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Charles Mierzwa,
Clearance Officer.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26749; 812-13160]

Morgan Stanley AIP GP LP, et al.; Notice of Application and Temporary Order

February 4, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Morgan Stanley & Co. Incorporated ("MS&Co.") on February 4, 2005 by the United States District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: Morgan Stanley AIP GP LP, Morgan Stanley Asset & Investment Trust Management Co., Limited, Morgan Stanley Investment Advisors Inc., Morgan Stanley Investment Management Company, Morgan Stanley Investment Management Inc., Morgan Stanley Investment Management Limited, Van Kampen Advisors Inc., and Van Kampen Asset Management (together, the "Advisers"); MS&Co., Morgan Stanley Distribution, Inc., Morgan Stanley Distributors Inc., Morgan Stanley DW Inc., and Van Kampen Funds Inc. (together, the "Underwriters"); Morgan Stanley Capital Partners III, Inc., Morgan Stanley Global Emerging Markets, Inc., Morgan Stanley Venture Capital III, Inc., MSDW Capital Partners IV, Inc., MSDW OIP Investors, Inc., MSDW Real Estate Special Situations II Manager, L.L.C., MSDW Venture Partners IV, Inc., MSREF II, Inc., MSREF III, Inc., MSREF IV, L.L.C., MSREF V, L.L.C. and MSVP 2002, Inc. (together, "ESC Managers"

and, with the Advisers and Underwriters, the "Applicants").¹

FILING DATES: The application was filed on January 25, 2005 and amended on January 26, 2005. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 1, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Barry Funk, Esq., Morgan Stanley, 1221 Avenue of the Americas, 22nd Floor, New York, NY 10020.

FOR FURTHER INFORMATION, CONTACT: John Yoder, Attorney-Adviser, or Mary Kay Frech, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

Applicants' Representations

1. Each Applicant is a direct or indirect subsidiary of Morgan Stanley, a Delaware corporation. Morgan Stanley is a publicly held global financial services company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services. MS&Co., a Delaware corporation, is a global financial services firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange

¹ Applicants request that any relief granted pursuant to the application also apply to any other company of which MS&Co. is or becomes an affiliated person in the future (together with Applicants, "Covered Persons").

Act") and as an investment adviser under the Investment Advisers Act of 1940. MS&Co. serves as principal underwriter for, and the other Applicants serve as investment adviser, subadviser, depositor or principal underwriter for, numerous registered investment companies ("Funds"). The ESC Managers serve as the general partner or investment adviser to certain employees' securities companies operating pursuant to Commission orders (included in the term "Funds").²

2. On February 4, 2005, the United States District Court for the District of Columbia entered the Injunction against MS&Co. in a matter brought by the Commission.³ The Commission alleged in the complaint ("Complaint") that MS&Co. violated Rule 101 of Regulation M under the Exchange Act by attempting to induce certain customers to place orders for shares in the aftermarket for certain initial public offerings ("IPOs") it underwrote during the restricted period of such IPOs. The alleged violations occurred in connection with certain IPOs underwritten by MS&Co. from March 1999 through November 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, MS&Co. consented to the entry of the Injunction as well as the payment of a civil penalty of \$40 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under

² Morgan Stanley Capital Investors, L.P., Investment Company Act Release Nos. 24340 (Mar. 17, 2000) (notice) and 24389 (Apr. 12, 2000) (order); Morgan Stanley Venture Investors, L.P., Investment Company Act Release Nos. 20206 (Apr. 8, 1994) (notice) and 20276 (May 4, 1994) (order).

³ *Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated*, Final Judgment Against Morgan Stanley & Co. Incorporated, 05:CV 00166 (HHK) (D.D.C., filed February 4, 2005) ("Final Judgment").

common control with, the other person. Applicants state that MS&Co. is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory, depositor or underwriting services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter or depositor to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as is reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel, as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application.⁴ The Applicants will

⁴ With respect to Funds that are unit investment trusts ("UITs"), Applicants will provide written notification to the trustee for each of the UITs

provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources over more than thirty years to establish an expertise in advising and underwriting Funds. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.⁵ In addition, Dean Witter Reynolds Inc., the predecessor of Morgan Stanley DW Inc., previously sought and received an exemption under section 9(c) of the Act.⁶

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, it is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

concerning the Injunction, any impact on the UITs, and the application, and will provide any other related information that may be requested by the trustee.

⁵ Morgan Stanley Investment Advisers Inc., Investment Company Act Release No. 26236 (Oct. 31, 2003) (notice and temporary order).

⁶ Dean Witter Reynolds Inc., Investment Company Act Release Nos. 17887 (Nov. 29, 1990) (notice and temporary order) and 18119 (Apr. 29, 1991) (permanent order).

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51137; File No. SR-BSE-2005-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Minor Rule Violation Plan

February 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 31, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange designated its filing as non-controversial pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6).⁴ Accordingly, the proposed rule change became effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its rules related to its Minor Rule Violation Plan ("MRVP"). The text of the proposed rule change is available on BSE's Web site (<http://www.bostonstock.com/legal/index.html>), at BSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).