proposing release, an alternative would be for the SEC to prescribe only the topic headings and give instructions on what should be addressed in Form CRS. The SEC has already adopted such an approach with respect to Form ADV, for which the SEC prescribes headings and issues to address, but affords firms discretion to craft disclosure language tailored to each firm's business.[34]

The SEC should further consider requiring, or giving firms the option of addressing, additional issues of importance to retail investors. For example, a firm's capital, its cybersecurity protections and the extent of its risk and compliance program may be as important to clients in deciding which firm to do business with than other information included on Form CRS.

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[32] The Form CRS proposing release provides that the form be updated within 30 days after the relationship summary becomes materially inaccurate and delivered to existing clients who are "retail investors" within 30 days after the updates are made. *See* Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the Use of Certain Names or Titles, Exchange Act Release No. 83063, 83 Fed. Reg. 21416, 21493 (May 9, 2018) (hereinafter, "Form CRS Proposing Release"). Those time periods may not be sufficient to address the related operational issues. Accordingly, Morgan Stanley respectfully proposes that the time periods be extended to 60 days in both instances, and that the "delivery" requirement be satisfied by posting the revised Form CRS on a public website and by providing actual clients with a link to that website in a mailing such as in an account statement. Once again as a practical matter, such delivery would need to be effective even if a client has not elected e-delivery.

[33] *See* Form CRS Proposing Release, 83 Fed. Reg. at 21419 (noting that Form CRS should be "as short as practicable").

[34] *See, e.g.*, Form ADV Part 2 Instructions.

d. Morgan Stanley Concurs with SIFMA's Proposal Regarding Form CRS Recordkeeping

Finally, with respect to recordkeeping, while the current Form CRS proposing release requires firms to keep records of delivery to both prospective and actual clients, the requirement that firms track delivery of Form CRS to prospective customers is not feasible and provides minimal benefit. Firm recordkeeping systems are designed to track relationships with actual customers. Accordingly, Morgan Stanley endorses the recordkeeping provisions regarding Form CRS as proposed by SIFMA, particularly with respect to prospective customers, in that it should be sufficient to post the current version of Form CRS on a firm's website and track which versions were previously posted and when.

e. The Proposed Restrictions on the Use of the Titles "Advisor" and "Adviser" Are Too Narrow

Registered representatives of dual-registrant firms should be able to use the terms "adviser" or "advisor" even when the person is not currently handling advisory accounts. As SIFMA points out, there will be ramp-up periods or gap periods when a registered representative will not be handling advisory accounts, yet still should not be precluded from using the "adviser" or "advisor" title. To address these issues, Morgan Stanley proposes that (a) where a firm is dually registered as a broker-dealer and as an investment adviser and (b) where the registered representative has been trained by a firm to handle both brokerage and advisory accounts, it would be entirely appropriate for that person to hold himself or herself out as an "adviser" or "advisor."

The proposed title restrictions also conflict with the long-standing historical practice of many firms that have used titles such as "financial advisor." In light of this practice, these titles are already firmly embedded in firms' client agreements and other innumerable client-facing documents and websites. Unless all of their registered representatives are able to use the titles "adviser" or "advisor," firms currently using these titles will be required to engage in a burdensome and costly review and revision of all of their agreements – and other client-facing documents and websites – to remove the banned titles and replace them with different nomenclature. The benefits of this exercise to investors would be very limited, particularly since, by requiring Form CRS, clients will be informed of whether they are dealing with a firm in its capacity as broker-dealer, investment adviser or both. Banning the titles would not add meaningful incremental clarity to that already provided by Form CRS and by the extensive client-facing materials that dual-hatted firms already make available to distinguish between their roles as broker-dealer and investment adviser.

V. COMMENTS ADDRESSING THE PROPOSED INTERPRETATION REGARDING THE STANDARD OF CONDUCT FOR INVESTMENT ADVISERS

Morgan Stanley provides feedback below on the Commission's proposed interpretation regarding the standard of conduct and request for comment on investment adviser enhancements.[35] We support the desire to clarify and reaffirm elements of the fiduciary duty that an investment adviser owes to its clients under Section 206(1) and (2) of the Advisers Act.[36] Morgan Stanley submits the comments below to seek clarification on certain items within the Commission's proposed interpretation.

a. Implied Limits on Disclosure in the Interpretation Depart from Established Guidelines

It is understood that two essential fiduciary duties that investment advisers owe their clients are the duty of care and duty of loyalty. With respect to the duty of loyalty, we believe it is well settled that disclosure is an appropriate means to address conflicts of interest. In its proposing release, however, the Commission notes that "disclosure of a conflict alone is not always sufficient to satisfy the adviser's duty of loyalty and section 206 of the Advisers Act."[37]

The Commission's proposed limitation on disclosure as an appropriate means to mitigate potential conflicts of interest appears inconsistent with common law, federal securities law principles and precedent.[38] In addition, it leaves investment advisers in the position of not knowing whether a particular conflict of interest can be addressed through disclosure or whether, even where disclosure is clear and detailed, the SEC or its staff might, after the fact, deem the conflict of interest to be one for which disclosure alone was insufficient and assert that the conflict should have been mitigated, resulting in potentially unascertainable liability. In light of long-standing judicial guidance and best practices, Morgan Stanley respectfully requests that (1) the Commission remove this statement from the proposal and (2) clarify that customary forms of investment adviser disclosures (i.e., Form ADV Part 2) are an adequate means to address and mitigate conflicts of interest under the Advisers Act. The governing standard should be whether the investment adviser has disclosed all material facts about the conflict to allow the client to make an informed decision as to whether to retain the services of the investment adviser.[39] Consistent with the doctrine of implied consent, a client should be deemed to have consented to a conflict of interest if the client continues to receive the investment adviser's services after receiving disclosure of the conflict.

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[35] Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, Advisers Act Release No. 4889, 83 Fed. Reg. 21203 (May 9, 2018) (hereinafter, "Investment Advisers Proposing Release").

[36] *See* Investment Advisers Proposing Release, 83 Fed. Reg. at 21204

[37] *Id.* at 21208

[38] *See, e.g.*, *Capital Gains Research Bureau*, 375 U.S. 180.

[39] *See* Amendments to Form ADV, Investment Advisers Act Release No. 3060, 75 Fed. Reg. 49234 (Aug. 12, 2010) ("[T]he disclosure clients and prospective clients receive is critical to their ability to make an informed decision about whether to engage an adviser and, having engaged the adviser, to manage that relationship.").

Subjectively determining that certain conflicts of interest may not be resolved through disclosure adds ambiguity and unnecessary risk. Moving forward, Morgan Stanley encourages the Commission to work in conjunction with investment advisers and industry groups alike to develop practical guidelines for robust conflict of interest disclosures.

b. The Proposed Fiduciary Standard of Care Does Not Distinguish Between Various Types of Investment Adviser Relationships

While the proposal acknowledges that an investment adviser's responsibilities may vary depending on whether they provide personalized or impersonal investment advice, it does not sufficiently recognize that the scope of the relationship with a particular client is a function of the agreement with the client (both as to the duties of care and loyalty) and will vary between clients depending on the agreed-upon services.[40] There are numerous variations in how investment advisers provide advice to clients, in many cases depending on whether the client is an institutional client or an individual or family, or depending on the particular services the client is seeking. In addition, under certain arrangements, advice may be provided by a number of advisers or subadvisers who each have responsibility for certain aspects of an overall investment advisory relationship. If, for example, each investment adviser in a multi-adviser arrangement were required to examine and provide advice based on a client's investment profile, each investment adviser might come to a different conclusion, resulting in inconsistencies or even conflicting advice. In certain institutional arrangements, an investment adviser might be retained to provide a very specific and narrow service to a client that may not require that an investment adviser examine the client's investment profile.

The Commission's interpretation of the fiduciary standard of care does not adequately differentiate between the various types of investment adviser relationships and associated complexities or acknowledge that specific requirements, such as the obligation to collect and examine a client's investment profile, are unnecessary. Morgan Stanley recommends that the Commission not add such new requirements to a principles-based regulatory regime or, at a minimum, exclude institutional arrangements from any new requirements.

VI. COMMENTS REGARDING ENHANCED INVESTMENT ADVISER REGULATION

a. Morgan Stanley Supports Federal Licensing and a National Continuing Education Standard

To better protect investors, Morgan Stanley supports federal licensing and continuing education requirements for personnel of SEC-registered investment advisers.[41] Investment advisers and certain representatives should be required to satisfy basic competency requirements on a periodic basis, provided that practical guidelines are established.

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[40] *See* Investment Advisers Proposing Release, 83 Fed. Reg. at 21205.

[41] *See id.* at 21212.

Morgan Stanley supports efforts by the Commission to create a national continuing education standard for SEC-registered investment advisers. In order to avoid conflicting or redundant requirements, Morgan Stanley requests that any such requirements for SEC-registered investment advisers be consistent with those developed by the North American Securities Administrators Association ("NASAA"). NASAA has recently developed a continuing education and licensing initiative pertaining to investment adviser representatives ("IARs"). Although this project is in the early stages, it may ultimately result in the creation of a NASAA Model Rule governing the continuing education and licensing requirements of IARs. In the event that the SEC and NASAA standards differ, we request clarification that compliance with SEC standards would suffice.

Morgan Stanley also requests that any continuing education requirements specify that an IAR's home state's requirements would be controlling and that IARs conducting business in several states should not have to satisfy each state's unique requirements. Failure to specify this would impair an IAR's ability to conduct business in multiple jurisdictions.

b. Morgan Stanley Supports the Commission's Proposals Regarding the Delivery of Account Statements and Financial Responsibility Requirements

Finally, Morgan Stanley supports the provision of account statements to retail investors who may not be receiving such statements already in the ordinary course of the investment advisory relationship, as well as the imposition of financial responsibility requirements on SEC-registered investment advisers that are similar to those imposed on broker-dealers to enhance the security and protection of investors.

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We thank you for consideration of our comments.

Sincerely,

MORGAN STANLEY SMITH BARNEY LLC

By: Anne Tennant

Anne Tennant
Managing Director and General Counsel