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

DIVISION OF
CORPORATION FINANCE

January 28, 2025

Ning Chiu
Davis Polk & Wardwell LLP

Re: Morgan Stanley (the "Company")
Incoming letter dated January 24, 2025

Dear Ning Chiu:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Kelly Aimone (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 13, 2025 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Jerry Bowyer
Bowyer Research, Inc.

January 13, 2025

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Ladies and Gentlemen:

On behalf of Morgan Stanley, a Delaware corporation (the "**Company**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by Kelly Aimone (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2025 Annual Meeting of Shareholders (the "**2025 Proxy Materials**"). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2025 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the 2025 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request that the Board of Directors of Morgan Stanley report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how Morgan Stanley's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

EXECUTIVE SUMMARY

The Company is a global financial institution that raises, manages and allocates capital to clients that include individuals, corporations, and asset managers and asset owners. Given the diverse backgrounds and viewpoints of its 80,000 employees and millions of clients, the Company is committed to avoiding discrimination on the basis of race, religion, or any other protected status or political views. The Proponent has not indicated that the Company has engaged in such discrimination. The Company makes charitable contributions to many different types of organizations that it believes are in the best interests of the Company's employees, clients and shareholders through a rigorous process. However, the Proposal, along with the Supporting Statement, are clearly focused on charitable contributions made primarily to the Human Rights

Campaign, an organization that supports LGBTQIA2+ rights. The Staff has consistently permitted companies to exclude shareholder proposals that target contributions to specific types of organizations, which is the case here, on the basis that the proposals are ordinary business. Accordingly, the Proposal should be excluded from the Company's 2025 Proxy Materials.

REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations and does not focus on a significant policy issue that transcends the Company's ordinary business operations.

Background

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." The purpose of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). As explained by the Staff, the term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." 1998 Release.

The ordinary business exclusion is based on two central considerations. First, the Staff notes that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals. 1998 Release. The second consideration "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." 1998 Release.

The Proposal Should Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.

The Proposal implicates the "ordinary business" exception as outlined in the 1998 Release because its subject matter is "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."

When applying Rule 14a-8(i)(7), the Staff evaluates the "underlying subject matter" of the proposal, regardless of how the proposal is framed. See Release No. 34-20091 (Aug. 16, 1983); Staff Legal Bulletin No. 14H (Oct. 22, 2015). The Staff clarified in Staff Legal Bulletin No. 14E (Oct. 27, 2009) that "rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk . . . we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company." Similarly, the Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See*, ***e.g., McDonald's Corp.*** (avail. Mar. 22, 2019) (proposal asking the company to "disclose the economic risks" it faced from "campaigns targeting the [c]ompany over concerns about cruelty to chickens" because it "focuse[d] primarily on matters relating to the [c]ompany's ordinary business operations"); and *The*

TJX Companies, Inc. (avail. Mar. 29, 2011) (proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state, and local taxes and provide a report to shareholders on the assessment).

The Proposal, when read together with the Supporting Statement and the Supporting Statement's footnotes, relates to specific recipients of the Company's charitable contributions and does not have a general and neutral objective with regard to the Company's charitable contributions. Instead, the focus is directed at contributions to organizations, primarily the Human Rights Campaign, that support LGBTQIA2+ rights.

Proposals that request that companies make, or not make, charitable contributions to specific organizations or specific types of organizations have consistently been excluded under Rule 14a-8(i)(7). The fact that the language in the resolution of the Proposal is facially neutral does not change the analysis. The Staff has consistently permitted the exclusion of proposals when (as here) the "Resolved" clause itself does not mention any specific organizations, but the Proposal read as a whole targets specific groups. *See*, *e.g.*, *JPMorgan Chase & Co.* (avail. Feb. 28, 2018) (where the resolution requested that the company provide an annual report disclosing the company's standards for choosing recipients of charitable donations, the business rationale and purpose for each charitable contributions and the related personnel participating in the decision to contribute, while the supporting statement discussed specific organizations to which the company donated, such as the Southern Poverty Law Center, Planned Parenthood and the Clinton Foundation, and the Staff noted when concurring that the proposal may be excluded that the "[p]roposal relates to contributions to specific types of organizations.")

More recently, in *The Walt Disney Company* (Dec. 23, 2020), the Staff permitted exclusion of a proposal where the supporting statement specifically referenced the company's donations to the NAACP and "unspecified organizations to support 'social justice,'" and in *Starbucks Corp.* (Dec. 23, 2020), the Staff also permitted the exclusion of a similar proposal where the footnotes to the supporting statement that provided links to media stories made clear that the proposal was targeted at company donations in support of Black Lives Matter ("**BLM**") and other racial justice programs. Similarly, at *Facebook, Inc.* (Mar. 6, 2021) a request to provide information about "charitable giving" where neither the proposal nor the supporting statement referenced any specific organizations, but the footnotes provided links to articles describing the company's support for BLM and controversies surrounding BLM provided context and support to the seemingly neutral statements in the proposal, the proposal was excluded as ordinary business.

Here, the Supporting Statement makes clear the "underlying subject matter" of the Proposal relates to specific charitable activities, where the Supporting Statement seeks details on the Company's participation in the Human Rights Campaign and "groups like the Human Rights Campaign." The Supporting Statement states that the Company "partners with the [Human Rights Campaign] and receives a perfect score on the Corporate Equality index" and that "the [Human Rights Campaign] in particular has advocated for legislation like the Equality Act, which would pose serious threats to religious freedom, free speech, and the progress women have made toward equality in law and culture … [a]nd its Corporate Equality Index requires companies to provide "puberty blockers for youth" in their healthcare plans…" The Proposal cites to companies that have "cut ties" with the Human Rights Campaign, and provides context and support for these statements by citing recent public relations matters faced by Anheuser-Busch and Target in footnotes with links to various articles describing recent public debate in connection with LGBTQIA2+ campaigns. The Proposal does not cite to any other charitable organizations that the Company supports, either by name or type, or any public controversies involving the Company's donations, and therefore plainly seeks to limit the Company's charitable contributions to or involvement with the Human Rights Campaign and other organizations

supporting LGBTQIA2+ rights. Accordingly, the Proposal relates directly to an ordinary business matter—namely, specific organizations to which the Proponent believes the Company should, or should not, make charitable contributions.

The Proposal Does Not Focus on a Significant Social Policy Issue That Transcends the Company's Ordinary Business Operations.

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters—namely, the Company's decisions about associating with specific types of organizations—and therefore, is excludable under Rule 14a-8(i)(7). In the 1998 Release, the Staff distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that "focus on" significant social policy issues. The Staff stated, "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." 1998 Release. Additionally, the Staff clarified in SLB 14C, part D.2 (June 28, 2005) that "in determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole."

The Staff most recently discussed its interpretation of how it will evaluate whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14L (Nov. 3, 2021), noting that it is "realign[ing]" its approach to determining whether a proposal relates to ordinary business with the standards the Staff initially articulated in 1976 and reaffirmed in the 1998 Release. In addition, the Staff stated that it will "no longer tak[e] a company-specific approach to evaluating the significance of a policy issue under Rule 14a-8(i)(7)" but rather will consider only "whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company." The Staff also stated that under its new approach, proposals "previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)."

Proposals with passing references touching upon topics that might raise significant social policy issues—but that do not *focus on* or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). In all of the above-referenced precedents, the proposals noted were excluded as ordinary business without transcending social policy.

Other proposals that touched on the social policy issue of discrimination were similarly excludable when the focus of those proposals were about ordinary business matters. *Deere & Co.* (avail. Nov. 14, 2024, recon. denied Jan. 5, 2015) (the proposal requested the company adopt a code of conduct that included an anti-discrimination policy that protects employees' "human right[s] and ability to engage in the political process and civic activities was related to the company's "policies concerning its employees."); *Intel Corp.* (Mar. 18, 2022) (a proposal requesting a report on the public display of the pride flag); and *Walmart Inc.* (April 8, 2019) (proposal requested a report evaluating the risk of discrimination that may result from company policies regarding absences from work due to personal or family illness as relating to the company's management of its workforce).

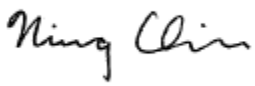
Despite references to "the rights to free speech and religion," the Proposal is principally focused on the disclosure of the Company's charitable contributions to specific organizations. Accordingly, the Proposal

concerns an ordinary business matter that is not transcended by a significant social policy issue and is excludable under Rule 14a-8(i)(7).

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(7).

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Martin Cohen, Corporate Secretary, Morgan Stanley

Jerry Bowyer

Exhibit A

Shareholder Proposal

Report on Charitable Partnerships

Resolved: Shareholders request that the Board of Directors of Morgan Stanley report to shareholders annually, at reasonable expense and excluding confidential information, an analysis of how Morgan Stanley's charitable partnerships impact its risks related to discrimination against individuals based on their speech or religious exercise.

Supporting Statement

Corporations routinely use their platforms to voice support for humanitarian causes and human rights. Some of the most fundamental are the rights to free speech and religion, which are recognized by the First Amendment to the United States Constitution and the UN Declaration of Human Rights[1]. Unfortunately, many companies are supporting organizations that are undermining these freedoms.

The 2024 edition of the Viewpoint Diversity Score Business found that 62% of some of the largest companies in America support non-profits that are influencing public policy by actively attacking free speech and religious freedom.

Groups like the Human Rights Campaign have led coalitions calling on major social media platforms to censor "hate speech and harassment" that includes many mainstream views on parental rights and human sexuality.[2] The HRC in particular has advocated for legislation like the Equality Act, which would pose serious threats to religious freedom, free speech, and the progress women have made toward equality in law and culture.[3] And its Corporate Equality Index requires companies to provide "puberty blockers for youth" in their healthcare plans[4] even though nearly 70% of Americans oppose the practice and has induced corporations like Anheuser-Busch[5] and Target[6] into marketing decisions that have severely and permanently harmed their brand value.

Many companies, including John Deere, Jack Daniels, Harley Davidson, Lowes, Home Depot, Ford, and Coors, have already taken affirmative steps to refocus their charitable giving to serve their diverse customers.[7] Many have also explicitly cut ties with the Human Rights Campaign as a part of this effort.

But Morgan Stanley still partners with the HRC and receives a perfect score on the Corporate Equality index.[8] As per Morgan Stanley's diversity strategy and Executive Chairman James Gorman[9], "By valuing diverse

[1] https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] https://deadline.com/2023/06/glaad-letter-human-rights-campaign-social-media-policies-letter-hate-speech-1235425983/; https://www.hrc.org/press-releases/new-research-hateful-and-abusive-speech-towards-lgbtq-community-surging-on-twitter-under-elon-musk

[3] https://www.heritage.org/religious-liberty/commentary/misguided-fairness-all-act-would-undermine-religious-liberty

[4] https://hrc-prod-requests.s3-us-west-2.amazonaws.com/2023-CEI-Criteria-Toolkit-FINAL.pdf

[5] https://www.newsweek.com/anheuser-busch-stock-drops-20-percent-bud-light-sales-struggle-1803680

[6] https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/

[7] https://www.dailymail.co.uk/news/article-13812241/american-brand-dei-rules-backlash.html

[8] https://www.hrc.org/resources/cei-equality-100-award

[9] https://www.morganstanley.com/about-us/diversity

perspectives, we can better serve our clients while we help employees achieve their professional objectives." Yet when it comes to diverse political and religious perspectives, Morgan Stanley's corporate partnerships simply don't meaningfully align with the company's aims.

Morgan Stanley needs to assure its shareholders that it is following through on these promises of equality for employees of diverse backgrounds, including diversity of political beliefs and religious practice, and that it is promoting fundamental freedoms that benefit every American.

Davis Polk

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

January 24, 2025

Re: Morgan Stanley
Withdrawal of No-Action Request Dated January 13, 2025 Regarding Shareholder Proposal Submitted by Kelly Aimone

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Dear Sir or Madam:

On behalf of Morgan Stanley (the "**Company**"), and in reference to our letter, dated January 13, 2025 (the "**No-Action Request**"), pursuant to which we requested that the Staff of the Office of Chief Counsel of the Securities and Exchange Commission concur with our view that the Company may exclude the shareholder proposal (the "**Proposal**") submitted by Bowyer Research on behalf of Kelly Aimone (the "**Proponent**") from the proxy materials it intends to distribute in connection with its 2025 Annual Meeting of Shareholders, we submit this withdrawal request.

Attached as Exhibit A is a letter, dated January 23, 2025 (the "**Withdrawal Communication**"), sent via electronic mail to the Company by the Proponent, in which the Proponent voluntarily agrees to withdraw the Proposal. In reliance on the Withdrawal Communication, we hereby withdraw the No-Action Request.

Please contact the undersigned at (212) 450-4908 or ning.chiu@davispolk.com if you should have any questions or need additional information. Thank you for your attention to this matter.

Respectfully yours,

Ning Chiu

Attachment: Exhibit A

cc: Martin Cohen, Corporate Secretary, Morgan Stanley
Jerry Bowyer

Exhibit A

Withdrawal Communication

[redacted]

Subject: FW: [EXTERNAL] Bowyer Research resolution withdrawal notice

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From: Jerry Bowyer [redacted]
Sent: Thursday, January 23, 2025 10:39:08 PM
To: Cohen, Martin (LEGAL) [redacted]; Pappas, Alexa (LEGAL) [redacted]
Cc: Isaac Willour [redacted] Jeremy Tedesco [redacted]
Subject: [EXTERNAL] Bowyer Research resolution withdrawal notice

In light of our ongoing discussions, Bowyer Research on behalf of an individual shareholder and filer of the proposal for inclusion in Morgan Stanley's 2025 proxy statement, withdraws that proposal."

Jerry Bowyer

Bowyer Research

[redacted]

If you have received this communication in error, please notify the sender immediately. Your communications with Morgan Stanley are subject to the Morgan Stanley General Disclaimers http://www.morganstanley.com/disclaimers/terms and Privacy Policies https://www.morganstanley.com/privacy-pledge. This email and any files attached may be sensitive, confidential, subject to legal privilege and/or otherwise protected from disclosure. Morgan Stanley is not acting as a municipal advisor and the opinions or views contained herein are not intended to be, and do not constitute, advice within the meaning of Section 975 of the Dodd Frank Wall Street Reform and Consumer Protection Act.