



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

December 22, 2015

David Meister
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

Re: In re Morgan Stanley Investment Management, Inc. and Sheila Huang (NY-09022)
Morgan Stanley – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Meister:

This is in response to your letter dated December 14, 2015, written on behalf of Morgan Stanley (“Company”) and constituting an application for relief from the Company being considered an “ineligible issuer” under Clause (1)(vi) of the definition of ineligible issuer in Rule 405 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 December 22, 2015, of a Commission Order (“Order”) pursuant to Section 8A of the Securities Act, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Morgan Stanley Investment Management, Inc. (“MSIM”). The Order requires that, among other things, MSIM cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Section 17(a)(2) of the Investment Company Act.

Based on the facts and representations in your letter, and assuming MSIM complies with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Clause (2) of the definition of ineligible issuer in Rule 405 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 failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Sincerely,

/s/

Elizabeth Murphy
Associate Director
Division of Corporation Finance

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December 14, 2015

Elizabeth Murphy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Morgan Stanley Investment Management

Dear Ms. Murphy:

We are writing on behalf of Morgan Stanley (“Morgan Stanley”) in connection with the anticipated settlement of the above-captioned administrative proceeding (“Proceeding”) brought against Morgan Stanley’s subsidiary, Morgan Stanley Investment Management Inc. (“MSIM”), by the U.S. Securities and Exchange Commission (“Commission” or “SEC”). The Proceeding would arise out of MSIM’s supervision of certain activities.

Morgan Stanley is a publicly-traded company listed on the New York Stock Exchange (“NYSE”) and is a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”). Morgan Stanley qualifies as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 under the Securities Act of 1933 (“Securities Act”). We respectfully request a waiver from the Division of Corporation Finance (“Division”), acting pursuant to its delegated authority, determining that Morgan Stanley would not be an “ineligible issuer,” as defined in Rule 405 under the Securities Act, as a result of the Commission order arising from the Proceeding (“Order”), which is described below. Consistent with the framework outlined in the Division’s *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014) (“Revised Statement”), we respectfully submit that there is good cause for the Division to grant the requested waiver, as discussed below.

We request that the Division’s determination that Morgan Stanley shall not be considered an ineligible issuer be made effective upon entry of the Order.

I. BACKGROUND

As a result of settlement discussions, MSIM and the Division of Enforcement (“Staff”) have reached an agreement in principle to settle the matter as described below. Accordingly, MSIM and the Staff are in the process of formalizing the settlement that will include an offer of settlement in which, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, MSIM will consent to the entry of an Order without admitting or denying the matter set forth in the Order, except the jurisdiction of the Commission and the subject matter of the proceeding.

The Order will make findings that, among other things: MSIM did not have policies and procedures reasonably designed to prevent one of MSIM’s portfolio managers (“Employee”) from engaging in six instances of inappropriate prearranged sales and repurchases of mortgage securities and other asset-backed securities during the period from December 2011 to March 2012; MSIM did not have an explicit policy against prearranged trading; and the Employee did not obtain best execution for MSIM’s clients in the sales and repurchases at issue.

The Order will state that MSIM violated (a) Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-7 promulgated under the Advisers Act for not having policies and procedures reasonably designed to prevent the Employee’s misconduct; (b) Section 206(2) of the Advisers Act and Section 17(a)(3) of the Securities Act based on the Employee’s same misconduct; and (c) Section 203(e)(6) of the Advisers Act for failing to reasonably supervise the Employee. The Order will also state that MSIM aided and abetted a violation of Section 17(a) of the Investment Company Act of 1940 (“1940 Act”) because one of the Employee’s trades involved sales of two bonds by two registered investment companies. Without admitting or denying the findings in the Order, except as to the Commission’s jurisdiction and the subject matter of the proceedings, MSIM will agree to consent to (a) cease and desist from committing or causing any violations and any future violations of these provisions, (b) pay disgorgement of approximately \$774,000 plus prejudgment interest, and (c) pay a civil monetary penalty of \$8 million.

II. DISCUSSION

A WKSI is eligible to utilize many important reforms in the securities offering and communication processes that the Commission adopted in 2005. Among other things, a WKSI can register securities for offer and sale under an automatic shelf registration statement, which becomes effective upon filing and is also eligible for the other benefits of the streamlined registration process, such as the ability to file automatically effective post-effective amendments to register additional securities and pay registration filing fees on a “pay as you go” basis. Furthermore, a WKSI is also able to communicate more freely than a non-WKSI during the offering process, including through the use of free writing prospectuses.

The Commission also created another category of issuer under Rule 405 – the “ineligible issuer.” A company cannot qualify as a WKSI if it is an “ineligible issuer.” Accordingly, a company that becomes an ineligible issuer loses all of the benefits bestowed on a WKSI, including, and most importantly, the ability to utilize an automatic shelf registration statement and to use free writing prospectuses (except in very limited circumstances). An issuer is an ineligible issuer if “[w]ithin 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.”¹

The entry of the Order against MSIM would render Morgan Stanley, as MSIM’s parent company, an ineligible issuer under Rule 405. As a result, absent a waiver from the disqualification, Morgan Stanley would lose its current status as a WKSI.

The Commission retains the authority under Rule 405 to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”² The Commission has delegated the authority to the Division to make such a determination.³ In the Revised Statement, the Division stated that it will consider the following factors in determining whether to grant a waiver:

- the nature of the violation and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future;
- whether the alleged misconduct involved a criminal conviction or scienter-based violation;
- who was responsible for the misconduct and what was the duration of the misconduct;

¹ 17 C.F.R. 230.405(1)(vi).

² 17 C.F.R. 230.405(2).

³ 17 C.F.R. § 200.30-1(a)(10).

- what remedial steps the issuer took; and
- the impact if the waiver request is denied.

For the reasons set forth below, we respectfully submit that there is good cause for the Division to determine that granting the waiver would be consistent with the public interest and the protection of investors.

A. Nature of Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors

As discussed above, the conduct described in the Order does not pertain to the disclosure provided by Morgan Stanley in documents filed with the Commission. Furthermore, the trades in question do not involve misstatements or omissions in Morgan Stanley's disclosure and do not call into question the reliability of Morgan Stanley's disclosure or its ability to produce reliable disclosure in the future. Rather, the charges against MSIM in the Order are centered upon the failure to detect and prevent intentionally wrongful misconduct of principally one employee who, on certain occasions, sold securities with a prearranged understanding to buy them back, and the failure to have specific policies and procedures addressing that type of misconduct. MSIM is also being charged, by virtue of the Employee's conduct, with negligence-based fraud under the Advisers Act, and causing two registered investment companies to violate cross trading rules with respect to sales of two bonds. The Order also states that the Employee had instructed a trader on the mortgage team to fabricate and record two competing quotes when bonds in the trades in question were bought back and no competing offers existed, inasmuch as MSIM's best execution policies required traders to obtain and document two comparable quotes. None of these charges implicate in any way the ability of Morgan Stanley, MSIM's parent, to issue reliable disclosure.

B. The Order Is Not Criminal in Nature or Involve Scienter-Based Fraud

The Revised Statement indicates that the Division "will review whether the conduct involved a criminal conviction or scienter-based violation as opposed to a civil or administrative non-scienter based violation." The Order does not involve a criminal conviction and does not state that MSIM acted with scienter or intent to defraud. None of the violations against MSIM described in the Order are scienter-based. In particular, the Order finds only non-scienter based fraud-related violations of the federal securities laws by MSIM, namely violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7, and Section 17(a)(3) of the Securities Act, which are violations that can be established by a showing of negligence.

C. The Persons Responsible for the Misconduct and the Duration of the Misconduct

As noted above, the core conduct giving rise to the charges against MSIM is the intentionally wrongful misconduct of principally one employee and involves a relatively small number of trades over a limited period of time. During the relevant period, the Employee was one of approximately 65 managing directors employed by MSIM and just one of 14 fixed income portfolio managers employed by MSIM. The mortgage team that the Employee headed was comprised of approximately three or four other employees during the period in which the misconduct occurred and was just one of approximately twenty fixed income strategies within MSIM's traditional asset management business. The Employee was not a member of Morgan Stanley's or MSIM's senior management and was not involved in any way with Morgan Stanley's disclosures. The Employee was terminated for the misconduct described in the Order and no longer works at Morgan Stanley or any of its subsidiaries or affiliates.

As discussed below, MSIM's senior management was not aware of indicia of misconduct prior to March 2012. The last violative trade described in the Order was on March 26, 2012, when the Employee repurchased bonds she had sold on March 23, 2012 ("March 2012 Trades"). Within days after the March 2012 Trades, MSIM compliance personnel noticed the repurchase of these bonds and made several requests to the Employee for additional information regarding these trades. Compliance staff also noted, among other things, that some accounts were "crossing using a broker" and that the ERISA-related positions were sold and repurchased at identical markups.⁴ The Employee went to great lengths to conceal her misconduct from MSIM, including by making false statements to internal officials during the course of internal reviews and fabricating documents to obstruct attempts to uncover the truth. MSIM's senior management was not aware of indicia of misconduct prior to MSIM compliance personnel noticing this repurchase.

MSIM compliance personnel investigated the March 2012 Trades from a best execution standpoint, and asked the Employee to provide comparable quotes for these trades. In response, the Employee took steps to deceive MSIM. The Employee sent to MSIM compliance personnel an email falsely stating that the positions were sold through a "competitive all-or-none" bidding process and that the counterparty that had purchased the bonds in the first place had won by submitting the highest bids. The Employee also fabricated a list of bids to cover up her failure to obtain competitive bids pursuant to MSIM's best execution policy and had the fabricated

⁴ Separately, an employee in MSIM Risk Management flagged for management that the mortgage team had sold two positions at 70 and 80 when they were vendor priced around par and then repurchased them at the same prices.

documents sent to MSIM compliance personnel.⁵ Unfortunately, the Employee's deception worked at the time, as the Morgan Stanley internal investigation in 2012, following the March 2012 Trades, did not uncover her misconduct. In 2014, after receiving a SEC request for the voluntary production of policies and procedures, Morgan Stanley reopened its internal review, learned of the true nature of the Employee's misconduct, terminated her employment, and immediately informed the Division of Enforcement and fully cooperated with the Staff's investigation. MSIM promptly volunteered the key facts to the Division of Enforcement, marshalled evidence, and assisted in the investigation, all of which saved the Staff substantial resources.

D. Remedial Steps

Morgan Stanley has taken significant steps to prevent recurrence of the conduct described in the Order.

- MSIM has terminated the Employee as well as one junior trader who participated in the misconduct at the Employee's direction and should have, but did not, report the misconduct to the management of MSIM. Neither the Employee nor the junior trader has any current affiliation with Morgan Stanley or its subsidiaries or affiliates.
- MSIM has also enhanced its compliance policies and internal training for all fixed income portfolio managers and traders, including but not limited to, adding explicit prohibitions on cross trades that are prearranged or executed indirectly through a broker. The mandatory training sessions were provided in addition to the general compliance training that MSIM provides annually to all MSIM employees and the fixed income compliance training that MSIM provides annually to all fixed income investment team members. The training sessions covered topics such as applicable cross trade regulations, MSIM policies on cross trades, the circumstances under which cross trades can be executed, the prohibition on brokerage commissions in these circumstances, and the types of accounts that are prohibited from effecting cross trades, such as accounts covered by ERISA.

⁵ Within a few days after the repurchase, MSIM's pricing team also sent a form email indicating that some of the positions in the Employee's trade had traded greater than a 5% margin from the vendor price. The Employee instructed the pricing team to challenge the adjusted vendor prices for some of the bonds, indicating that she did not agree with the prices for trades she had executed.

- MSIM also introduced an exception report that triggers automatically upon the sale and repurchase of any security within three days, prompting a follow-up by MSIM's compliance personnel.
- Finally, MSIM voluntarily retained the services of ACA Compliance Group, a well-regarded consultant, to review and make recommendations to further enhance MSIM's compliance policies and procedures related to the conduct described in the Order. ACA's recommendations are designed to enhance MSIM's cross trading and best execution compliance processes and control environment. These recommendations focus largely on policies, procedures and controls designed to (i) identify potential "pre-arranged" repurchase transactions and intentional cross trades; (ii) ensure best execution for clients and that all clients are treated fairly; and (iii) ensure appropriate reporting and escalation of identified cross-trade transactions. ACA's report has been provided to the Division of Enforcement. MSIM has accepted the recommendations made in ACA's report and is currently implementing these recommendations.

E. Previous Actions

Morgan Stanley has previously been granted waivers regarding its WKSJ status in the following instances:

- *In the Matter of Morgan Stanley & Co. LLC* (June 18, 2015) related to the failure by Morgan Stanley & Co. LLC ("MS&Co.") to conduct adequate due diligence on certain municipal securities offerings in connection with the Municipalities Continuing Disclosure Cooperation Initiative. This matter was self-reported to the Commission and the settlement involved 36 underwriters.
- *In the Matter of Morgan Stanley & Co. LLC; Morgan Stanley ABS Capital I Inc.; and Morgan Stanley Mortgage Capital Holdings LLC* (July 24, 2014) related to understatements of current and/or historically delinquent loans collateralizing two subprime residential mortgage-backed securities offerings in which MS&Co. acted as underwriter, Morgan Stanley ABS Capital I Inc. acted as depositor and Morgan Stanley Mortgage Capital Holdings LLC acted as sponsor.
- *In the Matter of Morgan Stanley Investment Management, Inc.* (Nov. 16, 2011) related to conduct by MSIM in connection with the investment advisory fees charged to a particular fund by the fund's Malaysian sub-adviser and representations made to investors and the fund's board of directors regarding the

nature of the services provided by the sub-adviser. MSIM served as the primary investment adviser to the fund.

- *In the Matter of Morgan Stanley & Co. Incorporated* (July 20, 2009) related to conduct by Morgan Stanley & Co. Incorporated in connection with recommendations to certain advisory clients of 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, failing to disclose the conflicts of interest associated with such recommendations, failing to supervise a financial adviser involved in such violations and failing to maintain certain books and records.
- *In the Matter of Morgan Stanley & Co. Incorporated* (May 11, 2007) related to conduct by Morgan Stanley & Co. Incorporated in connection with best execution owed to retail customers on over-the-counter orders.

The conduct that was the subject of the above-referenced waiver requests and the conduct in this matter do not relate to Morgan Stanley's conduct as an issuer of securities and do not call into question Morgan Stanley's ability to make accurate and reliable disclosures. Further, there is no relationship between the trades conducted by the Employee and any of the actions underlying the above-referenced waiver requests. Lastly, Morgan Stanley and its affiliates have taken remedial steps related to the conduct described in the Order to help prevent such conduct from recurring.

F. Impact on Issuer if Request is Denied

The Division's Revised Statement indicates that it will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct." Given that the conduct described in the Order was of a limited duration and involved the issuer's subsidiary's failure to detect and prevent intentionally wrongful misconduct of principally one employee and to have sufficient policies and procedures, and taking into account the monetary fines imposed on MSIM and the remedial measures described above, we respectfully submit that the impact of being designated an ineligible issuer would be unduly severe.

Morgan Stanley is a global financial institution that relies on automatic shelf registration statements to conduct its day-to-day business transactions, including frequent offers and sales under automatic shelf registration statements. For Morgan Stanley, the automatic shelf registration process provides a critical means of accessing the capital markets, which is an essential source of funding for its global operations, in a timely and efficient manner. In addition, many Morgan Stanley institutional and retail clients seek to purchase investment

products that are structured to meet the specific investment goals of those clients. These structured products are securities issued by Morgan Stanley and are often sold in offerings registered with the SEC using Morgan Stanley's automatic shelf registration statement, as described further below. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSJ is extremely important to Morgan Stanley's ability to raise capital, conduct its operations, and operate client-facing businesses.

As an ineligible issuer, Morgan Stanley would, among other things, lose the ability to:

- file automatic shelf registration statements to register an indeterminate amount of securities;
- offer additional securities of the classes covered by a registration statement without filing a new registration statement;
- allow Morgan Stanley to include certain information omitted from the registration statement at the time of effectiveness through the filing of prospectus supplements or incorporated Exchange Act reports;
- take advantage of the "pay as you go" filing fee payment process;
- qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement; and
- use free writing prospectuses other than one that contains only a description of the terms of the offered securities or the offering itself.

Morgan Stanley currently has on file an automatic shelf registration statement on Form S-3 that registers indeterminate amounts of multiple classes of securities. For the period from July 1, 2013 to June 30, 2015, it priced approximately 1,140 securities offerings under its automatic shelf registration statement, with a total principal amount of approximately \$53,365,554,000. Morgan Stanley uses its automatic shelf registration statement to offer and sell three principal categories of securities.

- First, Morgan Stanley issues securities to meet its regulatory capital requirements, such as preferred stock and subordinated debt. For the period from July 1, 2013 to June 30, 2015, approximately 11 offerings, with a total principal amount of approximately \$13,019,355,000, were conducted pursuant to the automatic shelf registration statement.

- Second, Morgan Stanley issues senior debt securities with a fixed or floating rate of interest. For the period from July 1, 2013 to June 30, 2015, approximately 93 offerings, with a total principal amount of approximately \$33,730,823,000, were conducted pursuant to the automatic shelf registration statement.
- Finally, Morgan Stanley issues a variety of structured products linked to the performance of different underlying assets and sells them to its clients and through third-party dealer relationships. These structured products include: market-linked notes (which provide investors with a market-based return in addition to the return of par or some other guaranteed amount); leveraged performance investments (which provide enhanced returns relative to an underlying asset's actual return); enhanced yield investments (which may provide current income derived from taking a view on an underlying asset); and access investments (which provide exposure to the returns of less-accessible sectors, asset classes or investment strategies). For the period from July 1, 2013 to June 30, 2015, approximately 1,037 offerings, with a total principal amount of approximately \$6,615,375,000, were conducted pursuant to the automatic shelf registration statement.

The vast majority of these securities offerings used a free writing prospectus as one of the offering documents. The ability to use free writing prospectuses enables Morgan Stanley to communicate more freely with its prospective investors and provide them with important information needed for an informed investment decision. For example, many of the free writing prospectuses used by Morgan Stanley in its offerings are investor education materials. Morgan Stanley would be at a disadvantage compared to other issuers if it were unable to utilize these types of communications, which have become commonplace following the securities offering reforms adopted by the Commission in 2005. For example, if Morgan Stanley was unable to utilize certain free writing prospectuses, certain third-party dealers may refuse to sell its structured notes due to their marketing documentation requirements.

Accordingly, certain Morgan Stanley lines of business would encounter significant difficulty if the benefits of WKSI status described above became unavailable. The ability to avail itself of these benefits is extremely important to Morgan Stanley's ability to raise capital efficiently and conduct its operations. As noted, these WKSI benefits are also important to a number of Morgan Stanley's investment client-facing businesses as it allows them to efficiently offer structured products and provide educational materials to investors about their terms, in the same manner as other peers in these markets. Denial of this request would hinder necessary access to the capital markets and these client-facing investment markets by significantly increasing the time, labor, and cost of such access, a result that Morgan Stanley believes would be inequitable to its shareholders and its clients.

Elizabeth Murphy
U.S. Securities and Exchange Commission
December 14, 2015
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III. CONCLUSION

We believe that the granting of the request is merited because the Order does not find any misconduct relating to Morgan Stanley's financial statements, to any disclosure by Morgan Stanley, or to any statements in any of Morgan Stanley's filings with the Commission. Finally, as noted above, Morgan Stanley and MSIM have fully cooperated with the Division of Enforcement in connection with its investigations. In light of these considerations, we believe that subjecting Morgan Stanley to ineligible issuer status is not necessary to serve the public interest or for the protection of investors. Accordingly, we respectfully request that the Division, on behalf of the Commission, make the determination that there is good cause for Morgan Stanley not to be considered an ineligible issuer as a result of the Order.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at (212) 735-2100.

Sincerely,

/s/ David Meister

David Meister