

brought by the Commission.³ The Commission alleged in the complaint ("Complaint") that MS&Co. violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in conduct involving conflicts of interest between research analysts in MS&Co.'s research department ("Research Department") and MS&Co.'s investment banking business (the "Investment Banking Department"). The Federal Injunction enjoined MS&Co. directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, MS&Co. consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by MS&Co. to adopt and implement policies and procedures relating to certain research activities. Applicants state that MS&Co. expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain State and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

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 UIT 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 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 further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

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 the 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 standard 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 the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.⁴ While the Applicants' portfolio managers had access to research materials issued by the Research Department, there is no indication that the portfolio managers relied on such research more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.⁵

⁴ The Complaint refers to general practices regarding the relationship between the research and investment banking departments of MS&Co. It is possible that one or more current or former officers or employees of Applicants, who is or was engaged in the provision of investment advisory, principal underwriter or depositor services to the Funds was at some time involved in investment banking or research activities.

⁵ Applicants state that they have acted as investment adviser, principal underwriter, or

Although some of the Funds held securities in their portfolios at the time that MS&Co. issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, Morgan Stanley has adopted policies regarding information barriers (the "Policies"). The Policies, which apply to each of the Applicants and which were in effect at the time of the conduct described in the Complaint, are designed to separate and maintain information barriers between investment management operations and certain other Morgan Stanley businesses, such as research analysts.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.⁶ The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of MS&Co. previously have received exemptions under section 9(c) as the result of conduct that triggered

depositor to certain Funds whose portfolio securities were selected based primarily on a list of recommended securities compiled by the Research Department.

⁶ Applicants state that they will advise the Boards of any State Injunctions that are issued. With respect to the Funds discussed in footnote 5 that are UITs, Applicants state that they will provide written notification to the trustee for each of these UITs concerning the Final Judgment, any impact on the UITs, and this application, and will provide any other related information that may be requested by the trustee.

³ *Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated*, 03 Civ. 2948 (WHP) (S.D.N.Y., filed April 28, 2003).