FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005001449202

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Morgan Stanley & Co. Incorporated ("Morgan Stanley"), Respondent
BD No. 8209

Pursuant to NASD Rule 9216 of FINRA Code of Procedure, Morgan Stanley submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Morgan Stanley alleging violations based on the same factual findings.

Morgan Stanley understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by FINRA's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Morgan Stanley; and

3. If accepted:

    a. this AWC will become part of Morgan Stanley's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Morgan Stanley;

    b. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Morgan Stanley's disciplinary record;

    c. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

    d. Morgan Stanley may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Morgan Stanley's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a

party.

Morgan Stanley also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history includes the following:

> On April 1, 2007, Respondent Morgan Stanley became the successor in interest to Morgan Stanley DW Inc. (BD 7556) ("MSDW"). Prior to that date, both firms were under common ownership. At all times relevant to this AWC, MSDW was a full-service broker-dealer and, through predecessor entities, has been registered with FINRA (or its predecessor, NASD) since October 16, 1936.
>
> NASD issued an AWC in May 1998 finding that Dean Witter Reynolds, Inc., which merged with Morgan Stanley & Co., Inc. in 1997 to form MSDW, had violated Conduct Rule 2110 as a result of its failure to comply with (i) an order of an arbitration panel requiring the firm to produce documents and (ii) provisions of the Code of Arbitration Procedure. The firm was censured and fined $10,000.
>
> In July 2004, NASD issued an AWC finding that MSDW failed to comply with its discovery obligations in various arbitration proceedings. The firm was censured, fined $250,000, and ordered to undertake certain remedial measures.

I.

WAIVER OF PROCEDURAL RIGHTS

Morgan Stanley specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Formal Complaint issued specifying the allegations against Morgan Stanley;

B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Morgan Stanley specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Morgan Stanley further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

A. Findings

Morgan Stanley hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

Summary

This matter involves the failure by MSDW to provide two categories of documents to claimants in discovery in arbitration proceedings over a number of years. In particular, MSDW failed to provide pre-September 11, 2001 e-mail in discovery in numerous arbitration proceedings from October 2001 through March 2005, and failed to provide updates to the firm's Branch Manager's Manual in discovery in numerous arbitration proceedings from late 1999 through the end of 2005.

After the firm's e-mail servers in New York City were destroyed on September 11, 2001, the firm restored millions of e-mails by using back-up tapes. Many other e-mails, stored on network and local drives by individual employees, were not affected by the events of September 11. However, until March 2005, MSDW did not treat the pre-September 11, 2001 e-mails restored to the firm's servers as a potential source to be searched in response to requests for e-mail. During that time period, MSDW did not provide pre-September 11, 2001 e-mail in numerous customer arbitration proceedings and in response to regulatory inquiries, stating that such e-mail had been destroyed, and that it did not have any pre-October 2001 e-mail. These statements were not true.

Instead of preserving the e-mail back-up tapes that had been used to restore its servers, MSDW reused those tapes, overwriting and permanently erasing most of their contents. The firm also allowed the e-mails that had been restored to the firm's servers to be permanently deleted by users of the firm's e-mail system over an extended period of time. As a result, between September 2001 and March 2005, millions of pre-September 11, 2001 e-mails that had been available to the firm were lost.

In addition, between late 1999 and the end of 2005, MSDW failed on numerous occasions to provide updates to its manual setting out supervisory policies and procedures for branch managers – known as the Manager's Policies and Procedures Manual ("MAPPS Manual") – to

claimants in discovery in arbitration proceedings. The MAPPS Manual was issued in 1994. However, between that time and the end of 2005, the manual was repeatedly supplemented through the issuance of separate updates in the form of compliance notices or other bulletins. Despite this, when the MAPPS Manual (or portions thereof) was produced by MSDW in discovery in arbitration proceedings, often only the original manual itself was produced and the relevant updates to the manual were not provided. As a result, MSDW did not provide complete discovery to parties in numerous arbitration proceedings.

Moreover, in November 1999, materials such as the relevant portions of the MAPPS Manual and the updates to the manual became presumptively discoverable in arbitration proceedings under the process set forth in NASD Notice to Members 99-90. Despite this, MSDW often failed to provide relevant updates to the MAPPS Manual.

By virtue of the conduct set forth herein, MSDW violated NASD rules by failing to comply with its obligations to produce these documents to claimants in discovery in arbitration proceedings and to regulators, and by inaccurately representing that documents in its possession did not exist. In addition, in connection with the e-mail issues described above, MSDW violated the recordkeeping requirements of the federal securities laws and NASD rules by failing to preserve millions of pre-September 11, 2001 e-mails. MSDW also failed to establish and maintain systems and written procedures to supervise the activities of its employees and the types of business in which it engages, which were reasonably designed to ensure compliance with the recordkeeping requirements and with its obligations to respond completely and accurately to regulatory requests and to discovery requests in arbitration proceedings.

Providing Inaccurate Information and Failing to Produce Pre-September 11, 2001 E-Mails in Response to Requests from Claimants and Regulators

As of September 11, 2001, MSDW maintained e-mails on a system of twelve Exchange servers. MSDW took and preserved a "snapshot" or "mirror image" of the Exchange servers at the end of the day so that the firm could restore active e-mail service in the event of a disaster or catastrophic system failure. Separately, as an e-mail was sent or received by the MSDW system a copy was automatically made and stored on an archive. The archive system was designed to be used for responding to discovery and regulatory requests.

All of MSDW's e-mail Exchange servers, archive servers and archive tapes were destroyed on September 11, 2001. E-mails stored on network and local drives by individual employees located outside of the World Trade Center were not affected. MSDW's Technology Department rebuilt the firm's active e-mail system in a new location by September 17, 2001 by repopulating servers with data from disaster recovery back-up tapes of the destroyed e-mail Exchange servers that had been created on August 30 and 31, 2001 (which were the most recently-created e-mail Exchange server disaster recovery back-up tapes still in existence) ("the Back-Up Tapes"). By using these tapes, MSDW was able to restore the e-mail data from eleven of its twelve servers.[1] Thus, when MSDW's e-mail system was restored, the system contained most of the e-mails that

[1] Due to technology problems, MSDW was unable to reload the data from the twelfth server's back-up tapes until 2006.

had been on the system as of the close of business on August 30 or 31, 2001. Through this process, MSDW restored millions of pre-September 11, 2001 e-mails to its system. When most MSDW employees logged onto the firm's e-mail system on or after September 17, 2001, they were able to access and review e-mails that had been in their mailboxes as of the close of business on August 30 or 31, 2001, with the exception of those on the twelfth server.

Personnel in the Information Technology Department knew that pre-September 11, 2001 e-mail from the Back-Up Tapes had been restored to the firm's servers and was available to respond to requests for e-mail. However, the firm did not place the restored e-mails into an archive for use in responding to requests or retain the tapes used to restore the e-mails to the messaging system. Accordingly, from October 2001 through March 2005, MSDW routinely but inaccurately told claimants in arbitration proceedings and regulators that it had no pre-September 11, 2001 e-mails. In fact, millions of such e-mails had been recovered from the Back-Up Tapes and restored to the firm's new e-mail servers and were available to respond to requests for e-mail. Still more were available on network and local drives accessible to individual employees.

MSDW failed to produce pre-September 11, 2001 e-mail from the Back-Up Tapes, and inaccurately represented that such e-mail had been destroyed, in numerous arbitration proceedings brought against the firm from 2001 through March 2005. MSDW routinely responded to requests for e-mails by inaccurately stating that all e-mails sent to or received from third parties and that predate October 9, 2001 were destroyed. In addition, although MSDW told numerous arbitration claimants that it would search individual users' computers in branch offices, it did not inform all requestors of that potential alternative source of e-mail. As a result, documents subject to discovery requests in numerous customer arbitration proceedings were not provided to claimants.

MSDW also failed to provide pre-September 11, 2001 e-mails to NASD. In response to a Rule 8210 request made in March 2004 for e-mails as part of an NASD investigation into MSDW's fee-based account practices, MSDW inaccurately asserted that pre-October 9, 2001 "external e-mails were maintained in the World Trade Center and destroyed on September 11, 2001."[2]

MSDW also inaccurately told the New York Stock Exchange, in response to a request for information regarding records that were permanently destroyed at the World Trade Center, that it "lost e-mails sent to or from the World Trade Center complex...." The firm did not disclose that many pre-September 11, 2001 e-mails existed on the firm's servers or that pre-September 11, 2001 e-mails existed on back-up tapes which had been reused.

In addition, in response to a subpoena issued by the Massachusetts Securities Division on September 5, 2003 calling for the production of e-mails sent to or received by five specified individuals from June 2000 through the date of the subpoena, MSDW produced external e-mails

[2] Later in 2005, after the settlement of the fee-based case, MSDW notified NASD of the e-mails in the New Repository. The New Repository is the archive of pre-September 11, 2001 e-mails created by MSDW subsequent to March 2005. NASD staff thereafter requested, in connection with the investigation related to this matter, that MSDW produce e-mail responsive to the prior request in the fee-based case. MSDW then produced over 12,000 e-mails and attachments.

from October 9, 2001 forward and inaccurately stated in the cover letters that "[e]arlier external emails were maintained in the World Trade Center and destroyed on September 11, 2001."

In responding to requests for e-mails from claimants and regulators, MSDW also did not regularly search network or local drives. The firm instead left the decision as to whether to search network or local drives to individuals conducting those searches, including in-house counsel, outside counsel, paralegals, and branch office employees. Outside counsel were not routinely told about this potential source of documents until 2004, and the firm did not provide training to the branch personnel who were often relied upon to conduct searches for e-mails.

MSDW violated NASD Conduct Rule 2110 by inaccurately telling numerous arbitration claimants that all pre-October 2001 e-mail had been destroyed and by failing to conduct an adequate search in responding to requests for e-mails in arbitration proceedings. MSDW also violated Rule 2110 and IM-10100 of the Code of Arbitration Procedure by failing to produce documents in its possession in response to discovery requests in numerous arbitration proceedings; violated Procedural Rule 8210 and Conduct Rule 2110 by telling NASD that pre-October 9, 2001 e-mail had been destroyed when in fact the firm possessed such e-mails, by failing to conduct an adequate search for such e-mail in responding to an NASD Procedural Rule 8210 request for e-mails, and by failing to produce documents in its possession called for by an NASD Procedural Rule 8210 request; and separately violated Conduct Rule 2110 by inaccurately telling other regulators that pre-October 2001 e-mail had been destroyed and by not producing such e-mail in response to requests by regulators.

Failing to Produce Updates to the MAPPS Manual in Discovery in Arbitration Proceedings

Between late 1999 and the end of 2005, MSDW failed to provide updates to its manual setting out supervisory policies and procedures for branch managers, known as the MAPPS Manual, in numerous arbitration proceedings.

In September 1994, MSDW's predecessor issued the MAPPS Manual. Between that time and the end of 2005, the MAPPS Manual was updated numerous times through the issuance of compliance notices and bulletins.[3] As early as 2003, these updates were compiled as a separate volume of compliance communications collected from various departments within MSDW. By November 2005, there were approximately 300 updates. Each such update represented a new policy, an update to an existing policy, a reminder or clarification of an existing policy, or a notification that a policy was no longer effective.

[3] On June 30, 2006, MSDW issued a new Branch Managers Supervisory Manual replacing the MAPPS Manual.

NASD Notice to Members 99-90, issued in November 1999, announced a new "Discovery Guide" to be used in NASD arbitration proceedings. Among other things, Notice to Members 99-90 included several "Discovery Lists" that identified categories of "presumptively discoverable" documents that, absent a written objection, are to be exchanged automatically by the parties. List 1, item 9, of the Discovery Guide required that the following documents be produced in all customer-involved arbitrations:

> All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s), and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents and index to each such Manual.

Despite Notice to Members 99-90, during the period December 1999 through 2005, MSDW failed on numerous occasions to produce relevant updates to the MAPPS Manual in discovery in arbitration proceedings. During this period, MSDW did not have a firm-wide procedure that addressed the documents that should be produced in response to a request for the firm's written supervisory procedures or the documents that should be produced in order to comply with the firm's discovery obligations to produce such documents pursuant to NTM 99-90.

For much of the relevant period, MSDW attorneys, as well as outside counsel representing the firm in NASD arbitrations, responded to requests for MSDW's supervisory procedures by offering to produce sections of the MAPPS Manual itself but did not offer to produce updates to the manual. In many cases, no updates were ever produced.

In November 2003, in response to complaints regarding possible abuses of discovery and an increase in the frequency of monetary sanctions for discovery abuse, NASD issued Notice to Members 03-70. That Notice included a reminder to member firms that the document production lists set forth in the Discovery Guide were presumptively discoverable in customer disputes and that, absent a written objection or an agreement by the parties to the contrary, parties must exchange documents set forth on applicable lists. Following the issuance of Notice to Members 03-70, MSDW began to review its discovery practices in arbitration proceedings. Although the firm did in certain instances begin to produce updates to the MAPPS Manual in response to requests for the firm's written supervisory procedures, it did not do so on a regular basis. It was not until late 2005 that MSDW adopted a firm-wide written policy requiring that the firm produce updates to the MAPPS Manual in discovery in arbitration proceedings by providing an index of the updates.

By failing to provide relevant updates to the MAPPS Manual in discovery in numerous arbitration proceedings, MSDW violated NASD Conduct Rule 2110 and IM-10100 under the Code of Arbitration Procedures.

Failure to Preserve Required Books and Records

In addition, MSDW violated its recordkeeping obligations by allowing users to delete pre-September 11, 2001 e-mails restored to the new Exchange servers. As a result, by March 2005,

millions of pre-September 11, 2001 e-mails that had been restored to the firm's systems had been permanently deleted, leaving only approximately 500,000 of these e-mails on the servers.

As described above, when MSDW created a new archive system on October 9, 2001, the archive did not have any initial content, because the earlier archive had been destroyed. MSDW did, however, have the Back-Up Tapes (which held, for eleven of the twelve e-mail Exchange servers, the content of the users' Inboxes and Sent Items folders as of August 30-31, 2001, but not the historical archives) that could have been used to restore a substantial portion of the archive. The firm's Technology Department decided that the Back-Up Tapes should not be used to restore its archive, and did not retain the Back-Up Tapes, but instead put the tapes back into the back-up rotation. This resulted in the tapes being overwritten, and most of their content permanently lost, beginning shortly after September 17, 2001.

MSDW also failed to take affirmative steps to ensure that e-mails that had been restored to its systems were retained. Specifically, MSDW failed to require employees to retain the pre-September 11, 2001 e-mails that had been restored to user mailboxes, and those that users had stored on network and local drives.

MSDW also failed to preserve pre-September 11, 2001 e-mails stored on network and local drives of departing employees, even though employees might have moved e-mails into folders on their network and local drives, either before September 11, 2001, or after those e-mails had been restored on September 17. The firm routinely eliminated the pre-September 11, 2001 e-mails of departing employees who were not currently the subject of pending or anticipated litigation.

As a result of these failures, MSDW allowed many pre-September 11, 2001 e-mails which had been restored to its systems to be deleted by users and erased millions of e-mails by overwriting the Back-Up Tapes from which the e-mail servers had been restored. Between October 9, 2001 and March 2005, at least 7.8 million pre-September 11, 2001 e-mails were deleted from the firm's active e-mail servers. By virtue of this conduct, MSDW failed to keep electronic communications for three years and to preserve electronic mail communications for the first two years in an accessible place, in violation of Section 17(a) of the Securities Exchange Act of 1934, Rule 17a-4 thereunder, and NASD Conduct Rules 2110 and 3110.

Failure to Establish and Maintain Systems and Written Procedures Reasonably Designed to Preserve Required Records and to Ensure that MSDW Conducted Adequate Searches in Response to Regulatory Inquiries and Discovery Requests

During the period from 2001 through at least March 2005, MSDW failed to devise any formal procedures requiring employees to retain pre-September 11, 2001 e-mails to and from the firm for any period of time. The firm's 2001 Code of Conduct, which contained the only document retention provision applicable to e-mails, contained a general statement that employees should "review files periodically to ensure that information is current and essential; and consistent with document retention policies and applicable law, discard drafts, notes, notebooks, diaries,

telephone logs, message slips and other documents when they are no longer useful or current." The 2001 Code of Conduct further stated that documents should not be discarded if they are:

> documents that must be kept for specific periods of time under applicable laws or regulations (guidance concerning which can be obtained from Law or Compliance); documents that are the subject of a subpoena or document request; or documents that are potentially relevant to a lawsuit or an investigation that has been or may be initiated.

By failing to implement any procedures addressing the retention by employees of pre-September 11, 2001 e-mails to and from the firm, MSDW failed to prevent the destruction of millions of pre-September 11, 2001 e-mails that had been restored to its system. In addition, the firm failed to adopt procedures to prevent the overwriting of the Back-Up Tapes which contained pre-September 11, 2001 e-mails.

MSDW also did not have adequate systems or procedures governing searches for pre-September 11, 2001 e-mail in response to discovery requests in arbitration proceedings and regulatory inquiries. For instance, the firm failed to adopt procedures requiring that the firm's e-mail servers or individuals' network and local drives be searched where appropriate. The firm also failed to have adequate supervisory systems and procedures to ensure that relevant updates to the firm's 1994 MAPPS Manual were produced in response to discovery requests for the firm's written supervisory procedures.

By virtue of its failure to establish and maintain systems and written procedures to supervise the activities of its employees and the types of business in which it engages that were reasonably designed to achieve compliance with the record keeping requirements for e-mails, and with its obligations to respond completely and truthfully to regulatory requests and to discovery requests in arbitration proceedings, MSDW violated NASD Conduct Rules 3010(a) and (b) and 2110.

B. Sanctions

Morgan Stanley also consents to the imposition, at a maximum, of the following sanctions:

1. A censure.

2. A fine of $3 million.

3. Morgan Stanley shall, within thirty days of the acceptance of this AWC, deposit $9.5 million into an interest-bearing escrow account to establish a fund to make payments to arbitration claimants. Those payments shall represent discovery sanctions for MSDW's failure to provide pre-9/11 e-mail and failure to provide updates to the MAPPS Manual. The amounts shall be paid to claimants by a Fund Administrator acceptable to FINRA pursuant to the terms set forth in a Plan of Distribution. In connection with such Plan of Distribution:

   a. Morgan Stanley shall pay all costs and expenses associated with the

administration of the fund and all costs and expenses incurred by or associated with the Fund Administrator.

b. Morgan Stanley shall cooperate fully with the Fund Administrator in the implementation of his or her duties, including by identifying arbitration claimants; providing records requested by the Fund Administrator; providing the Fund Administrator with MAPPS Manual update lists and updates; and conducting any searches of Morgan Stanley's New Repository for pre-September 11, 2001 e-mails required by the settlement. Morgan Stanley shall not place any restrictions or limitations on the Fund Administrator's activities in implementing this Plan of Distribution.

c. Any funds remaining after payment of all amounts to claimants will revert to FINRA as an additional fine amount.

4. Within thirty days of the acceptance of this AWC, Morgan Stanley shall, at its own expense, retain an Independent Consultant acceptable to FINRA to review the firm's current procedures for complying with discovery requirements in arbitration proceedings relating to the firm's retail brokerage operations.

a. At the conclusion of the Independent Consultant's review, which in no event shall be more than ninety days after the Independent Consultant is retained, the Independent Consultant shall submit to Morgan Stanley and FINRA staff a written report detailing the Independent Consultant's determinations and recommendations. If Morgan Stanley accepts all of the Independent Consultant's recommendations, it shall adopt and implement the recommendations within ninety days after delivery of the written report. If Morgan Stanley determines that any recommendations are unduly burdensome or impractical, the firm shall, within thirty days after delivery of the written report, propose an alternative that is reasonably designed to achieve the same objective(s). Morgan Stanley shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within thirty days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the firm with a written decision reflecting his or her determination. Morgan Stanley will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and, within 120 days of delivery of the Independent Consultant's decision as to proposed alternative procedures, must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

b. Within ninety days after delivery of the Independent Consultant's written report or, if Morgan Stanley proposes alternative procedures, within ninety days of delivery of the Independent Consultant's decision regarding

alternative procedures, an officer of Morgan Stanley shall certify in writing to FINRA that the firm has implemented each of the Independent Consultant's recommendations. This certification shall also describe the specific actions taken by the firm, including the systems and procedures developed to implement the Independent Consultant's recommendations.

c. Morgan Stanley shall cooperate fully with the Independent Consultant and shall not place restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Morgan Stanley shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval. Morgan Stanley shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA.

5. For a period of two years following the date of the conclusion of the work as described herein and in the Plan of Distribution, neither Morgan Stanley, nor any of its principals, agents, officers, directors or employees acting in their capacities as such, may employ or otherwise hire the Independent Consultant or Fund Administrator in any capacity. Any firm with which the Independent Consultant or Fund Administrator is affiliated or of which he or she is a member, and any person or firm engaged to assist the Independent Consultant or Fund Administrator in the performance of their duties shall not, without prior written consent of Department of Enforcement staff, enter into any employment, consulting or other professional relationship with Morgan Stanley, or any of its directors, officers, employees, or agents in their capacity as such for the period of the engagement and for a period of two years thereafter.

III.

OTHER MATTERS

A. Morgan Stanley understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Morgan Stanley understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

B. Morgan Stanley agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it

proposes to pay any fine imposed.

C. Morgan Stanley specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned representative of Morgan Stanley has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Morgan Stanley to submit it.

9/19/07
Date

Morgan Stanley & Co. Incorporated
Respondent

By: Eric F. Grossman
Title: Managing Director

Reviewed by:

Counsel for Morgan Stanley & Co. Incorporated
Herbert F. Janick III
Bingham McCutchen LLP
85 Exchange Street, Suite 300
Portland, ME 04101

Accepted by FINRA:

Sept. 24, 2007
Date

Department of Enforcement
FINRA
1801 K Street NW, Suite 800
Washington, DC 20006

Signed on behalf of the Director of ODA, by delegated authority

Attachment: Plan of Distribution

Plan of Distribution

This Plan of Distribution effectuates the distribution and disposition of the $9.5 million Fund established pursuant to the Letter of Acceptance, Waiver and Consent ("AWC") entered into by Morgan Stanley & Co., Inc. ("Morgan Stanley") in matter 2005001449202.

A. Appointment and Duties of the Fund Administrator

1. Within thirty days[1] of the acceptance of the AWC in this matter, Morgan Stanley will notify the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") of the person selected by Morgan Stanley to act as Fund Administrator. The Department of Enforcement will have the right, in its absolute and sole discretion, to accept or reject any proposed Fund Administrator. If FINRA rejects any proposed Fund Administrator, Morgan Stanley will have fifteen days to propose an alternative Fund Administrator.

2. The Fund Administrator will be responsible for all matters set forth below, unless specifically allocated to any other entity by the terms of this Plan of Distribution. The Fund Administrator will be bound by the restrictions set forth in Part II.B.5 of the AWC.

3. Morgan Stanley shall cooperate fully with the Fund Administrator in the implementation of his or her duties, including by identifying claimants in arbitration proceedings; providing records requested by the Fund Administrator; providing the Fund Administrator with MAPPS Manual update lists and updates; and conducting any searches of Morgan Stanley's New Repository[2] containing pre-September 11, 2001 e-mails required by the settlement. Morgan Stanley shall not place any restrictions or limitations on the Fund Administrator's activities in implementing this Plan of Distribution.

4. The Fund Administrator shall be responsible for overseeing Morgan Stanley's compliance with its obligations in this matter, including but not limited to its obligation to search for and produce e-mails as provided in Part F below. The Fund Administrator shall file quarterly reports with FINRA regarding the discharge of his or her duties in administering this Plan of Distribution. This shall include a description of Morgan Stanley's compliance with its obligations in connection with this Plan of Distribution.

5. Morgan Stanley will be responsible for all costs and expenses of the Fund Administrator and all costs and expenses associated with administration of the Fund. Morgan Stanley shall compensate the Fund Administrator pursuant to the terms of a retention agreement between Morgan Stanley and the Fund Administrator, which shall be subject to approval

[1] The term "days" shall mean calendar days for the purposes of this Plan of Distribution.

[2] The New Repository is the archive of pre-September 11, 2001 e-mails created by MSDW subsequent to March 2005, as described more fully in the accompanying AWC. MSDW refers to Morgan Stanley DW, Inc., which is Morgan Stanley's predecessor in interest as a result of a business restructuring effective as of April 1, 2007.

by FINRA. In no event shall FINRA be liable for any compensation, reimbursement of expenses, or other payments to the Fund Administrator.

6. All determinations under the Plan of Distribution by the Fund Administrator shall be made on the basis of the papers submitted by claimants and, if any, by Morgan Stanley, to the Fund Administrator without hearing, oral argument, or presentation of evidence (other than e-mails obtained pursuant to the Plan of Distribution and the Statement of Claim in the underlying arbitration) unless, given the particular circumstances, the Fund Administrator determines that a hearing, oral argument, or presentation of evidence is required to resolve the matter being determined.

7. Any requests by the Fund Administrator to vary from any of the timetables set forth herein must be approved in writing by the Department of Enforcement and supported by a showing of good cause.

8. The Fund Administrator will consult with the Department of Enforcement regarding any uncertainties, ambiguities, or unresolved issues in the application of this Plan of Distribution.

B. Establishment and Maintenance of the Fund

1. Within thirty days of the acceptance of the AWC, Morgan Stanley will establish an interest-bearing escrow account for the $9.5 million Fund established pursuant to the AWC in this matter and will deposit $9.5 million into that account.

2. All interest accrued during the existence of the Fund shall be used to make payments to claimants as described herein or remitted to FINRA as described in Part B.4 below.

3. The Fund shall be under the control of the Fund Administrator, once the Fund Administrator is approved by FINRA's Department of Enforcement.

4. The Fund Administrator will remit any funds remaining in the Fund to FINRA, after completion of payments to claimants as described herein, as an additional fine amount paid by Morgan Stanley.

C. Ascertaining Potentially Eligible Claimants

1. Potentially eligible claimants shall include the following:

    a. *Eligible E-mail Claimants*: Claimants eligible to receive payments from the Fund with respect to pre-September 11, 2001 e-mail will be customer claimants in arbitration proceedings brought against Morgan Stanley's predecessor in interest,

MSDW, which were either initiated on or after, or still open as of, September 11, 2001, and which were closed on or before June 20, 2005.[3]

b. *Eligible MAPPS Claimants:* Claimants eligible to receive payments from the Fund with respect to updates to the MAPPS Manual will be customer claimants in arbitration proceedings brought against MSDW before NASD's Office of Dispute Resolution which were initiated on or after July 1, 1999, and which were closed on or before December 31, 2005.[4]

2. Within thirty days following FINRA's approval of the Fund Administrator, the Fund Administrator will begin notifying the potentially eligible claimants, as identified by FINRA and Morgan Stanley to the Fund Administrator, of their right to seek payments from the Fund. That notification, which will be reviewed by Morgan Stanley and subject to prior review and approval by FINRA, will include, at a minimum, the following information:

   a. *Eligible E-mail Claimants*:

      i. Standard Payment Amount: Qualifying claimants shall be entitled to receive a payment from the Fund in an amount to be determined based on the number of eligible claimants participating in the distribution. Any such payment shall be between $3,000 and $5,000 per case,[5] subject to the availability of funds, as described in Part H below.

      ii. Upon request, claimants may require Morgan Stanley to produce pre-September 11, 2001 e-mails from the New Repository established by MSDW, as more fully described in Part F below. Alternatively, claimants may forgo the right to receive such e-mails, and receive the Initial Payments described in Part E below within sixty days of the deadline for making that election, and the additional payment, if any, as provided in Part H below.

      iii. Any claimant who obtains pre-September 11, 2001 e-mail may, as described in Part G below, receive the Standard Payment Amount or waive the Standard Payment Amount and have the Fund Administrator determine the amount, if any, to be received by the claimant depending on the facts and circumstances of the case and the availability of funds. In such cases, the maximum payment will be no more than $20,000.

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[3] For the purposes of this Plan of Distribution, an arbitration is "closed" as of the date an award or order of dismissal was issued or a settlement agreement executed.

[4] Notices will not be provided to certain claimants, to be identified to the Fund Administrator by FINRA staff, who received production of updates to the MAPPS Manual.

[5] For the purposes of this Plan of Distribution, a "case" is a matter given a unique arbitration file number. The Fund Administrator will determine whether consolidated matters should be treated as one or more cases for the purposes of this Plan of Distribution.

iv. The Fund Administrator shall include forms in the initial mailing setting out the elections described above.

b. *Eligible MAPPS Claimants*:

i. Standard Payment Amount: Qualifying claimants shall be entitled to receive a payment from the Fund in an amount to be determined based on the number of eligible claimants participating in the distribution. Any such payment shall be between $1,500 and $2,500 per case, subject to the availability of funds, as described in Part H below.

ii. In order to qualify to receive payment, claimants must provide the Fund Administrator with: (1) a certification (on a form to be provided to claimants by the Fund Administrator, reviewed by Morgan Stanley, and approved by FINRA) from the lawyer who represented them in the arbitration stating that they did not receive all updates to the MAPPS Manual related to the claims in their case; (2) for claimants who represented themselves, a certification to the same effect; or (3) for those who cannot provide the certification described above, an explanation why they could not procure the certification, along with a description of any efforts to obtain the information. Claimants who provide the information called for by (1) and (2) will be paid the Standard Payment amounts by the Fund Administrator. The Fund Administrator will consider responses provided pursuant to (3) and make payments to claimants where appropriate, in his or her sole discretion.

iii. The Fund Administrator shall include the appropriate certification form(s) and the index of compliance notices and bulletins that updated the MAPPS Manual from 1994 through 2005 in the initial mailing.

iv. The Fund Administrator will have the sole discretion to determine whether the certifications provided pursuant to Part C.2.b.ii above are adequate on the basis of the papers submitted. If the Fund Administrator determines that any certification is not adequate, he or she shall promptly notify the claimant(s) of that determination and allow the claimant(s) thirty days to cure any deficiency, and will promptly determine whether any re-submitted certifications are adequate.

c. *All Eligible Claimants:* All Eligible Claimants will be provided with a waiver form as described in Part D.1 below.

3. The Fund Administrator shall undertake reasonable efforts to ensure that all potentially eligible claimants receive notification. Upon completion of those efforts, the Fund Administrator shall certify to FINRA that reasonable efforts have been undertaken and provide a description of those efforts.

4. All responses by potentially eligible claimants called for by this provision, including certifications pursuant to Part C.2.b.ii above, and elections to receive payments or to receive e-mails pursuant to Part C.2.a.ii above, shall be due no later than sixty days after the mailing of the notices. The notices will include the due date.

5. For the purposes of this Plan of Distribution, the term "claimant" shall refer collectively to all claimants in each individual arbitration case. Checks shall be payable to all claimants in a case, or to their legal successors, as determined by the Fund Administrator, unless all claimants in a case agree to another method of distribution. The Fund Administrator will resolve any disputes as to the method or format of payments.

6. Any claimants who are both Eligible E-mail Claimants and Eligible MAPPS Claimants will be entitled to receive payments as to each matter, with no offset or diminution in recovery by virtue of the fact that the claimants are in both groups.

D. Waiver

1. Prior to receiving any payment from the Fund:

    a. All Eligible E-mail Claimants in a case will be required to execute a waiver pursuant to which the claimant agrees that, in return for any payments from the Fund, the claimant waives any right to seek any other payment from Morgan Stanley that is intended to punish the firm for the failure to produce pre-September 11, 2001 e-mail, but does not waive the right to make any other argument or assert any other claim, to the extent they are available.[6]

    b. All Eligible MAPPS Claimants in a case will be required to execute a waiver pursuant to which the claimant agrees that, in return for any payments from the Fund, the claimant waives any right to seek any other payment from Morgan Stanley that is intended to punish the firm for the failure to produce updates to the MAPPS Manual in the underlying arbitration proceedings, but does not waive the right to make any argument or assert any other claim, to the extent they are available.

[6] This waiver is not intended to affect the class action lawsuit, *Ibarzabal, et al. v. Morgan Stanley DW, Inc.*, Case No. 07-CV-2273 (SCR), pending in the United States District Court for the Southern District of New York. Participation in this settlement will not bar any claimant from the receipt of the relief, if any, obtained in that action.

c. A claimant who is receiving payments as both an Eligible E-mail Claimant and an Eligible MAPPS Claimant will be required to execute both waivers described in Parts D.1.a & b above.

2. Any such waiver will only be effective as to claimants who actually receive a distribution of funds pursuant to this Plan of Distribution. Any waiver submitted by a potential claimant who is determined by the Fund Administrator not to be eligible for payment shall be null and void.

E. Initial Payments

1. Within sixty days after the deadline for submissions of election forms, certifications, and waivers described in Parts C and D above, the Fund Administrator will (subject to the availability of funds):

   a. Pay $3,000 to all Eligible E-mail Claimants who have elected to receive payment without obtaining e-mails as set forth in Part C.2.a.ii above and have submitted the waiver form described in Part D above.

   b. Pay $1,500 to all Eligible MAPPS Claimants who have provided the appropriate certification as set forth in Part C.2.b.ii above and have submitted the waiver form described in Part D above.

   c. In determining the initial payments pursuant to this Part E, the Fund Administrator shall consult with FINRA staff.

2. Within fourteen days of making the payments described in Part E.1, the Fund Administrator will provide the Department of Enforcement with a list identifying all claimants who received payments (including the original arbitration case number) and the amounts received by each.

F. Requests for Pre-September 11, 2001 E-mail from the New Repository

1. Within sixty days of the mailing of the notice provided in Part C.2 above, an Eligible E-mail Claimant[7] may elect to request production of pre-September 11, 2001 e-mail from the New Repository established by MSDW. Any Eligible E-mail Claimant who elects to request e-mail will not receive the Initial Payment described in Part E above, but will not forfeit the right to receive the Standard Payment described in Parts G.1.a and H.1.c later in the process, unless the claimant chooses to seek an Independent Determination by the Fund Administrator pursuant to Part G.1.b below.

[7] For the purposes of Part F, any claimant in a multiple claimant case may request e-mail. No Initial Payments will be made in any case in which any claimant requests e-mail.

2. If an Eligible E-mail Claimant elects to seek such e-mail, the claimant will notify the Fund Administrator, who will then direct Morgan Stanley to search the New Repository for e-mail containing (1) claimant's first and last name (within three words of each other) in the fields[8] or body; (2) claimant's account number(s) (as provided by claimant and as reflected in the records of Morgan Stanley) in the subject line or body; or (3) claimant's e-mail address (as provided by the claimant) in fields, subject line, or body. In addition, Morgan Stanley will search for the claimant's last name in the fields or body of e-mails in the mailbox(es) of claimant's broker(s) (as provided by claimant).[9] If the claimant is unable to identify the broker(s), Morgan Stanley will identify claimant's broker(s) as reflected in the records of Morgan Stanley. The Fund Administrator will provide Eligible E-mail Claimants with a form on which to elect to obtain e-mail, which shall include spaces for the e-mail address and broker(s) names described in this paragraph.

3. A claimant may propose additional specific search terms or search criteria to the Fund Administrator, along with an explanation as to why the proposed search terms or criteria are reasonably designed to obtain e-mails relevant to any claim in the claimant's arbitration proceeding. The Fund Administrator shall have Morgan Stanley conduct the requested search as part of the initial search described in the preceding paragraph if he or she determines that the proposed additional search terms and criteria are reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration. The Fund Administrator will have the authority to accept, reject, or modify the proposed search terms or criteria.

4. Within thirty days of receipt of the e-mails pursuant to the preceding paragraphs, a claimant may make one additional request for additional e-mail searches based upon the results of the initial search upon satisfying the Fund Administrator that under the circumstances the proposed additional search terms and criteria are reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration.

5. Morgan Stanley shall provide all responsive e-mails (along with the attachments thereto) to the claimant within sixty days of its receipt of the request (subject to the objection process described below), and will provide to the Fund Administrator a description of the search methodology and results, including the number of e-mails provided to the claimant. Morgan Stanley may request, upon a showing of good cause, that the Fund Administrator provide the firm additional time to conduct the e-mail searches described in Parts F.2, F.3 and F.4.

6. The Fund Administrator will provide Morgan Stanley with copies of the requests described in Parts F.3 and F.4. If Morgan Stanley objects to any such request for search terms or criteria:

    a. Morgan Stanley shall, within fifteen days of receipt of the request, provide the Fund Administrator and claimant with a written statement setting out its objection. The claimant may respond to the objection in writing within ten days.

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[8] "Fields" refers to the to, from, cc, and bcc lines in any e-mail.

[9] For the purposes of Part. F.2, Morgan Stanley will use the actual account title for any account maintained in the name of a non-natural person, such as a business entity or trust.

b. The Fund Administrator shall, within thirty days of receipt of the objection, notify Morgan Stanley and the claimant of his or her determination as to the appropriate search terms or search criteria pursuant to a request made under Part F.3 or whether to require that the second search be conducted under Part F.4, based on whether the proposed search terms and criteria are reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration.

c. Morgan Stanley will provide all responsive e-mails to the claimant within thirty days of its receipt of the Fund Administrator's determination pursuant to the preceding paragraph, and will provide to the Fund Administrator a description of the search methodology and results, including the number of e-mails provided to the claimant.

7. Confidentiality: Morgan Stanley may request, for good cause shown on a case-by-case basis, that the Fund Administrator require that Eligible E-mail Claimants agree to maintain the confidentiality of any e-mails they or their representative receive and to use such e-mails only in petitioning the Fund Administrator for an additional sanction payment or otherwise in the prosecution of claims related to the subject matter underlying the claimant's prior arbitration. Any such request by Morgan Stanley shall be made in writing at least ten days before the deadline for providing the e-mails to the requesting claimant and cite the particular reason(s) why confidential treatment is required. The requesting claimant shall be given ten days to submit a written opposition to the confidentiality request by providing a written response to the Fund Administrator and a copy to Morgan Stanley. Morgan Stanley may respond to any such opposition within ten days. The Fund Administrator shall make his or her determination within fifteen days of the deadline for the requesting claimant's response. Nothing in any ruling, decision, or order by the Fund Administrator, or any agreement between Morgan Stanley and a requesting claimant, shall prevent or be deemed to prevent a claimant from providing e-mails to, or discussing their contents with, any governmental entity or self-regulatory organization.

8. Privilege: If Morgan Stanley asserts privilege as to any e-mails responsive to requests under this Part F, it may withhold production of such e-mails pending the determination by the Fund Administrator described in this paragraph, and shall provide the claimant and the Fund Administrator with a list identifying all such withheld e-mails no later than the date on which e-mails are due to be produced to the claimant. The list shall specify the date and subject matter of any such e-mails, the names of all senders and recipients (including those designated as "cc" or "bcc"), the names of all attorneys or attorney agents sending or receiving the e-mails, and the basis of the privilege. The claimant may challenge the assertion of privilege within fifteen days of receiving the notification, and the Fund Administrator shall determine whether production is required within thirty days of the deadline for receipt of the claimant's challenge to the privilege assertion.

G. Claimants' Options Upon Receipt of the E-Mails

1. Upon completion of the e-mail request process set forth in Part F above, the Eligible E-mail Claimant will have thirty days to elect either of the following:

    a. Standard Payment: Accept the Standard Payment discussed in Part H.1 below paid to Eligible E-mail Claimants who did not elect to receive e-mails from the New Repository.

    b. Independent Determination Process: Waive the right to receive the Standard Payment and seek to have the Fund Administrator determine the appropriate monetary sanction for MSDW's failure to produce the e-mails, based on the facts and circumstances of each case, up to a limit of $20,000. The Eligible E-mail Claimant shall provide copies of all e-mails received from Morgan Stanley to the Fund Administrator along with the Eligible E-mail Claimant's election to participate in the Independent Determination Process. This option will only be available if all claimants in a case agree to its use.

2. The Fund Administrator shall ensure that all Eligible E-mail Claimants are apprised, prior to making the foregoing election, that choosing to participate in the Independent Determination Process could result in their receiving less than the Standard Payment or no payment at all.

3. For each Eligible E-mail Claimant who elects to participate in the Independent Determination Process, the Fund Administrator will review the e-mails provided to the claimant, the Statement of Claim, and the Answer[10] relating to the underlying arbitration, and, within sixty days of receipt of the e-mails, make a determination of the amount, if any, to be paid to each such claimant, subject to the availability of sufficient funds. The Fund Administrator will take into account, among other things, the content of any e-mails provided pursuant to Part F above, the number of such e-mails produced, the potential significance of the e-mails to the claims in the original arbitration, and any findings or adjudications reached in the arbitration. In no case shall the amount exceed $20,000.

H. Determination of Distribution Amounts

1. Upon completion of the procedures described above, the Fund Administrator will determine the amount to be paid to each Eligible Claimant, as follows:

    a. The Fund Administrator shall determine the total of the minimum Standard Payments to be made to each Eligible Claimant (excluding those who have sought an Independent Determination pursuant to Part G.1.b above). This shall include all Initial Payments made pursuant to Part E above.

[10] If neither party can locate the Statement of Claim or Answer, the Fund Administrator shall attempt to obtain them from the Office of Dispute Resolution or the appropriate arbitration forum.

b. The Fund Administrator shall then determine the amount to be paid to all Eligible E-mail Claimants who participated in the Independent Determination Process pursuant to Part G.1.b above. If there are insufficient funds remaining in the Fund to pay all such amounts after taking into account the minimum payments under the preceding paragraph, the amount payable to each such claimant shall be reduced proportionately.

c. If there are funds remaining after computation of the amounts to be paid under the preceding paragraphs, the Fund Administrator shall increase the Standard Payment Amount to be paid to all Eligible E-mail Claimants and Eligible MAPPS Claimants who elected to receive the Standard Payment, subject to the following:

   i. The amount to be paid to each Eligible E-mail Claimant shall be twice the amount paid to each Eligible MAPPS Claimant.

   ii. The amount to be paid to each Eligible E-mail Claimant shall not exceed $5,000, and the amount paid to each Eligible MAPPS Claimant shall not exceed $2,500.

2. Within thirty days of completion of the calculations in the preceding three paragraphs, the Fund Administrator will pay all of the amounts determined to be payable to Eligible Claimants under this Part, offsetting any amounts paid as Initial Payments under Part E above. Any amount due to any claimant who is eligible for payment and who provided a waiver, but who cannot be located at the time payments are made, shall be remitted to the escheat, unclaimed property, or abandoned property fund of the state of the customer's last known residence.

3. All determinations by the Fund Administrator shall be final and not subject to appeal.

4. Any remaining money in the Fund shall be paid to FINRA as an additional fine amount imposed under the AWC in this matter.

I. Final Report

1. Within thirty days of completing the payments described in Part H above, the Fund Administrator shall file a written report with the Department of Enforcement.

2. The report shall include, at a minimum:

   a. The names and amounts paid to each Eligible E-mail Claimant and Eligible MAPPS Claimant (including the original arbitration case number), along with proof of payment.

   b. The names and amounts paid to each Eligible E-mail Claimant (including the original arbitration case number) who sought a determination pursuant to the

Independent Determination Process, including any claimant as to whom the Fund Administrator determined that no money should be paid.

c. The names of all claimants who sought production of e-mails from the New Repository, the index numbers of the underlying arbitrations for those claimants, the number of e-mails produced to each of those claimants, and the number of e-mails located but withheld under claim of privilege for each of those claimants.

d. The amount of interest earned in the Fund.

e. A detailed accounting of the disposition of all funds from the Fund.

f. A description of Morgan Stanley's compliance with its obligations under the terms of this Plan of Distribution.