

**Disciplinary Panel
American Stock Exchange LLC**

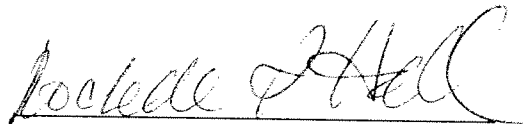
IN THE MATTER
OF
MORGAN STANLEY & CO., INC.

Case No. 05-185

Hearing Officer – RSH

NOTICE OF DECISION

Enclosed is a copy of the decision of the Disciplinary Panel in this disciplinary proceeding, dated March 13, 2007 (“Decision”). Under Article V, Section 2 of the Exchange Constitution, this Decision will become the final decision of the Exchange 10 days after service of the Decision upon you unless the Amex Adjudicatory Council calls the Decision for review. Pursuant to Exchange Disciplinary Rule 12, the Disciplinary Panel has decided that its Decision shall be publicized as provided therein. However, no publicity release shall be made until the Decision becomes final.


Rochelle S. Hall, Chair

Dated: March 13, 2007

Copies to: Morgan Stanley & Co., Inc. *(via overnight courier and first class mail)*
Joyce Tavoulaareas, Esq. *(via facsimile and first class mail)*
Jennifer D. Kim, Esq. *(electronically and via first class mail)*
Arlene Collins-Day *(electronically and via first class mail)*

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
MORGAN STANLEY & CO., INC.

Case Nos. 05-185
Hearing Officer – RSH

DECISION

March 13, 2007

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Article V, Section 4(h) of the Exchange Constitution and Exchange Rule 320, as stipulated, and as a penalty imposed a censure and a \$10,000 fine.

I. Introduction

The American Stock Exchange, LLC (“Exchange”) instituted a formal disciplinary proceeding against Morgan Stanley & Co., Inc. (“Morgan Stanley” or the “Firm”), a Regular Member Organization of the Exchange. The Disciplinary Panel Chair (“Chair”), presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on February 1, 2007, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”), which is attached as Exhibit A. The Exchange and Morgan Stanley entered into the Stipulation for the purpose of settling this proceeding and concluding all disciplinary actions by the Exchange against Morgan Stanley based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Morgan Stanley, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Chair has determined to accept the facts for purposes of this Decision, and they are incorporated herein.

III. Violations

Based upon the stipulated facts, the Chair concludes that Morgan Stanley:

(1) violated Article V, Section 4(h) of the Exchange Constitution between November 2003 and February 2004 by failing to comply with the affirmative determination requirements articulated in Amex Information Circulars 90-25 and 98-1135 prior to effecting 10 short sales for the firm's proprietary or customer accounts; and

(2) violated Exchange Rule 320 by failing to ensure that it developed, maintained and enforced reasonable written supervisory policies and procedures regarding compliance with the requirement that it make arrangements to either borrow the necessary stock or obtain other assurances that delivery can be made on the settlement date prior to effecting short sales for Firm proprietary or customer accounts.

IV. Penalties and Publicity

The Stipulation proposes that the Chair impose on Morgan Stanley a censure and a \$10,000 fine.

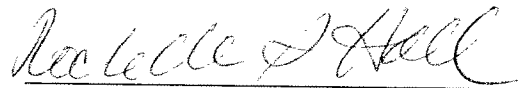
After considering the stipulated facts and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalty is appropriate under the facts and circumstances of this case, and therefore it will be imposed. The Chair further finds that the results of this disciplinary

proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.¹

V. Conclusion

The Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Morgan Stanley & Co., Inc. a censure and a \$10,000 fine.

FOR THE DISCIPLINARY PANEL



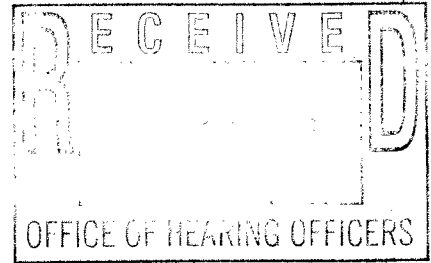
Rochelle S. Hall, Chair

Copies to: Morgan Stanley & Co., Inc. *(via overnight courier and first class mail)*
Joyce Tavoulareas, Esq. *(via facsimile and first class mail)*
Jennifer D. Kim, Esq. *(electronically and via first class mail)*
Arlene Collins-Day *(electronically and via first class mail)*

¹ Rule 12 exempts from publicity those cases in which the Panel finds that the offense “related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” That exemption does not apply to the facts of this case.

EXHIBIT A

**Disciplinary Panel
American Stock Exchange LLC**



IN THE MATTER
OF
MORGAN STANLEY & CO. INC.

**STIPULATION OF FACTS
AND CONSENT TO PENALTY**

Case No.: 05-185

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange") against Morgan Stanley & Co. Inc. ("Morgan Stanley" or the "Firm"), a Regular Member Organization (CRD# 8209) of the Exchange. This Stipulation of Facts and Consent to Penalty ("Stipulation") is entered into with Morgan Stanley pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Morgan Stanley based upon or arising out of the facts hereinafter stipulated. Morgan Stanley, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Constitution, Rules and federal securities laws, and the imposition of the penalties hereinafter provided. Morgan Stanley understands that this settlement is subject to approval by an Exchange Disciplinary Panel and can be the subject of review by the Amex Adjudicatory Council ("AAC") and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Morgan Stanley understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of the Firm's disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

1.0 During all relevant periods herein, Morgan Stanley was a Regular Member Organization of the Exchange.

1.1 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that:

A member, member organization or approved person who or which shall be adjudged guilty in a proceeding under this Article of a violation of the Constitution of the Exchange, of a violation of a rule adopted pursuant to the Constitution, of a violation of a resolution of the Board regulating the conduct or business of members or member organizations, or of conduct or proceeding inconsistent with just and equitable principles of trade, may, if a member or member organization, be suspended or expelled from membership or, if an approved person have his approval withdrawn, unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.

1.2 During all relevant periods herein, Amex Information Circular #90-25 provided in relevant part that it is:

Exchange policy to require that, prior to effecting a short sale for either a proprietary or customer account, member organizations must make arrangements to either borrow the necessary stock or obtain other assurances that delivery can be made on settlement date.

1.3 During all relevant periods herein, Amex Information Circular #98-1135 provided in relevant part:

It is the responsibility of each member when accepting an order to sell short directly from a non-member broker dealer, non-member correspondent, or customer to first obtain assurances that the appropriate borrowing arrangements have been made.

1.4 During all relevant periods herein, Exchange Rule 320(b) provided that:

Each office, department or business activity of a member or member organization (including foreign incorporated branch offices) shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and

responsibility. The person in charge of a group of employees shall reasonably discharge his duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer including compliance with securities laws and regulations.

OVERVIEW

2.0 As is set forth in the following paragraphs, the Market Surveillance Department (“MSD”) of the Exchange conducted several routine reviews of Morgan Stanley to determine its compliance with the requirement that it make arrangements to either borrow the necessary stock or obtain other assurances that delivery can be made on settlement date prior to effecting short sales for Firm proprietary or customer accounts as required by the above-cited Exchange Rules and Circulars. MSD initially reviewed Morgan Stanley’s short sale activity from April 2003 through May 2003 and determined that the Firm did not fully comply with affirmative determination requirements for customer accounts during this time period. As a consequence of the foregoing review, the Exchange issued a warning letter on November 17, 2003. Two subsequent routine reviews of Morgan Stanley’s compliance with affirmative determination requirements conducted from October 2003 through February 2004 revealed further violations.

Background

3.0 Pursuant to a routine review that was concluded in November 2003, the Market Surveillance Department (“MSD”) of the Exchange detected a problem with Morgan Stanley’s affirmative determination requirements during the period April 2003 through May 2003, in that there was a significant increase in the total short position reported in the common stock of ABC Corp. (“ABC”) between the April

15, 2003 and May 15, 2003 settlement dates.¹ Accordingly, MSD contacted Morgan Stanley to request information demonstrating the Firm's compliance with affirmative determination requirements as to ABC shares. After obtaining the requested information, MSD learned that Morgan Stanley did not fully comply with affirmative determination requirements for customer accounts during this period.

- 3.1 Based on MSD's review and findings, the Exchange issued a warning letter to Morgan Stanley on November 17, 2003, directing that action be taken to address the situation and admonishing the Firm that any future infractions involving similar matters could result in more stringent action taken by the Exchange.
- 3.2 On December 17, 2003, Morgan Stanley forwarded to the Exchange copies of the Firm's revised affirmative determination locate procedures dated December 2003 along with the Firm's 2001 Compliance Notice with respect to equity short sale locate procedures that required that, in connection with an equity short sale, prior arrangements be made to borrow the stock, or an affirmative determination be made that the customer has the securities available so that delivery of shares can occur on settlement day.

Affirmative Determination Violations (November 2003 – December 2003)

- 4.0 In order to assess the Firm's compliance with its revised locate procedures and Compliance Notice, MSD initiated a review of short sale trading activity of the common stock of DEF, Inc. ("DEF") in October 2003 and continued its surveillance through December 2003.

¹ Settlement date is defined as the remittance of money by the buyer and the delivery of stock by the seller and is calculated as Trade date ("T") + three business days.

- 4.1 On January 27, 2004, MSD requested that Morgan Stanley provide account information for the accounts underlying Morgan Stanley's reported short position in DEF as of December 15, 2003 and submit documentary evidence demonstrating that affirmative determinations had been made in connection with short sales of DEF.
- 4.2 Based upon the information provided to the Exchange by the Firm for accounts that held short positions in DEF as of December 15, 2003, Morgan Stanley did not fully comply with Exchange policies regarding affirmative determination requirements in connection with eight (8) short sale transactions effected during the reporting period.

Affirmative Determination Violations (January 2004)

- 5.0 In February 2004, MSD conducted a further review of Morgan Stanley's compliance with its locate procedures and Compliance Notice. MSD reviewed short positions reported by the Firm in the common stock of GHI, Inc. ("GHI") to verify the increase in the GHI short position reported by Morgan Stanley during the January 15, 2004-February 13, 2004 reporting period.
 - 5.1 For the February settlement date, Morgan Stanley reported a total short position in GHI of approximately 1 million shares to the Exchange.
 - 5.2 On February 23, 2004, MSD contacted Morgan Stanley and requested account information for the accounts underlying Morgan Stanley's reported short position in GHI as of February 13, 2004 and documents to verify that affirmative determinations were made in connection with those short sale transactions.
 - 5.3 Based upon the information provided to the Exchange by the Firm for accounts that held short positions in GHI, Morgan Stanley did not fully comply with

Exchange policies regarding affirmative determination requirements in connection with two (2) short sale transactions effected during the reporting period.

Summary

6.0 The Exchange's review of short sales involving DEF and GHI between November 2003 and February 2004 revealed that Morgan Stanley executed a total of ten (10) short sale transactions between November 12, 2003 and February 13, 2004 without obtaining affirmative determinations of a stock locate.

Failure to Supervise

7.0 During the relevant period herein, Morgan Stanley failed to ensure that it developed, maintained and enforced reasonable written supervisory policies and procedures regarding the compliance with the requirement that it make arrangements to either borrow the necessary stock or obtain other assurances that delivery can be made on settlement date prior to effecting short sales for Firm proprietary or customer accounts, as set forth in paragraphs 4.0 through 6.0.

DISCIPLINARY ACTION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may impose the following penalties against Morgan Stanley:

- (a) a censure; and
- (b) a \$10,000 fine.²

MORGAN STANLEY hereby acknowledges that it has read carefully this Stipulation and understands all of the provisions contained herein; that it has agreed to its provisions voluntarily; and that no offer, promise, threat or inducement of any kind has been tendered to MORGAN STANLEY by the Exchange, its staff or representatives to induce MORGAN STANLEY to enter into this Stipulation, aside from the prospect of settling this disciplinary proceeding based on the terms and conditions set forth in this Stipulation rather than adjudicating this matter by way of a hearing on a Charge Memorandum as provided by Exchange rules.

Further, MORGAN STANLEY hereby agrees that it 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 Stipulation or create the impression that the Stipulation 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 the Exchange is not a party.

Finally, it is understood and agreed that in any written submission to or proceeding before any person or body convened to consider this Stipulation of Facts and Consent to Penalty (including to a Hearing Officer acting alone, a Hearing Panel, or any reviewing body authorized by the Amex Constitution and/or Rules), neither Enforcement nor MORGAN STANLEY shall offer any argument that is inconsistent with the stipulated facts or the agreed-upon penalty, nor shall either party ask for the imposition of any penalty other than that agreed upon in this Stipulation of Facts and Consent to Penalty.

ON BEHALF OF AMERICAN STOCK EXCHANGE LLC

By: 

David Rosenstein
Vice President and Deputy Director
NASD Amex Regulation Division

Agreed to this 8 day of December 2006.


MORGAN STANLEY

² In recommending the foregoing sanctions, NASD Amex Regulation took into consideration Morgan Stanley's recent execution of an Acceptance, Waiver and Consent ("AWC") with NASD to resolve multiple matters, including issues involving the failure to make affirmative determinations during the period March 2003-July 2003 and May 2004-January 2005.