

MORGAN STANLEY INVESTMENT MANAGEMENT INC

Form 40-APP/A

October 09, 2009

Before the

THIRD AMENDED AND RESTATED APPLICATION FOR AN ORDER PURSUANT TO SECTIONS 6(C) AND 17(B) OF THE INVESTMENT COMPANY ACT OF 1940 EXEMPTING CERTAIN TRANSACTIONS FROM THE PROVISIONS OF SECTION 17(A) OF THE ACT AND PURSUANT TO SECTION 17(D) OF THE ACT AND RULE 17D-1 THEREUNDER PERMITTING CERTAIN TRANSACTIONS

In the matter of application of

MORGAN STANLEY INVESTMENT MANAGEMENT INC.

MORGAN STANLEY INVESTMENT ADVISORS INC.

VAN KAMPEN ASSET MANAGEMENT

MORGAN STANLEY & CO. INCORPORATED

MORGAN STANLEY BALANCED FUND

MORGAN STANLEY DIVIDEND GROWTH SECURITIES INC.

MORGAN STANLEY NATURAL RESOURCE DEVELOPMENT SECURITIES INC.

MORGAN STANLEY SPECIAL GROWTH FUND

MORGAN STANLEY LIMITED TERM MUNICIPAL TRUST

ACTIVE ASSETS CALIFORNIA TAX-FREE TRUST

ACTIVE ASSETS INSTITUTIONAL MONEY TRUST

ACTIVE ASSETS MONEY TRUST

ACTIVE ASSETS TAX-FREE TRUST

MORGAN STANLEY HEALTH SCIENCES TRUST

MORGAN STANLEY HIGH YIELD SECURITIES INC.

MORGAN STANLEY LIQUID ASSET FUND INC.

MORGAN STANLEY MID CAP GROWTH FUND

MORGAN STANLEY VALUE FUND

MORGAN STANLEY EUROPEAN EQUITY FUND INC.

MORGAN STANLEY FLEXIBLE INCOME TRUST

MORGAN STANLEY PACIFIC GROWTH FUND INC.

MORGAN STANLEY INCOME SECURITIES INC.

MORGAN STANLEY INSURED MUNICIPAL TRUST

MORGAN STANLEY INSTITUTIONAL FUND, INC.

THE UNIVERSAL INSTITUTIONAL FUNDS, INC.

THE TURKISH INVESTMENT FUND, INC.

MORGAN STANLEY ASIA-PACIFIC FUND, INC.

MORGAN STANLEY EASTERN EUROPE FUND, INC.

MORGAN STANLEY HIGH YIELD FUND, INC.

MORGAN STANLEY INDIA INVESTMENT FUND, INC.

THE LATIN AMERICAN DISCOVERY FUND, INC.

THE MALAYSIA FUND, INC.

THE THAI FUND, INC.

VAN KAMPEN EQUITY TRUST

VAN KAMPEN MONEY MARKET FUND

VAN KAMPEN TAX FREE MONEY FUND

VAN KAMPEN SERIES FUND, INC.

VAN KAMPEN SENIOR LOAN FUND

VAN KAMPEN EQUITY TRUST II

VAN KAMPEN HIGH YIELD FUND

VAN KAMPEN TRUST

VAN KAMPEN PARTNERS TRUST

VAN KAMPEN RETIREMENT STRATEGY TRUST

VAN KAMPEN GOVERNMENT SECURITIES FUND

VAN KAMPEN PENNSYLVANIA TAX FREE INCOME FUND

VAN KAMPEN TAX FREE TRUST

VAN KAMPEN TRUST II

VAN KAMPEN GROWTH AND INCOME FUND

VAN KAMPEN TAX-EXEMPT TRUST

VAN KAMPEN COMSTOCK FUND

VAN KAMPEN ENTERPRISE FUND

VAN KAMPEN EXCHANGE FUND

VAN KAMPEN HARBOR FUND

VAN KAMPEN LIFE INVESTMENT TRUST

VAN KAMPEN REAL ESTATE SECURITIES FUND

VAN KAMPEN U.S. GOVERNMENT TRUST

VAN KAMPEN SENIOR INCOME TRUST

VAN KAMPEN ADVANTAGE MUNICIPAL INCOME TRUST II

VAN KAMPEN CALIFORNIA VALUE MUNICIPAL INCOME TRUST

VAN KAMPEN DYNAMIC CREDIT OPPORTUNITIES FUND

VAN KAMPEN MASSACHUSETTS VALUE MUNICIPAL INCOME TRUST

VAN KAMPEN MUNICIPAL OPPORTUNITY TRUST

VAN KAMPEN MUNICIPAL TRUST

VAN KAMPEN OHIO QUALITY MUNICIPAL TRUST

VAN KAMPEN PENNSYLVANIA VALUE MUNICIPAL INCOME TRUST

VAN KAMPEN SELECT SECTOR MUNICIPAL TRUST

VAN KAMPEN TRUST FOR INSURED MUNICIPALS

VAN KAMPEN TRUST FOR INVESTMENT GRADE MUNICIPALS

VAN KAMPEN TRUST FOR INVESTMENT GRADE NEW JERSEY MUNICIPALS

VAN KAMPEN TRUST FOR INVESTMENT GRADE NEW YORK MUNICIPALS

VAN KAMPEN BOND FUND

VAN KAMPEN HIGH INCOME TRUST II

CITIGROUP ALTERNATIVE INVESTMENTS LLC

CITIGROUP GLOBAL MARKETS INC.

CITIGROUP GLOBAL MARKETS LIMITED

CITIGROUP FINANCIAL PRODUCTS INC.

CITIBANK, N.A.

CITIBANK CANADA

CITIBANK INTERNATIONAL PLC

LMP CORPORATE LOAN FUND INC.

File No. 812-13656

October 9, 2009

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This Application consists of 89 pages (including Exhibits),

which have been numbered sequentially.

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UNITED STATES OF AMERICA

before the

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In the Matter of	:	
	:	
Morgan Stanley Investment Management Inc.	:	Application for an order pursuant to Sections 6(c) and 17(b)
Morgan Stanley Investment Advisors Inc.	:	of the Investment Company Act of 1940 exempting certain
Van Kampen Asset Management	:	transactions from the provisions of Sections 17(a) of the Act
Morgan Stanley & Co. Incorporated	:	and pursuant to Section 17(d) of the Act and Rule 17d-1
Morgan Stanley Balanced Fund	:	thereunder permitting certain transactions
Morgan Stanley U.S. Government Money Market Trust	:	
Morgan Stanley Dividend Growth Securities Inc.	:	
Morgan Stanley Natural Resource Development Securities Inc.	:	
Morgan Stanley Special Growth Fund	:	
Morgan Stanley Global Dividend Growth Securities	:	
Morgan Stanley Limited Term Municipal Trust	:	
Morgan Stanley Technology Fund	:	
Morgan Stanley Small-Mid Special Value Fund	:	
Morgan Stanley Global Advantage Fund	:	
Morgan Stanley Limited Duration U.S. Government Trust	:	
Active Assets California Tax-Free Trust	:	
Active Assets Government Securities Trust	:	
Active Assets Institutional Government Securities Trust	:	
Active Assets Institutional Money Trust	:	
Active Assets Money Trust	:	
Active Assets Tax-Free Trust	:	
Morgan Stanley Equally-Weighted S&P 500 Fund	:	
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Morgan Stanley S&P 500 Index Fund	:	
Morgan Stanley Convertible Securities Trust	:	
Morgan Stanley Fundamental Value Fund	:	
Morgan Stanley Mid Cap Growth Fund	:	
Morgan Stanley Prime Income Trust	:	
Morgan Stanley Value Fund	:	

Morgan Stanley European Equity Fund Inc. :
 Morgan Stanley Flexible Income Trust :
 Morgan Stanley International Fund :
 Morgan Stanley Mortgage Securities Trust :
 Morgan Stanley Pacific Growth Fund Inc. :
 Morgan Stanley Capital Opportunities Trust :
 Morgan Stanley Real Estate Fund :
 Morgan Stanley California Tax-Free Daily Income Trust :
 Morgan Stanley California Tax-Free Income Fund :
 Morgan Stanley Focus Growth Fund :
 Morgan Stanley FX Series Funds :
 Morgan Stanley New York Municipal Money Market Trust :
 Morgan Stanley New York Tax-Free Income Fund :
 Morgan Stanley Select Dimensions Investment Series :
 Morgan Stanley Tax-Exempt Securities Trust :
 Morgan Stanley Tax-Free Daily Income Trust :
 Morgan Stanley U.S. Government Securities Trust :
 Morgan Stanley Global Infrastructure Fund :
 Morgan Stanley Variable Investment Series :
 Morgan Stanley Municipal Income Opportunities Trust II :
 Morgan Stanley Municipal Income Opportunities Trust III :
 Morgan Stanley Municipal Income Opportunities Trust :
 Morgan Stanley Municipal Premium Income Trust :
 Morgan Stanley Income Securities Inc. :
 Morgan Stanley California Insured Municipal Income Trust :
 Morgan Stanley California Quality Municipal Securities :
 Morgan Stanley Insured California Municipal Securities :
 Morgan Stanley Insured Municipal Bond Trust :
 Morgan Stanley Insured Municipal Income Trust :
 Morgan Stanley Insured Municipal Securities :
 Morgan Stanley Insured Municipal Trust :
 Morgan Stanley New York Quality Municipal Securities :
 Morgan Stanley Quality Municipal Income Trust :
 Morgan Stanley Quality Municipal Investment Trust :
 Morgan Stanley Quality Municipal Securities :
 Morgan Stanley Institutional Fund Trust :
 Morgan Stanley Institutional Liquidity Funds :
 Morgan Stanley Institutional Fund, Inc. :
 The Universal Institutional Funds, Inc. :
 Morgan Stanley Emerging Markets Domestic Debt Fund, Inc. :
 The Turkish Investment Fund, Inc. :
 Morgan Stanley Asia-Pacific Fund, Inc. :
 Morgan Stanley China A Share Fund, Inc. :
 Morgan Stanley Eastern Europe Fund, Inc. :
 Morgan Stanley Emerging Markets Debt Fund, Inc. :

Morgan Stanley Emerging Markets Fund, Inc. :
 Morgan Stanley Global Opportunity Bond Fund, Inc. :
 Morgan Stanley High Yield Fund, Inc. :
 Morgan Stanley India Investment Fund, Inc. :
 Morgan Stanley Frontier Emerging Markets Fund, Inc. :
 The Latin American Discovery Fund, Inc. :
 The Malaysia Fund, Inc. :
 The Thai Fund, Inc. :
 Van Kampen Equity Trust :
 Van Kampen Money Market Fund :
 Van Kampen Capital Growth Fund :
 Van Kampen Tax Free Money Fund :
 Van Kampen Series Fund, Inc. :
 Van Kampen Senior Loan Fund :
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 Van Kampen Equity Trust II :
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 Van Kampen Government Securities Fund :
 Van Kampen Pennsylvania Tax Free Income Fund :
 Van Kampen Tax Free Trust :
 Van Kampen Trust II :
 Van Kampen Growth and Income Fund :
 Van Kampen Tax-Exempt Trust :
 Van Kampen Comstock Fund :
 Van Kampen Enterprise Fund :
 Van Kampen Equity and Income Fund :
 Van Kampen Exchange Fund :
 Van Kampen Harbor Fund :
 Van Kampen Life Investment Trust :
 Van Kampen Limited Duration Fund :
 Van Kampen Real Estate Securities Fund :
 Van Kampen U.S. Government Trust :
 Van Kampen Senior Income Trust :
 Van Kampen Advantage Municipal Income Trust II :
 Van Kampen California Value Municipal Income Trust :
 Van Kampen Dynamic Credit Opportunities Fund :
 Van Kampen Massachusetts Value Municipal Income Trust :
 Van Kampen Municipal Opportunity Trust :
 Van Kampen Municipal Trust :
 Van Kampen Ohio Quality Municipal Trust :
 Van Kampen Pennsylvania Value Municipal Income Trust :
 Van Kampen Select Sector Municipal Trust :
 Van Kampen Trust for Insured Municipals :

Van Kampen Trust for Investment Grade Municipals :
Van Kampen Trust for Investment Grade New Jersey Municipals :
Van Kampen Trust for Investment Grade New York Municipals :
Van Kampen Bond Fund :
Van Kampen High Income Trust II :
Citigroup Alternative Investments LLC :
Citigroup Global Markets Inc. :
Citigroup Global Markets Limited :
Citigroup Financial Products, Inc.
Citibank, N.A.
Citibank Canada
Citibank International plc
LMP Corporate Loan Fund Inc.

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I.

Summary of Application

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This Third Amended and Restated Application (Application) is submitted to the Securities and Exchange Commission (the Commission) on behalf of the applicants named herein (the Applicants) pursuant to Sections 6(c) and 17(b) of the Investment Company Act of 1940, as amended (the Act), for an order exempting securities transactions of the type described below from the provisions of Sections 17(a) of the Act, and pursuant to Section 17(d) of the Act and Rule 17d-1 under the Act permitting certain transactions. The Applicants are Morgan Stanley Investment Management Inc., Morgan Stanley Investment Advisors Inc. and Van Kampen Asset Management (each, a MS Adviser and collectively, the MS Advisers); the Funds listed in Schedule A to this Application, which are advised by the MS Advisers (the MS Funds); Morgan Stanley & Co. Incorporated (MS & Co.) (or its affiliates, together, the MS Trading Entity unless the context otherwise requires); Citigroup Alternative Investments LLC (the Citi Adviser and, together with the MS Advisers, the Advisers); LMP Corporate

Loan Fund Inc. (the LMP Fund) for which the Citi Adviser currently acts as a sub-investment adviser; and Citigroup Global Markets Inc. (CGMI), Citigroup Global Markets Limited, Citigroup Financial Products Inc., Citibank, N.A., Citibank Canada or Citibank International plc as relevant to the particular transaction (or their affiliates, together, the Citi Trading Entity, unless the context otherwise requires, and, together with the MS Trading Entity, the Trading Entities).

The Order sought herein would permit the MS Funds to engage in the Securities Transactions (defined below) with the Citi Trading Entity and would permit the Citi Funds (defined below) to engage in the Securities Transactions with the MS Trading Entity. The Securities Transactions that are the subject of the requested order (the Order) are: (1) primary and secondary market transactions in fixed-income securities executed on a principal basis (as discussed in section VI below) between the MS Funds and the Citi Trading Entity and between the Citi Funds and the MS Trading Entity(1) and (2) certain types of transactions (as discussed in section VI below) in which the Citi Trading Entity or the MS Trading Entity and the MS Funds or the Citi Funds, respectively, might each participate jointly or have a joint interest (sometimes referred to as Joint Transactions). The Order would apply only under circumstances in which the Citi Trading Entity might be deemed an affiliated person of an affiliated person (a second-tier affiliate) of a MS Fund (or the MS Trading Entity deemed a second-tier affiliate of a Citi Fund) solely as a result of the formation of Morgan Stanley Smith Barney Holdings LLC (MSSB or the Joint Venture), a joint venture to which each of Citigroup Inc. (Citigroup) and Morgan Stanley, the parent company of the MS Advisers and

(1) Fixed-income securities for purposes of the Order include interests in syndicated loans (including loans made directly as a syndicate member, or the acquisition of a loan interest in the form of an assignment or participation), as well as convertible bonds and convertible preferred stock.

MS Trading Entity (Morgan Stanley), have contributed certain businesses. The Order requested herein is subject to certain conditions, as more fully described below.

Applicants seek to extend the Order requested to (i) any open-end or closed-end investment company registered under the Act, whether now existing or organized in the future, that is advised by any Adviser or by any existing or future investment adviser controlling, controlled by or under common control with Morgan Stanley or Citigroup other than MSSB(2) (such a fund, when advised by a Citigroup entity, is hereafter referred to together with the LMP Fund as a Citi Fund and, together with the MS Funds, the Funds), (ii) the Advisers and any existing or future investment adviser controlling, controlled by or under common control with Morgan Stanley or Citigroup other than MSSB and (iii) the Trading Entities and any existing or future entity controlling, controlled by or under common control with Citigroup or Morgan Stanley other than MSSB, provided that any entity that relies on the Order complies with the terms and conditions set forth in this Application as though it were an Applicant.

Applicants request relief hereunder only for transactions that would be restricted by Sections 17(a) and 17(d) of the Act, and Rule 17d-1 thereunder, solely because of Citigroup's and Morgan Stanley's direct or indirect interest in MSSB. The relief sought hereunder will not apply where a Trading Entity is an affiliated person or a second-tier affiliate of a Fund for reasons other than such interest. Additionally, the relief sought hereunder will not apply if the transactions would be restricted by the above provisions because a Trading Entity is a principal underwriter or promoter of a Fund. No fund advised or promoted by MSSB, or for which MSSB

(2) Pursuant to a Joint Venture Contribution and Formation Agreement (the JV Agreement), Morgan Stanley contributed to the Joint Venture its global wealth management (retail brokerage) and private wealth management businesses, which businesses currently operate and will in the future operate independent of the MS Advisers, as described herein. Citigroup contributed to the Joint Venture its retail brokerage and futures business operated under the name Smith Barney in the United States and Australia and operated under the name Quilter in the United Kingdom, Ireland and the Channel Islands.

acts as principal underwriter, would be covered by the Order.(3) The proposed Order will not apply to transactions between the MS Funds and any Morgan Stanley controlled entity or to transactions between the Citi Funds and any Citigroup controlled entity. (4)

II.

II.

Description of the Applicants

A. The Funds

Each Fund is an open-end or closed-end management investment company registered under the Act and is organized as a statutory trust, business trust or corporation under the laws of Delaware, Maryland, Massachusetts or Pennsylvania.⁽⁵⁾ The Funds have a variety of investment objectives, but each may to a greater or lesser degree invest a portion of its assets in fixed-income securities. (For the sake of simplicity, while there are no Citi Funds currently other than the LMP Fund, this Application generally will use the present tense for both the MS Funds and the Citi Funds.)

The fixed-income securities in which the Funds may invest include, but are not limited to, government securities, municipal securities, tender option bonds, taxable and tax-exempt money market securities, repurchase agreements, asset- and mortgage-backed securities, corporate issues and syndicated loans (including assignments thereof and participations therein), each as the Funds' respective investment policies allow.

(3) MSSB may act as principal underwriter for new closed-end MS or Citi Funds. However, such role will cease at the time the syndicate terminates and prior to any transactions by such MS Fund involving the Citi Trading Entity or by such Citi Fund involving the MS Trading Entity.

(3) MSSB may act as principal underwriter for new closed-end MS or Citi Funds. However, such role will cease at

(4) Morgan Stanley presently has an exemptive order to, among other things, permit its broker-dealer subsidiary, MS&Co. Incorporated, to engage in principal transactions in taxable and tax-exempt money market instruments with the MS Funds. Investment Company Act Release No. 28150 (Feb. 13, 2008).

(5) The Van Kampen Exchange Fund is a California limited partnership and is managed by a Board of General Partners.

B. The Advisers

The MS Advisers are direct or indirect wholly-owned subsidiaries of Morgan Stanley, a Delaware corporation. Morgan Stanley is a leading global financial services firm whose business activities include securities trading and brokerage activities, investment banking, research and analysis, financing and financial advisory services. Each MS Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the Advisers Act). The MS Advisers act as investment advisers to each of the MS Funds and may supervise one or more affiliated or unaffiliated sub-advisers with respect to certain MS Funds.

The Citi Adviser is an indirect wholly-owned subsidiary of Citigroup, a Delaware corporation. Citigroup, a leading global financial services company, has some 200 million customer accounts and does business in more than 100 countries, providing consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, and wealth management. The Citi Adviser is registered as an investment adviser under the Advisers Act. The Citi Adviser acts as sub-investment adviser to the LMP Fund and may, as noted above, act in the future as adviser to such registered investment companies as may otherwise exist or are organized subsequently.

Each Fund and its Adviser have entered into an investment management agreement pursuant to which the Adviser is responsible for managing the Fund's investment portfolio, subject to the supervision of the Board of Directors, Board of Trustees or other governing body of such Fund, as applicable (each, a Board), making investment decisions on behalf of the Fund and placing its transactions.

Each of the MS Advisers and the Citi Adviser have adopted confidentiality policies designed to limit the unnecessary flow of information about client holdings and transactions.

Such policies have been extended to prevent unnecessary information sharing between MSSB and each of the MS Advisers and the Citi Adviser. For example, the MS Advisers and the Citi Adviser have each adopted policies designed to keep information about client holdings and transactions on a confidential basis, prior to any public disclosure. Pursuant to these policies, information regarding investment advisory and portfolio execution matters relating to the MS Funds and the Citi Funds are considered by the MS Advisers and the Citi Adviser, respectively, as information that may not be communicated outside of such Adviser except as necessary (*e.g.*, to a potential executing broker or dealer on an actual trade), including to MSSB. In general, prior to any public disclosure and consistent with an Adviser's fiduciary duty to the Fund, information concerning Fund portfolio holdings is considered confidential and may only be shared by a Fund's Adviser for a legitimate business purpose with certain types of parties and then, upon prior approval by the Fund's Board or by a committee set up to evaluate such circumstances. Additionally, information barriers are in place to prevent the dissemination of confidential information between affiliates, such as between the MS Advisers and other MS Entities (as defined below) or between the Citi Adviser and other Citi Entities (as defined below), respectively.

C. The Trading Entities

MS & Co., a Delaware corporation, is a wholly-owned subsidiary of Morgan Stanley. CGMI, a New York corporation, is an indirect wholly-owned subsidiary of Citigroup. Each Trading Entity is registered as a broker-dealer with the Commission pursuant to Section 15 of the Securities Exchange Act of 1934. Each conducts a diversified, full service securities business, including (but not limited to) as a dealer and underwriter for fixed-income securities, and each is a primary dealer in U.S. government securities. As described below, each of MS & Co. and CGMI are leading dealers and underwriters in respect of a variety of fixed-income securities.

Citibank, N.A., Citibank Canada, Citibank International plc, Citigroup Global Markets Limited and Citigroup Financial Products Inc. are each wholly-owned subsidiaries of Citigroup (directly or indirectly) and are each, among other things, leading originators of, or participants in, syndicated loans and/or participants in the secondary markets for such loans.

III.

The Joint Venture

On January 13, 2009, Morgan Stanley and Citigroup entered into a joint venture contribution and formation agreement (the *JV Agreement*) to create MSSB, a Delaware limited liability company of which the equity capitalization consists solely of one class of common membership interests (the *Interests*).⁽⁶⁾ MSSB is a holding company and the sole member of Morgan Stanley Smith Barney LLC, which conducts most of the Joint Venture's domestic operations as a dual-registered broker-dealer and investment adviser. On June 1, 2009, the Joint Venture closed in accordance with the terms of the *JV Agreement*.

A. Ownership of the Joint Venture

Pursuant to the terms of the *JV Agreement*, Morgan Stanley has contributed into the Joint Venture the businesses of its global wealth management (retail brokerage) and private wealth management businesses (the *MS Contributed Businesses*) (together with all contracts, employees, property licenses and other assets and liabilities). Citigroup has contributed into the Joint Venture its businesses Smith Barney, Quilter and Smith Barney Australia (the *Citi Contributed Businesses*) and, collectively with the *MS Contributed Businesses*, the *Contributed Businesses*) (together with all contracts, employees, property licenses and other assets and liabilities).

(6) The *JV Agreement* is included with Morgan Stanley's filing on Form 8-K dated January 13, 2009.

Morgan Stanley now owns indirectly through subsidiaries 51% of the Interests, and Citigroup owns, indirectly through CGMI 49% of the Interests. In addition, under the JV Agreement, Morgan Stanley has the option to purchase an additional 14% of the Interests following the third anniversary of the closing, an additional 15% of the Interests after the fourth anniversary, and any remaining Interests held by Citigroup after the fifth anniversary.

B. The Contributed Businesses

No parent or any business unit of any Adviser will be a Contributed Business. No Fund is advised by a Contributed Business.

Formerly, Smith Barney was a division of CGMI and Quilter was operated through several separate legal entities under the control of Citigroup. Currently, the Citi Contributed Businesses form part of MSSB, operating separately from CGMI and any other Citigroup entity. Prior to the closing of the Joint Venture, Morgan Stanley's global wealth management businesses formed part of MS & Co. Such businesses are currently, as part of MSSB, operated separately from MS & Co., which remains an investment bank and broker-dealer.

MSSB provides retail brokerage and a variety of wealth management services, including as an investment adviser, insurance broker, insurance agency and futures broker. MSSB conducts its own businesses, operating separately from the non-MSSB business units of Citigroup and Morgan Stanley (although they may perform certain functions, such as clearing, for MSSB for a certain period of time following the closing of the Joint Venture). Citigroup and Morgan Stanley have preserved their distinct brands and continue to offer independently a wide range of financial services. Citigroup has no interest in, and will not control (within the meaning of Section 2(a)(9) of the Act) directly or indirectly, Morgan Stanley, the MS Advisers, or any other Morgan Stanley entity that is not a MS Contributed Business (together with the MS Advisers, the MS Entities). Morgan Stanley has no interest in, and will not control (within the

meaning of Section 2(a)(9) of the Act) directly or indirectly, Citigroup, the Citi Adviser, or any other Citigroup entity that is not a Citi Contributed Business (together with the Citi Adviser, the Citi Entities).

C. Governance of the Joint Venture

MSSB is governed by a newly formed Board of Directors controlled by Morgan Stanley. Currently, the Board consists of four Morgan Stanley designees and two Citigroup designees (as long as Citigroup owns 10% or more of the Interests) and the president of MSSB. The Chairman of MSSB is the Co-President of Morgan Stanley. Morgan Stanley designees constitute a majority of each committee of the MSSB Board, which also includes at least one Citigroup designee.(7)

All matters with regard to MSSB generally will be determined by a majority vote of the MSSB Board, although the Joint Venture also includes certain other specified governance and approval rights. These rights require the approval of Morgan Stanley and, for so long as Citigroup owns at least 20% of MSSB, of Citigroup, with respect to certain specified major decisions, including (but not limited to), generally: (i) any merger, liquidation or sale of MSSB; (ii) any acquisition or disposition of a business representing more than 20% of assets or revenues; (iii) related party transactions other than those conducted (a) at arm's length and (b) in the ordinary course of business (Citigroup may dispute either (a) or (b)); (iv) issuance, repurchase or redemption of equity securities except in certain circumstances; (v) removal or replacement of the president of MSSB or certain other officers; (vi) entry into new business lines in certain circumstances and (vii) certain bankruptcy and tax events. Approval of Citigroup is

(7) Although no public offering of common shares of MSSB is contemplated, in the event of such a public offering, (1) the MSSB Board will include at least three independent directors, (2) Citigroup will have the right to proportionate representation on the MSSB Board for so long as it owns at least 20% of MSSB (and in any event, not less than one designee) and (3) Morgan Stanley will be entitled to designate a majority of the MSSB Board.

required for amendment to MSSB's limited liability company agreement, as long as Citigroup owns at least 20% of the Interests; thereafter, Citigroup's approval will be required only as to certain specified matters. Citigroup also may put its Interests to Morgan Stanley, in the event of a change of control of Morgan Stanley or after the sixth anniversary of the closing of the Joint Venture transaction if Morgan Stanley has exercised its first two call rights.

IV.

Separation Between the MS Entities and the Citi Entities

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Subsequent to the closing of the Joint Venture, the Citi Trading Entity and the MS Advisers (and the MS Trading Entity and the Citi Adviser) continue to operate as separate, independent businesses. The Citi Trading Entity and the MS Advisers (and the MS Trading Entity and the Citi Adviser) continue to have separate ownership, their own separate officers and employees, and each continues to be separately capitalized and each maintains its own separate books and records and physically separate offices.⁽⁸⁾ In addition, the MS Advisers operate as distinct entities and independent profit centers under the umbrella of Morgan Stanley. Further, Morgan Stanley will not have any involvement with respect to proposed transactions pursuant to the Order and will not attempt to influence or control in any way the placing by the MS Funds or the MS Advisers of orders. Furthermore, officers and employees of the MS Advisers may not communicate confidential and non-public investment-related information to Morgan Stanley employees outside of the MS Advisers and their mutual fund service provider affiliates, except in connection with a conflicts clearing process set up for that purpose. Such information barriers are designed to control and prevent the dissemination of confidential and material nonpublic

(8) No director, officer or employee of the MS Funds or the MS Advisers also is or will be a director, officer or employee of the Citi Trading Entity. No director, officer or employee of the Citi Fund or the Citi Adviser also is or will be a director, officer or employee of the MS Trading Entity. As noted above, each of Citigroup and Morgan Stanley has the right to designate members of the Board of Directors of MSSB. Currently, the Chairman of MSSB is the Co-President of Morgan Stanley.

information by employees who receive such nonpublic information during the course of their employment. Similarly, the Citi Adviser operates as a distinct entity and independent profit center and also employs information barriers to prevent the dissemination of confidential and nonpublic information outside the Citi Adviser.

The Funds and their investors are also protected from any undue influence, among other things, by the substantial separation and independent operation of the Trading Entities from each other and from MSSB. Independent operation generally consists of separate profit centers, separate capitalization, separate books and records and a separate compensation system that does not reward employees based on (i) a factor that treats the Funds differently than unaffiliated counterparties (for example, no Trading Entity will provide any additional compensation to any employee solely based on such employee's transacting business with a Fund that would not generally be provided to employees performing similarly with respect to transactions with unaffiliated parties) or (ii) the amount of business done by the Citi Funds with the MS Trading Entity (in the case of Citigroup) or the MS Funds with the Citi Trading Entity (in the case of Morgan Stanley), except to the extent such business might affect indirectly the profits or losses of the Advisers (such as where Securities Transactions result in higher profits to a Fund that increase the net asset value of such Fund, based upon which an Adviser generally receives a percentage fee).(9) None of the Funds will engage in portfolio transactions with MSSB. Further, the information barriers described above with respect to the Advisers and their affiliates will prevent the exchange of confidential information between the Advisers and MSSB.

In light of the entity separation described above, the Applicants submit that neither the Citi Trading Entity nor the MS Trading Entity will be in a position to cause any Securities

(9) The MS Entities and MSSB are managed as separate lines of business, though each entity ultimately reports to the same individual(s) with respect to the Morgan Stanley side.

Transaction by the MS Funds or the Citi Funds, respectively. That separation is in effect required to be maintained for so long as the Order is relied upon by the Structural Conditions described in section X below. Further, among other things, those conditions prohibit the Citi Trading Entity or its affiliates from consulting with the MS Advisers regarding potential transactions beyond the extent normally carried out with unaffiliated parties in the normal course of business. In addition, the Citi Trading Entity must adopt and implement policies prohibiting it from (i) linking approvals regarding MSSB to actions by a MS Adviser or MS Fund, or (ii) using MSSB to seek business with the MS Advisers or MS Funds, nor will Citigroup adopt any compensation scheme that treats such business differently from business with unaffiliated partners. Similarly, such conditions prohibit the MS Trading Entity or its affiliates from consulting with the Citi Adviser regarding potential transactions beyond the extent normally carried out with unaffiliated parties in the normal course of business. In addition, the MS Trading Entity must adopt and implement policies prohibiting it from (i) linking approvals regarding MSSB to actions by a Citi Adviser or Citi Fund, or (ii) using MSSB to seek business with the Citi Adviser or Citi Funds, nor will Morgan Stanley adopt any compensation scheme that treats such business differently from business with unaffiliated partners. Moreover, there is not, and will not be, any express or implied understanding between the Citi Trading Entity and Morgan Stanley or any MS Adviser that a MS Adviser will cause a MS Fund to enter into Securities Transactions or give preference to the Citi Trading Entity in effecting such transactions between the MS Fund and the Citi Trading Entity. Similarly, there is not, and will not be, any express or implied understanding between the MS Trading Entity and Citigroup or any Citi Adviser that a Citi Adviser will cause a Citi Fund to enter into Securities Transactions or

give preference to the MS Trading Entity in effecting such transactions between the Citi Fund and the MS Trading Entity.

All decisions by the Funds to enter into portfolio transactions are determined solely by their respective Advisers in accordance with the investment objectives of the Fund. In that regard, trade execution for the Funds is the responsibility of one or more individuals employed solely by their respective Advisers and the Advisers will continue to adhere to a best execution standard. Portfolio managers employed by MS Advisers will have no affiliation (within the meaning of the Act) with the Citi Trading Entity, and their lines of reporting responsibility will be solely within the MS Advisers. Portfolio managers employed by Citi Adviser will have no affiliation (within the meaning of the Act) with the MS Trading Entity, and their lines of reporting responsibility will be solely within the Citi Adviser. Prior to any purchase or sale decision, the portfolio manager at an Adviser will independently evaluate any research provided by broker-dealers, including unaffiliated broker-dealers, and other analysts and determine his or her own recommendations. In addition, a major determinant of the compensation of a portfolio manager at any Adviser is the performance of the Fund or Funds for which he or she has responsibility. In no instance would his or her compensation be affected by the amount of business done by Funds he or she manages with the Citi Trading Entity or the MS Trading Entity, respectively.

In summary, notwithstanding the formation of MSSB, the MS Advisers will continue to operate independently of the Citi Trading Entity in performing portfolio management services for the MS Funds, and the Citi Trading Entity will not have any influence over those services. The Citi Adviser will continue to operate independently of the MS Trading Entity in performing

portfolio management services for the Citi Funds, and the MS Trading Entity will not have any influence over those services.

V.

V.

Consolidation in the Financial Services Industry

A. The Impact of Consolidation

Significant consolidation has occurred in the banking and investment banking (broker-dealer) industries, blurring the line between the two industries (referred to herein, collectively, as the financial services industry) both conceptually and in practice. A 1995 paper published by the Brookings Institution reported that from 1979 to 1994, the banking industry was transformed by the massive reduction in the number of banking organizations; the significant increase in the number of failures; the dramatic rise in off-balance sheet activities; the major expansion in lending to U.S. corporations by foreign banks; . . . and the opening up of interstate banking markets. (10) Nearly a decade later, an article in the FDIC Banking Review asserted that [o]ver the two decades 1984-2003, the structure of the U.S. banking industry indeed underwent an almost unprecedented transformation one marked by a substantial decline in the number of commercial banks and savings institutions and by a growing concentration of industry assets among a few dozen extremely large financial institutions. (11) Indeed, consolidation in the financial services industry continued from 2003, accelerating during the credit crisis that began in 2007.

Consolidation in the financial services industry, combined with an increase in industry assets, has resulted in a few major broker-dealers accounting for a large percentage of the market

(10) Allen N. Berger, *et al.*, *The Transformation of the U.S. Banking Industry: What a Long, Strange Trip It s Been*, Brookings Papers on Economic Activity 2, 127 (1995).

(11) Kenneth D. Jones and Tim Critchfield, *Consolidation in the U.S. Banking Industry: Is the Long, Strange Trip About to End?*, 17 FDIC Banking Review 4, 31 (2005).

share in connection with trading in various asset classes.(12) In March 2008, The Bear Stearns Companies, Inc., the U.S.'s fifth largest investment bank, was acquired by JP Morgan Chase & Co. (JP Morgan). In September of that year, Lehman Brothers Holdings Inc. (Lehman Brothers) filed for Chapter 11 bankruptcy protection, and Merrill Lynch & Co. was acquired by Bank of America Corporation (Bank of America), reducing the number of major pure investment banks (broker-dealers) to two, The Goldman Sachs Group, Inc. (Goldman Sachs) and Morgan Stanley. These companies subsequently registered as bank holding companies. In the fourth quarter of 2008, Wachovia Corporation was acquired by former competitor Wells Fargo & Company, and Barclays Bank, PLC (Barclays) agreed to purchase certain core capital markets businesses of Lehman Brothers.

B. Consolidation has Increased the Applicants' Need for Relief

The aforementioned companies, including Citigroup, JP Morgan, Goldman Sachs, Morgan Stanley, Bank of America and Barclays all ranked in the top ten managing underwriters of U.S. municipal new issues, global debt, global asset-backed securities and global high yield debt in 2008.(13) These companies are important institutions involved in secondary market trading. The decline in the number of broker-dealers and banks trading in the securities in which the Funds seek to invest and increasing importance of the few remaining institutions has increased the importance to the Funds of their relationships with such entities, including the Citi Trading Entity or the MS Trading Entity, as applicable. The number of broker-dealers with which the MS Funds and the Citi Funds may engage in trades is further reduced due to the MS

(12) For example, mergers prior to 2008 involving the following companies reduced the number of firms dealing in money market instruments and other asset classes: Bank of America and FleetBoston; Wachovia and First Union; Deutsche Bank and Scudder Investments; Wachovia and Prudential Securities; J.P. Morgan Chase & Co. and Bank One; and Bank of New York and Mellon Financial Corporation.

(13) Citigroup, JP Morgan, Goldman Sachs, Bank of America and Barclays also ranked in the top ten managing underwriters of global and U.S. mortgage-backed securities in 2008. Thomson Reuters, *Debt Capital Markets Review: Fourth Quarter 2008*; Thomson Reuters, *US Municipals Review: Year End 2008*.

Funds' first-tier affiliation with Morgan Stanley broker-dealers and the Citi Funds' first-tier affiliation with Citigroup broker-dealers and bank, respectively, as the MS Funds are already generally precluded from trading with the MS Trading Entity⁽¹⁴⁾ and the Citi Funds are already generally precluded from trading with the Citi Trading Entity. Such preclusion from trading with a major broker-dealer in a wide variety of securities already puts the Funds and their Advisers at a disadvantage as compared to funds not subject to such restrictions when seeking to obtain competitive pricing and achieve best execution. The few other dealers available to the Funds may be less inclined to provide competitive pricing or more favorable terms knowing that the Advisers' choices of a dealer are limited.

Prohibiting the MS Funds from engaging in Securities Transactions with the Citi Trading Entity (and the Citi Funds from engaging in Securities Transactions with the MS Trading Entity) would further reduce the opportunities available to the Funds to obtain competitive pricing and best execution and to access the markets for particular securities that are available from only a few dealers. Preventing the Funds from trading with the Citi Trading Entity or the MS Trading Entity, as applicable, could materially limit the ability of the Funds to obtain the pricing, terms and quality of service available from a major dealer. For example, the Citi Trading Entity can be responsible for more than 10% of the dollar trading volume of primary offerings and more than 20% of the dollar trading volume of secondary market trading in certain types of fixed income securities. That effect is compounded, as noted above, by the MS Funds' already existing inability to trade with the MS Trading Entity which, especially in the aggregate, could affect the ability to obtain best execution. Moreover, the Citi Trading Entity has been and is expected to be an increasingly important counterparty for the MS Funds because of the quality of execution.

(14) Morgan Stanley does presently have an exemptive order to, among other things, permit its broker-dealer subsidiary, MS&Co., to engage in principal transactions in taxable and tax-exempt money market instruments with the Funds. Investment Company Act Release No. 28150 (Feb. 13, 2008).

provided, particularly, market liquidity. For example, certain MS Funds have used the Citi Trading Entity for more than 20% of their dollar trading volume in certain types of fixed-income securities. Due to the absence of a centralized reporting mechanism for completed transactions, the precise impact of not having available a counterparty of this importance is difficult to measure. Specifically, fixed-income markets are often subject to limited transparency, which in turn limits an investment adviser's ability to measure best execution on a trade-by-trade basis.⁽¹⁵⁾ However, it has been (and is expected to be) frequently the case that only a limited number of dealers, often including the Citi Trading Entity, have been willing to trade with a Fund in a particular fixed-income security in the quantities specified by the Fund at a given time. As the MS Trading Entity and the Citi Trading Entity are major participants in the fixed-income securities markets, as described above, a Fund's inability to trade with each Trading Entity could impair the Fund's ability to trade in a particular fixed-income security, at the time and in the quantities specified by the Fund, where the relevant Trading Entity is one of few dealers willing to trade in such fixed-income security at such time and in such quantities. Therefore, precluding a Fund from trading with a Trading Entity may harm the Fund by preventing it from obtaining what would be best execution if the Fund were allowed to trade with the Trading Entity. Finally, the rapid pace of consolidation in the financial services industry over the past two years portends future consolidation which could even further increase the need for the Funds to trade with the Trading Entities, as such Trading Entities could be among the few remaining major financial institutions which provide competitive pricing and high-quality service for the relevant transactions.

(15) See *Best Execution Guidelines for Fixed-Income Securities*, Securities Industry and Financial Markets Association, Asset Management Group (September 2008).

VI.

VI.

The Securities Transactions

