

State of Rhode Island

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In the matter of)
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MORGAN STANLEY & CO.)
INCORPORATED (CRD #8209))
)
Respondent.)
)

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Morgan Stanley & Co. Incorporated ("Morgan Stanley") is a broker-dealer registered in the state of Rhode Island; and

WHEREAS, coordinated investigations of the activities of Morgan Stanley in connection with the marketing and sale of auction rate securities ("ARS") have been conducted by a multistate task force composed of members of the North American Securities Administrators Association Inc. ("NASAA"); and

WHEREAS, Morgan Stanley has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, Morgan Stanley has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to retail investors; and

WHEREAS, Morgan Stanley agrees to, among other things, reimburse certain purchasers of auction rate securities, implement certain changes with respect to its marketing and sale of ARS, and make certain payments; and

WHEREAS, Morgan Stanley elects to permanently waive any right to a hearing and appeal under § 7-11-602 of the Rhode Island Uniform Securities Act, § 7-11-101 *et seq.* of the R. I. Gen. Laws of 1989 as amended (the "RIUSA"), with respect to this Administrative Consent Order (the "Order");

WHEREAS, Morgan Stanley admits the jurisdiction of the Department of Business Regulation (the "Department"); acknowledges, without admitting or denying the truth thereof, that

1 the following allegations contained in the Notice of Hearing shall be adopted as the Department's
2 Findings of Fact; and consents to the entry of this Order by the Department:

3 NOW, THEREFORE, the Director, Department of Business Regulation (the "Director"), as
4 administrator of the RIUSA, hereby enters this order:

5 I.

6 **FINDINGS OF FACT**

7 **Unethical Practices in the Offer and Sale of Auction Rate Securities**

8 1. Auction rate securities are financial instruments that include auction preferred
9 shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate
10 bonds (collectively referred to herein as "ARS"). ARS are long-term instruments where the
11 interest/dividend is reset weekly or monthly.

12 2. Morgan Stanley participated in the marketing and sale of ARS.

13 3. In certain instances, Morgan Stanley, through its salespeople, advised certain clients
14 that ARS were safe, liquid investments, when in fact auction rate securities had significant liquidity
15 risks associated with them.

16 4. Representatives of Morgan Stanley represented to certain customers of Morgan
17 Stanley that ARS were short-term investments. In fact, because ARS are bonds with long-term
18 maturities, their short-term liquidity was dependent on the successful operation of a bidding
19 process known as a Dutch auction. Certain representatives of Morgan Stanley failed to disclose to
20 certain customers with short-term liquidity needs that they might be unable to sell their ARS if the
21 auction process failed.

22 5. In connection with the sale of ARS, certain Morgan Stanley salespeople told certain
23 investors that ARS were "just like cash" and "liquid with seven days notice."

24 6. Morgan Stanley marketed ARS to investors within a brochure entitled "Money
25 Market Instruments." Within this brochure, ARS are listed under the subsection "Other Short-
26 Term Instruments."

1 7. Since it began participating in the auction rate securities market, Morgan Stanley
2 submitted support bids—purchase orders for the entirety of an auction rate security issue for which
3 it acted as the sole or lead broker. Support bids were Morgan Stanley proprietary orders that would
4 be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When
5 Morgan Stanley purchased auction rate securities through support bids, auction rate securities were
6 then owned by Morgan Stanley and the holdings were recorded on Morgan Stanley's balance sheet.
7 For risk management purposes, Morgan Stanley imposed limits on the amounts of auction rate
8 securities it could hold in inventory.

9 8. Because many investors could not ascertain how much of an auction was filled
10 through Morgan Stanley proprietary trades, they could not determine if auctions at Morgan Stanley
11 were clearing because of normal marketplace demand, or because Morgan Stanley was making up
12 for the lack of demand through support bids. Generally, investors were also not aware that the
13 liquidity of the auction rate securities as to which Morgan Stanley was the managing broker-dealer
14 depended upon Morgan Stanley's continued use of support bids. While Morgan Stanley could track
15 its own inventory as a measure of the supply and demand for its auction rate securities, ordinary
16 investors had no comparable ability to assess the operation of Morgan Stanley's auctions. There
17 was no way for such investors to monitor supply and demand in the market or to assess when
18 broker-dealers might decide to stop supporting the market, thereby causing its collapse.

19 9. Starting in August 2007, the credit crisis and other deteriorating market conditions
20 strained the auction rate securities market. Some institutional investors withdrew from the market,
21 decreasing demand for auction rate securities.

22 10. The resulting market dislocation should have been evident to Morgan Stanley.
23 Morgan Stanley's support bids filled the increasing gap in the demand in its auctions for auction
24 rate securities, sustaining the impression that the demand for auction rate securities had not
25 decreased. As a result, Morgan Stanley's auction rate securities inventory grew significantly,
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1 requiring Morgan Stanley to raise its risk management limits on its auction rate securities
2 inventory.

3 11. From the Fall of 2007 through February of 2008, demand for auction rate securities
4 continued to erode and Morgan Stanley's auction rate securities inventory reached unprecedented
5 levels. Morgan Stanley eventually became aware of the increasing strains in the auction rate
6 securities market, and recognized the potential for widespread market failure. Morgan Stanley
7 never disclosed these increasing risks of owning or purchasing auction rate securities to its
8 customers.

9 12. In February 2008, Morgan Stanley and other firms stopped supporting the auctions.
10 Without the benefit of support bids, the auction rate securities market collapsed, leaving investors
11 who had been led to believe that these securities were cash alternative investments appropriate for
12 managing short-term cash needs, holding long-term or perpetual securities that could not be sold at
13 par value until and if the auctions cleared again.

14 **Failure to Supervise**

15 13. Although ARS are complex products, Morgan Stanley did not provide its sales or
16 marketing staff with the training necessary to adequately explain these products or the mechanics
17 of the auction process to their customers.

18 14. Morgan Stanley did not adequately train all of its brokers and financial advisers
19 regarding the potential illiquidity of ARS, including the fact that Morgan Stanley may stop
20 supporting the market.

21 **II.**

22 **CONCLUSIONS OF LAW**

23 15. The Department has jurisdiction over this matter pursuant to the RIUSA.

24 16. The Department] finds that the above conduct subjects Morgan Stanley to sanctions
25 under RIUSA §7-11-212(8), unethical or dishonest practices and §7-11-212(11), failure to
26 supervise.

1 constitutes Rhode Island's allocated share of the total settlement payment described in the
2 preceding paragraph.

3 7. In the event another state securities regulator determines not to accept Morgan
4 Stanley's settlement offer, the total amount of the payment to the State of Rhode Island shall not be
5 affected.

6 **Requirement to Repurchase ARS from Retail ARS Investors**

7 8. Morgan Stanley shall provide liquidity to Retail ARS Investors by buying-back, at
8 par, in the manner described below, Eligible ARS that were not clearing as of September 30, 2008.

9 9. "Eligible ARS," for the purposes of this Order, shall mean auction rate securities
10 purchased at Morgan Stanley prior to February 13, 2008.

11 10. "Retail ARS Investors," for the purposes of this Order, shall mean:

12 i. Natural persons (including their IRA accounts, testamentary trust and estate
13 accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who
14 purchased Eligible ARS at Morgan Stanley;

15 ii. Charities and nonprofits with Internal Revenue Code Section 501(c)(3)
16 status that purchased Eligible ARS at Morgan Stanley; and

17 iii. Small Businesses that purchased Eligible ARS at Morgan Stanley. For
18 purposes of this provision, "Small Businesses" shall mean Morgan Stanley customers not
19 otherwise covered in paragraph 10(i) and (ii) above that had \$10 million or less in assets in
20 their accounts with Morgan Stanley, net of margin loans, as determined by the customer's
21 aggregate household position(s) at Morgan Stanley as of August 31, 2008, or, if the
22 customer was not a customer of Morgan Stanley as of August 31, 2008, as of the date that
23 the customer terminated its customer relationship with Morgan Stanley. Notwithstanding
24 any other provision, "Small Businesses" does not include broker-dealers or banks acting as
25 conduits for their customers.
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1 11. Morgan Stanley shall offer to purchase, at par plus accrued and unpaid
2 dividends/interest, from Retail ARS Investors their Eligible ARS that were not clearing as of
3 September 30, 2008 (“Buyback Offer”), and explain to such Retail ARS Investors what they must
4 do to accept, in whole or in part, the Buyback Offer. The Buyback Offer shall remain open until at
5 least January 11, 2009 (“Offer Period”). Morgan Stanley may in its sole discretion extend the
6 Offer Period beyond this date.

7 12. Morgan Stanley shall have undertaken its best efforts to identify and provide notice
8 to Retail ARS Investors who invested in Eligible ARS that were not clearing as of September 30,
9 2008, of the relevant terms of this Order by October 20, 2008.

10 13. Retail ARS Investors may accept the Buyback Offer by notifying Morgan Stanley at
11 any time before midnight, Eastern Time, January 11, 2009, or such later date and time as Morgan
12 Stanley may in its sole discretion decide to extend the Offer Period. For Retail ARS Investors who
13 accept the Buyback Offer prior to December 11, 2008, Morgan Stanley shall have purchased their
14 Eligible ARS by December 15, 2008. Morgan Stanley shall have purchased the Eligible ARS of all
15 other Retail ARS Investors who accept the Buyback Offer within the Offer Period, on or before
16 January 16, 2009.

17 14. If at any time between January 12, 2009, and December 31, 2009, a Retail ARS
18 Investor who did not accept the Buyback Offer contacts Morgan Stanley and affirms that he or she
19 did not receive notice of the Buyback Offer prior to January 11, 2009, Morgan Stanley will
20 purchase the Eligible ARS of such investor.

21 15. No later than October 20, 2008, Morgan Stanley shall have established: a) a
22 dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and
23 to respond to questions concerning the terms of this Order; and b) a public Internet page on its
24 corporate Web site(s), with a prominent link to that page appearing on Morgan Stanley’s relevant
25 homepage(s), to provide information concerning the terms of this Order and, via reasonable means,
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1 to respond to questions concerning the terms of this Order. Morgan Stanley shall maintain the
2 telephone assistance line and Internet page through December 31, 2009.

3 **Review of Customer Accounts**

4 16. For a period of two years from the date of this Order, upon request from any firm
5 that is repurchasing auction rate securities, Morgan Stanley shall take reasonable steps to provide
6 notice of that firm's offer to repurchase auction rate securities to Morgan Stanley customers that
7 Morgan Stanley can reasonably identify, that hold such auction rate securities subject to the other
8 firm's repurchase.

9 **Relief for Investors Who Sold Below Par**

10 17. No later than December 11, 2008, Morgan Stanley shall pay any Retail ARS
11 Investor that Morgan Stanley can reasonably identify who sold Eligible ARS below par between
12 February 13, 2008, and August 13, 2008, the difference between par and the price at which the
13 Retail ARS investor sold the Eligible ARS.

14 **Claims for Consequential Damages**

15 18. Notwithstanding this Order, an investor may pursue any claims related to the sale of
16 auction rate securities via any method normally available to the investor. However, if the investor
17 is pursuing claims related exclusively to consequential damages, Morgan Stanley shall provide the
18 investor with the option to proceed in arbitration according to the following provisions:

19 a. The arbitrations will be conducted by a single public arbitrator in accordance
20 with FINRA's special arbitration procedures for claims of consequential damages filed by
21 Retail ARS Investors;

22 b. Morgan Stanley shall pay all applicable FINRA forum and FINRA filing
23 fees;

24 c. Any Morgan Stanley Retail ARS Investors who choose to pursue such
25 claims shall bear the burden of proving that they suffered consequential damages and that
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1 such damages were caused by the investors' inability to access funds consisting of Eligible
2 ARS holdings purchased at Morgan Stanley; and

3 d. Morgan Stanley shall be able to defend itself against such claims; provided,
4 however, that Morgan Stanley shall not contest liability related to the sale of auction rate
5 securities, and provided further that Morgan Stanley shall not be able to use as part of its
6 defense a Morgan Stanley Retail ARS Investor's decision not to borrow money from
7 Morgan Stanley.

8 19. Retail ARS Investors who elect to use the special arbitration process provided for
9 herein shall not be eligible for punitive damages.

10 20. All customers, including but not limited to Retail ARS Investors who avail
11 themselves of the relief provided pursuant to this Order, may pursue any remedies against Morgan
12 Stanley available under the law. However, Eligible Investors that elect to utilize the special
13 arbitration process set forth above are limited to the remedies available in that process and may not
14 bring or pursue a claim against Morgan Stanley or in any case where Morgan Stanley is
15 underwriter relating to Eligible ARS in another forum.

16 **Institutional Investors**

17 21. Morgan Stanley shall endeavor to work with issuers and other interested parties,
18 including regulatory and governmental entities, to expeditiously provide liquidity solutions for
19 institutional investors that purchased auction rate securities not covered by the Retail ARS Investor
20 repurchase provisions delineated above.

21 22. Beginning December 11, 2008, and within 45 days of the end of each quarter
22 thereafter, Morgan Stanley shall submit a written report to a representative specified by NASAA
23 outlining the efforts in which Morgan Stanley has engaged and the results of those efforts with
24 respect to Morgan Stanley institutional investors' holdings in Eligible ARS. Morgan Stanley shall,
25 at the option of the representative specified by NASAA, confer with such representative no less
26 frequently than quarterly to discuss Morgan Stanley's progress. Such quarterly meetings shall

1 continue until no later than December 2009. Following every quarterly meeting, the representative
2 shall advise Morgan Stanley of any concerns and, in response, Morgan Stanley shall detail the
3 steps that Morgan Stanley plans to implement to address such concerns. The reporting or meeting
4 deadlines set forth above may be amended upon Morgan Stanley's request if written permission is
5 received from the representative specified by NASAA.

6 **Relief for Municipal Issuers**

7 23. Morgan Stanley shall promptly refund to municipal issuers refinancing fees the
8 issuers paid to Morgan Stanley for the refinancing of their auction rate securities, where such
9 refinancing occurred between February 11, 2008, and the date of this Order and where Morgan
10 Stanley acted as underwriter for the primary offering of the auction rate securities between August
11 1, 2007, and February 11, 2008. Nothing in this Order precludes the Department from pursuing
12 any other civil action that may arise with regard to auction rate securities other than the marketing
13 and sale of auction rate securities to retail investors.

14 **Additional Considerations**

15 24. Nothing herein shall preclude Rhode Island, its departments, agencies, boards,
16 commissions, authorities, political subdivisions and corporations (collectively, "State Entities"),
17 other than the Department and only to the extent set forth in paragraph 1 above, and the officers,
18 agents or employees of State Entities from asserting any claims, causes of action, or applications
19 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive
20 relief against Morgan Stanley in connection with certain auction rate securities practices at Morgan
21 Stanley.

22 25. This Order shall not disqualify Morgan Stanley or any of its affiliates or current or
23 former employees from any business that they otherwise are qualified or licensed to perform under
24 applicable state law and this Order is not intended to form the basis for any disqualification.

25 26. To the extent applicable, this Order hereby waives any disqualification from relying
26 upon the registration exemptions or registration safe harbor provisions that may be contained in the

1 federal securities laws, the rules and regulations thereunder, the rules and regulations of self
2 regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Order is
3 not intended to form the basis for any such disqualifications. In addition, this Order is not intended
4 to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange
5 Act of 1934.

6 27. This Order and any dispute related thereto shall be construed and enforced in
7 accordance with, and governed by, the laws of the State of Rhode Island without regard to any
8 choice of law principles.

9 28. Evidence of a violation of this Order proven in a court of competent jurisdiction
10 shall constitute prima facie proof of a violation of the RIUSA, in any civil action or proceeding
11 hereafter commenced by the Department against Morgan Stanley.

12 29. Should the Department prove in a court of competent jurisdiction that a material
13 breach of this Order by Morgan Stanley has occurred, Morgan Stanley shall pay to the Department
14 the cost, if any, of such determination and of enforcing this Order including without limitation
15 legal fees, expenses, and court costs.

16 30. If Morgan Stanley fails to make the payment specified in paragraph 6, the
17 Department may, at its sole discretion, pursue any legal remedies, including but not limited to
18 initiating an action to enforce the Order, revoking Morgan Stanley's registration within the state, or
19 terminating this Order.

20 31. If in any proceeding, after notice and opportunity for a hearing, a court of competent
21 jurisdiction, including an administrative proceeding by a state securities administrator, finds that
22 there was a material breach of this Order, the Department, at its sole discretion, may terminate the
23 Order. If Morgan Stanley defaults on any other obligation under this Order, the Department may,
24 at its sole discretion, pursue legal remedies to enforce the Order or pursue an administrative action,
25 including but not limited an action to revoke Morgan Stanley's registration within the state. Morgan
26 Stanley agrees that any statute of limitations or other time related defenses applicable to the subject

1 of the Order and any claims arising from or relating thereto are tolled from and after the date of this
2 Order. In the event of such termination, Morgan Stanley expressly agrees and acknowledges that
3 this Order shall in no way bar or otherwise preclude the Department from commencing, conducting
4 or prosecuting any investigation, action, or proceeding, however denominated, related to the Order,
5 against Morgan Stanley, or from using in any way any statements, documents or other materials
6 produced or provided by Morgan Stanley prior to or after the date of this Order, including, without
7 limitation, such statements, documents or other materials, if any, provided for purposes of
8 settlement negotiations, except as may otherwise be provided in a written agreement with the
9 Department.

10 32. Morgan Stanley shall cooperate fully and promptly with the Department and shall
11 use its best efforts to ensure that all the current and former officers, directors, trustees, agents,
12 members, partners, and employees of Morgan Stanley (and of any of Morgan Stanley's parent
13 companies, subsidiaries, or affiliates) cooperate fully and promptly with the Department in any
14 pending or subsequently initiated investigation, litigation, or other proceeding relating to auction
15 rate securities and/or the subject matter of the Order. Such cooperation shall include, without
16 limitation, and on a best efforts basis:

17 a. Production, voluntarily and without service of subpoena, upon the request of
18 the Department, of all documents or other tangible evidence requested by the Department
19 and any compilations or summaries of information or data that the Department requests that
20 Morgan Stanley (or the Morgan Stanley's parent companies, subsidiaries, or affiliates)
21 prepare, except to the extent such production would require the disclosure of information
22 protected by the attorney-client and/or work product privileges;

23 b. Without the necessity of a subpoena, having the current (and making all
24 reasonable efforts to cause the former) officers, directors, trustees, agents, members,
25 partners, and employees of Morgan Stanley (and of any of the Morgan Stanley's parent
26 companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in

1 Rhode Island or elsewhere at which the presence of any such persons is requested by the
2 Department and having such current (and making all reasonable efforts to cause the former)
3 officers, directors, trustees, agents, members, partners, and employees answer any and all
4 inquiries that may be put by the Department to any of them at any proceedings or
5 otherwise, except to the extent such production would require the disclosure of information
6 protected by the attorney-client and/or work product privileges. "Proceedings" include, but
7 are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury
8 proceedings, or other proceedings;

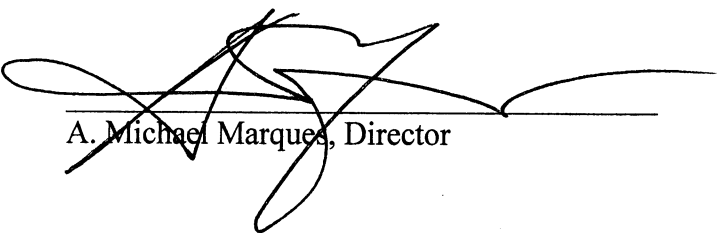
9 c. Fully, fairly, and truthfully disclosing all information and producing all
10 records and other evidence in its possession, custody, or control (or the possession, custody,
11 or control of the Morgan Stanley parent companies, subsidiaries, or affiliates) relevant to all
12 inquiries made by the Department concerning the subject matter of the Order, except to the
13 extent such inquiries call for the disclosure of information protected by the attorney-client
14 and/or work product privileges; and

15 d. Making outside counsel reasonably available to provide comprehensive
16 presentations concerning any internal investigation relating to all matters in the Order and
17 to answer questions, except to the extent such presentations or questions call for the
18 disclosure of information protected by the attorney-client and/or work product privileges.

19 33. In the event Morgan Stanley fails to comply with paragraph 32 of the Order, the
20 Department shall be entitled to specific performance, in addition to any other available remedies.

21 Dated this 30th day of November 2009.

22 BY ORDER OF THE DIRECTOR
23 DEPARTMENT OF BUSINESS REGULATION

24 
25 A. Michael Marques, Director

26 Order No. 09-263

1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY MORGAN STANLEY & CO. INCORPORATED**

2 Morgan Stanley & Co. Incorporated ("Morgan Stanley") hereby acknowledges that it has
3 been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its
4 right to a hearing and appeal in this matter, and has waived the same.

5 Morgan Stanley admits the jurisdiction of the Department, neither admits nor denies the
6 Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order
7 by the Department as settlement of the issues contained in this Order.

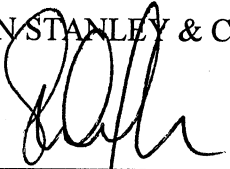
8 Morgan Stanley agrees that it shall not claim, assert, or apply for a tax deduction or tax
9 credit with regard to any state, federal or local tax for any administrative monetary penalty that
10 Morgan Stanley shall pay pursuant to this Order.

11 Morgan Stanley states that no promise of any kind or nature whatsoever was made to it to
12 induce it to enter into this Order and that it has entered into this Order voluntarily.

13 S. Anthony Taggart represents that he/she is Executive Director of Morgan
14 Stanley and that, as such, has been authorized by Morgan Stanley to enter into this Order for and on
15 behalf of Morgan Stanley.

16 Dated this 12th day of November, 2009.

17 MORGAN STANLEY & CO. INCORPORATED

18 
19 By: _____
20 Title: Executive Director

21 STATE OF New York)
22 County of New York)

23 SUBSCRIBED AND SWORN TO before me this 12th day of November, 2009.

24 Yoko Nitta
25 Notary Public

26 My commission expires:

YOKO NITTA
Notary Public, State Of New York
No. 01N16060999 Queens
Qualified In New York County
Commission Expires July 9, 20 11