

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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IN THE MATTER OF :
 :
MORGAN STANLEY & CO. INC. :
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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

On April 14, 2008, the Office of the Attorney General of the State of New York (the "Attorney General"), commenced an investigation, pursuant to Article 23-A of the General Business Law (the "Martin Act"), of Morgan Stanley & Co. Inc. ("Morgan Stanley") and its subsidiaries and affiliates, concerning Morgan Stanley's marketing, sale and distribution of auction rate securities (the "Investigation"). This Assurance of Discontinuance ("Assurance") contains the findings of the Attorney General's Investigation and the relief agreed to by the Attorney General and Morgan Stanley.

FINDINGS

The Attorney General finds as follows:

I. Relevant Entity

1. Morgan Stanley is a Delaware corporation and a wholly-owned subsidiary of Morgan Stanley. It is licensed to do business in the State of New York and its principal executive offices are located in New York City. Morgan Stanley is a registered broker/dealer offering brokerage, financial planning and investment products and services to investors across the United States.

II. Background on Auction Rate Securities

2. Auction rate securities are long-term bonds issued by municipalities, corporations and student loan companies, or perpetual equity instruments issued by closed end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

3. At a Dutch auction, bidders generally state the number of auction rate securities they wish to purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest to highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest rate required to sell all of the auction rate securities available at auction, known as the “clearing rate,” becomes the rate paid to all holders of that particular security until the next auction. The process is then repeated, typically every 7, 28 or 35 days.

4. When there are not enough orders to purchase all of the auction rate securities being sold, a “failed” auction occurs. In the event of a failed auction, investors cannot sell their auction rate securities in that auction.

5. As a leading underwriter of auction rate securities, Morgan Stanley also acted as the managing broker-dealer for many issues of auction rate securities. When acting as sole manager, Morgan Stanley was the only firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to buy and/or sell any auction rate securities. When acting as lead manager, Morgan Stanley was the primary firm that could submit bids into the auction, while other broker-dealers were able to submit orders on behalf of their clients as well. Morgan Stanley received revenue in connection with auction rate securities, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

III. Morgan Stanley Made Misrepresentations to Certain Investors in Connection With the Sale of Auction Rate Securities

6. Morgan Stanley represented to certain of its customers that auction rate securities were secure, liquid securities that were “cash alternatives.” It did so through its sales people, some of whom represented to investors that auction rate securities were highly liquid, safe, cash-equivalent investments.

7. These misrepresentations were made to certain investors. Auction Rate securities were in fact different from cash or cash alternatives. As discussed above, the liquidity of an auction rate security relied on the successful operation of the Dutch auction process. In the event of a failed auction, investors cannot sell their auction rate securities and are stuck holding long-term investments, not cash alternative securities. As discussed below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an increased risk of failure.

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

9. Because many investors could not ascertain how much of an auction was filled through Morgan Stanley proprietary trades, they could not determine if auctions at

Morgan Stanley were clearing because of normal marketplace demand, or because Morgan Stanley was making up for the lack of demand through support bids. Generally, investors were also not aware that the liquidity of the auction rate securities as to which Morgan Stanley was the managing broker-dealer depended upon Morgan Stanley's continued use of support bids. While Morgan Stanley could track its own inventory as a measure of the supply and demand for its auction rate securities, ordinary investors had no comparable ability to assess the operation of Morgan Stanley's auctions. There was no way for such investors to monitor supply and demand in the market or to assess when broker-dealers might decide to stop supporting the market, thereby causing its collapse.

IV. By the Fall of 2007, The Auction Rate Securities Market Faced Dislocation

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

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

12. From the Fall of 2007 through February of 2008, demand for auction rate securities continued to erode and Morgan Stanley's auction rate securities inventory reached unprecedented levels. Morgan Stanley eventually became aware of the increasing strains in the auction rate securities market, and recognized the potential for

widespread market failure. Morgan Stanley never disclosed these increasing risks of owning or purchasing auction rate securities to its customers.

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

VI. Violations

14. The foregoing acts and practices of Morgan Stanley violated the Martin Act, Article 23-A of the General Business Law.

15. The foregoing acts and practices of Morgan Stanley violated § 349 of the General Business Law.

16. The foregoing acts and practices of Morgan Stanley violated § 63(12) of the Executive Law.

AGREEMENT

WHEREAS, the parties agree to settle allegations that Morgan Stanley's conduct violated the Martin Act, General Business Law § 349 and Executive Law § 63(12) and the Attorney General can bring an action when misrepresentations are made in connection with the sale of securities and scienter need not be proven to establish a violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12);

WHEREAS, Morgan Stanley neither admits nor denies the Attorney General's Findings and conclusions of law set forth herein;

WHEREAS, the Attorney General is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15), and to discontinue, as described in paragraph 56 below, its Investigation of Morgan Stanley;

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, that:

I. Relief for Auction Rate Security Investors

A. Buybacks from Auction Rate Securities Investors

17. Morgan Stanley shall provide liquidity to Eligible Investors by buying-back, at par, in the manner described below, Eligible Auction Rate Securities that were not clearing as of September 30, 2008.

18. "Eligible Auction Rate Securities," for the purposes of this Assurance, shall mean auction rate securities purchased at Morgan Stanley prior to February 13, 2008.

19. "Eligible Investors," for the purposes of this Assurance, shall mean:

- i. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible Auction Rate Securities at Morgan Stanley;
- ii. Charities and non-profits with Internal Revenue Code Section 501(c)(3) status that purchased Eligible Auction Rate Securities at Morgan Stanley; and

- iii. Small Businesses that purchased Eligible Auction Rate Securities at Morgan Stanley. For purposes of this provision, “Small Businesses” shall mean Morgan Stanley customers not otherwise covered in paragraph 19(i) and (ii) above that had \$10 million or less in assets in their accounts with Morgan Stanley, net of margin loans, as determined by the customer’s aggregate household position(s) at Morgan Stanley as of August 31, 2008, or, if the customer was not a customer of Morgan Stanley as of August 31, 2008, as of the date that the customer terminated its customer relationship with Morgan Stanley. Notwithstanding any other provision, “Small Businesses” does not include broker-dealers or banks acting as conduits for their customers.
- iv. In no event shall Morgan Stanley be required by this Assurance to purchase more than \$10 million of auction rate securities from any Small Business.

20. Morgan Stanley shall offer to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities that were not clearing as of September 30, 2008 (“Buyback Offer”), and explain to such Eligible Investors what they must do to accept, in whole or in part, the Buyback Offer. The Buyback Offer shall remain open until at least January 11, 2009 (“Offer Period”). Morgan Stanley may in its sole discretion extend the Offer Period beyond this date.

21. Morgan Stanley shall have undertaken its best efforts to identify and provide notice to Eligible Investors who invested in Eligible Auction Rate Securities that

were not clearing as of September 30, 2008 of the relevant terms of this Assurance by October 20, 2008.

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

23. If at any time between January 12, 2009 and December 31, 2009, an Eligible Investor who did not accept the Buyback Offer contacts Morgan Stanley and affirms that he or she did not receive notice of the Buyback Offer prior to January 11, 2009, Morgan Stanley will purchase the Eligible Auction Rate Securities of such investor.

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

B. Relief for Eligible Investors Who Sold Below Par

25. By December 11, 2008, Morgan Stanley shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par between February 13, 2008 and August 13, 2008, and pay them the difference between par and the price at which the investor sold the Eligible Auction Rate Securities.

C. Reimbursement for Related Loan Expenses

26. Morgan Stanley shall have made best efforts to identify Eligible Investors who took out loans from Morgan Stanley, between February 13, 2008 and the date of this Assurance, that were secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken out from Morgan Stanley, and paid interest associated with the auction rate securities based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Morgan Stanley shall reimburse such customers for the excess expense, plus reasonable interest thereon. Such reimbursement will occur within a reasonable period of time.

D. Consequential Damages Arbitration Process

27. Morgan Stanley shall consent to participate in a special arbitration (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their inability to sell Eligible Auction Rate Securities. Morgan Stanley shall notify Eligible Investors of the terms of the Arbitration process through the notice described in paragraph 21 above.

28. The Arbitration shall be conducted by a single public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer

Disputes, eff. April 16, 2007), under the auspices of FINRA. Morgan Stanley will pay all applicable forum and filing fees.

29. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible Auction Rate Securities. In the Arbitration, Morgan Stanley shall be able to defend itself against such claims; provided, however, that Morgan Stanley shall not contest liability for the illiquidity of the underlying auction rate securities position or use as part of its defense any decision by an Eligible Investor not to borrow money from Morgan Stanley.

30. Eligible Investors who elect to use the special arbitration process provided for herein shall not be eligible for punitive damages, or for any other type of damages other than consequential damages.

31. All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Assurance, may pursue any remedies against Morgan Stanley available under the law. However, Eligible Investors that elect to utilize the special arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities in another forum.

E. Municipal Issuers

32. Morgan Stanley shall promptly refund to municipal issuers refinancing fees the issuers paid to Morgan Stanley for the refinancing of their auction rate securities, where such refinancing occurred between February 11, 2008 and the date of this Assurance, and where Morgan Stanley acted as underwriter for the primary offering of the auction rate securities between August 1, 2007 and February 11, 2008.

F. Institutional Investors

33. Morgan Stanley shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors not covered by Section I.A. above that purchased auction rate securities from Morgan Stanley (“Institutional Investors”).

34. The Attorney General has refrained from taking legal action against Morgan Stanley with respect to Institutional Investors. The Attorney General shall issue continuances as it deems appropriate.

35. Beginning December 11, 2008 and within 45 days of the end of each quarter thereafter, Morgan Stanley shall submit to the Attorney General a quarterly written report detailing Morgan Stanley’s progress with respect to efforts to provide liquidity solutions for Institutional Investors. Such quarterly reports shall continue through the report covering the month ended December 31, 2009 (due on February 14, 2010). Morgan Stanley shall, at the option of the Attorney General, confer with the Attorney General no less frequently than on a quarterly basis, until the first quarter of 2010, to discuss Morgan Stanley’s progress to date. Such quarterly meetings shall continue until the first quarter of 2010. Following every quarterly meeting, the Attorney General shall advise Morgan Stanley of any concerns regarding Morgan Stanley’s progress in providing liquidity solutions for Institutional Investors and, in response, Morgan Stanley shall detail the steps that Morgan Stanley plans to implement to address such concerns. The reporting or meeting deadlines set forth above may be amended upon Morgan Stanley’s request if written permission is received from the Attorney General.

G. Penalty and Remedial Procedures

36. Morgan Stanley shall pay a total civil penalty of THIRTY-FIVE MILLION DOLLARS (\$35,000,000.00), of which \$4,867,949.38 shall be paid to the State of New York no later than June 15, 2009, and the remainder to those states and territories that enter administrative or civil consent orders approving the terms of the NASAA settlement. The payment shall be in the form of a certified or bank check made out to "State of New York" and mailed to: Office of the Attorney General of the State of New York, 120 Broadway, 23rd Floor, New York, New York, 10271, Attn: David A. Markowitz, Chief, Investor Protection Bureau, or by wire.

37. Morgan Stanley agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 36 above.

H. Other Relief

38. Morgan Stanley admits the jurisdiction of the Attorney General. Morgan Stanley will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

II. Other Provisions

39. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12)

in any civil action or proceeding hereafter commenced by the Attorney General against Morgan Stanley.

40. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by Morgan Stanley has occurred, Morgan Stanley shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

41. If Morgan Stanley defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to Morgan Stanley. Morgan Stanley agrees that any statute of limitations or other time related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, Morgan Stanley expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Morgan Stanley, or from using in any way any statements, documents or other materials produced or provided by Morgan Stanley prior to or after the date of this Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with the Attorney General.

42. Except in an action by the Attorney General to enforce the obligations of Morgan Stanley in this Assurance or in the event of termination of this Assurance by the

Attorney General, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Morgan Stanley in any civil, criminal, administrative or arbitration proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance.

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

- (a) production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that Morgan Stanley (or the Morgan Stanley's parent companies, subsidiaries or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;
- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of Morgan Stanley (and of any of the Morgan Stanley's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the

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

- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of the Morgan Stanley parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
- (d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

44. In the event Morgan Stanley fails to comply with paragraph 43 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to any other available remedies.

45. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Morgan Stanley, its counsel, and the Attorney General's own factual Investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

46. Morgan Stanley shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

47. To the extent applicable, this Assurance hereby waives any disqualification from relying upon the registration exemptions or registration safe harbor provisions that may be contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Assurance is not intended to form the basis for any such disqualifications. In addition, this Assurance is not intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.

48. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Morgan Stanley:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attn: David Meister

If to the Attorney General:

Office of the Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
Attn: David A. Markowitz

49. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

50. Morgan Stanley consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

51. Morgan Stanley agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Morgan Stanley's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. Nothing in this assurance shall be considered an admission of fraud.

52. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

53. This Assurance constitutes the entire agreement between the Attorney General and Morgan Stanley and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance. No representation, inducement, promise, understanding, condition or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

54. In the event that one or more provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

55. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

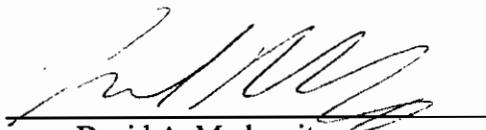
56. Upon execution by the parties to this Assurance, the Attorney General agrees to suspend, pursuant to Executive Law § 63(15), this Investigation as and against

Morgan Stanley solely with respect to its marketing and sale of auction rate securities to Eligible Investors.

57. Any payments and all correspondence related to this Assurance must reference AOD #AOD 08-180.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

ANDREW M. CUOMO,
Attorney General of the State of New York

By: 
David A. Markowitz

Chief, Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8198

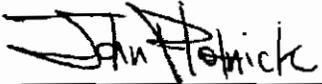
Dated: June 2, 2009

MORGAN STANLEY & CO. INC.

By: 
Eric F. Grossman, Esq.
Managing Director

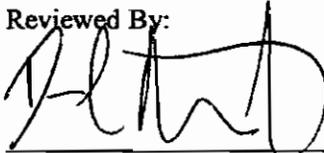
ACKNOWLEDGMENT

On this 2nd day of June, 2009, before me personally came Eric F. Grossman, known to me, who, being duly sworn by me, did depose and say that he is the Managing Director of Morgan Stanley & Co. Inc., the entity described in the foregoing Assurance, and is duly authorized by Morgan Stanley & Co. Inc. to execute the same, and that he signed his name in my presence by like authorization.


Notary Public
My commission expires:

JOHN PLOTNICK
Notary Public, State of New York
No. 31-01PL4730133
Qualified in New York County
Commission Expires 1/31/2011

Assurance of Discontinuance
Reviewed By:



SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for Morgan Stanley & Co. Inc.

Dated: June 2, 2009