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

DIVISION OF
CORPORATION FINANCE

January 13, 2017

Robert A. Buhlman, Esq.
Sidley Austin LLP
60 State Street
36th Floor
Boston, MA 02109

Re: Morgan Stanley Smith Barney LLC
Morgan Stanley and Morgan Stanley Finance LLC – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Buhlman:

This is in response to your letter dated January 10, 2017, written on behalf of Morgan Stanley ("MS") and Morgan Stanley Finance LLC ("MSFL") and constituting an application for relief from MS and MSFL being considered "ineligible issuer[s]" under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). MS and MSFL request relief from being considered "ineligible issuer[s]" under Rule 405, due to the entry on January 13, 2017 of a Commission Order ("Order") pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Morgan Stanley Smith Barney LLC ("MSSB"). The Order requires that, among other things, MSSB cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

Based on the facts and representations in your letter, and assuming MSSB complies with the Order, the Commission, pursuant to delegated authority, has determined that MS and MSFL have made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that MS and MSFL will not be considered ineligible issuers by reason of the entry of the Order. Accordingly, the relief described above from MS and MSFL being ineligible issuers 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/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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January 10, 2017

By Email

Timothy Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: *In the Matter of Morgan Stanley Smith Barney LLC*

Dear Mr. Henseler:

We are writing on behalf of Morgan Stanley ("Morgan Stanley") and Morgan Stanley Finance LLC ("MSFL") (collectively, "MS") in connection with Morgan Stanley Smith Barney LLC's ("MSSB") anticipated settlement with the United States Securities and Exchange Commission ("SEC" or "Commission") relating to *In the Matter of Morgan Stanley Smith Barney LLC*. The settlement will result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order") against MSSB.

Morgan Stanley is a publicly-traded company listed on the New York Stock Exchange and is a reporting company under the 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"). MSFL is a wholly-owned finance subsidiary of Morgan Stanley, and securities issued by MSFL are fully and unconditionally guaranteed by Morgan Stanley. We respectfully request a waiver from the Division of Corporation Finance (the "Division"), acting pursuant to its delegated authority, or the Commission itself determining that it is not necessary under the circumstances that MS would be considered an "ineligible issuer," as defined in Rule 405 under the Securities Act, as a result of the Commission entering the 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"), there is good cause for the Division, on behalf of the Commission, or the Commission itself to grant the requested waiver, as discussed below.

We request that the determination that MS not be considered an ineligible issuer be made effective upon entry of the Order.

I. BACKGROUND

MSSB has engaged in settlement discussions with the Division of Enforcement in connection with the above-referenced administrative proceeding. As a result of these discussions, MSSB expects to submit an Offer of Settlement that will agree to the Order, which will be presented by the staff to the Commission.

MSSB is dually registered with the Commission as a broker-dealer and investment adviser. MSSB is a wholly owned indirect subsidiary of Morgan Stanley.

The Order will arise out of three unrelated issues involving MSSB's investment advisory business: (i) client fee-billing errors, (ii) legacy Rule 206(4)-2 custody examinations, and (iii) retention of original client advisory agreements.

The Order will find that MSSB willfully violated (i) Section 206(2) of the Advisers Act, (ii) Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, (iii) Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and (iv) Section 204(a) and Rules 204-2(a)(10) and 204-2(e)(1) thereunder.

Without admitting or denying the findings in the Order, except as to the Commission's jurisdiction over MSSB and the subject matter of the proceeding, MSSB will consent to the issuance of the Order and to (i) cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4) and 204(a) of the Advisers Act and Rules 206(4)-2, 206(4)-7, 204-2(a)(10) and 204-2(e)(1) thereunder, (ii) be censured, (iii) pay a civil money penalty in the amount of $13 million, and (iv) comply with certain undertakings enumerated in the Order, including undertakings related to fee billing, books and records and client notices.

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 that is 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 MSSB will render MS an ineligible issuer under Rule 405. As a result, absent a waiver from the disqualification, MS would no longer be able to utilize the benefits of WKSI status.

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 misconduct involved a criminal conviction or scienter-based violation;
- who was responsible for the misconduct and what was the duration of the misconduct;
- what remedial steps the issuer took; and
- the impact if the waiver request is denied.

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[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).

For the reasons set forth below, we respectfully submit that there is good cause for the Division to grant the waiver and determine that it is not necessary for the public interest or the protection of investors that MS be considered an ineligible issuer.

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

The conduct described in the Order does not pertain to any disclosures provided by MS in documents filed with the Commission. Nor does the conduct involve any intentional misconduct by MS. Rather, the conduct described in the Order relates only to MSSB – a subsidiary of Morgan Stanley – and arises out of inadvertent errors by MSSB in advisory client fee billing and custody examinations, which violate provisions of the Advisers Act.[4] The Order will find that certain advisory clients were inadvertently overcharged - primarily due to coding and other errors in billing systems and processes - and that MSSB violated the custody examination provisions of the Advisers Act when it failed, in 2011, to engage an accountant to perform a custody examination over legacy assets of the Smith Barney Division of Citigroup ("Citi Smith Barney"), and, in 2012, provided an over-inclusive account population, which caused an insufficient number of advisory accounts to be sampled by MSSB's independent public accountant.[5] The Order will find that MSSB did not have adequate policies and procedures in place to prevent these violations of the Advisers Act. No senior executive officers of MSSB or MS were involved in the conduct underlying the Order.

Furthermore, as discussed below, the inadvertent errors occurred within Consulting Group, a division of MSSB. Consulting Group neither shares employees with MS nor was involved with the disclosures of MS.

None of the conduct described in the Order implicates in any way the ability of MS to issue reliable disclosures.

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

[4] As discussed above, the Order also finds violations related to the retention of advisory agreements; however, such violations would not cause MS to be deemed an "ineligible issuer."

[5] On June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. ("GWM") and Citi Smith Barney, respectively, into MSSB. Morgan Stanley now owns, through its subsidiaries, 100% of MSSB.

state that MSSB acted with scienter or intent to defraud. None of the violations against MSSB 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 MSSB, namely violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder, 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

The Commission has not sought to charge any individuals associated with MSSB with violations in connection with the conduct underlying the Order, and we understand that no such charges are forthcoming. Likewise, the Order will not find that any particular person(s) were responsible for the conduct at issue. The inadvertent errors occurred within Consulting Group, a division of MSSB.

1. Fee Billing

The fee billing issues in the Order involve instances in which MSSB inadvertently overbilled its advisory clients due to coding and other errors in its billing systems and processes. From 2011 through 2016, MSSB remediated 36 categories of fee-billing issues that occurred at MSSB and legacy entities from 2002 to 2016.[6] Six of the error categories, which account for 58% of the fees overbilled, originated with Citi Smith Barney. Of the remaining 30 categories of errors that originated with Morgan Stanley or MSSB, 19 were identified through MSSB's internal controls and procedures, two were discovered by the Commission's examination staff during a 2013-2014 on-site inspection, and nine came to MSSB's attention through a client or financial advisor inquiry. MSSB fully researched each fee billing error to identify the accounts and the amounts by which they were overbilled, and fully remediated all impacted clients. The fee billing errors are the sole basis for the charges related to MSSB's fee-billing practices.

While the fee errors impacted a significant number of accounts, the remediated fees represent less than 0.06% of the $28 billion in fees billed by MSSB to advisory clients from 2011-2015 . Most of the errors that arose were identified and remediated by MSSB through its own internal compliance, audit and business-as-usual testing and practices. Approximately 70% of impacted customers were remediated within four (4) months of discovery of the original fee-billing error, and the errors that are the subject of the Order are largely historical: fee-billing errors from 2013-2015 comprise only 0.002% of fees billed during the period.

[6] From 2009 through 2015, MSSB inadvertently overbilled 15,152 advisory client accounts of Citi Smith Barney and from 2002 through 2009 and 2009 through 2016, MSSB's predecessor, GWM, and MSSB, respectively, inadvertently overbilled 134,240 legacy GWM and MSSB advisory client accounts.

2. MSSB's Custody Examinations

The Order contains violations related to the annual surprise custody examination requirement. The errors at issue in the Order relates to the custody examination itself, not custody of client assets. For its 2011 surprise custody examination, MSSB did not enter into a written agreement with an independent public accountant to verify the client funds and securities for certain legacy Citi Smith Barney accounts over which MSSB had custody. MSSB discovered the error the following year and engaged its independent public accountant to conduct a supplemental examination of the previously-omitted client funds. For its 2012 surprise exam, MSSB did not identify for its independent public accountant a small number of accounts it had classified as being custodied at an outside institution, but were custodied at MSSB, and also provided its independent public accountant with an overinclusive account population that caused an insufficient number of advisory accounts to be sampled by MSSB's independent public accountant.

D. Remedial Steps

MSSB has taken substantial remedial steps, on its own initiative, to address the conduct at issue in the Order and it will take additional remedial steps to comply with the undertakings enumerated in the Order.

1. Fee Billing Remediation

As the Order acknowledges, MSSB fully researched each fee billing error to identify the accounts and the amounts by which they were overbilled, and fully remediated all impacted clients. MSSB identified the majority of the fee-billing errors at issue through its internal controls and procedures. MSSB also fully researched and remediated errors that came to its attention through a client or financial advisor inquiry.

From 2011 through 2015, MSSB refunded approximately $16,169,000 in fees to advisory clients plus approximately $1,582,000 in interest.

In May 2014, MSSB hired a new head of its advisory operations department, which handles billing for advisory accounts and other operation functions. The new head of the advisory operations department designed and implemented enhancements to MSSB's account enrollment and fee testing. Since 2015, MSSB has implemented several enhancements designed to further strengthen its fee-billing policies and procedures. For example, MSSB has modified the method by which it selects accounts for periodic fee-testing. To increase the likelihood of detecting errors, MSSB now targets accounts for testing that have undergone certain changes that may disrupt fee calculations ("Scenario Testing"). The scenarios tested include: multiple capital

change fees (deposits and withdrawals), multiple allocation changes, manager changes, investment style changes, mid period rate changes, financial advisor reassignments, and account movements among branches. MSSB's fee-testing procedures also now include a step to confirm that the fee rate in MSSB's billing system is consistent with the fee rate in the client's account documentation.

In 2016, MSSB launched its annual fee rate communication to clients and financial advisors. In June 2016, MSSB sent all advisory clients a communication containing the client's effective advisory fee rate with an instruction to contact the client's financial advisor with any questions regarding that fee rate. Going forward, clients will receive a communication stating their effective advisory fee rate on an annual basis. Before issuing the client communication, MSSB made clients' effective fee rates available to financial advisors and instructed the financial advisors to escalate any questions or errors regarding that rate. MSSB also launched a new reporting mechanism for financial advisors to elevate billing concerns. In particular, MSSB created a Fee Accuracy Team to investigate fee billing errors and directed all financial advisors to report fee overbilling errors identified in one or more of advisory accounts that cannot be explained, may be system related, or if additional review is needed to determine the cause to the Fee Accuracy Team through a dedicated inquiry on the Firm's service portal. The Fee Accuracy Team policies and procedures require that the team shall report findings from investigation of errors to MSSB management and business representatives on a quarterly basis.

As of August 31, 2016, MSSB also has implemented a number of additional enhancements. First, MSSB has created a centralized team within the advisory operations department that has primary responsibility for the review, investigation, remediation, tracking, and reporting of fee-billing errors in advisory accounts. The team will review and investigate fee-billing errors reported from various sources and ensure timely remediation of all impacted accounts. Second, MSSB has introduced the following further enhancements to its periodic fee-testing process: (a) accounts for fee testing are selected by risk management, not the team conducting the testing; (b) in selecting accounts, risk management takes into account, among other factors, geographic diversity of accounts; (c) the number of accounts tested per cycle has been increased to no fewer than 1200 accounts tested for billing cycle A and no fewer than 600 accounts tested for billing cycles B and C, which doubles the number of accounts tested in 2014; (d) Scenario Testing has been expanded such that over 90% of accounts tested will be selected by scenario, and (e) the advisory fee rate check against client documentation has been expanded to include accounts that are reviewed by the business units. These enhancements are designed to streamline and strengthen MSSB's already strong procedures.

2. Custody Examination Remediation

In February 2015, MSSB implemented written policies and procedures for compliance with Rule 206-4(2). The written policies and procedures govern the processes for yearly engagement of an independent public accountant, collection of data for examination, quality assurance of the data provided, and review and filing of the report and Form ADV-E. In particular, the written policies and procedures (a) require that MSSB and its independent public accountant agree on the data to be requested and target dates for submission and that certain groups within MSSB are responsible for gathering the requested data within the agreed upon timeframes, and (b) contain provisions on the collection and verification of data submitted to the accountant, including a reasonableness check against the Form ADV.

3. MSSB Has Agreed to Implement Additional Remedial Efforts In Connection with the Order

In connection with the Order, MSSB also will agree to implement certain undertakings including the following:

- Fee billing:
    - For a period of three years from the date of the Order ("Undertaking Period"), research and remediate the full scope and impact of all fee overbilling errors discovered in advisory accounts within six months of the date of discovery and make a report to the SEC staff if it is unable to remediate the error within six months and remediate the issues as promptly as possible;
    - During the Undertaking Period, provide a quarterly written report to the SEC staff concerning fee overbilling errors discovered in advisory accounts and that affect more than one unrelated advisory account; and
    - Provide a certification to the SEC staff at the end of the Undertaking Period containing the information detailed in the Order.
- Notice to advisory clients:
    - Within ten days of the Order, prominently disclose on MSSB's website a summary of the Order and hyperlink to the Order. MSSB has agreed to maintain the posts for 12 months; and
    - For a period of one year from the date of the Order, to the extent that MSSB is required to deliver a brochure or a summary of material changes to existing or

prospective clients pursuant to Rule 204-3 under the Advisers Act, include in the brochure or summary of material changes, notice of the entry of the Order and a website address where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order, which MSSB will provide upon request.

MSSB thus has taken and will continue to take concrete steps to remediate the conduct at issue in the Order. The steps are designed to enhance MSSB's overall compliance program going forward.

E. Previous Actions

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

- *In the Matter of Morgan Stanley Investment Management, Inc. and Sheila Huang* (Dec. 22, 2015) related to a series of unlawful prearranged trades conducted by a portfolio manager/trader formerly employed by Morgan Stanley Investment Management, Inc. ("MSIM").
- *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 MS's conduct as an issuer of securities and do not call into question MS's ability to make accurate and reliable disclosures. Further, there is no relationship between the conduct in this matter and any of the actions underlying the above-referenced waiver requests. In fact, none of the above-referenced waiver requests involve MSSB. Lastly, MSSB has 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 involved the issuer's subsidiary's advisory business's fee billing and its policies and procedures and books and records, and taking into account the monetary fine imposed on MSSB 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 MS 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 WKSI is extremely important to MS's ability to raise capital, conduct its operations, and operate client-facing businesses.

As an ineligible issuer, MS 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;
- 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. As described above, as of February 2016, Morgan Stanley amended its registration statement to add MSFL as an issuer. Securities issued by MSFL are fully and unconditionally guaranteed by Morgan Stanley. For the period from June 1, 2014 to May 31, 2016, MS, including securities offered by Morgan Stanley and MSFL, priced approximately 1,165 securities offerings under its automatic shelf registration statement, with a total principal amount of approximately $55,252,568,000.[7] MS 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 June 1, 2014 to May 31, 2016, approximately five offerings, with a total principal amount of approximately $7,388,455,000, were conducted pursuant to the automatic shelf registration statement.[8]

Second, MS issues senior debt securities with a fixed or floating rate of interest. For the period from June 1, 2014 to May 31, 2016, approximately 61 offerings, with a total principal amount of approximately $41,769,447,000, were conducted pursuant to the automatic shelf registration statement, including securities offered by Morgan Stanley and MSFL.

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[7] Morgan Stanley priced approximately 1,101 securities offerings with a total principal amount of approximately $54,994,814,000 and MSFL priced approximately 64 securities offerings with a total principal amount of approximately $257,754,000.

[8] MSFL did not offer any securities to meet regulatory capital requirements.

Finally, MS 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 June 1, 2014 to May 31, 2016, approximately 1,099 offerings, with a total principal amount of approximately $6,094,666,000, were conducted pursuant to the automatic shelf registration statement, including securities offered by Morgan Stanley and MSFL.

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 MS 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 MS in its offerings are investor education materials. MS 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 MS 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 MS 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 MS's ability to raise capital efficiently and conduct its operations. As noted, these WKSI benefits are also important to a number of MS'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 would be inequitable to its shareholders and its clients.

III. CONCLUSION

We respectfully submit that the Division should grant the request for this waiver because the Order does not find violations of scienter-based fraud or involve criminal conduct; the Order does not find disclosure violations by MSSB, Morgan Stanley or MSFL; and MSSB has undertaken extensive remedial actions, on its own initiative, to enhance its compliance program. Additionally, MSSB has fully cooperated with the Division of Enforcement in connection with

its investigation and MSSB has agreed to extensive undertakings in connection with the Order to further enhance its compliance program and remediate the conduct at issue. In light of these considerations, subjecting MS to ineligible issuer status is not necessary to serve the public interest or for the protection of investors. Accordingly, we request that the Division, on behalf of the Commission, or the Commission itself make the determination that there is good cause for MS 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 617-223-0333.

Very truly yours,

Robert A Buhlman/EM

Robert A. Buhlman