

accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

**DATE AND TIME:** *Open sessions*—June 6, 2006, from 8:30 a.m. to 1 p.m. and from 3 p.m. to 6 p.m.; and June 7, 2006, from 8 a.m. to 1 p.m. *Closed Session*—June 6, 2006, from 1 p.m. to 3 p.m.

**ADDRESSES:** The National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233-2072; e-mail: [ehollis@nifl.gov](mailto:ehollis@nifl.gov).

**SUPPLEMENTARY INFORMATION:** The Board is established under section 242 of the Workforce Investment Act of 1998, Public Law 105-220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board will meet June 6-7, 2006. On June 6, 2006 from 8:30 a.m. to 1 p.m. and from 3 p.m. to 6 p.m.; and June 7, 2006 from 8 a.m. to 1 p.m., the Board will meet in open session to discuss the Institute's program priorities; status of on-going Institute work; and other Board business as necessary. On June 6, 2006 from 1 p.m. to 3 p.m., the Board meeting will meet in closed session in order to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and

related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

The National Institute for Literacy Advisory Board meeting on June 6-7, 2006, will focus on future and current program activities, presentations by education researchers, and other relevant literacy activities and issues.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: May 11, 2006.

**Sandra L. Baxter,**

*Director.*

[FR Doc. E6-7655 Filed 5-18-06; 8:45 am]

**BILLING CODE 6055-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for continued operation of a small research camp at Cape Shirreff, Livingston Island, Antarctica, by Dr. Rennie S. Holt, a citizen of the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 19, 2006. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292-8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit

application under this Regulation for the continued operation of a small remote research camp at Cape Shirreff, Livingston Island, Antarctica (62°28'07"S, 60°46'10"W), for another five years to continue predator-prey studies initiated in 1996 at the site. The permit period requested is from October 15, 2006 to April 15, 2011. Cape Shirreff is an ice-free peninsula towards the western end of the north coast of Livingston Island, and is designated an Antarctic Specially Protected Area No. 149 under the Antarctic Treaty. The camp consists of approximately four semi-permanent structures containing work, living, and storage spaces. During the field season from early September through the end of March of each year, four to six scientists will utilize the camp.

*The permit applicant is:* Dr. Rennie S. Holt, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

**Polly A. Penhale,**

*Environmental Officer.*

[FR Doc. 06-4688 Filed 5-18-06; 8:45am]

**BILLING CODE 7555-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27320; 812-13189]

### J.P. Morgan Fleming Series Trust and J.P. Morgan Investment Management Inc.; Notice of Application

May 15, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as certain disclosure requirements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

**APPLICANTS:** J.P. Morgan Fleming Series Trust (the "Trust") and J.P. Morgan Investment Management Inc. (the "Manager").

**FILING DATES:** The application was filed on May 17, 2005 and amended on May 8, 2006.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington DC 20549-1090. Applicants, Stephen M. Benham, Esq., J.P. Morgan Investment Management Inc., 522 Fifth Avenue, New York, NY, 10036.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street NE, Washington DC 20549-0102 (tel. 202-551-5850).

### Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust currently offers two series, each of which has its own investment objectives, restrictions, and policies (each current or future series, a "Fund" and collectively, the "Funds"). Certain of the Funds use or may use the multi-manager structure described below (each, a "Multi-Manager Fund," and collectively, the "Multi-Manager Funds").<sup>1</sup> The Manager is registered as

an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and provides investment management services to the Funds pursuant to an investment advisory and management agreement with the Trust ("Advisory Agreement"). The Advisory Agreement has been approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust ("Disinterested Board Members"), as well by each Fund's shareholders.

2. Under the terms of the Advisory Agreement, the Manager oversees the investments of the Multi-Manager Funds and manages each Multi-Manager's business affairs, subject to oversight by the Board. The Advisory Agreement also provides that the Manager may select and contract with one or more investment advisers ("Sub-Advisers") to exercise day-to-day investment discretion over all or a portion of the assets of the Multi-Manager Funds (each such agreement, a "Sub-advisory Agreement" and collectively, the "Sub-advisory Agreements"). The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Manager have been, or will be, selected and approved by the Board, including a majority of the Disinterested Board Members. Each Sub-Adviser to a Multi-Manager Fund is, and any future Sub-Adviser to a Multi-Manager Fund will be, an investment adviser registered under the Advisers Act. The Manager compensates or will compensate each Sub-Adviser out of the fees paid to the Manager under the Advisory Agreement.

3. Applicants request relief to permit the Manager to enter into and materially amend Sub-advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Multi-Manager Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds ("Affiliated Sub-Adviser"). None of the current Sub-Advisers is an Affiliated Sub-Adviser.

management investment company that currently intends to rely on the order. If the name of any Multi-Manager Fund contains the name of a Sub-Adviser (as defined below), then the name of the Manager or the name of the entity controlling, controlled by, or under common control with the Manager that serves as the primary adviser to the Multi-Manager Fund will precede the name of the Sub-Adviser.

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Multi-Manager Funds to disclose the fees paid by the Manager to the Sub-Advisers. An exemption is requested to permit a Multi-Manager Fund to disclose (as both a dollar amount and as a percentage of the Multi-Manager Fund's net assets): (a) the aggregate fees paid to the Manager and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fees"). If a Multi-Manager Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration

<sup>1</sup> Applicants request that any relief granted that pursuant to the application also apply to any other existing or future registered open-management investment company or series thereof that: (i) is advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; and (ii) adopts the multi-manager structure described in the application (included in the term "Multi-Manager Funds"). Any Multi-Manager Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trust is the only existing registered open-end

statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Multi-Manager Fund, shareholders, in effect, will hire the Manager to manage the Multi-Manager Fund's assets by using its investment adviser selection and monitoring process. Applicants assert that investors will purchase Multi-Manager Fund shares to gain access to the Manager's expertise in these areas. Applicants further assert that the requested relief will reduce Multi-Manager Fund expenses and enable the Multi-Manager Funds to operate more efficiently. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) and rule 18f–2.

8. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a "posted" fee schedule. Applicants state that while Sub-Advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will better enable the Manager to negotiate lower advisory fees with the Sub-Advisers, the benefits of which would be passed on to the shareholders of the Multi-Manager Funds.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Multi-Manager Fund may rely on the requested order, the operation of the Multi-Manager Fund in the manner described in the application will be approved by a majority of the Multi-Manager Fund's outstanding voting securities, as defined in the Act, or, in the case of a Multi-Manager Fund whose public shareholders purchase

shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) prior to offering shares of the Multi-Manager Fund to the public.

2. Each Multi-Manager Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Multi-Manager Fund will hold itself out to the public as employing the multi-manager approach described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) for the investment performance of the Multi-Manager Fund due to its responsibility to oversee Sub-Advisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, the Manager will furnish shareholders of the affected Multi-Manager Fund with all of the information about the new Sub-Adviser that would be contained in a proxy statement, except as modified by the order to permit the disclosure of Aggregate Fees. This information will include the disclosure of Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-Adviser. The Manager will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit the disclosure of Aggregate Fees.

4. The Manager will not enter into a Sub-advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the affected Multi-Manager Fund.

5. At all times, at least a majority of the Board will be Disinterested Board Members, and the nomination of new or additional Disinterested Board Members will be placed within the discretion of the then-existing Disinterested Board Members. The Board also will satisfy the fund governance standards defined in rule 0–1(a)(7) under the Act.

6. When a change of Sub-Adviser is proposed for a Multi-Manager Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Disinterested Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Multi-Manager Fund and its shareholders and does not involve a conflict of interest from which the Manager or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Multi-Manager Fund, including overall supervisory responsibility for the general management and investment of the Multi-Manager Fund's assets and, subject to review and approval of the Board, will: (i) Set the Multi-Manager Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or a part of the Multi-Manager Fund's assets; (iii) when appropriate, allocate and reallocate the Multi-Manager Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the Sub-Advisers' performance; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Multi-Manager Fund's investment objectives, policies and restrictions.

8. No trustee or officer of a Multi-Manager Fund, or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-Adviser except for: (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Multi-Manager Fund will disclose in its registration statement the Aggregate Fees.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Disinterested Board Members. The selection of such counsel will be within the discretion of the then-existing Disinterested Board Members.

11. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per-Multi-Manager Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Manager's profitability.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson**

*Assistant Secretary*

[FR Doc. E6-7638 Filed 5-18-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27318; 812-13291]

### Morgan Stanley and Co. Incorporated, et al.; Notice of Application and Temporary Order

May 15, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them and any other company of which Morgan Stanley & Co. Incorporated ("MS&Co.") is or in the future becomes an affiliated person ("Covered Persons") from section 9(a) of the Act with respect to an injunction entered against MS&Co. on May 12, 2006 by the U.S. District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order with respect to the Injunction.

**APPLICANTS:** MS&Co., Morgan Stanley AIP GP LP, Morgan Stanley Asset & Investment Trust Management Co., Limited, Morgan Stanley Investment Advisors Inc., Morgan Stanley Investment Management Company, Morgan Stanley Investment Management Inc., Morgan Stanley Investment Management Limited, Van Kampen Advisors Inc., and Van Kampen Asset Management (together, the "Advisers"); Morgan Stanley Distribution, Inc., Morgan Stanley Distributors Inc., and Van Kampen Funds Inc. (together, the "Underwriters"); Morgan Stanley Capital Partners III, Inc., Morgan Stanley Global Emerging Markets, Inc., Morgan Stanley Private Equity Asia, Inc., Morgan Stanley Venture Capital III, Inc., MSDW Capital Partners IV, Inc., MSDW OIP Investors, Inc., MSDW Real Estate Special Situations II Manager, L.L.C., MSDW Venture Partners IV, Inc., MSREF II, Inc., MSREF III, Inc., MSREF IV, L.L.C., MSREF V, L.L.C. and MSVP 2002, Inc. (together, "ESC Managers")

and, with the Advisers and Underwriters, the "Applicants").

**FILING DATES:** The application was filed on May 10, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2006, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Barry Fink, Esq., Morgan Stanley, 1221 Avenue of the Americas, 22nd Floor, New York, NY 10020.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Senior Counsel, at (202) 551-6878, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102, (telephone (202) 551-5850).

### Applicants' Representations

1. Each Applicant is a direct or indirect subsidiary of Morgan Stanley, a Delaware corporation. Morgan Stanley is a publicly held global financial services company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services. MS&Co., a Delaware corporation, is a global financial services firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and as an investment adviser under the Investment Advisers Act of 1940. MS&Co. serves as principal underwriter for, and the other Applicants serve as investment adviser,

subadviser, depositor or principal underwriter for, numerous registered investment companies ("Funds"). The ESC Managers serve as the general partner or investment adviser to certain employees' securities companies operating pursuant to Commission orders (included in the term "Funds").<sup>1</sup>

2. On May 12, 2006, the U.S. District Court for the District of Columbia entered the Injunction against MS&Co. in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that MS&Co. violated section 17(b) of the Exchange Act and rule 17a-4(j) thereunder of the Exchange Act by failing to produce e-mails to the Commission staff pursuant to Commission subpoenas and requests in the Commission's investigation into MS&Co.'s practices in allocating shares of stock in initial public offerings and an investigation into conflicts of interest between the firm's research and investment banking practices. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, MS&Co. consented to the entry of the Injunction as well as the payment of a civil penalty of \$15 million.<sup>3</sup>

### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person.

<sup>1</sup> Morgan Stanley Capital Investors, L.P., Investment Company Act Release Nos. 24340 (Mar. 17, 2000) (notice) and 24389 (Apr. 12, 2000) (order); Morgan Stanley Venture Investors, L.P., Investment Company Act Release Nos. 20206 (Apr. 8, 1994) (notice) and 20276 (May 4, 1994) (order).

<sup>2</sup> *U.S. Securities and Exchange Commission v. Morgan Stanley & Co. Incorporated*, Final Judgment Against Morgan Stanley & Co. Incorporated, 06-CV00882 (RCL) (D.D.C., filed May 12, 2006).

<sup>3</sup> The civil penalty would be reduced by any amounts up to \$5,000,000 paid by MS&Co. pursuant to its agreements with NASD and the New York Stock Exchange to pay a total of \$5,000,000 in penalties in related proceedings.