

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

MORGAN STANLEY AND CO.  
INCORPORATED,

Defendant.

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Civil Action No.

03 Civ. 2948 (WHP)

**FINAL JUDGMENT AS TO DEFENDANT  
MORGAN STANLEY AND CO. INCORPORATED**

Plaintiff Securities and Exchange Commission (“Commission”) having filed a Complaint in this action (“Complaint”) and Defendant Morgan Stanley and Co. Incorporated (“Defendant”) having (a) entered a general appearance, (b) consented to the Court’s jurisdiction over Defendant and the subject matter of this action, (c) consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction), (d) waived findings of fact and conclusions of law, and (e) waived any right to appeal from this Final Judgment; and the Commission having agreed that, on the basis of this Final Judgment, it will not institute a proceeding against Defendant pursuant to Sections 15(b), 15B, 15C, or 19(h) of the Securities Exchange Act of 1934 (the “Exchange Act”):

**I.**

**Injunctive Relief**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 2110 of the Conduct Rules of NASD Inc. ("NASD") and Rules 401 and 476 of the New York Stock Exchange, Inc. ("NYSE"), by: (1) engaging in acts or practices that create or maintain inappropriate influence by investment banking over research analysts and therefore impose conflicts of interest on research analysts, and by failing to manage these conflicts in an adequate or appropriate manner; (2) promising, implicitly or explicitly, favorable research coverage to investment banking clients or potential clients; or (3) failing to disclose or cause to be disclosed in offering documents or elsewhere the use of proceeds from offerings to make payments to other persons or entities for research coverage.

B. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating NASD Rule 2210 and NYSE Rule 472 by issuing communications to the public that fail to disclose the use of proceeds from offerings to make payments to other persons or entities for research coverage.

C. Defendant, Defendant's officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating NASD Rule 3010 and NYSE Rule 342 by failing to maintain appropriate supervisory procedures regarding or controls over the following that are reasonably designed to ensure compliance with securities laws and regulations: (1) influence by investment banking over

research analysts; (2) compensation and evaluation of research analysts; (3) use of research or research analysts in connection with the solicitation or marketing of investment banking business; (4) publication of research regarding a securities issuer with which Defendant has, has solicited, or is soliciting an investment banking relationship; and (5) payments by Defendant to other entities for the publication of research by such other entities regarding Defendant's investment banking clients.

## II.

### Monetary Sanctions

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

A. As a result of the violations alleged in the Complaint, Defendant shall pay a total amount of \$125,000,000 (which amount includes the State Settlement Offer, as defined below, and is subject to the decision of any state securities regulator(s) not to accept the State Settlement Offer). This amount includes:

1. \$25,000,000, as a penalty;
2. \$25,000,000, as disgorgement of commissions and other monies; and
3. \$75,000,000, to be used for the procurement of Independent Research, as described in Section VIII below and the undertakings set forth in Addendum A hereto.

No portion of the payments for Independent Research shall be considered disgorgement or restitution, and/or used for compensatory purposes.

B. The amount of \$50,000,000, which is the sum of the penalty of \$25,000,000 and disgorgement of \$25,000,000, consists of (1) \$25,000,000 in connection with the resolution of this action and related proceedings instituted by NASD and NYSE (the "Federal Payment"); and

(2) \$25,000,000 that Defendant has offered to pay in connection with the resolution of related proceedings by state securities regulators (which, for these purposes, shall include the District of Columbia and Puerto Rico) (Defendant's offer to the state securities regulators hereinafter shall be called the "State Settlement Offer"). Defendant shall pay the Federal Payment of \$25,000,000 by wire transfer into an interest bearing account with the Federal Reserve Bank of New York ("FRB-NY"), to be designated the "Morgan Stanley and Co. Incorporated Distribution Fund Account" on the tenth business day after entry of this Final Judgment in accordance with instructions to be provided to Defendant by the FRB-NY and authorized or ordered by the Court. Defendant shall simultaneously transmit proof of its payment to the Court, the Clerk of the Court, and the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. These funds, together with any interest and income earned thereon (collectively, the "Distribution Fund"), shall be held by the FRB-NY until further order of the Court. In the event that any portion of the penalty described in Section II.A.1 above is remitted for deposit into the Distribution Fund, such penalty amount shall be added to the Distribution Fund and distributed pursuant to the Fair Funds provisions in Section 308 of the Sarbanes-Oxley Act of 2002 and any further order of the Court; provided, however, that the full penalty amount and such portion shall still be considered a penalty for tax and any other purposes. Pending further order of the Court, in accordance with the letter dated August 26, 2003 from the Director of the Administrative Office of the United States Courts to the Commission's counsel in connection with this action, the court registry fund fee pursuant to 28 U.S.C. § 1914 for the Distribution Fund shall be four (4) percent of the income earned on the Distribution Fund. The Distribution Fund shall be managed in accordance with the terms of, and



































