



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

DIVISION OF
CORPORATION FINANCE

January 13, 2017

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

**Re: In the Matter of Morgan Stanley Smith Barney LLC
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D
Exchange Act Release No. 79794, January 13, 2017
Investment Advisers Act Release No. 4607, January 13, 2017
Administrative Proceeding File No. 3-17773**

Dear Mr. Buhlman:

This letter responds to your letter dated December 30, 2016 ("Waiver Letter"), written on behalf of Morgan Stanley Smith Barney LLC ("MSSB"), and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that will arise as to MSSB under Rule 506 of Regulation D under the Securities Act by virtue of the Commission's order entered January 13, 2017 in the Matter of Morgan Stanley Smith Barney LLC, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Release No. 79794 (the "Order").

Based on the facts and representations in the Waiver Letter and assuming MSSB complies with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that MSSB has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to MSSB under Rule 506 of Regulation D by reason of the entry of the Order is granted on the condition that it fully complies with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

A handwritten signature in cursive script that reads "Sebastian Gomez Abero".

Sebastian Gomez Abero
Chief, Office of Small Business Policy
Division of Corporation Finance



SIDLEY AUSTIN LLP
 60 STATE STREET
 36TH FLOOR
 BOSTON, MA 02109
 +1 617 223 0300
 +1 617 223 0301 FAX

rbuhlman@sidley.com
 (617) 223 0333

BEIJING	HONG KONG	SAN FRANCISCO
BOSTON	HOUSTON	SHANGHAI
BRUSSELS	LONDON	SINGAPORE
CENTURY CITY	LOS ANGELES	SYDNEY
CHICAGO	MUNICH	TOKYO
DALLAS	NEW YORK	WASHINGTON, D.C.
GENEVA	PALO ALTO	

FOUNDED 1866

December 30, 2016

By Email and Overnight Courier

Sebastian Gomez Abero, Esq.
 Chief, Office of Small Business Policy
 Division of Corporation Finance
 Securities and Exchange Commission
 100 F Street, NE
 Washington, DC 20549

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

Dear Mr. Gomez Abero:

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

On behalf of MSSB, we hereby respectfully request a waiver of any disqualification that will arise pursuant to Rule 506 of Regulation D under the Securities Act of 1933 (the “Securities Act”) with respect to MSSB or any of its affiliates as a result of the entry of the Order.

BACKGROUND

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

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

Sidley Austin (NY) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

Sebastian Gomez Abero, Esq.
December 30, 2016
Page 2

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

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

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

DISCUSSION

MSSB understands that, absent a waiver, the entry of the Order will disqualify it, affiliated entities, and certain other issuers from relying on Rule 506 of Regulation D under the Securities Act. MSSB is concerned that, if it or its affiliates are deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer, or promoter of securities, or if it is deemed to be acting in any other capacity described in Rule 506 for purposes of Rule 506(d)(1), then MSSB, its affiliates, and third parties that engage MSSB and its affiliates to act in (or otherwise involve MSSB in) one of the listed capacities in connection with their securities offerings would be prohibited from relying on Rule 506.

The Commission has the authority to waive this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.¹ MSSB requests that the Commission do so here, on the following grounds:

1. *The Violations in the Order Do Not Arise Out of the Offer or Sale of Securities*

The Order arises solely out of the duties of a registered investment adviser, not the offer or sale of securities. Specifically, the conduct described in the Order arises out of inadvertent errors by MSSB in advisory client fee billing, custody examinations and books and records and

¹ See Rule 506(d)(2)(i).

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 3

policies and procedures violations, which violate provisions of the Advisers Act. The Order will find that certain advisory clients were inadvertently overcharged - primarily due to coding and other errors in billing systems and processes - and that MSSB violated the custody examination provisions of the Advisers Act when it failed, in 2011, to engage an accountant to perform a custody examination over legacy assets of the Smith Barney Division of Citigroup (“Citi Smith Barney”) and, in 2012, provided an over-inclusive account population which caused an insufficient number of advisory accounts to be sampled by MSSB’s independent public accountant.² The Order will also find that MSSB violated the books and records provisions of the Advisers Act with respect to maintenance of client contracts. The Order will find that MSSB did not have adequate policies and procedures in place to prevent these violations of the Advisers Act.

2. *The Misconduct Does Not Involve Violations of Section 5 of the Securities Act or Scierter-Based Statutory or Regulatory Provisions and Does Not Involve a Criminal Proceeding*

The violations in the Order are not criminal in nature and do not involve scierter-based fraud or violations of Section 5 of the Securities Act.

3. *MSSB Has Taken Remedial Steps and Will Take Additional Steps*

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

- A. Fee Billing Remediation

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

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

² On June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. (“GWM”) and Citi Smith Barney, respectively, into MSSB. Morgan Stanley now owns, through its subsidiaries, 100% of MSSB.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 4

In May 2014, MSSB hired a new head of its advisory operations department, which handles billing for advisory accounts and other operation functions. The new head of the advisory operations department designed and implemented enhancements to MSSB's account enrollment and fee testing. Since 2015, MSSB has implemented several enhancements designed to further strengthen its fee-billing policies and procedures. For example, MSSB has modified the method by which it selects accounts for periodic fee-testing. To increase the likelihood of detecting errors, MSSB now targets accounts for testing that have undergone certain changes that may disrupt fee calculations ("Scenario Testing"). The scenarios tested include: multiple capital change fees (deposits and withdrawals), multiple allocation changes, manager changes, investment style changes, mid period rate changes, financial advisor reassignments, and account movements among branches. MSSB's fee-testing procedures also now include a step to confirm that the fee rate in MSSB's billing system is consistent with the fee rate in the client's account documentation.

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

As of August 31, 2016, MSSB also has implemented a number of additional enhancements. First, MSSB has created a centralized team within the advisory operations department that has primary responsibility for the review, investigation, remediation, tracking, and reporting of fee-billing errors in advisory accounts. The team will review and investigate fee-billing errors reported from various sources and ensure timely remediation of all impacted accounts. Second, MSSB has introduced the following further enhancements to its periodic fee-testing process: (a) accounts for fee testing are selected by risk management, not the team conducting the testing; (b) in selecting accounts, risk management takes into account, among other factors, geographic diversity of accounts; (c) the number of accounts tested per cycle has been increased to no fewer than 1200 accounts tested for billing cycle A and no fewer than 600 accounts tested for billing cycles B and C, which doubles the number of accounts tested in 2014;

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 5

(d) Scenario Testing has been expanded such that over 90% of accounts tested will be selected by scenario; and (e) the advisory fee rate check against client documentation has been expanded to include accounts that are reviewed by the business units. These enhancements are designed to streamline and strengthen MSSB's already strong procedures.

B. Custody Examination Remediation

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

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

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

- Fee billing:
 - For a period of three years from the date of the Order ("Undertaking Period"), research and remediate the full scope and impact of all fee overbilling errors discovered in advisory accounts within six months of the date of discovery and make a report to the SEC staff if it is unable to remediate the error within six months and remediate the issues as promptly as possible;
 - During the Undertaking Period, provide a quarterly written report to the SEC staff concerning fee overbilling errors discovered in advisory accounts and that affect more than one unrelated advisory account; and
 - Provide a certification to the SEC staff at the end of the Undertaking Period containing the information detailed in the Order.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 6

- Notice to advisory clients:
 - Within ten days of the Order, prominently disclose on MSSB's website a summary of the Order and hyperlink to the Order. MSSB has agreed to maintain the posts for 12 months; and
 - For a period of one year from the date of the Order, to the extent that MSSB is required to deliver a brochure or a summary of material changes to existing or prospective clients pursuant to Rule 204-3 under the Advisers Act, include in the brochure or summary of material changes, notice of the entry of the Order and a website address where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order, which MSSB will provide upon request.

- Books and records:
 - Within six months of the Order, review certain open advisory accounts and determine whether MSSB has a copy of a signed advisory agreement for such accounts;
 - Within 12 months of the Order, for certain open advisory accounts for which MSSB cannot locate a signed advisory agreement, and for all open advisory accounts where MSSB has been unable to locate a signed advisory agreement during its periodic fee testing procedures, to: (i) disclose such fact to the client in writing; and (ii) if the client has not retained a copy of the signed advisory agreement, enter into a new advisory agreement with the client as described in the Order;
 - To enter into a new advisory agreement with a client, MSSB agrees: (i) to use all reasonable means (which shall include, without limitation, telephone calls) to contact the client and have the client enter into a new advisory agreement; and (ii) for any client who has not entered into a new advisory agreement as enumerated in the Order, to send final notice to that client of the need for the client to enter into a new advisory agreement, close the account, or be subject to the terms of the current standard advisory agreement, and after 30 additional days notify the client that the account is now subject to the terms of the current standard advisory agreement. For all clients who enter into a new advisory agreement consistent with the terms of the Order, the entry into a new advisory agreement will have no impact on the advisory fee rate charged to the account;

Sebastian Gomez Abero, Esq.
December 30, 2016
Page 7

- Within 12 months of the Order to: (i) conduct a study to determine whether it has unilaterally amended client advisory agreements that provide for amendment through mutual assent; (ii) provide the results of such study to the staff; and (iii) in the event MSSB determines that it has unilaterally amended client advisory agreements that provide for amendment through mutual assent, notify clients who have been impacted; and
- Within 14 months of the Order, to report to the staff all remedial efforts it has made with respect to the books and records undertakings enumerated in the Order.

MSSB thus has taken and will continue to take concrete steps to remediate the conduct at issue in the Order. The steps are designed to enhance MSSB's overall compliance program going forward. Accordingly, it is not necessary to disqualify MSSB and its affiliates from relying on Rule 506 in connection with an offering.

4. *No Individuals Associated with MSSB Were Charged With Any Violations in Connection with the Order*

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

5. *Nature and Duration of the Misconduct*

A. Fee Billing

The fee billing issues in the Order involve instances in which MSSB inadvertently overbilled its advisory clients due to coding and other errors in its billing systems and processes. From 2011 through 2016, MSSB remediated 36 categories of fee-billing issues that occurred at MSSB and legacy entities from 2002 to 2016.³ Six of the error categories, which account for 58% of the fees overbilled, originated with Citi Smith Barney. Of the remaining 30 categories of errors that originated with Morgan Stanley or MSSB, 19 were identified through MSSB's internal controls and procedures, two were discovered by the Commission's examination staff during a 2013-2014 on-site inspection, and nine came to MSSB's attention through a client or financial

³ From 2009 through 2015, MSSB inadvertently overbilled 15,152 advisory client accounts of Citi Smith Barney and from 2002 through 2009 and 2009 through 2016, MSSB's predecessor, GWM, and MSSB, respectively, inadvertently overbilled 134,240 legacy GWM and MSSB advisory client accounts.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 8

advisor inquiry. MSSB fully researched each fee billing error to identify the accounts and the amounts by which they were overbilled, and fully remediated all impacted clients. The fee billing errors are the sole basis for the charges related to MSSB's fee-billing practices.

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

B. MSSB's Custody Examinations

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

C. MSSB's Retention of Advisory Agreements

The books and records violations in the Order relate to the retention of original advisory account agreements. In connection with an OCIE examination, MSSB became aware that it could not locate advisory agreements associated with certain legacy Citi Smith Barney accounts. Based on a sample review conducted at the staff's request in 2015, MSSB determined that it was unable to locate copies of certain advisory agreements. MSSB was unable to locate signed client contracts for approximately 17% of that sample, which should have been maintained under the Advisers Act and rules thereunder, and an additional 8% of that sample of accounts, which should have been maintained under MSSB's written document retention policies.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 9

5. *Disqualification Would Have a Material and Disproportionate Impact on MSSB and its Clients*

MSSB's inability to act as a placement agent or compensated solicitor for Rule 506 offerings would have a significant adverse impact on clients and would be extremely damaging to MSSB, its affiliates, including Morgan Stanley Investment Management ("MSIM"), on funds sponsored, administered and/or advised by MSSB affiliates, funds managed by third parties (collectively, the "Funds"), and issuers of Private Placements (defined below) that have retained, or in the future may retain MSSB in connection with transactions that rely on exemptions under Rule 506(b) or (c).

MSSB currently acts, and in the future desires to continue to act, as (a) a "placement agent" for private placements of securities offered by affiliate and third-party issuers ("Private Placements"), and (b) a compensated solicitor pursuant to Fund selling agreements.

A. Effects of Disqualification on MSSB Alternative Investments Business

The alternative investments business at MSSB consists of the marketing and distribution of private funds such as exchange funds, managed futures, single manager hedge funds, fund of funds, private equity funds and real estate funds. The MSSB alternative investments business has approximately \$60 billion assets under management ("AUM") and the Rule 506 business constitutes nearly 90% of the AUM. The MSSB alternative investments business employs approximately 50 dedicated professionals and dozens of additional "service provider" employees. If MSSB was disqualified from acting as a compensated solicitor or placement agent for offerings relying on Rule 506, many, if not all, such professionals would lose their jobs and MSSB may be forced to exit its alternative investments business.

The alternative investments business continues to grow year over year and MSSB has increased the number of funds added to its platform each year since 2013. MSSB currently acts as a compensated solicitor and/or placement agent for approximately 235 open funds and works with over 500 asset management partners. For the period January 2012 to November 2016, MSSB offered approximately 500 unique funds issued in reliance on Rule 506, and such Funds raised approximately \$38 billion from MSSB investors.⁴ MSSB also offers over 50 new funds, on average, each year. As of November 2016, MSSB is working on approximately 30 funds for which it expects to act as a compensated solicitor within the next six months.

Since 2012, MSSB has also served as placement agent, and provided access to alternative investments for wealth management clients such as individuals, trusts, family offices, pension

⁴ In addition to the 500 unique Funds issued in reliance on Rule 506, MSSB may have also offered for sale other Funds relying on Rule 506 that did not generate any sales.

Sebastian Gomez Abero, Esq.
December 30, 2016
Page 10

funds, endowments and non-taxable retirement plans, in debt and equity offerings that raised approximately \$44 billion from MSSB accounts. As placement agent, MSSB works cooperatively with issuers to structure the Private Placements and the majority of such issuers prefer to offer their securities in reliance on Rule 506 rather than Section 4(a)(2) of the Securities Act. Reliance on Rule 506 is generally preferred over Section 4(a)(2) of the Securities Act due to the clearly delineated exemption criteria outlined in Rule 506 and related clarity regarding the universe of permissible clients in a offering made in reliance on Rule 506.

MSSB is also the sole distributor for its wealth management proprietary feeder fund business for wealth management clients. Each of the feeder funds is formed solely for the purpose of investing in an affiliate or third party managed private fund and relies on Rule 506. For certain of the feeder funds, such funds cannot conduct an offering under Section 4(a)(2) of the Securities Act given that the underlying funds often elect to rely on Regulation D and are also unable to utilize a distributor that is unable to participate in an offering made in reliance on Regulation D. MSSB clients are the sole investors in the feeder funds. If MSSB was disqualified pursuant to Rule 506, the clients invested in the feeder funds would be negatively and disproportionately impacted.

Fees to MSSB from fund sales, including placement agent fees, are approximately \$1.9 billion from January 2012 to November 2016, and cumulative fees associated with Fund sales that were issued in reliance on Rule 506 are approximately \$1.6 billion. Fees associated with Fund sales that were issued in reliance on Rule 506 constitute approximately 80% of the alternative investments business and approximately 2% of the total Morgan Stanley Wealth Management business.

B. Effect of Disqualification on MSSB Clients

As referenced above, alternative investments offered pursuant to Rule 506 are an integral part of MSSB's product offerings to clients. Over 9,500 MSSB financial advisors have clients holding at least one alternative investment position in their portfolios. Incorporating alternative investments into a traditional portfolio can help clients reduce overall volatility while increasing portfolio diversification, with a typically lower correlation to the market movements of traditional investments such as stocks and bonds. MSSB offers access to proprietary, affiliated and third-party Funds to approximately 360,000 MSSB households with a combined net worth of approximately \$1.7 trillion.⁵ Eligible MSSB clients currently hold approximately 170,000 positions across approximately 100,000 accounts in Funds sold by MSSB. As demonstrated by the number of high net worth clients investing in Funds and Private Placements through their

⁵ MSSB offers Private Placements and Funds to its qualified high net worth and institutional clients. The clients to whom MSSB offers the Funds are all accredited investors.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 11

MSSB accounts, access to such products is very important to high net worth investors and allows such investors the ability to diversify their holdings in unique ways.

As the needs of such eligible investors and market conditions change, MSSB needs to be able to offer eligible investors new products that might more closely suit their investment objectives and current needs. If MSSB was disqualified from offering such Funds and Private Placements to its clients, clients would lose access to the types of Funds they may have accessed in the past or wish to access in the future. As a consequence, such clients may not be able to invest their portfolios as they and/or their financial advisors may see fit and, as such, may need to open new accounts at other broker-dealers or move their accounts to other brokerage firms that can offer such products to them.

Moving accounts to other brokerage firms can be very burdensome and harmful to clients because clients may hold positions that may not be easily transferred to other brokerage firms. Therefore, absent a waiver, clients would be forced to choose between maintaining multiple brokerage accounts, which many clients, especially high net worth clients, do not want to do for a variety of reasons, or lose access to products that would otherwise be in their best interests to meet their investment objectives and goals. For example, those clients invested in MSSB feeder funds may not have the ability to hold their positions outside of Morgan Stanley.

Finally, there would be commercial harm to MSSB if such clients (and their financial advisors) moved to other brokerage firms.

C. Effects of Disqualification on MSIM and MSIM Funds

MSSB is the primary distributor for MSIM funds and is the main retail channel for MSIM funds. MSSB client alternative fund assets currently account for approximately \$14 billion of MSIM's AUM. The majority of the MSIM alternative funds offered by MSSB are sold in reliance on the exemption under Rule 506.

If MSSB was disqualified pursuant to Rule 506, it would be unable to act as a compensated solicitor of any funds offered pursuant to Rule 506 and, therefore, the MSIM alternative funds would be disqualified from retaining MSSB as its compensated solicitor in connection with an offering made in reliance on Rule 506. Since MSSB is the main retail channel for the MSIM alternative funds, such funds would lose access to most of their retail investors, which represent a significant number of their investors. Currently, approximately 45,000 unique MSSB accounts hold investments in MSIM funds.⁶ Although MSSB would technically be permitted to act as a compensated solicitor of funds offered in reliance on Section 4(a)(2) of the Securities Act, the MSIM alternative funds would not likely be willing to offer

⁶ Please note that each account may hold positions in more than one MSIM fund.

Sebastian Gomez Abero, Esq.

December 30, 2016

Page 12

their securities pursuant to Section 4(a)(2) due to the restrictions related to such offerings. MSIM's inability to use MSSB as its compensated solicitor would be detrimental to MSIM and the MSIM alternative funds.

6. *Provision of Written Description of Administrative Order*

If this requested waiver is granted, until MSSB provides all of the certifications to the Commission staff described above and detailed in the Order, MSSB agrees to furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

REQUEST FOR WAIVER

In light of the nature of the violations in the Order, the enforcement remedies that already will be obtained by entry of the Order, the remedial measures MSSB has taken and will take, and the fact that the disqualification would have a material and disproportionate negative impact on MSSB's Rule 506 business, MSSB clients and MSSB affiliates, MSSB respectfully submits that it has shown good cause that relief from the Rule 506 disqualification should be granted.

Accordingly, we respectfully urge the Division, on behalf of the Commission, or the Commission, pursuant to Rule 506(d)(2)(ii), to waive the disqualification provisions in Rule 506 under the Securities Act to the extent they may be applicable to MSSB and its affiliates as a result of the entry of the Order.⁷

⁷ The Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances: *See In the Matter of Pacific Investment Management Company LLC* (Dec. 1, 2016); *In the Matter of Moloney Securities Co., Inc., et al.* (Sept. 30, 2016); *In the Matter of Feltl & Company, Inc.* (June 21, 2016); *In the Matter of Royal Alliance Associates, Inc., et al.* (Mar. 14, 2016); *In the Matter of Barclays Capital Inc.*, Rel. No. 10011 (Jan. 31, 2016); *In the Matter of National Asset Management, Inc.* (Oct. 26, 2015); *In the Matter of Citigroup Global Markets, Inc.*, Rel. No. 9895 (Aug. 19, 2015); *Guggenheim Partners Investment Management, LLC* (Aug. 5, 2015); *Merrill Lynch, Pierce, Fenner & Smith and Merrill Lynch Professional Clearing Corp.* (June 1, 2015); *BlackRock Advisors, LLC* (Apr. 20, 2015); *H.D. Vest Investment Securities, Inc.* (Mar. 4, 2015); *Barclays Capital Inc.*, Rel. No. 33-9651 (Sept. 23, 2014); *Wells Fargo Advisers, LLC*, Rel. No. 33-9649 (Sept. 22, 2014); *Dominick & Dominick LLC*, Release No. 33-9619 (July 28, 2014); *Jefferies LLC*, (Mar. 12, 2014); *Credit Suisse Group AG* (Feb. 21, 2014); *Instinet, LLC* (Dec. 26, 2013). MSSB is not requesting waivers of the disqualifications from relying on Regulation A or Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. MSSB understands that it may request such waivers in a separate request if circumstances change.

Sebastian Gomez Abero, Esq.
December 30, 2016
Page 13

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Robert A. Buhlman" followed by a stylized monogram "RAB".

Robert A. Buhlman