



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

DIVISION OF
CORPORATION FINANCE

May 31, 2006

Steven G. Kobre
Kobre & Kim LLP
800 Third Avenue
New York, NY 10022

Re: In the Matter of Certain Auction Practices File No. HO-9954
**Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.– Waiver
Request of Ineligible Issuer Status under Rule 405 of the Securities Act**

Dear Mr. Kobre:

This is in response to your letter dated April 20, 2006, written on behalf of Morgan Stanley (Company) and its subsidiaries Morgan Stanley & Co. Incorporated and Morgan DW Inc. (collectively, the "Morgan Stanley Broker-Dealers") constituting an application for relief from the Company and Morgan Stanley Broker-Dealers being considered "ineligible issuers" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company and Morgan Stanley Broker-Dealers each request relief from being considered an "ineligible issuer" under Rule 405, due to the entry on May 31, 2006, of a Commission Order (Order) pursuant to Section 8A of the Securities Act and Section 15(b) of the Securities Exchange Act of 1934, naming Morgan Stanley Broker-Dealers as a respondent. The Order finds, among other things, that Morgan Stanley Broker-Dealers violated Section 17(a)(2) of Securities Act and requires that Morgan Stanley Broker-Dealers cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

Based on the facts and representations in your letter, and assuming the Company and Morgan Stanley Broker-Dealers will comply with the Order, the Commission, pursuant to delegated authority has determined that the Company and Morgan Stanley Broker-Dealers have made a showing of good cause under Rule 405(2) and that the Company and Morgan Stanley Broker-Dealers will not be considered ineligible issuers by reason of the entry of the Order. Specifically, we determined under these facts and representations that the Company and Morgan Stanley Broker-Dealers have shown that the terms of the Order were agreed to in a settlement prior to December 1, 2005. Accordingly, the relief described above from the Company and Morgan Stanley Broker-Dealers being ineligible issuers under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

A handwritten signature in black ink that reads "Mary F. Kosterlitz".

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

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April 20, 2006

BY FAX AND FEDERAL EXPRESS

Mary Kosterlitz, Esq.
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-7553

**Re: In the Matter of Certain Auction Rate Securities
Practices, File No. HO-09954**

Dear Ms. Kosterlitz:

We submit this letter on behalf of Morgan Stanley in connection with a settlement arising out of the above-entitled investigation by the Securities and Exchange Commission (the "Commission"). The settlement resulted in the issuance of an order that is described below (the "Order") against Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc. (collectively, the "Morgan Stanley Broker-Dealers"), wholly owned subsidiaries of Morgan Stanley (together "Morgan Stanley" or the "Firm").

Morgan Stanley hereby respectfully requests, pursuant to Rule 405 of the Securities Act of 1933 (the "Securities Act"), 17 C.F.R. § 230.405, that the Commission determine that, for good cause shown, it is not necessary under the circumstances that Morgan Stanley be considered an "ineligible issuer" under Rule 405. Morgan Stanley requests that this determination be effective upon the entry of the Order. It is our understanding that the Division of Enforcement does not object to the Division of Corporate Finance providing the requested determination.

BACKGROUND

The Morgan Stanley Broker-Dealers are part of a group of broker-dealer firms that, prior to December 1, 2005, had reached an agreement in principle with the staff of the Division of Enforcement (the "Staff") on the terms of the Order. As a result of this agreement, each of the firms, including the Morgan Stanley Broker-Dealers, have submitted offers of settlement in which they neither admit nor deny the findings of the Order but consent to its entry in agreed form. The

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Order will find that each of the firms, including the Morgan Stanley Broker-Dealers, violated Section 17(a)(2) of the Securities Act by managing auctions for auction rate securities in ways that were not adequately disclosed or that did not conform to disclosed procedures. The Order will direct that each firm, including the Morgan Stanley Broker-Dealers, (a) be censured, (b) cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, (c) pay a civil money penalty,¹ and (d) comply with certain undertakings set forth in the Order.

DISCUSSION

Morgan Stanley understands that entry of the Order against the Morgan Stanley Broker-Dealers could operate to make Morgan Stanley an "ineligible issuer" under Rule 405 of the Securities Act. That Rule, along with recently adopted and amended Securities Act rules, provide substantial benefits to issuers classified as a "well-known seasoned issuer" ("WKSI"), including the use of greater flexibility in registering securities through the streamlined automatic shelf registration process and exemption from "quiet period" restrictions prohibiting communication during the 30-day period prior to the filing of a registration statement.² The new rules also permit most other issuers to use a "free writing prospectus" after a registration statement is filed to communicate information about a registered offering of securities.³

These benefits, however, are unavailable to issuers defined as an "ineligible issuer" pursuant to Rule 405. In relevant part, Rule 405 defines "ineligible issuer," as "an issuer with respect to which any of the following is true as of the relevant dates of determination:"

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¹ Some of the firms, including the Morgan Stanley Broker-Dealers, each agreed to pay a penalty of \$1.5 million (the Morgan Stanley Broker-Dealers agreed to pay a total penalty of \$1.5 million to satisfy the settlement for both Morgan Stanley & Co. Incorporated and Morgan Stanley DW Inc.). Other firms agreed to pay \$125,000 and one firm agreed to pay \$750,000.

² See Rule 405; Securities Offering Reform, 70 Fed. Reg. 44,722, 44,805-806 (Aug. 3, 2005) (to be codified at 17 C.F.R. pt. 230.163) ("Rule 163"); Securities Offering Reform, 70 Fed. Reg. 44,722, 44,806 (Aug. 3, 2005) (to be codified at 17 C.F.R. pt. 230.163A).

³ See Securities Offering Reform, 70 Fed. Reg. 44,722, 44,806-807 (Aug. 3, 2005) (to be codified at 17 C.F.R. pt. 230.164) ("Rule 164"). The new Securities Act rules permit WKSI's to use a free writing prospectus *before* a registration statement is filed as well. See Rule 163.

(vi) Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), 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 anti-fraud provisions of the federal securities laws.

See Rule 405 (definition of "Ineligible issuer", para. (1)(vi)).

Pursuant to section (2) of the "ineligible issuer" definition set forth in Rule 405, however, the Commission may determine "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."⁴ The Commission has delegated to the Division of Corporate Finance the authority to grant or deny applications requesting that an issuer not be considered an ineligible issuer as defined in Rule 405.⁵

Morgan Stanley, if it is not an "ineligible issuer," would qualify as a well-known seasoned issuer and would anticipate taking advantage of the securities offering reforms reflected in the Commission's recently-adopted rules, including Rule 405, modifying the registration, communications and offering processes under the Securities Act. *See* Release No. 33-8591 (July 19, 2005).

Morgan Stanley thus respectfully requests that the Commission make a determination that Morgan Stanley not be considered an "ineligible issuer" based on the following grounds: The Morgan Stanley Broker-Dealers and the Staff entered into an agreement-in-principle, regarding the above-discussed terms of the Order, prior to December 1, 2005 (the effective date of Rule 405). Under such circumstances, the Morgan Stanley Broker-Dealers should be treated as if they were the subject of an order agreed to in a settlement prior to December 1, 2005.

⁴ *See* Rule 405. (definition of "Ineligible issuer", para. (2)).

⁵ *See* Securities Offering Reform, 70 Fed. Reg. 44,722, 44,798-799 (Aug. 3, 2005) (to be codified at 17 C.F.R. pt. 200.30-1).

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Accordingly, the Commission should determine that Morgan Stanley is not an "ineligible issuer" within the meaning of Rule 405. We understand that the Division of Enforcement concurs.

In light of these considerations, there is good cause to determine that Morgan Stanley should not be considered an "ineligible issuer" under Rule 405. We respectfully request the Commission to make that determination.

If you have any questions regarding this request, please contact the undersigned at (212) 488-1202.

Sincerely,



Steven G. Kobre
212.488.1202

cc: Melissa E. Lamb, Esq.
James J. Mangan, Esq.