

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Joanne Augst-Johnson, Nancy Reeves,	)	
Debra Shaw, Jan Tyler, Cheryl Giustiniano,	)	
Laurie Blackburn, Erna Tarantino,	)	
and Elizabeth Reinke,	)	Case No. 1:06-cv-01142 (RWR)
	)	
On behalf of themselves and all others similarly	)	
situated,	)	CLASS ACTION
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Morgan Stanley & Co. Incorporated, formerly	)	
known as Morgan Stanley DW Inc.,	)	
	)	
Defendant.	)	

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**JOINT MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Plaintiffs and Defendant Morgan Stanley & Co. Incorporated (“Morgan Stanley”), by and through their respective counsel and pursuant to Fed. R. Civ. P. 23(e), hereby move the Court for final approval of their proposed Settlement Agreement, including all orders necessary to effectuate their proposed class action settlement. A memorandum in support of this Motion accompanies this Motion. A proposed Final Order Approving Class Representatives, Certifying Class, Appointing Class Counsel, Approving Settlement Agreement, Awarding Fees and Costs and Dismissing Action Subject to the Court’s Continuing Jurisdiction will accompany Class Counsel’s Supplemental Motion in Support of Class Counsel’s Motion for an Award of Attorneys’ Fees and Expenses, which will be filed within two days of this Motion.

Dated: October 1, 2007

/s/ Cyrus Mehri

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Certificate of Service

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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## **INTRODUCTION**

Plaintiffs Joanne Augst-Johnson, Nancy Reeves, Debra Shaw, Jan Tyler, Cheryl Giustiniano, Laurie Blackburn, Erna Tarantino, and Elizabeth Reinke (the “Named Plaintiffs” or “Class Representatives”), on behalf of the Settlement Class, respectfully request that this Court grant the parties’ Joint Motion for Final Approval of their Class Action Settlement Agreement. The proposed Settlement will provide Class Members with substantial programmatic and monetary relief. On July 17, 2007, this Court granted preliminary approval to the Settlement with Morgan Stanley & Co. Incorporated. (“Morgan Stanley”). Since then, Notice was provided by first class mail to each of the 2,867 members of the Settlement Class. Only two Class Members have objected to the Settlement, and a third person, who is not a Class Member, submitted a purported objection. No current employees have objected to the Settlement. Only one percent of Class Members have requested exclusion from the terms of the Settlement. As of October 1, 2007, the Claims Administrator, Settlement Services, Inc. (“SSI”) has received 907 Claim Forms from Class Members.<sup>1</sup> The overwhelmingly positive response from Class Members provides strong evidence that this Settlement is fair, adequate, and reasonable in all respects and should be approved.

## **BACKGROUND**

### **I. PROCEDURAL HISTORY**

The procedural history of this litigation and the terms of the Settlement Agreement are described in detail in Plaintiffs’ Memorandum in Support of Joint Motion for Preliminary Approval of Class Action Settlement and Class Counsel’s Motion for Award of Attorneys’ Fees

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<sup>1</sup> The Claims Administrator has not yet determined whether all persons who submitted Claim Forms are, in fact, Class Members.

and Expenses (“Prelim. Mem.”), filed on April 24, 2007, at pp. 1-9. We review this history more briefly here.

This case began in early 2005, after Joanne Augst-Johnson contacted Mehri & Skalet, PLLC regarding her experiences at Morgan Stanley. Mehri & Skalet joined forces with Sprenger + Lang, PLLC, and Moody & Warner, P.C., who had been investigating the claims of Nancy Reeves, Debra Shaw, and Jan Tyler. The three firms collectively conducted interviews of more than 200 women employed in Morgan Stanley’s retail brokerage business. In the course of the investigation, four additional women stepped forward and were added as Named Plaintiffs in this action. (Declaration of Cyrus Mehri, (hereinafter “Mehri Decl.”), ¶¶ 4-5, 10-11), attached hereto as Exhibit 1.

The Named Plaintiffs in this case allege that Morgan Stanley discriminated against women Financial Advisors and Registered Financial Advisor Trainees with respect to distributions and transfers of accounts, work assignments, compensation, career advancement opportunities, termination, and other terms and conditions of employment, as described in the Amended Complaint, filed on April 24, 2007.

The parties entered into settlement negotiations in April 2005, well before a complaint was filed. During these negotiations, the parties entered into a tolling agreement, a confidentiality agreement, and exchanged information similar to the discovery that would have occurred during formal class discovery. This information included detailed information on company policies and practices and company-wide computer data concerning account distributions and compensation for women compared to men during the potential liability period. The data exchanged was thoroughly analyzed by recognized statistical expert, Dr. Janice Madden, a professor at the University of Pennsylvania and a principal in the consulting firm,

Econsult Corp. (Mehri Decl., ¶¶ 13). The information exchanged enabled the parties to fully assess their respective litigation positions. The exhaustive negotiations spanned more than two years, included over 15 in-person meetings and numerous telephone conferences and were facilitated by a skilled and highly respected mediator, Hunter H. Hughes, Esq. of Rogers & Hardin, LLP. (*Id.* at ¶ 15). These mediation efforts culminated in a Settlement Agreement executed on April 23, 2007. The parties filed a Joint Motion for Preliminary Approval of Class Action Settlement Agreement on April 24, 2007. A preliminary approval hearing was held on July 5, 2007, during which this Court suggested certain revisions to the Settlement Agreement and Notice to Class Members. Counsel for the parties made the changes suggested by the Court and filed revised versions of the Settlement Agreement and Notice on July 11 and July 16, 2007. On July 17, 2007, this Court preliminarily approved the proposed Settlement, provisionally certified the proposed Settlement Class, appointed the Named Plaintiffs as Class Representatives, approved the Notice and Claim Form, and designated Class Counsel. (Preliminary Approval Order, (hereinafter “Prelim. App. Order”), July 17, 2007).

## **II. SUMMARY OF THE SETTLEMENT TERMS**

### **A. General Terms**

The Settlement Class includes all women who were employed by Morgan Stanley as Financial Advisors or Registered Financial Advisor Trainees at any time between August 5, 2003 and June 30, 2007. (Second Revised Settlement Agreement (hereinafter “Settlement Agreement”), § III.D.1, attached hereto as Exhibit 2). All Class Members who receive a monetary award under the Settlement will expressly release all claims that arise out of the allegations giving rise to this lawsuit. (*Id.*, § V.A). Class Members who wished to opt out of the monetary portion of the Settlement were required to do so by submitting an opt-out statement

with the Court by September 10, 2007. (*Id.*, § IV.C.5; Prelim. App. Order ¶ 8.) The terms of the Settlement are described in detail in Plaintiffs' Preliminary Approval Memorandum at pp. 4-9 and are only briefly summarized here.

### **B. Programmatic Relief**

The programmatic relief agreed to in the Settlement consists of changes in company policies and practices that plaintiffs alleged were the source of the sex discrimination that they and other women experienced. Among other things, Morgan Stanley has agreed to revise the "Power Rankings" used to allocate accounts and other business opportunities to ensure equitable and fair account distribution without regard to gender. Morgan Stanley will also implement account distribution policies to ensure equitable and fair distribution of the accounts of departing Financial Advisors, retiring Financial Advisors, departing Financial Advisor partners, and leads, call-ins, and walk-ins, and will computer-automate the account distribution process. (Settlement Agreement, § VII.C). The company will maintain the Branch Management Mobility project and develop and implement a comprehensive management and assessment and development program to provide candidates a path to assessment and selection as branch managers. (*Id.*, § VII.B). The company will provide bi-annual diversity training to all management-level field personnel and include a diversity component to branch manager compensation designed to measure and reward efforts at recruiting, training and retaining women Financial Advisors. (*Id.*).

The parties have jointly selected Industrial Psychologists Dr. Kathleen Lundquist and Dr. Irwin Goldstein to work with Morgan Stanley and Class Counsel to develop meaningful, novel, state-of-the-art programs designed to attract, retain and enhance the success of women Financial Advisors and Registered Financial Advisor Trainees. The Industrial Psychologists will also develop meaningful, state-of-the-art programs designed to increase the participation of women

Financial Advisors in partnerships and in the receipt of retiring Financial Advisors' accounts. (*Id.*, § VII.F.2).

The term for the programmatic provisions of the Settlement is five years. During the five-year term, Morgan Stanley will regularly report to Class Counsel about Morgan Stanley's compliance with its Settlement obligations through a Diversity Monitor hired pursuant to the Settlement Agreement. (*Id.*, § VII.F.1 and § IX.C). The company will institute a state-of-the-art monitoring program developed with input from the jointly appointed expert Industrial Psychologists. (*Id.*, § VII.F.2 and § IX.B). If Morgan Stanley fails to carry out any of its obligations, Class Counsel may bring an enforcement action following attempted voluntary resolution of the dispute. Any such enforcement action would be brought before an arbitration panel and subject to binding arbitration and Court oversight (*Id.*, § X).

The parties estimate that Morgan Stanley will spend approximately \$7.5 million on diversity efforts during the period of the Settlement Agreement. As a result of the actions taken by Morgan Stanley under this Agreement, the parties anticipate that the earnings of women Financial Advisors will increase by at least \$16 million over the five-year term of the settlement. (Mehri Decl. ¶ 31).

### **C. Monetary Relief for Class Members and Named Plaintiffs**

On July 27, 2007, pursuant to the Settlement Agreement, Morgan Stanley paid \$46 million by wire transfer to the MS-GWMG Financial Advisor Sex Discrimination Settlement Fund.<sup>2</sup> The principal is expected to generate over \$1 million in interest prior to Class Member distributions. (Mehri Decl. ¶ 25). Morgan Stanley will also pay the employer's share of payroll

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<sup>2</sup> This sum, including the interest thereon, is intended to cover all attorneys' fees and costs Plaintiffs are requesting the Court award. Plaintiffs' Motion for Attorneys' Fees and Costs will be filed within two days of this Motion.

taxes due on Class Member distributions. (Settlement Agreement, § VIII.F.2). Ultimately, the Settlement Fund, inclusive of interest and the employer's share of payroll taxes, is likely to approach \$50 million. (Mehri Decl. ¶ 25). The Settlement Fund will be used to pay the claims of Class Members (including the Named Plaintiffs), attorneys' fees and litigation expenses, and costs to administer the claims process and to monitor and enforce the Settlement. (Settlement Agreement, § VIII.A).

The allocation of awards from the Claims Portion to Class Members, including the Named Plaintiffs, will be based on an allocation formula that includes an Earnings Regression component and a Claim Form component, each of which will be weighted equally in calculating a Class Member's monetary award. (*Id.*, § VIII.D.1-2). The Earnings Regression component, which will be developed by Plaintiffs' labor economist and statistician, will consist of a mathematical calculation that accounts for both the claimant's length of tenure at Morgan Stanley and the disparity between the claimant's earnings during the liability period and those of male peers. (*Id.*, § VIII.D.1). The Claim Form component, which will be administered by a Special Master, will be based on a formula that takes into consideration individual evidence of sex discrimination, individual evidence of compensatory damages, individual contributions to the litigation, and the release of claims asserted in administrative charges that exceed the scope of the Class claims. (*Id.*, § VIII.D.2). No awards will be paid prior to final approval of the Settlement. (*Id.*, § VIII.D.3.d). The Special Master will recommend a plan of allocation based on the Earnings Regression calculations and consideration of the Claim Forms, and will submit a Report and Recommendation to the Court for approval. (*Id.*, § VIII.D.3.a-c). The Special Master's report will include a discussion of the formula and the rationale therefore.

## ARGUMENT

### I. CLASS COUNSEL HAS COMPLIED WITH THE NOTICE PROVISIONS

When this Court granted preliminary approval of the Settlement on July 17, 2007, it also approved the means for giving members of the Settlement Class notice of the proposed Settlement. As shown below, Class Counsel has fully complied with the Court's directions regarding the notice program.

On April 30, 2007 and July 13, 2007, the parties supplied to the Claims Administrator, Settlement Services, Inc. ("SSI"), data on all female Financial Advisors and Registered Financial Advisor Trainees (current and former) who worked at Morgan Stanley at any time between August 5, 2003 and June 30, 2007. (Declaration of Mark Patton, ¶ 3 (hereinafter "Patton Decl."), attached hereto as Exhibit 3). This list contained contact information for 2,867 women who comprise the entire universe of potential Class Members. (*Id.*). On July 27, 2007, SSI mailed copies of the Notice, Claim Form, and Class Member Release approved by the Court (the "notice package") to each person on the list provided by Morgan Stanley. (*Id.*, ¶ 5). Three hundred and sixteen of the notice packages were returned to SSI as undeliverable; 41 of those had forwarding addresses on the returned envelopes and were promptly remailed. (*Id.*, ¶ 7-8). When SSI searched for updated address information for all 316 undeliverable notices, 32 returned the same address and 284 new addresses were found. (*Id.*, ¶ 8).

On September 14, 17 and 18, Class Counsel searched for updated addresses for the 32 addresses SSI did not find new addresses for using LEXIS-NEXIS' SmartLinx tool. (Mehri Decl., ¶ 39). Where phone numbers were located, Class Counsel made efforts to call these Class Members or relatives of the Class Members and obtain updated addresses. (*Id.*) Class Counsel provided updated addresses for 13 Class Members to SSI on September 17 and 18, 2007. (*Id.*).

On September 14, 2007, SSI resent the Notice Package to all 316 Class Members whose original package had been returned as undeliverable. (Patton Decl., ¶ 8). Because the resending of the undeliverable notices was delayed, SSI resent all 316 notice packages via priority mail, with a bright yellow insert instructing Class Members to contact Class Counsel if they anticipated any problems meeting the deadlines. (*Id.*). Class Counsel has received phone calls from some of these Class Members and has instructed each of them to include a letter or note with her submission of a Claim Form indicating that she received her Notice too late to submit her Claim Form by the September 24, 2007 postmark deadline. (Mehri Decl., ¶ 40). As of October 1, 2007, there are only 21 Class Members, less than one percent of the Class, for whom SSI or Class Counsel could not find what appear to be accurate addresses. (Patton Decl., ¶ 10).<sup>3</sup>

The mailed notice packages provided actual notice to each Class Member, to the extent practicable. In addition to the mailed notice packages, Class Counsel created and maintained a website, [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com), which contained detailed information related to the proposed Settlement. On this website, a visitor can view and/or download the Amended Complaint; the Joint Motion for Preliminary Approval of Class Action Settlement; Plaintiffs' Memorandum in Support of Preliminary Approval; the Second Revised Settlement Agreement; the Notice of Class Action, Proposed Settlement Agreement & Settlement Hearing; the Claim

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<sup>3</sup> Approximately 25 Class Members contacted Class Counsel after receiving the remailed notice package. (Mehri Decl., ¶ 40). None of these callers indicated a desire to object to the fairness of the Settlement. (*Id.*) Class Counsel did receive a copy of a letter sent to this Court from Daniel J. Kaiser, Esq., who represents three Class Members involved in individual litigation against Morgan Stanley. One of Mr. Kaiser's clients is on the list of 316 Class Members whose notice package was returned as undeliverable, and Class Counsel understand Mr. Kaiser plans to attend the October 11, 2007 fairness hearing to request the Court give his clients leave to opt-out of the Settlement even though the deadline has passed. Morgan Stanley has communicated to Class Counsel its position is that Class Members whose opt-out requests are untimely must submit a notarized affidavit or a declaration pursuant to 28 U.S.C. § 1746 swearing that they did not receive the notice package before the opt-out deadline. (Mehri Decl., ¶ 43). Class Counsel do not oppose this position.



Form; the Named Plaintiff Release; and the Class Member Release. This website was activated on July 5, 2006. (Mehri Decl., ¶ 36). Class Counsel also posted information related to the Settlement and/or links to the [www.morganstanleygencase.com](http://www.morganstanleygencase.com) website on their individual firm websites, [www.findjustice.com](http://www.findjustice.com) (Mehri & Skalet, PLLC); [www.sprengerlang.com](http://www.sprengerlang.com) (Sprenger & Lang, PLLC); and [www.nmlaborlaw.com](http://www.nmlaborlaw.com) (Moody & Warner, P.C.). (*Id.*, ¶ 37).

The Court should find that Class Counsel complied with every provision in the Settlement concerning notice. Due process requires that absent class members have the right to be heard and an opportunity to remove herself from the class, if she so desires. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 848 (1999). Class Counsel's efforts at providing actual notice to virtually all Class Members have satisfied this requirement.

## **II. THE COURT SHOULD APPROVE THE SETTLEMENT CLASS**

On July 17, 2007, the Court provisionally found that the requirements of Fed. R. Civ. P. 23 (a) and (b)(2) and (b)(3) have been satisfied and granted preliminary approval. As part of the final approval process, the Court should conclude that all of the requirements of Rule 23 have indeed been satisfied and certify the Settlement Class.<sup>4</sup>

### **A. The Proposed Settlement Class Satisfies Rule 23(a)**

Under Rule 23(a) of the Federal Rules of Civil Procedure, a class may be certified when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions

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<sup>4</sup> The Class Action Fairness Act provides that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State officials are served with the notice” of the proposed settlement. 28 U.S.C. § 1715(d). The parties provided notice to the United States Attorney General and the Attorneys General of all 50 states and the District of Columbia on May 8, 2007, and again on July 25, 2007, after implementing the revisions recommended by this Court at the Preliminary Approval Hearing. (Declaration of Mark Dichter (hereinafter “Dichter Decl.,” ¶ 9, attached hereto as Exhibit 4). Thus, final approval to this Settlement may be given after October 24, 2007.

of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23 (a). The Settlement Class meets each of these requirements.

### **1. The Settlement Class Is So Numerous That Joinder of All Members Is Impracticable**

Courts generally agree that classes with 40 or more members satisfy the numerosity requirement. *See Frazier v. Consolidated Rail Corp.*, 851 F.2d 1447, 1456 n. 10 (D.C. Cir. 1988); *5 Moore’s Federal Practice* § 23.22[3][a] (Matthew Bender 3d ed. 1998). The parties have submitted to the Claims Administrator a list of 2,867 Class Members. (Patton Decl., ¶ 4-5). Therefore, the Settlement Class clearly meets the numerosity requirement.

### **2. Questions of Law and Fact Are Common to the Settlement Class**

Commonality requires that the claims in a case raise issues that involve questions of law or fact common to the class, but does not require that every issue of law or fact be identical with respect to each class member. *See, e.g., Taylor v. D.C. Water & Sewer Auth.*, 241 F.R.D. 33, 37 (D.D.C. 2007). Generally, the commonality requirement is satisfied where there is at least one issue which, if resolved, affects all or a significant number of class members. *See, e.g., Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 25-26 (D.D.C. 2006). For this reason, the commonality requirement is “easily met.” *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 259 (D.D.C. 2002).

The programmatic relief provisions of the proposed Settlement demonstrate that the claims of all members of the Class raise numerous common issues. Morgan Stanley maintains its employment practices and policies in much the same way at each of its branch offices. All of the Class Members, both current and former Morgan Stanley employees, were subjected to the

same employment policies and practices during their tenure as Financial Advisors or Registered Financial Advisor Trainees.

The similarity of these employment policies and practices presents a number of factual and legal issues common to members of the Settlement Class, some of which are set forth in the Amended Complaint at paragraph 22. The commonality requirement is thus easily satisfied in this case. *See, e.g., Bynum v. District of Columbia*, 214 F.R.D. 27, 33-34 (D.D.C. 2003) (finding commonality where class members were affected by the same policy or practice, even if the extent of individual class members' injuries varied).

### **3. The Named Plaintiffs' Claims Are Typical of the Class Claims**

The Rule 23(a) typicality requirement is met if "each class member's claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant's liability." *Pigford v. Glickman*, 182 F.R.D. 341, 349 (D.D.C. 1998) (internal citations omitted); *see also Chang v. United States*, 217 F.R.D. 262, 272 (D.D.C. 2003) ("typicality focuses on the similarity of the legal and remedial theories behind the claims of the named representatives and those of the putative class"). Courts have liberally construed the typicality requirement. *See In re Vitamin Antitrust Litig.*, 209 F.R.D. at 260. Here, all Class Members' claims arise from Morgan Stanley's employment policies and practices.

The eight Named Plaintiffs are or were employed by Morgan Stanley during the class period, between August 5, 2003 and June 30, 2007. Seven of the Named Plaintiffs held the title of Financial Advisor; one Named Plaintiff held the title of Registered Financial Advisor Trainee. Each Named Plaintiff alleges that she suffered sex discrimination with respect to Morgan Stanley's employment practices affecting compensation and career advancement – the same

forms of sex discrimination claimed on behalf of members of the Settlement Class. (*See* Declarations of Joanne Augst-Johnson; Nancy Reeves; Debra Shaw; Cheryl Giustiniano; Laurie Blackburn; Erna Tarantino; and Elizabeth Reinke, filed with Plaintiffs' Prelim. Mem. on April 24, 2007). Each Named Plaintiff would use the same legal theories to prove her claims. Accordingly, the typicality requirement is satisfied.

#### **4. The Named Plaintiffs Are Adequate Representatives Under Rule 23(a)(4)**

The Rule 23(a)(4) adequacy requirement “aims to ensure that the named representatives do not have interests antagonistic to those of the class members they represent, and that they will vigorously pursue the claims of the class through qualified counsel.” *Barnes v. District of Columbia*, 242 F.R.D. 113, 122 (D.D.C. 2007).<sup>5</sup> The interests of the Named Plaintiffs do not conflict with the interests of the other Class Members. The representative Named Plaintiffs have claims similar to the members of the Settlement Class and do not face unique overriding defenses. The Named Plaintiffs have aided Class Counsel in prosecuting the case by participating in Class Counsel's investigation and providing input regarding the programmatic relief and the Settlement Agreement at various stages. (Mehri Decl., ¶ 7, 11, 15, 23). The Named Plaintiffs have fairly and adequately represented the interests of the Settlement Class in this case.

#### **B. The Proposed Settlement Class Satisfies Rule 23(b)**

In addition to satisfying all four Rule 23(a) requirements, the proposed Settlement Class also must satisfy the provisions of at least one of the three subsections of Rule 23(b). Fed. R. Civ. P. 23 (b). The Settlement Class meets this requirement, and was provisionally certified by

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<sup>5</sup> Although not addressed by the Court in *Barnes*, the adequacy of Plaintiffs' counsel is no longer evaluated under Rule 23(a)(4), but is now assessed under Rule 23(g). *See* Advisory Committee Notes on 2003 Amendments, Subdivision (g) to Fed. R. Civ. P. 23(g).

this Court under both Rule 23(b)(2) and (b)(3). Approval of a class under both subsections is consistent with Fed. R. Civ. P. 23(c)(4), which permits cases to be maintained as a class action with respect to particular issues, and has been approved by the D.C. Circuit. *See Eubanks v. Billington*, 110 F.3d 87, 96 (D.C. Cir. 1997) (permitting district court to adopt a "hybrid" approach, certifying a (b)(2) class as to the claims for declaratory or injunctive relief, and a (b)(3) class as to the claims for monetary relief, effectively granting (b)(3) protections including the right to opt out to class members at the monetary relief stage"); *see also Barnes v. District of Columbia*, 242 F.R.D. 113, 124 (D.D.C. 2007) (certifying a hybrid (b)(2) and (b)(3) class); *Bynum v. District of Columbia*, 217 F.R.D. 43, (D.D.C. 2003) (certifying two hybrid (b)(2) and (b)(3) classes).

Rule 23(b)(2) requires that the defendant has acted on grounds generally applicable to the Class, making final injunctive relief appropriate with respect to the Class as a whole. This requirement is met by a showing that the defendant "has acted in a consistent manner toward members of the class so that his actions may be viewed as part of a pattern of activity." *Barnes*, 242 F.R.D. at 123 (internal quotations and citation omitted). Here, Morgan Stanley's account distribution policies and other employment practices affecting compensation, as well as its policies and practices for selecting sales management, applied to all members of the Settlement Class. The programmatic relief agreed to in the Settlement Agreement will benefit all members of the Settlement Class who currently work for Morgan Stanley as well as female Financial Advisors and Registered Financial Advisor Trainees who will work there in the future. Class Counsel believes that this relief is as valuable as the monetary relief agreed to in the Settlement. Thus, with respect to the programmatic relief, certification under Rule 23(b)(2) is appropriate.

The Settlement Class has also been provisionally certified pursuant to Rule 23(b)(3). It is appropriate to certify the Class under Rule 23(b)(3) insofar as Class Members seek and have collectively obtained monetary relief because common issues would predominate over purely individualized issues in the litigation over damages. The parties have agreed to an allocation formula using statistical earnings regressions models and a Claim Form designed to target distributions to those Class Members most harmed. Accordingly, some Class Members may believe that they are entitled to damages beyond those that may be afforded to them under this Settlement. By preliminarily certifying the Class under Rule 23(b)(3), the Court has afforded such Class Members the opportunity to opt-out of the monetary portion of the Settlement without releasing any of their claims. In fact, 29 Class Members have expressed a desire to opt-out of the Settlement. (Mehri Decl. ¶ 43). Class Members' rights to exercise control over the damages aspects of their claims have thus been protected and final certification of this class as a hybrid (b)(2) and (b)(3) class is appropriate.<sup>6</sup>

### **C. Class Counsel Are Competent Under Rule 23(g) to Represent the Class**

Rule 23(g) requires the Court to appoint class counsel that are able to fairly and adequately represent the interests of the Class. Fed. R. Civ. P. 23(g)(1). In appointing class counsel, the Court must consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; and (3) counsel's knowledge of the applicable law; (4) the resources counsel has committed to representing the class. The Court

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<sup>6</sup> Rule 23(b)(3) also requires that, to be approved, "a class action [be] superior to other available methods for the fair and efficient adjudication of the controversy." The Supreme Court, however, has held that this superiority requirement is irrelevant in the context of a settlement class. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

may also consider any other matters pertinent to counsel's ability to fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(C); *Bynum v. District of Columbia*, 412 F. Supp. 2d 73, 78 (D.D.C. 2006).

Lead Class Counsel are competent and experienced employment class-action litigators who have achieved several significant employment discrimination settlements and have vigorously represented the interests of the Class Members in this matter. The declarations filed by Cyrus Mehri and Steven M. Sprenger on April 24, 2007 with Plaintiffs' Preliminary Approval Memorandum describe in detail the extensive work by Class Counsel to investigate and pursue the claims of Class Members before the Settlement was reached and, on July 17, 2007, this Court found Class Counsel to be adequate representatives of the Class. Since then, Class Counsel have continued to devote substantial resources to representing the Class Members, including responding to Class Member inquiries regarding the Settlement and claims process, assisting the Named Plaintiffs and several Class Members with completion of their Claim Forms and working with SSI on the administration of the Settlement. (Mehri Decl., ¶ 38). Class Counsel are competent to represent the members of the Class and have fairly and adequately represented the interests of the Class.

### **III. FINAL APPROVAL IS APPROPRIATE BECAUSE THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE**

Rule 23(e) requires the Court to find that the proposed Settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(C). In this Circuit, "there is 'no obligatory test' that the Court must use to determine whether a settlement is fair, adequate and reasonable;" instead, the Court must consider the facts and circumstances of the case and exercise its discretion in determining whether it should approve a proposed settlement. *Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 8 (D.D.C. 2006) (citing *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999)),

*aff'd* 206 F.3d 1212 (D.C. Cir. 2000). Three judicial principles provide some guidance. First, the courts favor compromise of complex litigation to obviate the uncertainties of the outcome and to avoid wasteful litigation and expense. *See, e.g., Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993) (noting the “interest in encouraging settlements, particularly in class actions, which are often complex, drawn-out proceedings demanding a large share of finite judicial resources”); *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 103 (D.D.C. 2004) (“‘principle of preference’ favoring and encouraging settlements” limits judicial discretion); *Osher v. SCA Realty, Inc.*, 945 F. Supp. 298, 304 (D.D.C. 1996) (the general preference of courts for “resolution of disputes through voluntary compromise” is especially strong in the context of class actions “given the litigation expenses and judicial resources required in many such suits”) (internal citations omitted); *Hammon v. Barry*, 752 F. Supp. 1087, 1100 (D.D.C. 1990) (“particularly in class action suits, there is an overriding public interest in favor of settlement”); *Luevano v. Campbell*, 93 F.R.D. 68, 85 (D.D.C. 1981) (the “strong public policy in favor of the settlement of claims . . . is particularly important in the resolution of cases brought under Title VII of the Civil Rights Act of 1964, because of the ‘strong preference’ of Congress for ‘encouraging voluntary settlement of employment discrimination claims’”) (internal citations omitted).

Second, the purpose of requiring court approval of the settlement of a class action is to ensure that the interests of the non-party class members are protected. *See Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 7-8 (D.D.C. 2006) (“in deciding whether to approve a proposed settlement, the Court must protect the interests of those unnamed class members whose rights may be affected by the settlement of the action”); *Osher*, 945 F. Supp. at 304 (the Court has “the duty of protecting absentee class members, which it executes by ‘assuring that the settlement



represents adequate compensation for the release of the class claims’’). At the July 5, 2007 preliminary approval hearing, this Court proposed revisions to the Class Notice and Settlement Agreement that provided greater clarity for Class Members. Class Counsel implemented the Court’s proposed revisions before the Notice was distributed to Class Members.

Third, in evaluating a settlement under these principles, a court also should leave considerable discretion to the litigants and their counsel. *United States v. District of Columbia*, 933 F. Supp. 42, 46-47 (D.D.C. 1996) (“the function of the reviewing court is not to substitute its judgment for that of the parties to the decree, but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy”); *Hammon*, 752 F. Supp. at 1093 (“a court deciding whether to approve a class action should not substitute its judgment for that of the proponents of the settlement”). Indeed, a presumption of fairness, adequacy, and reasonableness attaches to a class settlement that was reached after arm’s length negotiations between experienced, capable counsel after meaningful discovery. *Blackman*, 454 F. Supp. 2d at 8. As described in the Declarations from Lead Counsel Cyrus Mehri and Steven M. Sprenger filed with Plaintiffs’ Preliminary Approval Memorandum, this Settlement has been crafted by experienced class action attorneys after the exchange of extensive information that enabled both sides to evaluate the strengths and weaknesses of their respective positions.

Given the application of these factors to this case, the proposed settlement is fair, adequate and reasonable to class members in three crucial respects. First, it provides adequate relief from the defendant to the Class. Second, it provides a fair means for allocating the benefits between Named Plaintiffs and other Class Members. Finally, the response from the members of the Class has been overwhelmingly positive. Each of these factors will be discussed in greater detail below.

**A. The Settlement Provides Adequate Relief to the Class**

In assessing the fairness, adequacy and reasonableness of a settlement, “by far the most important factor is a comparison of the terms of the compromise or settlement with the likely recovery the plaintiffs would realize if the case went to trial.” *See Blackman v. Dist. of Columbia*, 454 F. Supp. 2d 1, 8 (D.D.C. 2006); *see also Pigford*, 185 F.R.D. at 91; *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998). In this case, the Settlement provides significant programmatic and monetary relief to Class Members, far better than would likely have been possible in litigation.

As described briefly above and in more detail in Plaintiffs’ Preliminary Approval Memorandum, the programmatic relief is comprehensive, with provisions that address every significant issue raised by the Plaintiffs in the Amended Complaint: compensation, account assignments, mentoring programs, management job selection procedures, EEO investigative techniques and corporate accountability, monitoring and compliance, and enhanced programs and initiatives to promote opportunities for female Financial Advisors and Registered Financial Advisor Trainees. Systemic changes like these go far beyond the relief that is typically awarded by courts after trials in employment discrimination class cases. Class Counsel expects that the changes in Morgan Stanley’s employment practices contemplated in this Settlement will set an example for employers throughout the industry. (Mehri Decl., ¶ 17).

Likewise, the Settlement Fund is among the highest ever negotiated in the settlement of a gender discrimination class action. (Mehri Decl., ¶ 25). It will adequately compensate members of the Class for claimed losses. After deducting attorneys’ fees and the costs for settlement administration, the Settlement Fund will have approximately \$32 million to distribute to Class Members who submit timely Claim Forms. (Mehri Decl., ¶ 34).

The outstanding programmatic and monetary relief obtained for the Class makes approval of the Settlement appropriate, particularly when measured against the likely outcome if this case were litigated. The Named Plaintiffs and Class Members, as well as defendant, faced substantial risks in this case in addition to the risks, expenses and delay normally associated with employment discrimination class actions.<sup>7</sup> First, the substantive law regarding the time period for which Named Plaintiffs and the Class can recover for disparities in compensation is in dispute, and both sides have strong legal arguments in their favor, making the case risky for the Named Plaintiffs, Class and the defendant. Second, the Settlement Class encompasses over 2,800 Financial Advisors and Registered Financial Advisor Trainees who have worked throughout the country at numerous locations. Both sides faced significant risks in trying to prove or contest a pattern of discrimination and the existence of company influence over the relevant personnel practices necessary to certify a nationwide class and successfully establish class liability. Third, the Named Plaintiffs intended to seek recovery of both economic and compensatory damages on behalf of all Class Members should litigation have commenced, and defendant intended to seek to limit the potential scope of recovery.

Finally, an analysis done by Professor Stewart J. Schwab, Dean of Cornell Law School, of employment discrimination cases filed in the federal courts reveals that employment discrimination plaintiffs face a more difficult time in every stage of litigation than virtually any other category of cases. (*See* Stewart J. Schwab, *How Employment Discrimination Cases Fare*

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<sup>7</sup> Both sides recognize that, regardless of the outcome, litigation would be protracted and expensive, especially if the litigation preceded through a full-scale liability trial and a large number of individual damages hearings. *See, e.g. Freeport Partners, LLC v. Allbritton*, 2006 U.S. Dist. LEXIS 9710 at \*29-30 (D.D.C. March 13, 2006) (holding that early settlement that saved the class substantial money in attorneys' and expert fees, as well as avoiding the delay and uncertainty of litigation is a fact that "must weigh heavily" in favor of settlement approval); *Pigford v. Glickman*, 185 F.R.D. 82, 104 (D.D.C. 1999).

*in the Federal Courts: An Empirical Analysis*, attached as Exhibit B to Mehri Decl.). Dean Schwab found that 61 percent of employment discrimination cases are decided on pretrial motions in the defendant's favor. (*Id.* at 1). Employment discrimination plaintiffs win only 28.1 percent of trials. (*Id.* at 1). When an employment discrimination plaintiff wins at trial and the defendant appeals the judgment, the judgment is more likely to be reversed (42 percent of the time) than in almost any other category of cases. (*Id.* at 2). Considering the likelihood of losing a dispositive pretrial motion, the low win rate at trial, the high likelihood that a plaintiff's trial win will be appealed by the defendant, the high rate of reversal of plaintiffs' trial wins, and a generally low median award for employment discrimination plaintiffs, Professor Schwab projects that the value of a typical individual discrimination case is between \$6,536 and \$9,648. (*Id.* at 5). Therefore, this Settlement is a far better result for Class Members than proceeding with the typical employment discrimination litigation.

For all of these reasons, the Settlement is fair, adequate and reasonable in the quantum of relief it provides to Class Members.

**B. The Settlement Is Fair in the Allocation of Benefits Between Named Plaintiffs and Class Members**

With respect to monetary relief, the Settlement provides for the allocation of a portion of the Settlement Fund to Class Members who timely submit Claim Forms. (Settlement Agreement, § VIII.C). Monies will be allocated to Class Members based on an Earnings Regression model and information provided on a Claim Form and by Class Counsel. Class Members, including Named Plaintiffs, are entitled to consideration of their contributions to the prosecution of the litigation. In addition, Named Plaintiffs are entitled to consideration of their release of individual claims beyond the scope of the class-wide claims of sex discrimination if they decide to release such claims. (*Id.*, § VIII.D). After reviewing the Claim Form

submissions, the Special Master will recommend and submit an allocation plan to the Court for approval. No awards will be paid until Court approval is obtained. (*Id.*, § VIII.E).

The Court may exercise its authority to review the recommended awards to insure that the interests of Class Members are fully protected pursuant to Fed. R. Civ. P. 23(d). An allocation plan that is subject to court scrutiny is fair and reasonable even though the precise details of the formula are not spelled out in the settlement itself. *See In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987) (where court assessed overall fairness of settlement prior to adoption of distribution scheme, and where defendant's obligations under settlement agreement are not an issue, distribution scheme need not be finalized prior to final approval of class settlement); *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 224 (5th Cir. 1981) (sustaining district court's approval of settlement notice even though amount each class member could expect to receive not yet determined); *Bynum v. District of Columbia*, 412 F. Supp. 2d 73, 76 (D.D.C. 2006) (proposed method of allocating a sum certain for distribution to all class members who filed claims held to be fair, even though class members would not know exact size of award until after all claims had been processed).

**C. The Response From Members of the Class Has Been Overwhelmingly Positive and Demonstrates that the Settlement Is Fair**

**1. The Vast Majority of Class Members Support the Settlement**

The reaction of Class Members to the Settlement, as evidenced by the number of objections, opt-outs, and claim forms submitted, has been overwhelmingly positive. Class Counsel and the Claims Administrator have received 907 Claim Forms, only 29 opt-outs,<sup>8</sup> and only two objections from Class Members. (Mehri Decl., ¶ 42-43, 46; Patton Decl., ¶ 6). Class Members are voting overwhelmingly in favor of the Settlement and this response strongly

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<sup>8</sup> This number includes opt-outs received after the September 10, 2007 deadline.

supports final approval of the Settlement. *See, e.g. Bynum v. District of Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002). In addition, Class Counsel have received numerous calls from Class Members who have a favorable view of the Settlement. (Mehri Decl., ¶ 41).

The Court's Preliminary Approval Order required all opt-outs and objections to be sent to both Lead Class Counsel and counsel for Morgan Stanley and received by September 10, 2007. As of October 1, 2007, Class Counsel has received 29 requests to opt-out of the Settlement – only one percent of the total Class Members. (Mehri Decl., ¶ 43).

As of October 1, 2007, Class Counsel has received two objections to the Settlement, and a third person, who is not a Class Member, has submitted a purported objection. The low number of opt-outs and objections supports the conclusion that the Settlement is favorably viewed by well over the majority of the Class Members. *Bynum*, 412 F. Supp. 2d at 77; *In re Lorazepam*, 205 F.R.D. at 378. No currently-employed Class Members have claimed that any part of the Settlement is unfair to Class Members. In any event, none of the objections provides sufficient reason to question the fairness, adequacy or reasonableness of the Settlement.

## **2. The Few Objections Received Are Without Merit**

### *a. The Objection of Mary Harris Evans Should Be Overruled*

The objection of Mary Harris Evans is not a proper objection for two reasons. First, Ms. Evans stated in her letter that she is an Assistant Branch Manager in Morgan Stanley's Menlo Park branch office. (Objection/Opt-out of Mary Harris Evans, at 1, attached at Exhibit G to Mehri Decl.). Assistant Branch Managers are not part of the Settlement Class in this case, and Class Counsel's review of the list of Class Members provided by Morgan Stanley confirms that Ms. Evans is not a Class Member. (Mehri Decl., ¶ 46). As Ms. Evans is not a Class Member,

she has no standing to object to this Settlement. *Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993).

Second, Ms. Evans also specifically stated that if she were considered a Class Member, she wished to opt out of the Settlement. (Evans Objection/Opt-out, at 2). Class Members who opt out are not entitled to object to the Settlement. *Id.* Although there is an exception to this general rule that is recognized for non-settling parties who demonstrate “prejudice” from the settlement, *id.*, at 1093, Ms. Evans’ objection/opt-out does not demonstrate any prejudice to her by her being excluded from the Class. Ms. Evans simply states that as a “producing” Assistant Branch Manager, she has been and is subjected to gender discrimination. (Evans Objection/Opt-out, at 1-2). This is not persuasive. The far-reaching programmatic relief that Morgan Stanley will implement as a result of this Settlement will benefit all employees at Morgan Stanley, including female “producing” Assistant Branch Managers. Further, the type of prejudice that entitles a non-class member to object to a proposed settlement means “‘plain legal prejudice,” as when ‘the settlement strips the party of a legal claim or cause of action.’” *Mayfield*, 985 F.2d 1090, 1093. Ms. Evans will not be stripped of any legal claim or cause of action by this Settlement – since she is not a Class Member, she has not released any of her claims and remains free to bring her own gender discrimination case, if she so desires.<sup>9</sup>

*b. The Objection of Jennifer Cropper Should Be Overruled*

The objection of Jennifer Cropper does not challenge the fairness, adequacy, or reasonableness of the proposed Settlement. Ms. Cropper simply states in her objection that she

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<sup>9</sup> Ms. Evans also states that she agrees with the objection of Janice Grant. (Evans Objection/Opt-Out, at 2). Ms. Grant also raises the concern about the exclusion of Assistant Branch Managers from the Class; Named Plaintiffs address the merits of this objection *infra* on p. 28-29.

“neither experienced nor witnessed any form of discrimination,” and that Morgan Stanley made “every possible resource” available to female Financial Advisors to assist them. (Objection of Jennifer Cropper, attached as Exhibit E to Mehri Decl.). If Ms. Cropper does not feel she was discriminated against at Morgan Stanley, she is not forced to file a claim. She has, however, identified nothing in her objection that would make the proposed Settlement unfair, inadequate, or unreasonable for the Named Plaintiffs and Class Members who believe they have been discriminated against at Morgan Stanley. Indeed, Ms. Cropper’s objection underscores the challenges Plaintiffs would face if they pursued litigation instead of settlement in this case.

*c. The Objection of Janice Grant Should Be Overruled*

Janice Grant, a former Registered Financial Advisor Trainee, submitted a lengthy objection to the Court and Class Counsel. However, Ms. Grant’s objection is invalid because it does not follow the instructions for submitting objections to this Court. *Bynum*, 412 F. Supp. 2d at 76 (letters complaining about aspects of settlement that did not comply with procedure for making objections were not treated by court as objections). The Class Notice clearly stated that in order for a Class Member to either speak at the fairness hearing or have her objection considered by this Court, she must submit her objection in writing, with a detailed description of the basis for her objection. (Notice of Class Action, Proposed Settlement Agreement, and Settlement Hearing, at p. 8 (hereinafter the “Class Notice”)). Copies of any objections must also be submitted to Lead Class Counsel and counsel for Morgan Stanley. (*Id.* at 9).

The copy of Ms. Grant’s objection received by Lead Class Counsel included a nearly blank page, with the words “I submit the following paragraph confidentially to the Court” at the top of the page and a “REDACTED” stamp at the bottom of the page. (Objections of Janice Grant to Proposed Settlement and Notice of Intent to Appear at Settlement Fairness Hearing, at 7



(hereinafter “Grant Objection”), attached as Exhibit F to Mehri Decl.). The purpose of requiring objections to be submitted before the Fairness Hearing is so that counsel for the class has an opportunity to respond to the objections. Class Counsel cannot possibly respond to the redacted portion of Ms. Grant’s objection. Moreover, to the extent Ms. Grant’s attorney instructed or encouraged her to submit information to the Court that was not shared with Class Counsel or counsel for Morgan Stanley, this conduct violates the District of Columbia and Illinois Rules of Professional Conduct, which prohibit ex parte communication with the Court. *See* D.C. R. Prof. Conduct 3.5; Ill. R. Prof. Conduct 3.5(i).

In addition, Ms. Grant states that she plans to raise additional objections to the proposed Settlement at the Fairness Hearing that she does not identify in her written objection. (Grant Objection, at 9). However, the Class Notice instructions were clear that no objections may be raised at the Settlement Hearing that were not first submitted to the Court, Lead Class Counsel, and counsel for Morgan Stanley by September 10, 2007. (Class Notice, at 9). Ms. Grant is therefore precluded from raising any objections at the Fairness Hearing that are not contained within the version of her objection received by Lead Class Counsel.

Even if Ms. Grant’s objection is valid, it lacks merit. Ms. Grant was never a Financial Advisor at Morgan Stanley. She was a Registered Financial Advisor Trainee for only seven months, from February 2004 until September 2004. (Dichter Decl., ¶ 12). The grounds for Ms. Grant’s objection fall into four general categories of complaints: (a) that the monetary relief is inadequate; (b) that the Class definition is “unfairly restrictive;” (c) that the notice and claims process was inadequate; and (d) that the injunctive relief is inadequate. Each category is addressed in turn.

*i. The Monetary Relief Is Not Inadequate*

Ms. Grant believes that the “best test” for whether a settlement is fair to the Class is whether, in the absence of any “extra” awards or payments, the Named Plaintiffs would have settled their claims. (Grant Objection, at 6). Ms. Grant misunderstands the legal test for evaluating the fairness of a settlement, and the reasons justifying the fairness, adequacy and reasonableness of the monetary relief in this Settlement have been extensively briefed *supra* and in Plaintiffs’ Preliminary Approval Memorandum. In any event, the Named Plaintiffs agreed to the same distribution process that applies to all Class Members. Like Class Members, the Named Plaintiffs will not know the amount of their awards until the Special Master has recommended an allocation plan and the Court has approved it.

Ms. Grant also appears to have not read or has misunderstood the description of the monetary fund. All Class Members, not just the Named Plaintiffs, are entitled to consideration of their contributions to the prosecution of the litigation. The Named Plaintiffs are entitled to additional consideration if they decide to release their individual non-class claims, but the total amount of the settlement was negotiated with the intent of covering those claims and the amount of the fund agreed upon is sufficiently large to do so.<sup>10</sup> Contrary to Ms. Grant’s belief, Financial Advisor Trainees, like Ms. Grant, are eligible for awards from both the Earnings Regression and the Claim Form components of the allocation formula, to the same extent as Financial Advisors. There will be a separate Earnings Regression analysis for Registered Financial Advisor Trainees.

The Earnings Regression component will provide an award to any Class Member whose annual earnings in any year during the liability period fall below an annual earnings curve which is set at two standard deviations above the mean earnings curve for male Financial Advisors and

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<sup>10</sup> Awarding additional money to named plaintiffs for their individualized damages is a common feature in class settlements. *See, e.g., Bynum*, 412 F. Supp. 2d at 80-81.

male Registered Financial Advisor Trainees. (Settlement Agreement, § VIII.D.1). Two standard deviations above the mean earnings curve for male Financial Advisors is approximately the highest-earning 5% of male peers. (Mehri Decl., ¶ 27). Based on Class Counsel's review of Morgan Stanley's employment and payroll data, very few, if any, Class Members will have earned enough money to be excluded from an award under the Earnings Regression component. (*Id.*, ¶ 27). Even those Class Members who do not receive an award under the Earnings Regression component may still be eligible for an award under the Claim Form component. Indeed, the claims procedure in this Settlement will provide for significantly expedited relief for Class Members. This is an enormous benefit that compares favorably with other settlements, particularly in this industry, where class members have been required to prosecute and succeed at individual mini-trials in order to recover a monetary award. (*Id.*, ¶ 25). If this case were handled in a similar fashion, it is likely that many of the claimants could not successfully prosecute such a mini-trial – as has happened to numerous claimants in similar settlement arrangements in this industry. (*Id.*). This would result in large numbers of claimants receiving nothing, a situation that will not occur here. (*Id.*).

Ms. Grant describes several other cases which she claims settled for a much larger amount of money than provided for in this Settlement. (Grant Objection, at 3-4). The cases she mentions involved different facts, different claims, and different class members. Ms. Grant is either uninformed or mistaken about the justifications for and actual cash value received by class members in those cases. (Dichter Decl., ¶¶ 15-18; Mehri Decl., ¶¶ 47-48). Similarly, Ms. Grant's calculation of the maximum monetary award that will be available to Class Members (Grant Objection, at 3), is far too simplistic and is mistaken. The monetary funds will be distributed only to Class Members who file timely and valid claims. To date, SSI has received

907 Claim Forms. (Patton Decl., ¶ 8). As described above, after deducting attorneys' fees and settlement administration costs, the Settlement Fund will have approximately \$32 million to divide among these Class Members, based upon the result of the Earnings Regression analysis and the answers on their Claim Forms. (Mehri Decl., ¶ 34).

In any event, the crux of Ms. Grant's objection is that she believes Class Members should receive more money than they likely will in this Settlement. However, the Court should not reject a settlement simply because a single class member complains that the Class should have received more money. *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998); *In re Lorazepam*, 205 F.R.D. at 379. Indeed, "[p]utting a monetary value on the damage done to someone who has experienced discrimination...obviously is no easy matter, and it is probable that no amount of money can fully compensate class members for past acts of discrimination." *Pigford*, 185 F.R.D. at 108. The monetary fund in the proposed Settlement is fair, adequate and reasonable, especially when juxtaposed with the risks and uncertainty of continued litigation.

*ii. The Class Definition Is Not "Unfairly Restrictive"*

Ms. Grant contends that the class definition should be expanded to include Morgan Stanley employees who manage retail books of business but also have managerial titles or responsibilities. (Grant Objection, at 11). Ms. Grant again misunderstands the law related to class actions and class settlements. First, this case does not have a Named Plaintiff with managerial responsibilities who could represent the interests of these excluded employees.<sup>11</sup> These employees are not represented and their claims are not released by this Settlement.

Second, Ms. Grant herself points out that these managerial positions also manage retail books of business. (*Id.*) To the extent these "producing" managers play any role in the

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<sup>11</sup> Ms. Grant does not have standing to represent such excluded employees either.

assignment of accounts or other decisions which could affect the earnings of Financial Advisors, there exists a potential for conflict between their interests and the interests of the rest of the Class. In fact, many women Financial Advisors reported to Class Counsel that managers at Morgan Stanley made decisions directing accounts to themselves. (Mehri Decl., ¶ 14). Plaintiffs did not include managers and assistant managers in their investigation precisely because of this potential conflict. (*Id.*).

Finally, as explained above in response to Ms. Evans' Objection/Opt-out, if any female Sales Managers or Assistant Managers feel they have been discriminated against, this Settlement does not take away their right to bring claims based on these allegations.

*iii. The Notice and Claims Process Was Adequate*

Ms. Grant expresses concern that Class Members who are former employees may not have received the Notice with enough time to determine whether to object, opt-out, or file a claim. (Grant Objection, at 11). This Court approved the Notice and the timeframe for the required responses as adequate notice to the Class. (Prelim. App. Order, July 17, 2007). The notice packages were mailed on July 27, 2007, which allowed Class Members 45 days to determine whether to object or opt-out. (Patton Decl., ¶ 5). The deadline for submitting Claim Forms gave Class Members an additional 14 days to complete and submit their claims. The notice package was also available through the case website and the websites of Class Counsel. In addition, the case and Settlement have been covered timely and significantly in the media, which increased the likelihood that former employees would learn of it. (Mehri Decl., ¶ 36-37). Indeed, Ms. Grant claims to have learned of the Settlement from press reports about it. (Grant Objection, at 11). The notice program was more than adequate to inform Class Members of the Settlement and their rights in relation to it. Class Members' due process rights were sufficiently

and fairly protected by the notice process employed here. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 848 (1999).

As discussed above, 316 notice packages were returned as undeliverable, but all have been remailed. (Patton Decl., ¶ 8). The bright yellow insert encouraged Class Members to contact Class Counsel if they believed they would have trouble meeting any of the deadlines. (*Id.*). Only approximately 25 of these Class Members contacted Class Counsel and none indicated a desire to object to the fairness of the Settlement. (Mehri Decl., ¶ 40). Class Counsel has no objection to allowing those Class Members who wish to opt out to do so, if they sign an affidavit or declaration pursuant to 28 U.S.C. § 1746 testifying that they received the remailed notice package after the deadline to opt out.

*iv. The Injunctive Relief Is Fair and Adequate*

Ms. Grant claims the programmatic relief achieved in this Settlement is “grossly inadequate” and will discriminate against African-Americans. (Grant Objection, at 8-11). The far-reaching and comprehensive changes Morgan Stanley has agreed to make have been described in detail in this brief and in Plaintiffs’ Preliminary Approval Memorandum. The changes will not only benefit women Financial Advisors and Financial Advisor Trainees, but also other protected groups at Morgan Stanley. (Mehri Decl., ¶ 18-25, 31). Among other things, the account distribution system will be modified to reduce reliance on historical performance (which Named Plaintiff allege favors male brokers) and to ensure that business opportunities are distributed on the basis of merit and current performance. (*Id.*, ¶ 18-20). In fact, the National Council of Women’s Organizations, a nonpartisan, nonprofit coalition of 220 member organizations that address issues of concern to women has expressed wholehearted support for the Settlement and the programmatic relief contained in it. (*Id.*, ¶ 3).

Most of Ms. Grant's criticism is related to another class action against Morgan Stanley, *Jaffe v. Morgan Stanley*, Case No. 06-3903, filed by other counsel in the Northern District of California, who recently announced that they entered into a race class action settlement with Morgan Stanley. Ms. Grant's objection is therefore really an objection in that case, which she will have an opportunity to make if and when the plaintiffs in the case submit their proposed settlement for approval.

Ms. Grant's remaining criticisms of the programmatic relief in this case are not sufficient reason to reject this Settlement. First, Ms. Grant is mistaken when she claims that the revised Power Rankings have not been "back-tested" for disparate impact on African Americans. (Grant Objection, at 8). Morgan Stanley did indeed "back-test" the revised Power Rankings and found no adverse impact on either women or African Americans. (Dichter Decl., ¶ 22).

Second, Ms. Grant is mistaken when she claims that the Settlement Agreement "makes no meaningful attempt to address the issues of partnerships." (Grant Objection, at 9). The Settlement ensures that partnerships are not formed as a way of circumventing the regular account distribution process (Settlement Agreement, § VII.C.5.a and VII.C.7), and instructs the jointly appointed Industrial Psychologists to make recommendations for increasing the participation of women in partnerships. (*Id.*, at § VII.C.5.b and VII.F.2.). Ms. Grant is again mistaken when she complains that the Industrial Psychologists have no authority to implement meaningful reform. (Grant Objection, at 10). The Industrial Psychologists have access to, and in fact are instructed to, present their recommendations to senior executives at Morgan Stanley, including, if necessary, the Chief Operating Officer and President of Morgan Stanley. (Settlement Agreement, § VII.F.2.b).

Finally, Ms. Grant misunderstands the enforcement provisions of this Settlement Agreement. The provision limiting enforcement of the Agreement to Class Counsel is typical of class settlements like this one, and any Class Member who believes Morgan Stanley is not abiding by the terms of the Agreement may contact Class Counsel at any time during the term of the Agreement to discuss her concerns. The arbitration provision is related to enforcing the Settlement Agreement itself. (Settlement Agreement, § X.B). Morgan Stanley does not have a mandatory arbitration policy. (Dichter Decl., ¶ 23). The Settlement Agreement provides that disputes related to account distributions shall initially go through Morgan Stanley's alternative dispute resolution mechanism, but nothing in the Settlement Agreement prevents a Class Member from "pursuing any legal claim not released under the Settlement through any applicable governmental agency or court of law if she is otherwise entitled to do so." (Settlement Agreement, § VII.C.8).

Although Ms. Grant raises numerous issues in her 12-page objection, none of her arguments provide a basis to reject the proposed Settlement.

#### **IV. THE COURT SHOULD ENTER ADMINISTRATIVE ORDER NO. 2**

On July 27, 2007, Morgan Stanley paid the sum of \$46 million by wire transfer to the Settlement Fund. The terms of the Settlement provide that this sum will be allocated to cover all amounts paid to Class Members, including Named Plaintiffs; all attorneys' fees and costs awarded by this Court; and all costs in connection with administering the Settlement Fund. Administrative Order No. 1 established a Claims Portion and a Fees Portion of the Settlement Fund. The Fund must be allocated appropriately between these portions in manner consistent with the Attorneys' Fees Motion made by Class Counsel. In order to properly allocate the Fund, the parties request the Court to enter proposed Administrative Order No. 2. It provides for the



allocation of the Settlement Fund portions and is consistent with the Settlement Agreement and practices in other class action settlements in this District.

## **V. CONCLUSION**

For all the foregoing reasons, the Named Plaintiffs request that the Court certify the proposed Settlement Class, find that Class Counsel complied with the notice provisions of the Preliminary Approval Order, issue the proposed Findings of Fact, Conclusions of Law and Order granting final approval to the Settlement, and enter the parties' jointly proposed Administrative Order No. 2 to enable the proper allocation of settlement monies among the portions of the Settlement Fund and provide for the payment of attorneys' fees and costs.

Dated: October 1, 2007

Respectfully submitted,

/s/ Cyrus Mehri

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# EXHIBIT 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Joanne Augst-Johnson, Nancy Reeves,	)	
Debra Shaw, Jan Tyler, Cheryl Giustiniano,	)	
Laurie Blackburn, Erna Tarantino,	)	
and Elizabeth Reinke,	)	Case No. 1:06-cv-01142 (RWR)
	)	
On behalf of themselves and all others similarly	)	
situated,	)	CLASS ACTION
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Morgan Stanley & Co. Incorporated, formerly	)	
known as Morgan Stanley DW Inc.,	)	
	)	
Defendant.	)	

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**DECLARATION OF CYRUS MEHRI  
IN SUPPORT OF JOINT MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Title 28 U.S.C. Section 1746, I, Cyrus Mehri, hereby declare and state, as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein, and am competent to testify thereto.
2. I am a founding partner at Mehri & Skalet, PLLC ("M&S") , and co-lead counsel (along with Steven M. Sprenger of Sprenger + Lang, PLLC) for the plaintiffs in the above-referenced action.

**HISTORY OF THE CASE AND SETTLEMENT NEGOTIATIONS**

3. In 2004, the National Council of Women's Organizations ("NCWO") asked Mehri & Skalet to coordinate aspects of the Women on Wall Street Project – an

investigation of gender discrimination at several financial services companies. The NCWO had heard from women at many of these companies that they had experienced gender discrimination in their employment and asked my firm to initiate an investigation into these gender discrimination claims. We agreed to undertake the investigation because of the important public policy issues involved when women are systematically denied business opportunities afforded to their male counterparts in an industry so central to our financial system. The NCWO is a nonpartisan, nonprofit coalition of 220 member organizations that address issues of concern to women, including family and work, economic equity, education, affirmative action, older women, corporate accountability, women and technology, reproductive freedom, women's health, younger women, and global progress for women's equality. Attached hereto as Exhibit A is a letter from the NCWO, expressing their wholehearted support of the Settlement reached in this case.

4. In January 2005, my office first received a call from Joanne Augst-Johnson regarding a potential sex discrimination claim against Morgan Stanley & Co. Incorporated ("Morgan Stanley"). Ms. Augst-Johnson had already filed a discrimination charge with the U.S. Equal Employment Opportunity Commission ("EEOC") and had been issued a right-to-sue letter. Ms. Augst-Johnson believed that she and other female Financial Advisors were afforded fewer business opportunities than comparable male Financial Advisors and that she and other female employees experienced gender discrimination in numerous aspects of their employment including career advancement, distribution of accounts, work assignments, compensation, and other terms and conditions of employment.

5. My office began an investigation into Ms. Augst-Johnson's claims, and a few months later asked Steven M. Sprenger and Mara R. Thompson of Sprenger + Lang, PLLC to join

as co-counsel in the investigation because of their extensive experience in sex discrimination class action litigation and settlements, including *Kosen v. American Express Financial Advisers, Inc.*, Civ. No. 1:02CV00082 (HHK) (D.D.C.) (settlement of \$31 million on behalf of female financial advisors). Chris Moody and Whitney Warner of Moody & Warner, P.C., who had been investigating claims on behalf of Nancy Reeves, Debra K. Shaw, and Jan Tyler against Morgan Stanley, joined our legal team by May 2005. Together these three firms constitute "Class Counsel."

6. In March 2005, we entered into a tolling agreement with Morgan Stanley tolling claims for female Financial Advisors as of December 27, 2004. The tolling agreement was entered into in order to facilitate potential settlement negotiations. We scheduled an initial settlement negotiation meeting with Morgan Stanley's outside counsel, Mark Dichter, of Morgan Lewis & Bockius LLP, on April 15, 2005 in New York.

7. In preparing for our first settlement meeting, my co-counsel and I worked with Ms. Augst-Johnson to identify the claims in the case and to develop a written statement of the issues we believed should be resolved by a settlement on behalf of a nationwide class. Attorneys Mara Thompson, Sandi Farrell, and I all met with Ms. Augst-Johnson in person prior to the initial settlement meeting.

8. Prior to the initial settlement meeting on April 15, 2005, Plaintiffs' counsel identified three key programmatic issues to be addressed in a potential settlement: account distribution, promotions, and internal grievance procedures.

9. During the first several months of the negotiations, the Company was only willing to discuss far more limited programmatic relief than the relief we sought. Progress toward a comprehensive settlement that included broad programmatic relief and classwide monetary relief

was slow to develop and hard fought. By the end of 2005, the parties had begun to discuss the comprehensive and far-reaching programmatic relief envisioned by Class Counsel. In 2006, we continued those discussions and also discussed obtaining relevant computerized data and resolving the monetary relief claims.

10. As settlement negotiations went on, we continued our investigation of sex discrimination claims of financial advisors against the Company. In 2005 and 2006, Class Counsel conducted in-depth interviews with over two hundred (200) potential class members.

11. During these interviews, several women expressed interest in participating in the case in a more substantial way. Ultimately, the four original women were joined by four additional women and the Named Plaintiffs are: Joanne Augst-Johnson, Nancy Reeves, Deborah Shaw, Jan Tyler, Cheryl Giustiniano, Laurie Blackburn, Erna Tarantino, and Elizabeth Reinke. All eight Named Plaintiffs appeared to have typical claims and to be suitable to serve as class representatives. In addition, they represent a cross-section of the country: they are from the states of Minnesota, Colorado, Washington, Virginia, Nevada, and Illinois. All eight executed declarations in support of the Settlement that were filed on April 24, 2007 with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

12. With over 200 witness interviews, this was an extremely comprehensive investigation. Without disclosing the names of the witnesses, we provided the fruits of our investigation to the Defendant in various presentations. As a result of this, the Company agreed to expand the scope of the settlement talks. Based on the results of the continuing investigation, additional issues such as distributions and transfers of accounts, work assignments, compensation, career advancement opportunities, termination, and other terms and conditions of employment became part of the focus of the negotiations.

13. During settlement negotiations, Class Counsel sought, and Morgan Stanley produced to Class Counsel, voluminous data and other information concerning Morgan Stanley's workforce and work practices relevant to the claims asserted and damages we sought. If the parties had chosen to litigate, this type of candid and fruitful exchange may not have been possible. This exchange was, in many ways, equivalent to and even went beyond class discovery, and enabled Class Counsel to assess their litigation position. To that end, Class Counsel retained Dr. Janice Madden, a professor at the University of Pennsylvania and a principal in the consulting firm, Econsult Corp., to conduct statistical analyses of the data. Dr. Madden worked with Class Counsel to review the data, ensure it was complete, request supplemental data, and analyze the data. She also conducted studies similar to those that she would have conducted in preparation for trial of this matter. Class Counsel also retained a second expert to assist in analyzing industry practices and to provide input on crafting injunctive relief. He believes that outstanding relief has been achieved here.

14. During Class Counsel's investigation, many women Financial Advisors reported to Class Counsel that managers at Morgan Stanley made decisions directing accounts to themselves. For this reason, Class Counsel decided to exclude managers, assistant managers, and other employees with managerial titles or responsibilities from their investigation in order to avoid any potential conflicts between the claims of potential Class Members.

15. We engaged in settlement negotiations with the Defendant during most of 2005 and all of 2006, including numerous, lengthy in-person meetings in Philadelphia, New York, and Washington, DC, and many telephone conferences. The negotiations were conducted at arm's length, and faced several potential impasses. Beginning in June 2006, negotiations were conducted under the auspices of mediator Hunter Hughes, Esq., who was jointly selected by the



parties to serve in that capacity because of his reputation as one of the premier mediators for large employment discrimination class actions. The material terms of the settlement were subject to intense negotiation, and the parties called upon Mr. Hughes frequently to assist in resolving highly contested points. Class Counsel kept the Named Plaintiffs informed of the progress of negotiations by telephone, and had them review and provide input regarding the programmatic relief, the memorandum of understanding, and the settlement agreement at various stages. On February 22, 2007, counsel for the parties signed a Memorandum of Understanding, signaling the first step towards resolution. On April 23, 2007, counsel for the parties finalized a written settlement agreement resolving all claims in the case, subject to court approval.

16. On April 24, 2007, counsel for the parties filed a Joint Motion for Preliminary Approval of Class Action Settlement Agreement. A preliminary approval hearing was held on July 5, 2007, during which the Court suggested certain revisions to the Settlement Agreement and the Notice to Class Members. Counsel for the parties made the changes suggested by the Court and filed revised versions of the Settlement Agreement and Notice on July 11, and July 16, 2007.

#### **BENEFITS OF THE SETTLEMENT FOR THE CLASS**

17. Both the Settlement Agreement and the Plaintiffs' Memorandum of Points and Authorities in Support of the Motion for Preliminary Approval set forth the specific details of this relief, which should expand opportunities for female Financial Advisors to be successful at Morgan Stanley. Class Counsel anticipates that this relief will also set a valuable example for gender equity at other financial services companies.

18. In the judgment of Class Counsel, the terms of this settlement are enormously beneficial to the class and easily meet the legal standard of "fair, reasonable, and adequate" for

approving a class settlement. The class relief in the settlement directly addresses the concerns raised by the initial claimants in two key respects: First, the Settlement Agreement provides for meaningful programmatic relief that will greatly enhance business opportunities for women financial advisors at Morgan Stanley, making distribution of business opportunities more objective, by instituting innovative new programs and putting in place reporting, monitoring, and accountability measures. Second, the Settlement creates substantial monetary relief for a nationwide class. Because plaintiffs' counsel completed an extensive investigation and engaged in frequent and intensive settlement negotiations, we identified relevant legal issues and understood the strengths and weaknesses of our case. Based on this experience, we believe that this settlement creates an outstanding result without the long delays and risks of protracted litigation.

19. Perhaps the most significant and long-lasting benefit that class members who are current employees will reap from the settlement is the programmatic relief, which was fashioned in an extraordinarily collaborative way by the parties, and will be augmented with the recommendations of two jointly appointed Industrial Psychologists.

20. Some highlights of the programmatic relief include: (1) the account distribution system, which will be modified to ensure that business opportunities are distributed on the basis of criteria that reflect merit and current performance. This system will limit discretion of branch managers in distributing accounts and will decrease reliance on historical performance; (2) an independent Diversity Monitor will be appointed to ensure that the new account distribution system is being implemented and to monitor the way in which Human Resources responds to inquiries and complaints; and (3) the Company will develop and implement a comprehensive management assessment and development program to provide candidates a path to assessment and selection as branch managers.

21. In addition to these specific policy changes, the Company will appoint two noted outside Industrial Psychologists, Dr. Irwin Goldstein and Dr. Kathleen K. Lundquist, who will propose innovative, meaningful, novel, state of the art ideas for programs that will: attract and retain women to Morgan Stanley; increase participation of women in partnerships and in distribution of retiring broker accounts; and provide training, development, and mentoring for female Financial Advisors and Financial Advisor Trainees. Professor Goldstein is senior vice chancellor for academic affairs for the University System of Maryland. He previously served for 12 years as professor and dean of the School of Behavioral and Social Sciences at the University of Maryland, College Park. As an organizational psychologist, Professor Goldstein works with organizations on resolving issues related to employment discrimination. Dr. Lundquist is the President of Applied Psychological Techniques, Inc. She has over 20 years of experience in the field of industrial/organizational psychology, with particular interest in the areas of employment discrimination and the design of HR processes. She has frequently been appointed as a settlement expert in class action settlements. Both Dr. Goldstein and Dr. Lundquist just completed a five-year term as joint experts in the race discrimination case *Ingram v. The Coca-Cola Company*, which has been instrumental in making The Coca-Cola Company one of the top companies in the nation on the issue of diversity and equal opportunity.

22. The Joint Experts have already conducted substantial groundwork so they can proceed expeditiously upon final approval of the Settlement. They have made three on-site visits at Morgan Stanley to meet with executives who function in such areas as training, diversity, and hiring. They have started working on project plans and await the Court's final approval to begin their work in earnest.

23. On September 26 and 27, 2007, counsel for the parties and Named Plaintiff

Laurie Blackburn interviewed candidates for the Diversity Monitor that will be appointed pursuant to the Settlement. The Diversity Monitor will monitor Morgan Stanley's efforts to carry out the terms of the Settlement Agreement and provide reports to Lead Class Counsel and counsel for Morgan Stanley regarding the items monitored. The parties expect to finalize the selection of the Diversity Monitor shortly.

24. The benefits provided in the programmatic relief aspects of the Settlement, which extend beyond direct relief to the class, enhance the fairness of the settlement.

25. In addition to the far-reaching programmatic relief, the settlement also provides an outstanding monetary benefit to the class. The Settlement Fund will consist of an initial payment by Morgan Stanley of Forty-Six million dollars (\$46,000,000), accrued interest to the initial payment that is expected to add at least one million dollars, and the Company's additional financial contribution to cover the employer's share of payroll taxes on payments made to Class Members. Indeed, to Class Counsel's knowledge, this is one of the largest funds created in a gender discrimination case. Each class member who completes a Claim Form and Release will have an opportunity to receive a monetary payment, without being required to prove in court that she experienced any actual injury. This is an enormous benefit that compares favorably with other settlements, particularly in this industry, where class members have been required to prosecute and succeed at individual mini-trials in order to recover a monetary award. If this case were handled in a similar fashion, it is likely that many of the claimants could not successfully prosecute such a mini-trial – as has happened to numerous claimants in similar settlement arrangements in this industry. This would result in large numbers of claimants receiving nothing, a situation that will not occur here.

26. The allocation of awards to class members out of the Settlement Fund will be

based on a formula that includes two equally weighted components – an Earnings Regression component and a Claim Form component. The Earnings Regression component will be developed by Plaintiffs' labor economist and statistician and will account for the claimant's length of tenure at Morgan Stanley and the disparity between the claimant's earnings during the liability period and those of high-performing male peers. The Claim Form component will be based on a formula that takes into consideration the individual's evidence of sex discrimination, evidence of compensatory damages, the general release of claims asserted in administrative charges, and, where applicable, contributions to the litigation. Based on these two components, the Special Master will recommend a plan of allocation and the amounts of individual awards.

27. The Earnings Regression component will provide a Class Member an opportunity to receive an award if her annual earnings in any year during the liability period fall below an annual earnings curve which is set at two standard deviations above the mean earnings curve for male Financial Advisors. Two standard deviations above the mean earnings curve for male Financial Advisors is approximately the highest-earning 5% of male Financial Advisors. Based on Class Counsel's review of Morgan Stanley's employment and payroll data, very few Class Members will have earned enough money to be excluded from an award under the Earnings Regression component.

28. The Plaintiffs' labor economist and statistician, Dr. Janice Madden, a principal in the consulting firm, Econsult Corp., is ready to proceed with the Earnings Regression analysis upon final approval of the Settlement.

29. The Special Master agreed to by the parties and submitted to the Court for approval is Thomas ("Tommy") Warren. Mr. Warren has over 30 years of experience in class action and civil rights law and 15 years of experience in settlement administration. He is particularly well-

versed in employment discrimination settlements. Class Counsel are confident that Mr. Warren will fulfill his duties as Special Master with distinction. Mr. Warren is ready to proceed with determining a recommended plan of allocation of the Settlement Fund upon final approval of the Settlement.

30. The Claims Administrator chosen by the parties is Settlement Services Incorporated ("SSI"). SSI has extensive experience in settlement administration and the parties are confident that SSI will satisfy their responsibilities in the most effective and professional manner. SSI is ready to proceed with the processing of Claim Forms and administering the Settlement upon final approval of the Settlement.

31. In addition to the Settlement Fund, Morgan Stanley is expected to spend at least \$7.5 million over the term of the Settlement to implement the provisions of the programmatic relief. The projected benefit of the programmatic relief to class members in terms of expected additional earnings for female Financial Advisors as a result of the programmatic relief achieved here is at least \$16 million over the five-year settlement term. The overall value of the settlement is expected to exceed \$70 million – an excellent result for the class. This amount understates the true value of the settlement because the value of the reforms encompassed in the programmatic relief cannot be quantified monetarily.

32. Indeed, it is entirely possible that, even if the plaintiffs had litigated for years, the class had been certified, and the plaintiffs had survived an almost inevitable appellate challenge to certification, prevailed in a trial on the merits, and won a likely appeal, the class would not have achieved anywhere near what is provided in this settlement. Of course, there is also the substantial risk of achieving no relief for the class.

33. Stewart J. Schwab, Dean of Cornell Law School, analyzed the success rates of

employment discrimination cases in federal court, using official data from the Administrative Office of the United States Courts and his report on this analysis is attached hereto as Exhibit B. Dean Schwab found that plaintiffs have a more difficult time in employment discrimination cases than in virtually any other category of cases. Among other things, Dean Schwab found that 61 percent of employment discrimination cases are decided on pretrial motions in the defendant's favor. (Exhibit B, at 1). Employment discrimination plaintiffs win only 28.1 percent of trials, compared 44.0 percent for plaintiffs overall. (*Id.*, at 1-2). The median employment discrimination award after trial is \$68,000. (*Id.*, at 4). Even when employment discrimination plaintiffs win at trial, the judgment is more likely to be reversed on appeal (42 percent of the time) than in almost any other category of cases and trial judgments for defendants are much less likely to be reversed than any other nonprisoner category of case. (*Id.*, at 2). Considering the likelihood of losing a dispositive pretrial motion, the low win rate at trial, the high likelihood that a plaintiff's trial win will be appealed by the defendant, the high rate of reversal of plaintiffs' trial wins, and a generally low median award for employment discrimination plaintiffs, Professor Schwab projects that the value of a typical individual discrimination case is between \$6,536 and \$9,648. (*Id.* at 5).

34. These figures on the difficulty in litigating individual employment cases provide a sobering context for the exceptional result achieved here. As of October 1, 2007, 907 Class Members have filed timely Claim Forms. After deducting attorneys' fees and the costs for settlement administration, the Settlement Fund will have approximately \$32 million to distribute to Class Members who submit timely and valid Claim Forms. Class Counsel believe that this Settlement is a far better result than proceeding with litigation. Moreover, these claimants will receive their recovery with relative ease, avoiding years of delay and risk of

litigation.

35. Finally, the settlement benefits must be evaluated in light of the substantial due process protections provided to members of the class. The mandatory claims released by class members are limited to relief related to sex discrimination at Morgan Stanley during the class period. While the Named Plaintiffs are expected to execute a general release of all claims against Morgan Stanley, they, as well as all other class members, have the opportunity to opt out and preserve their claims if they so desire. The Named Plaintiffs have the additional option of signing a Class Member release, allowing them to opt out with respect to their non-gender claims. The benefits of the settlement terms, compared with the scope of the release, are entirely reasonable.

#### **CLASS COUNSEL'S CONTACTS WITH CLASS MEMBERS**

36. In addition to the Notice program approved by the Court and administered by the Claims Administrator, Settlement Services, Inc., Class Counsel created and maintained a website, [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com), which contained detailed information related to the proposed settlement. This website was activated on July 5, 2007. On the website, a visitor can view and/or download the Amended Complaint; the Joint Motion for Preliminary Approval of Class Action Settlement; Plaintiffs' Memorandum in Support of Preliminary Approval; the Second Revised Settlement Agreement; the Notice of Class Action, Proposed Settlement Agreement & Settlement Hearing; the Claim Form; the Named Plaintiff Release; and the Class Member Release.

37. Class Counsel also posted information related to the Settlement and/or links to the [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com) website on their individual firm websites, [www.findjustice.com](http://www.findjustice.com) (Mehri & Skalet, PLLC); [www.sprengerlang.com](http://www.sprengerlang.com) (Sprenger + Lang,



PLLC); and [www.nmlaborlaw.com](http://www.nmlaborlaw.com) (Moody & Warner, P.C.).

38. Class Counsel was available to answer questions from Named Plaintiffs and Class Members on any aspect of the Settlement. Class Members who called the 800-number listed on the Claim Form were connected directly with an attorney or paralegal at Mehri & Skalet, PLLC assigned to answer questions and provide assistance. Class Members also could and did call Sprenger + Lang, PLLC, and Moody & Warner, P.C., and speak to an attorney or paralegal for more information or assistance with her Claim Form. Any Named Plaintiff or Class Member who requested assistance in filling out her Claim Form was provided it. Class Counsel answered questions from or provided assistance to dozens of Class Members.

39. On September 14, 17 and 18, 2007, Class Counsel searched for updated addresses for the 33 addresses SSI did not find new addresses for using LEXIS-NEXIS' SmartLinx tool. Where phone numbers were located, Class Counsel made efforts to call these Class Members or relatives of the Class Members and obtain updated addresses. Class Counsel provided updated addresses for 13 Class Members to SSI on September 17 and 18, 2007.

40. On September 14, 2007, SSI informed Class Counsel that it resent the Notice Package to 316 Class Members whose original package had been returned as undeliverable via priority mail, with a bright yellow insert instructing Class Members to contact Class Counsel if they anticipated any difficulty meeting the deadlines specified in the Notice. Class Counsel has received approximately 25 calls from these Class Members and has instructed each of them to include a letter or note with her submission of a claim form or opt-out request indicating that she received her notice too late to submit her claim form or opt-out request by the deadline. No Class Member on the list of the 316 who were remailed the Notice with the bright yellow insert indicated to Class Counsel that she wished to object to the Settlement.

**CLASS MEMBERS' RESPONSE TO THE SETTLEMENT**

41. The response of the Class Members to this Settlement has been overwhelmingly positive. Many of the Class Members who spoke with paralegals and attorneys at my firm and at Sprenger + Lang have thanked us for prosecuting this case and bringing about such a comprehensive resolution. For example, a Class Member told Class Counsel that she believes the revised Power Rankings described in the Settlement will help women Financial Advisors.

42. As of October 1, 2007, 907 Class Members have filed claims. SSI has received 18 Claim Forms postmarked after the September 24, 2007 deadline and 28 Claim Forms with illegible postmarks. Class Counsel will ask the Special Master to consider these late Claim Forms.

43. Lead Class Counsel has received only 29 requests to opt out of the Settlement. This number is only one percent of the total Class. Some of the opt-outs received by Lead Class Counsel do not include all of the information required by the Notice to the Class and/or were received after the deadline for opt-outs. Morgan Stanley has communicated to Lead Class Counsel that it opposes the validity of late or deficient opt-outs, with one exception. Morgan Stanley does not object to the Court allowing a late opt-out from a Class Member who signs an affidavit or a declaration pursuant to 28 U.S.C § 1746 testifying that she did not receive the mailed notice before the September 10, 2007 deadline. Lead Class Counsel do not oppose this position.

44. A true and correct copy of each opt-out request received on or before September 10, 2007 is attached hereto as Exhibit C.

45. A true and correct copy of each opt-out request that was received after

September 10, 2007 is attached hereto as Exhibit D.

46. Lead Class Counsel has received only two objections to this Settlement from Class Members Jennifer Cropper, and Janice Grant. True and correct copies of each objection are attached hereto as Exhibits E, and F. Lead Class Counsel also received a purported objection from Mary Harris Evans, who is not a member of this Class. A true and correct copy of this document is attached hereto as Exhibit G.

47. The objection of Janice Grant includes certain information about other class settlements that Class Counsel is in a position to know is incorrect or inaccurate. She describes a settlement value reportedly in excess of \$200 million in *Cremin v. Merrill Lynch*. Class Counsel's understanding is that this settlement is not public and therefore Ms. Grant has no way of knowing the true monetary value of that settlement. Nor do we believe that her assertion could be accurate in light of the fact that under the *Cremin* settlement, each class member had to arbitrate her claim with a great uncertainty of success. The *Cremin* case focused on overt discrimination and sexual harassment claims. The settlement in that case included a series of arbitrations in which many women received no money. Many have had to wait several years, some as long as a decade, to complete their arbitrations.

48. Ms. Grant reports that a prior case against Morgan Stanley resulted in a \$54 million settlement. Part of that settlement provided \$12 million to the charging party for her termination claim. In addition, the class members in that case worked on the institutional side of Morgan Stanley and the class members' average earnings, according to Morgan Stanley's counsel, were many times higher than in this case.

49. I carefully considered whether to recommend that the class accept the settlement, based on the following: my knowledge of the strengths and weaknesses of the factual case we had

developed through informal discovery; my knowledge of the strengths and weaknesses of the class' position on class certification and its claims on the merits under prevailing law applicable in this jurisdiction; my knowledge and experience of the serious risks of litigating employment discrimination class actions; and the inevitable years of delay in obtaining a recovery, if any, at trial.

50. Based on this knowledge and experience, I determined that even if the class were certified and proceeded to trial, and was successful, it would be nearly impossible to obtain better programmatic relief, and it would be unlikely that the class would obtain a better monetary recovery. I believed that agreeing to such an excellent settlement, which would provide best-case scenario relief far more quickly and certainly than litigation, was undoubtedly in the best interests of the class. My co-counsel are all in strong agreement with this assessment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of October, 2007 in Washington, D.C.



Cyrus Mehri

# **EXHIBIT A**



**National Council  
Of Women's Organizations**

1050 17th Street, NW, Suite 250 Washington, DC 20036  
(p) 202-293-4505 (f) 202-293-4507

October 1, 2007

Honorable Richard W. Roberts  
U.S. District Court Judge  
District of Columbia  
U.S. Courthouse  
Room 4453  
333 Connecticut Avenue NW  
Washington, DC 20001

Dear Judge Roberts:

The National Council of Women's Organizations (NCWO) is the nation's oldest and largest coalition of women's groups, with 220 member organizations collectively representing twelve million women nationwide. Our groups range from large old-line organizations such as the League of Women Voters and Business and Professional Women USA, to newer groups such as the National Younger Women's Task Force and Digital Sisters. We engage in a wide range of activities on behalf of women and girls, including advocacy, legal analysis, direct service, education, and policy research. A list of member groups is attached.

We heard from many brave women nationwide as to ongoing sex discrimination in the financial sector in the wake of a national controversy in 2004 over sex discrimination at the Augusta National Golf Club, whose CEOs were members of the club. In 2004, NCWO formed a partnership with Mehri & Skalet PLLC to investigate claims of sex discrimination at financial firms, called the Women on Wall Street Project.

Thanks to the remarkable courage and fortitude of the named plaintiffs, this project resulted in the action against Morgan Stanley and proposed settlement now under consideration. In this case there are eight women who have bravely come forward to prosecute this case. I have had the opportunity to speak with most of them. We continue to hear from women who are or have been employees of a number of other financial firms, highlighting the need for ongoing work in this most important area of civil rights.

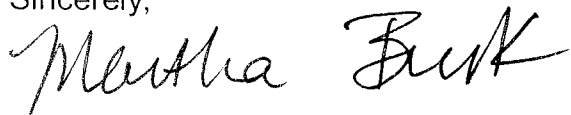
The programmatic relief contained in the settlement is significant and has the potential to influence the rest of the industry and to lead to improved outcomes for women far into the future. Notable features of the settlement include:

- The Allocation Process gives every class member an opportunity to receive payment quickly without the risks and burden of minitrials such as those in controversial cases in the industry in the 1990's. In those cases many women received no payments and the arbitrations are still on-going.

- The Claim Form allows each class member to confidentially share her experiences at Morgan Stanley to a special master. This allows for women to share their evidence without recourse.
- The account distribution system will be revamped and it will be reexamined by noted independent experts in one year. There will be greater transparency in the allocation of business opportunities and there will be restrictions on undue favoritism in the allocations from partnerships and retiring brokers. There will be efforts made to have the state of the art programs for training and mentoring.
- The settlement calls for independent, jointly selected experts who are charged with creating state of the art programs. The settlement will have a jointly selected Diversity Monitor overseeing the settlement for five years. These features give the settlement credibility and independence.

We have thoroughly reviewed the settlement and talked with the named plaintiffs, and we also have the utmost confidence in class counsel and their commitment to achieve the goals of the settlement. We enthusiastically support the settlement.

Sincerely,

A handwritten signature in black ink that reads "Martha Burk". The signature is fluid and cursive, with the first name "Martha" and the last name "Burk" clearly distinguishable.

Martha Burk, Ph.D.  
Director, Corporate Accountability Project  
CC: Cyrus Mehri, Mehri & Skalet PLLC

## NCWO Member Organizations 2007

9 to 5	Fairfield University Women's Studies Program	National Congress of Black Women	U.S. Committee for UNIFEM
African American Women's Clergy	FAIR Fund	National Council for Research on Women	U.S. Women Connect
Alexandria Commission for Women	Federally Employed Women (FEW)	National Council of Jewish Women	U.S. Women's Chamber of Commerce
Alice Paul Institute Inc	Females United Network	National Council of Negro Women	Utah Women's Alliance for Building Community (UWABC)
Alliance for National Defense	Feminist Caucus of the American Humanist Association	National Council of Women of the U.S	Veteran Feminists of America
Alliance of Faith and Feminism	Feminist Majority Foundation	National Family Planning & Reproductive Health Association	Vital Voices Global Partnership
American College Of Nurse-Midwives	Financial Women International	National Foundation for Women Legislators	Voters for Choice
American College of Women's Health Physicisans	First Freedom First	National Hispana Leadership Institute	Wages for Housework Campaign
American Forum	Florida Women's Consortium	National Hook-up of Black Women	Women's Action for New Directions (WAND)
American Medical Women's Association	Friends of MO Women's Council	National Latina Institute for Reproductive Health	Washington Area Women's Foundation
American Nurses Association	Gender Action	National Network of Abortion Funds	WECAI Network
American Physical Therapy Association	Gender PAC	National Organization for Women	Westside Women's Organization
American Psychological Association	GenderWatchers	National Osteoporosis Foundation	White House Project
American Women in Radio and Television	General Federation of Women's Clubs	National Partnership for Women & Families	Wider Opportunities for Women
American Association of University Women	Girls Incorporated	National Women's Conference	Woman Activist Fund
Aquinas College Women's Studies Center	Gutmacher Institute	National Women's Hall of Fame	Women & Philanthropy
Ariadne Institute for the Study of Myth and Ritual	HADASSAH	National Women's Health Network	Women & Politics Institute
Association for Women in Science	HealthonStage	National Women's Health Research Center	Women Employed
Association of Academic Women's Health Programs	Helping Our Pain and Exhaustion	National Women's History Museum	Women Executives In State Government
Association of Reproductive Health Professionals	Institute For Health & Aging	National Women's History Project	Women for Afghan Women
Black Women in Sports Foundation	Institute for Women's Policy Research	National Women's Law Center	Women for Women International
Black Women United for Action	InterAction-CAW	National Women's Political Caucus	Women in Community Service
Black Women's Agenda	International Black Women For Wages For Housework	National Women's Studies Association	Women in Government
Black Women's Health Imperative	International Center for Research on Women	NCA Union Retirees	Women in Military Service for America
Break the Chain Campaign	International Women's Democracy Center	Network Lobby	Women In Non-Traditional Employment Roles (WINTER)
Business & Professional Women/USA	International Women's Media Foundation	Network of East-West Women	Women, Men and Media
Buying Influence	Jewish Women International	New Life Ministries	Women of NACo Leadership Network (WON)
Catholics for a Free Choice	Jewish Women's Coalition	Nontraditional Employment for Women	Women Soaring
Center for Health and Gender Equity	Law Students for Choice	Northern Illinois Univ. Women's Studies Program	Women Under Forty Political Action Committee, Inc.
Center for Policy Alternatives	League of Women Voters	Oregon State University Women's Studies Program	Women Waging Peace-Hunt Alternatives Fund



Center for Reproductive Rights	Legal Momentum	ORUWOCA, Inc.	Women Work!
Center for the Advancement of Public Policy	Lifetime	Older Women's League	Women's Business Development Center
Center for the Child Care Workforce	Maine Women's Lobby	Ovarian Cancer National Alliance	Women's Campaign Forum
Center for Women Policy Studies	MANA	Peace X Peace	Women's Caucus for Political Science
Chellis House Women's Resource Center and Women's Gender Studies Program, Middlebury College	Manasota Women's Roundtable	Planned Parenthood Federation of America	Women's Center for Ethics in Action
Chicago Foundation for Women	Maryland Women's Coalition for Health Care Reform	Project Kid Smart	Women's City Club of New York
Child Care Action Campaign	McAuley Institute	PROMISE Central	Women's Committee Of 100
Choice USA	Miami University Women's Studies Center	Public Leadership Education Network (PLEN)	Women's Division, General Board of Global Ministries, United Methodist Church
Christian Women of Elegance	Million Mom March w/Brady	Religious Coalition for Reproductive Choice	Women's EDGE
Church Women United	Ms. Foundation for Women	Running Start	Women's Environment & Development Organization
Claremont Graduate University, Applied Women's Studies	Na'Amat USA	Sewall-Belmont House and Museum/National Woman's Party	Women's Housing & Economic Development Corporation
Clearinghouse on Women's Issues	NARAL	SisterSong	Women's Information Network (WIN)
Coalition of Labor Union Women	National Abortion Federation	Sisters Supporting Sisters, Inc	Women's Institute for a Secure Retirement (WISER)
Code Pink	National Alliance for Caregiving	Sister To Sister	Women's Institute for Freedom of the Press
CommonWell Institute International	National Asian Pacific American Women's Forum	Society for Women's Health Research	Women's International League for Peace and Freedom
Cornell University Institute for Women & Work	National Asian Women's Health Organization	Stanford University Feminist Studies Interdisciplinary Program	Women's International News Gathering Service
Counselling for Women	National Association for Female Executives (NAFE)	Start Smart America	Women's International Public Health Network
DC Rape Crisis Center	National Association of Commissions For Women	The Banyan Tree, Inc.	Women's Law Center of Maryland
Department for Professional Employees, AFL-CIO	National Association of Mothers' Centers (NAMC)	The Stories Center	Women's National Democratic Club
Dialogue on Diversity	National Association of Nurse Practitioners in Women's Health	The Wage Project	Women's Opportunity Link of Delaware, Inc.
Digital Sisters, Inc.	National Association of Orthopaedic Nurses	The Women's Center	Women's Ordination Conference
Eating Disorders Coalition	National Association of Women Business Owners	The Women's Museum	Women's Party
Economist's Policy Group on Women's Issues	National Research Center for Women & Families	Third Wave Foundation	Women's Policy, Inc.
Emerging Women Projects	National Coalition for Women With Heart Disease	Turning Anger into Change	Women's Research & Education Institute
Equality Now	National Coalition of Abortion Providers	United American Nurses	Women's Sports Foundation
Equal Rights Advocates	National Committee of Women for a Democratic Iran	United Methodist Church, General Board of Church and Society	Women's Studies at San Diego State University
ERA Campaign Network	National Committee on Pay Equity	University of Michigan	Women's Transportation Seminar
YWCA USA	W-SPARC		

# **EXHIBIT B**

How Employment Discrimination Cases Fare in the Federal Courts:  
An Empirical Analysis

by  
Stewart J. Schwab  
Cornell Law School

October 1, 2007

I. Request for this Report

I have prepared this report at the request of Mehri & Skalet, PLLC, class counsel in the case of *Augst-Johnson v. Morgan Stanley & Co.*, in connection with the fairness hearing for the proposed settlement scheduled for October 11, 2007 in the United States District Court for the District of Columbia.

II. Background and Training

My training is in law and in economics. I received a J.D. from the University of Michigan in 1980, and a Ph.D. in Economics in 1981. I served as a law clerk for Judge J. Dickson Phillips, Jr., of the United States Court of Appeals for the Fourth Circuit, and for Justice Sandra Day O'Connor of the United States Supreme Court. Since 1983, I have been a Professor at Cornell Law School, where I teach employment law, law and economics, torts, corporations, and empirical studies, among other courses. Since January 2004 I have also been the Allan R. Tessler Dean of Cornell Law School. I have served as Chair of the Law and Economics Section of the American Association of Law Schools. I am a member of the American Economics Association, the American Law and Economics Association, and the American Arbitration Association. In 2001, I was appointed by the American Law Institute to be a Reporter on the First Restatement of Employment Law. I am a co-author of *Employment Law* (Lexis Law Publishing 4<sup>th</sup> ed. 2007) (with Willborn, Burton, and Lester) and *Foundations of Labor and Employment Law* (Foundation Press 2000) (with Estreicher).

Cornell Law School is the leading center for research on empirical legal studies and is the home of the Journal of Empirical Legal Studies. With my colleagues, I have published many articles in the fields of employment law, employment discrimination law, and law and economics. The articles most directly relevant for this report are Kevin M. Clermont and Stewart J. Schwab, *How Employment Discrimination Plaintiffs Fare in Federal Court*, 1 *Journal of Empirical Legal Studies* 429 (2004); and Kevin M. Clermont, Theodore Eisenberg, and Stewart J. Schwab, *How Employment-Discrimination Plaintiffs Fare in the Federal Courts of Appeals*, 7 *Employee Rights & Employment Policy Journal* 547 (2004).

III. Summary of Report

In this report I describe the success rates of employment discrimination cases in federal court, using official data from the Administrative Office of the United States Courts. The Administrative Office collects data on every case in over 100 case categories, including employment discrimination cases. At every stage of litigation, plaintiffs have a more difficult time in employment discrimination cases than in virtually any other category of cases.

- In cases decided by **pretrial motion**, employment discrimination plaintiffs are **less successful** than plaintiffs in any other nonprisoner case category. They win only 3.4 percent of determinative pretrial motions, meaning they lose 96.6 percent of determinative pretrial motions. This compares to an 18.16 percent plaintiff pretrial-motion win rate in all case categories. See Tables 2 and 3. Over 60 percent of all employment-discrimination decisions are decided by pretrial motion in the employer's favor.
- At **trial**, employment discrimination plaintiffs are **less successful** than all but one nonprisoner case category. Employment discrimination plaintiffs win only 28.1 percent of trials, compared to 44.0 percent

Schwab-How Employment Discrimination Cases Fare, Page 1

for plaintiffs overall. See Table 4.

- When a plaintiff wins at trial and the **defendant appeals** the judgment, the judgment is **MORE likely to be reversed** in an employment discrimination case than in any other category of case except category 440: Other Civil Rights cases. Trial judgments for employment discrimination plaintiffs are reversed in 42.19 percent of the appellate decisions, compared to 32.79 percent in all cases. See Table 5.
- When a defendant wins at trial and the **plaintiff appeals** the judgment, the judgment is **LESS likely to be reversed** in an employment discrimination case than in any other nonprisoner category of case. Trial judgments for employment discrimination defendants are reversed in only 6.87 percent of the cases, compared to 11.85 percent in all cases. See Table 6.
- The resulting **gap between reversal rates in employment cases is over six fold**. The 35.32 percentage-point gap is, except for other civil rights cases, **larger** for employment discrimination cases than any other nonprisoner category of cases. See Table 7.
- Considering the likelihood of losing a dispositive pretrial motion, the low win rate at trial, the high likelihood that defendants will appeal a plaintiff win at trial, the high rate of reversal of plaintiffs' trial wins on appeal, and the low median award, the **value of a typical employment discrimination case** is between \$6,536 and \$9,648.

#### IV. The Administrative Office data

Whenever a case is filed in federal court, the plaintiff fills out a form of basic information about the case, including the category of claim. Again at the termination of each case, the court clerk sends a form to the Administrative Office containing information about the case. These forms are assembled by the Federal Judicial Center and disseminated by the Inter-University Consortium for Political and Social Research. All the data in this report come from the termination files of what is often called Administrative Office data. As the codebook for this data set explains, "The purpose of this data collection is to provide an official public record of the business of the federal courts." Federal Judicial Center, Federal Court Cases: Integrated Data Base, Codebook for Civil and Appellate Data, available at <<http://www.icpsr.umich.edu/index.html>> (ICPSR Project number 8429). Much of the Administrative Office data I have used for this report are available in convenient website form at <http://empirical.law.cornell.edu>, although that website only covers terminations through 2000.

The Administrative Office data include the "nature of suit" category for each terminated case. There are some 90 categories in all, although many of them contain few cases. One of the largest categories is Category 442, "Civil Rights: Jobs." Category 442 includes most employment discrimination cases in the federal courts, including race, sex, and other discrimination claims filed under Title VII of the Civil Rights Act of 1964, age discrimination claims filed under the Age Discrimination in Employment Act, and disability claims filed under the Americans with Disabilities Act. The period of study for this report is all terminated civil cases from 1987-2000, which is the most recent available data that link district court and appellate decisions. Until 1998 the data do not separate Title VII cases from other discrimination cases included in category 442, so this report uses all 442 cases and I will refer to Category 442 cases as "Employment Discrimination" cases. As shown in Kevin M. Clermont and Stewart J. Schwab, How Employment Discrimination Plaintiffs Fare in Federal Court, 1 *Journal of Empirical Legal Studies* 429, 434 Table 1 (2004), for the period 1998-2001 Title VII cases comprised nearly 70 percent of all 442 cases in the federal district courts.

#### V. Success Rates Before Trial

Table 1 shows the variety of ways in which federal district courts dispose of discrimination cases. It shows that fewer than 6.2 percent of discrimination cases are decided by trial.<sup>1</sup> Indeed, nearly two-thirds are decided by the vague "other dismissal," which presumably includes settlements and withdrawn cases. We know very little

<sup>1</sup>Discrimination cases are not unusual in the small fraction that are decided by trials. Indeed, a comparison (not shown here) of category 442 discrimination cases with other case categories reveals that a slightly higher percentage of discrimination cases go to trial.

about these cases. In particular, the data do not say whether the parties settled and what, if anything, the plaintiffs received. The next most common disposition is by pretrial motion. Almost 17 percent of all employment discrimination cases are resolved by pretrial motion. If we take out other dismissals and consent judgments, leaving only “involuntary” court judgments, still only 20 percent of the court judgments are decided by trial.

We can say a bit more about cases decided by pretrial motion. Table 2 shows, for cases in which there is coded a winner, the plaintiff win rates for each method of disposition. Not every case has a clear winner (and thus the frequency is less in Table 2 than in Table 1 for every method of disposition), but this varies dramatically by method of disposition. The Administrative Office data do not reveal winners in “lack of prosecution” or “other dismissal” cases, so settlements are not included in Table 2. At the other extreme, Table 2 shows the winner in 6,970 jury verdicts, so just 247 jury verdicts did not code a winner. Of course, even when the plaintiff is recorded as “winning” a case, it does not mean that the plaintiff recovered a significant monetary judgment, or even enough to cover his or her costs.

Overall, as Table 2 shows, discrimination plaintiffs win less than 15 percent of all district court judgments, meaning they lose over 85 percent of all district court judgments. Obviously, win rates vary dramatically by method of disposition. Plaintiffs win 61 percent of the default judgments and almost 90 percent of the consent judgments, but these are relatively trivial categories (only 5 percent of the 53,246 dispositions with a known winner fall in these categories). The most common method of disposition is pretrial motions, and discrimination plaintiffs do abysmally here, winning only 3.4 percent and losing 96.6 percent. Indeed, of all 53,246 cases disposed of in district court for which the data show a winner or loser, 32,661 or 61 percent are dispositive employer judgments on pretrial motion.

A 96.6 losing rate in cases disposed of by pretrial motion is dramatic. More revealing is to compare this win/loss rate to other categories of cases. Table 3 does this. It looks at all district-court cases disposed of by pretrial motion by case category (for all categories with more than 1,000 pretrial dispositions with a stated winner). Looking at all cases disposed of by pretrial motion in all categories, plaintiffs win 18 percent of such cases (and therefore lose 82 percent). In some categories (such as Code 152: student loan defaults, and Code 220: real property foreclosure), plaintiffs do spectacularly well, winning over 90 percent of the cases decided by pretrial motion. As Table 3 shows, employment discrimination plaintiffs are at the other end of the spectrum, winning barely 3 percent of cases disposed of by pretrial motion. Indeed, they do worse than every other nonprisoner category.

#### VI. Success Rates at Trial

Perhaps a more meaningful comparison is to look at success rates at trials. By the time of trial, most clearly non-meritorious lawsuits have been weeded out by the pretrial motion process. Tried cases are serious cases. Here again, though, discrimination plaintiffs do far worse than plaintiffs in other categories. Table 4 shows the results.

As Table 4 shows, over all case categories, the federal courts have held 151,563 trials in the period 1978-2000 for which there was a recorded winner. Plaintiffs won 44 percent of those trials. Employment discrimination plaintiffs have fared far worse in their 19,537 trials over this same period. They have won only 28 percent of their trials.<sup>2</sup> This success rate ranks 61<sup>st</sup> of 65 categories. Indeed, employment discrimination plaintiffs win a lower percentage of trials than any nonprisoner category except real property land condemnation trials.

<sup>2</sup>Table 4 reports success rates at trial that are slightly different than those that can be interpreted from Table 2. Table 2 reports that employment discrimination plaintiffs win 40.94 percent of cases disposed of by jury trial and 20.36 percent of cases disposed of by nonjury trial in the years 1987-2000. The weighted average of these figures from Table 2 gives an overall win rate at trial of 32.0 percent for this period. The database of all cases including those terminated without trial, from which the figures in Tables 1-3 were computed, are readily accessible only for the period 1987 through 2000. The 28.1 % trial win rate figure from Table 4 for employment discrimination plaintiffs covers the larger period of 1978-2000. It is not surprising that the trial win rate differs slightly in the two time periods. In the rest of this report I use the 28.1 percent trial win rate figure from the full time period.

## VII. Success Rates on Appeal

It is one thing to win at trial, it is another to hold the judgment on appeal. Tables 5-7 use a special data set that links district court cases with their appellate outcomes, created from Administrative Office data by my Cornell Law School colleagues Professors Kevin Clermont and Theodore Eisenberg and used by us in published work. The results are startling for 442 discrimination cases.

Table 5 reports all trials in which the plaintiff received a judgment, the defendant appealed, and the appellate court affirmed or reversed. It shows that trial judgments for plaintiffs are reversed more often in employment discrimination cases than in any other category of cases except category 440: Other Civil Rights. Employment discrimination plaintiffs who win at trial and whose cases are appealed are reversed 42.19 percent of the time. Even prisoner civil rights and habeas plaintiffs are better able to hold their trial judgments on appeal.

Table 6 reports the other side--when the defendant wins a trial, the plaintiff appeals, and the appellate court affirms or reverses. Employment discrimination plaintiffs are less successful at reversing adverse trial judgments on appeal than plaintiffs in all other case categories save one. Only 6.87 percent of trial judgments for defendants are reversed when plaintiffs appeal. Only the wardens in prisoner habeas corpus petitions and prisoner civil rights decisions are better able to hold their trial judgments on appeal than employers in discrimination cases.

The six-fold gap in reversal rates between discrimination plaintiffs and defendants in their trial judgments is astounding. As reported in Table 7, the gap between defendant and plaintiff success on appeal is larger in discrimination trials than in any other category of case except other civil rights cases and prisoner civil rights petitions.

## VIII. The Value of a Typical Employment Discrimination Case Going to Trial

In this section I estimate the value to a plaintiff of a typical employment discrimination case filed in district court and proceeding to court judgment. The median award after a trial is \$68,000, but there are many pitfalls before and after trial that reduce the likelihood that a plaintiff will receive this award. As Table 2 shows, plaintiffs win only 14.96 percent of the judgments in district court (meaning they lose 85.04 percent of the district-court judgments). This includes a pretrial motion losing rate of 96.64 percent (see Table 3) and a trial losing rate of 71.9 percent (see Table 4). Discounting the median award of \$68,000 by .1496 gives an ex ante value in District Court of \$10,173.

The \$10,173 ex ante district court value must be further reduced by the likelihood the judgment is reversed on appeal. Of those trials that employment discrimination plaintiffs win, defendants docket an appeal in 43.55 percent, and 12.35 percent go on to an appellate judgment.<sup>3</sup> As Table 5 shows, nearly half (42.19 percent) of those plaintiff-verdict trials with an appellate judgment are reversed.

The discounted value of the median judgment, then, considering both the probability of winning a judgment in district court and preserving it on appeal is

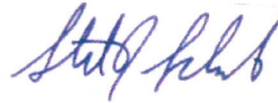
$$\begin{aligned} \text{Discounted Value of median 442 case filed in District Court} \\ &= p (1-ar) J, \\ &= .1496 * .9462 * \$68,000 \\ &= \$9,648. \end{aligned}$$

This \$9,648 figure is an over-estimate because it assumes that the plaintiff gets a full judgment when the

<sup>3</sup> See Kevin M. Clermont and Stewart J. Schwab, How Employment Discrimination Plaintiffs Fare in Federal Court, 1 *Journal of Empirical Legal Studies* 429, 447 n.25 (2004).

plaintiff wins at trial and the employer files an appeal but no appellate judgment is rendered. More likely, the parties will settle after the appeal has been filed for on average between  $\frac{1}{4}$  and  $\frac{3}{4}$  of the trial-court judgment. Under those assumptions, the discounted value of the case would be reduced to somewhere between \$6,536 and \$8,854.

Respectfully submitted,



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Stewart J. Schwab  
Professor of Law  
Cornell Law School

October 1, 2007



**Table 1**  
**Method of Disposition of**  
**Employment Discrimination Cases**  
**[Administrative Office Code 442]**  
**Federal District Court Civil Cases**  
**1987-2000**

METHOD OF DISPOSITION	NUMBER OF CASES	PERCENT OF ALL DISPOSITIONS
Lack of Prosecution	7,896	3.84%
Other Dismissal	131,235	63.91%
Default Judgment	646	0.31%
Consent Judgment	3,136	1.53%
Pretrial Motion	34,628	16.86%
Jury Verdict	7,197	3.50%
Directed Verdict	746	0.36%
Nonjury Trial	5,480	2.67%
Other	14,394	7.01%
Total	205,358	100.00%

Source: Administrative Office of the United States Courts, Federal District Court Cases, available at <http://empirical.law.cornell.edu>.

Dean Stewart J. Schwab  
 Cornell Law School  
 How Employment Discrimination Cases Fare in the Federal Courts: An Empirical Analysis  
 October 2007



**Table 2**  
**Plaintiff Win Rates by Method of Disposition**  
**Employment Discrimination Cases**  
**[Admin. Office Code 442]**  
**Federal District Court Civil Cases**  
**1987-2000**

METHOD OF DISPOSITION	PLAINTIFF WIN RATE	NUMBER OF CASES
Default Judgment	61.44%	625
Consent Judgment	88.46%	2,115
Pretrial Motion	3.36%	33,797
Jury Verdict	40.94%	6,950
Directed Verdict	8.14%	725
Nonjury Trial	20.36%	5,315
Other	15.81%	3,719
Total	14.96%	53,246

Source: Administrative Office of the United States Courts, Federal District Court Cases, available at <http://empirical.law.cornell.edu>.

Dean Stewart J. Schwab  
 Cornell Law School  
 How Employment Discrimination Cases Fare in the Federal Courts: An Empirical Analysis  
 October 2007

**Table 3**  
**Plaintiff Win Rates in Cases Decided by Pretrial Motion**  
**By Case Category**  
**Federal District Court Civil Cases**  
**1987-2000**

RANK	CASE CATEGORY	PLAINTIFF WIN RATE	NUMBER OF CASES
1	152 Contract Student Loan Defaults	95.61%	3,368
2	220 Real Property Foreclosure	92.69%	8,304
3	625 Drug Related Seizure of Property	88.87%	2,156
4	690 Forfeiture & Penalty other	87.91%	4,227
5	140 Contract Negotiable Instruments	83.26%	4,128
6	120 Contract Marine	63.74%	2,143
7	820 Property Rights Copyright	63.16%	2,345
8	840 Property Rights Trademark	62.87%	1,977
9	190 Contract other actions	45.32%	24,651
10	791 Labor Laws ERISA	43.55%	12,080
11	450 Interstate Commerce	43.50%	1,131
12	110 Contract Insurance	36.40%	13,338
13	430 Banks & Banking	34.99%	1,189
14	710 Labor Laws Fair Labor Standards Act	38.07%	1,811
15	850 Securities, Commodities, Exchange	34.01%	3,523
16	870 Tax Suits	33.44%	4,509
17	890 Other Statutory Actions	33.09%	14,698
18	290 Real Property other actions	31.40%	1,745
19	720 Labor Laws Labor/Mgt Relations Act	28.58%	6,242
20	893 Environmental Matters	26.78%	1,504
21	830 Property Rights Patent	26.52%	1,452
22	950 Constitutionality of State Statutes	25.02%	1,111
23	422 Bankruptcy Appeals Rule 801	23.12%	4,659
24	350 Torts Motor vehicle	22.08%	2,835
25	790 Labor Laws other	21.06%	2,972
26	863 Social Security DIWC & DIWW	20.77%	30,541
27	370 Torts Other Fraud	20.46%	2,214
28	380 Torts other personal property damage	19.70%	1,716
29	865 Social Security RSI	18.47%	1,955
30	864 Social Security SSID Title XVI	16.25%	13,301
31	340 Torts Marine	15.35%	2,170
32	510 Prisoner Petitions Vacate sentence (2255)	14.85%	18,778
33	470 RICO	14.76%	1,775
34	410 Antitrust	13.18%	1,351

35	365 Torts Product Liability	9.39%	3,898
36	895 Freedom of Information Act	9.20%	2,044
37	360 Torts other personal injury	8.33%	10,537
38	362 Torts Medical Malpractice	7.61%	1,642
39	540 Prisoner Petitions Mandamus	6.66%	2,748
40	440 Civil Rights other	5.68%	36,438
41	320 Torts Assault, libel & slander	4.90%	1,634
<b>42</b>	<b>442 Civil Rights Jobs [Employment Discrimination]</b>	<b>3.36%</b>	<b>33,797</b>
43	530 Prisoner Petitions Habeas Corpus	3.06%	65,222
44	550 Prisoner Petitions Civil Rights	1.44%	100,643
	Total (including categories with < 1,000 dispositive pretrial motions)	18.16%	483,632

\*Breakout includes all Administrative Office case categories with 1,000 or more cases decided by pretrial motion.

Source: Administrative Office of the United States Courts, Federal District Court Cases, available at  
<<http://empirical.law.cornell.edu>>.

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**Table 4**  
**Plaintiff Win Rates at Trial**  
**by Case Category\***  
 Federal District Court Civil Trials  
 1978-2000

RANK	CATEGORY	PLAINTIFF WIN RATE	NUMBER OF TRIALS
1	910 Local Question Domestic relations	95.1%	246
2	871 IRS – Third Party Suits	83.7%	196
3	620 Forfeiture & Penalty Food & Drug Acts	83.1%	219
4	220 Real Property Foreclosure	82.8%	506
5	690 Forfeiture & Penalty other	82.8%	1,350
6	625 Drug Related Seizure of Property	82.0%	217
7	130 Contract Miller Act	77.2%	698
8	150 Contract Recovery overpayments	76.4%	195
9	140 Contract Negotiable Instruments	75.8%	1,208
10	820 Property Rights Copyright	73.4%	759
11	420 *Bankruptcy trustee	70.2%	121
12	330 Tort Federal Employers' Liability	69.7%	2,051
13	230 Real Property Rent, lease, ejectment	68.8%	215
14	120 Contract Marine	67.5%	2,057
15	840 Property Rights Trademark	67.0%	1,126
16	450 Interstate Commerce	65.2%	328
17	441 Civil Rights Voting	64.8%	429
18	190 Contract other actions	64.7%	15,512
19	368 Torts Asbestos	64.2%	615
20	350 Torts Motor vehicle	62.3%	7,936
21	370 Torts Other Fraud	61.8%	1,409
22	870 Tax Suits	61.2%	2,404
23	470 RICO	60.6%	249
24	893 Environmental Matters	60.3%	456
25	710 Labor Laws Fair Labor Standards Act	60.2%	1,546
26	380 Torts other personal property damage	59.7%	1,900
27	340 Torts Marine	59.1%	4,560
28	240 Real Property Torts to Land	57.4%	570
29	195 Contract product liability	57.1%	494
30	830 Property Rights Patent	56.2%	1,486
31	290 Real Property other actions	55.9%	880
32	850 Securities, Commodities, Exchange	53.9%	1,584
33	110 Contract Insurance	52.8%	6,739

34	430 Banks & Banking	52.5%	221
35	310 Torts Airplane	51.9%	905
36	890 Other Statutory Actions	51.4%	3,162
37	791 Labor Laws ERISA	50.8%	1,812
38	423 Withdrawal	49.6%	248
39	160 Contract Stockholders suits	49.6%	125
40	410 Antitrust	48.1%	945
41	345 Torts Marine-product liability	48.1%	108
42	720 Labor Laws Labor/Mgt Relations Act	47.5%	1,419
43	443 Civil Rights Accommodations	46.8%	575
44	360 Torts other personal injury	46.0%	11,126
45	320 Torts Assault, libel & slander	45.9%	964
46	730 Labor Laws Lab/Mgt Rptg & Disclosure Act	45.5%	233
47	950 Constitutionality of state statutes	43.2%	227
48	863 Social Security DIWC & DIWW	43.1%	144
49	385 Torts Property damage-product liability	43.0%	553
50	422 Bankruptcy Appeals Rule 801	41.4%	584
51	790 Labor Laws other	41.3%	1,217
52	740 Labor Laws Railway Labor Act	40.3%	124
53	315 Torts Airplane product liability	40.0%	280
54	540 Prisoner Petitions Mandamus	37.9%	103
55	362 Torts Medical Malpractice	36.4%	2,686
56	891 Agricultural Acts	36.2%	31
57	245 Real Property Tort-product liability	36.1%	119
58	355 Torts Motor vehicle-product liability	33.0%	811
59	440 Civil Rights other	32.2%	14,307
60	365 Torts Product liability	29.0%	6,344
<b>61</b>	<b>442 Civil Rights Jobs [Emp. Discrimination]</b>	<b>28.1%</b>	<b>19,537</b>
62	510 Prisoner Petitions Vacate sentence (2255)	24.6%	207
63	530 Prisoner Petitions Habeas Corpus	20.8%	1,679
64	210 Real Property Land Condemnation	19.4%	5,332
65	550 Prisoner Petitions Civil Rights	11.5%	13,583
	<b>TOTAL (including categories with &lt; 100 trials)</b>	<b>44.0%</b>	<b>151,563</b>

\*Includes all Administrative Office case categories with 100 or more recorded outcomes of trials.

Source: Administrative Office of the U.S. Courts, Federal District Court Civil Trials, available at <http://empirical.law.cornell.edu>.

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**Table 5**  
**Reversal Rates When Defendants Appeal a Verdict After Trial**  
 U.S. Courts of Appeals  
 1987-20000

RANK	CASE CATEGORY	DEFENDANTS' REVERSAL RATE (%)	NUMBER OF DEFENDANT APPEALS
1	440 Civil Rights Other	50.33	302
2	<b>442 Civil Rights Jobs [Employment Discrimination]</b>	<b>42.19</b>	<b>448</b>
3	550 Prisoner Petitions Civil Rights	42.05	88
4	850 Securities, Commodities & Exchange	36.36	44
5	362 Torts Medical Malpractice	36.11	36
6	Product Liability*	34.92	189
7	791 ERISA	34.21	76
8	890 Other Statutory Actions	33.68	95
9	710 Labor Laws Fair Labor Standards Act	32.65	49
10	370 Fraud	32.43	37
11	530 Habeas Corpus	31.82	22
12	120 Marine Contracts	31.82	44
13	110 Insurance Contracts	28.43	204
14	360 Torts Other Personal Injury	28.17	252
15	Others	26.96	382
16	350 Motor Vehicle Torts	26.47	68
17	720 Labor/Management Relations Act	26.32	38
18	190 General Contracts	26.25	541
19	870 Tax Suits	25.49	51
20	790 Other Labor Litigation	25.00	40
21	340 Marine Torts	25.00	60
22	840 Trademark	24.49	49
23	140 Negotiable Instruments	20.75	53
24	330 FELA	20.59	34
	<b>ALL TRIAL DECISIONS</b>	<b>32.79</b>	<b>3,202</b>

\*This category combines the Administrative Office's eight product liability categories (## 195, 245, 315, 345, 355, 365, 368, & 385).

Source: Kevin M. Clermont, Theodore Eisenberg, and Stewart J. Schwab, How Employment-Discrimination Plaintiffs Fare in the Federal Courts of Appeals, 7 Employee Rights & Employment Policy Journal 547, 556 Display 4 (2004). (using linked database from Administrative Office district court and appellate court databases).

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**Table 6**  
**Reversal Rates When Plaintiffs Appeal a Verdict After Trial**  
 U.S. Courts of Appeals  
 1987-2000

RANK	CASE CATEGORY	PLAINTIFFS' REVERSAL RATE (%)	NUMBER OF PLAINTIFF APPEALS
1	140 Negotiable Instruments	37.50	16
2	850 Securities, Commodities & Exchange	26.67	60
3	370 Torts Fraud	25.71	35
4	840 Property Rights Trademark	24.39	41
5	890 Other Statutory Actions	22.44	156
6	710 Fair Labor Standards Act	20.37	54
7	OTHERS	19.07	535
8	120 Marine Contracts	18.75	48
9	870 Tax Suits	17.86	84
10	110 Insurance Contracts	17.65	289
11	190 General Contracts	17.37	426
12	791 ERISA	15.62	128
13	790 Other Labor Litigation	15.56	45
14	440 Other Civil Rights	13.98	901
15	365 Torts Product Liability*	12.68	339
16	340 Marine Torts	12.50	128
17	330 FELA	12.07	58
18	720 Labor Laws Labor/Mgt Relations Act	11.90	42
19	360 Other Personal Injury	11.14	359
20	362 Medical Malpractice	10.49	143
21	350 Torts Motor Vehicle	8.15	184
<b>22</b>	<b>442 Civil Rights Jobs [Employment Discrimination]</b>	<b>6.87</b>	<b>1,382</b>
23	530 Prisoner Petitions Habeas Corpus	6.15	130
24	550 Prisoner Civil Rights	5.75	1,201
	<b>ALL TRIAL DECISIONS</b>	<b>11.85</b>	<b>6,784</b>

\*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

Source: Kevin M. Clermont, Theodore Eisenberg, and Stewart J. Schwab, How Employment-Discrimination Plaintiffs Fare in the Federal Courts of Appeals, 7 Employee Rights & Employment Policy Journal 547, 557 Display 5 (2004). (using linked database from Administrative Office district court and appellate court databases).

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Table 7  
**Differences in Reversal Rates**  
**When Defendants Appeal and Plaintiffs Appeal a Trial Verdict**  
 U.S. Courts of Appeals  
 1987-2000

RANK	CASE CATEGORY	DEFENDANT-PLAINTIFF DIFFERENCE IN REVERSAL RATES
1	440 Other Civil Rights	36.35
2	550 Prisoner Petitions Civil Rights	36.30
<b>3</b>	<b>442 Civil Rights Jobs [Employment Discrimination]</b>	<b>35.32</b>
4	530 Habeas Corpus	25.67
5	362 Torts Medical Malpractice	25.62
6	720 Labor Laws Labor/Mgt Relations Act	24.42
7	Product Liability*	22.24
8	791 Labor Laws ERISA	18.59
9	350 Torts Motor Vehicle	18.32
10	360 Torts Other Personal Injury	17.03
11	120 Marine Contracts	13.07
12	340 Marine Torts	12.50
13	710 Labor Laws Fair Labor Standards Act	12.28
14	890 Other Statutory Actions	11.24
15	110 Insurance Contracts	10.78
16	850 Securities, Commodities & Exchange	9.69
17	790 Other Labor Litigation	9.44
18	190 General Contract	8.88
19	330 FELA	8.50
20	OTHERS	7.89
21	870 Tax Suits	7.63
22	370 Fraud	6.72
23	840 Trademark	0.10
24	140 Negotiable Instruments	-16.75
	ALL TRIAL DECISIONS	20.94

\*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

Source: Kevin M. Clermont, Theodore Eisenberg, and Stewart J. Schwab, How Employment-Discrimination Plaintiffs Fare in the Federal Courts of Appeals, 7 Employee Rights & Employment Policy Journal 547, 559 Display 6 (2004). (using linked database from Administrative Office district court and appellate court databases).

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 How Employment Discrimination Cases Fare in the Federal Courts: An Empirical Analysis  
 October 2007



# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

Joanne Augst-Johnson, et al.,	)	
	)	
On behalf of themselves and all others similarly	)	
situated,	)	Case No. 1:06-cv-01142 (RWR)
	)	
Plaintiffs,	)	
	)	CLASS ACTION
v.	)	
	)	
	)	
Morgan Stanley & Co. Incorporated f/k/a Morgan	)	
Stanley DW Inc.,	)	Declaration of Mark Patton
	)	
Defendant.	)	

---

I, MARK PATTON, declare:

1. I am the Projects Coordinator of Settlement Services Inc. ("SSI"), located at 2032-D Thomasville Road, Tallahassee, Florida. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. SSI was appointed as the Claims Administrator in the above-entitled action. SSI's duties include but are not limited to: a) preparing, printing, and mailing the Notice of Class Action, Proposed Settlement Agreement, and Settlement Hearing ("Class Notice," attached hereto as Exhibit A) and the Claim Form, which also included a release and a W-9 form (attached hereto as Exhibit B); and b) receiving and processing Claim Forms submitted by Class Members.

3. SSI received data on or about April 30, 2007 from Steven Sprenger, who is Co-Lead Counsel for the class in this case, and on or about July 13, 2007 from Azeez Hayne, an

attorney at Morgan, Lewis, & Bockius LLP, counsel for Morgan Stanley, characterized as containing the relevant data for all women who have worked or continue to work for Morgan Stanley in the Global Wealth Management Group during the class period as Financial Advisors or Registered Financial Advisor Trainees.

4. SSI reviewed the data and constructed a single database (the "Class Member List") containing the data needed to facilitate the mailing of the Class Notice and Claim Form.

5. On July 27, 2007, I caused the Class Notice, Claim Form, IRS Form W-9, and Release ("Notice Packet") to be mailed to the 2,867 Class Members on the Class Member List by First Class postage at the U.S. Post Office in Tallahassee, Florida. Prior to the mailing of the Notice Packets, all addresses in the Class Member List were verified using the National Change of Address ("NCOA") database.

6. The deadline for postmarking completed Claim Forms was September 24, 2007. As of October 1, 2007, SSI has received approximately 907 Claim Forms postmarked by the September 24, 2007 deadline.

7. Since July 27, 2007, 41 Notice Packets have been returned as undeliverable to SSI by the U.S. Postal Service with forwarding addresses. I caused new Notice Packets to be re-mailed to the Class Members at each of these new addresses within one business day of receipt of the undeliverable package.

8. As of September 14, 2007, a total of 316 Notice Packets were returned to SSI by the U.S. Postal Service. These 316 Class Members, which included the 41 discussed above, were traced using our locator service vendor, and on September 14, 2007, Notice Packets were remailed via Priority Mail to the most likely current address obtained via the trace. Out of the 316, the trace did not return a new address for 32 Class Members, although SSI still remailed Notice Packets to all 316, regardless of whether a new address was returned. Included in the

Notice Packet for this mailing was an insert, printed on bright yellow paper (“Insert”), which stated, “If you have any questions about anything in the enclosed documents or if you feel you do not have sufficient time to respond in any way to any of the enclosed documents, please call Class Counsel immediately at either of the following toll-free numbers: 1-866-464-9097 or 1-800-950-6231.”

9. Of the 316 Notice Packets remailed on September 14, 2007, 21 have been returned undeliverable as of October 1, 2007.

10. As of October 1, 2007, 90 of the 316 Class Members to whom Notice Packets were remailed on September 14, 2007 have returned Claim Forms. Of those 90, 78 were postmarked on or before the September 24, 2007 deadline, six had illegible postmarks, and six were postmarked after the September 24, 2007 deadline.

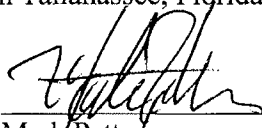
11. On or about September 17, 2007, Class Counsel sent SSI new addresses for 12 of the 32 Class Members for whom the trace did not return a new address. SSI sent these 12 Class Members an additional Notice Packet to the addresses provided by Class Counsel via Federal Express Overnight Mail. This mailing also included the Insert.

12. On or about September 18, 2007, Class Counsel sent SSI one additional new address for a Class Member whose Notice Packet was returned undeliverable. SSI sent an additional Notice Packet to the Class Member at the address provided by Class Counsel via Federal Express overnight delivery. This mailing also included the Insert.

13. As of October 1, 2007, SSI has received 18 claim forms postmarked after the September 24, 2007 deadline, and 28 claim forms with illegible postmarks. Six of the untimely claim forms and six of the illegibly postmarked claim forms came from women who were among the 316 whose Notice Packet was returned undeliverable and later remailed.

14. Following the Court's final approval of the settlement, SSI shall be responsible for requesting from Morgan Stanley employment data for Class Members who have filed Claim Forms, sending letters to those Class Members which state the employment history information Morgan Stanley has for each, and processing any challenges to this employment data. In addition, after the Special Master has reviewed the claims and issued his report, SSI shall be responsible for issuing the monetary payments to Class Members and calculating, reporting, and paying all payroll tax withholdings required by state and federal law.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 1<sup>st</sup> day of October, 2007 in Tallahassee, Florida.

  
\_\_\_\_\_  
Mark Patton

**Exhibit A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

Joanne Augst-Johnson, Nancy Reeves,	)	
Debra Shaw, Jan Tyler, Cheryl Giustiniano, Laurie	)	
Blackburn, Erna Tarantino,	)	
and Elizabeth Reinke,	)	Case No. 1:06-cv-01142 (RWR)
	)	
On behalf of themselves and all others similarly	)	
situated,	)	CLASS ACTION
	)	
Plaintiffs,	)	JURY TRIAL DEMAND
	)	
v.	)	
	)	
Morgan Stanley & Co. Incorporated f/k/a Morgan	)	
Stanley DW Inc.,	)	
	)	
Defendant.	)	

---

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT AGREEMENT,  
AND SETTLEMENT HEARING**

---

**IF YOU ARE A WOMAN AND WERE EMPLOYED AS A FINANCIAL ADVISOR OR  
REGISTERED FINANCIAL ADVISOR TRAINEE IN THE GLOBAL WEALTH  
MANAGEMENT GROUP OF MORGAN STANLEY & CO. INCORPORATED OR ITS  
PREDECESSOR(S) AT ANY TIME FROM AUGUST 5, 2003 THROUGH JUNE 30, 2007,  
A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

***A federal court has authorized this Notice.  
This is not a solicitation from a lawyer.***

Please read this Notice carefully and fully. This Notice describes a proposed settlement and related matters, including the procedures for seeking monies from a Settlement.

This Notice is intended to inform you about the terms of a proposed settlement (the "Settlement") of a pending legal action and your rights in connection with this Settlement. This Notice describes the steps you must take to be eligible to receive Settlement monies if this Settlement is finally approved by the Court. If you do not wish to be part of the class, this Notice details the steps you must take to be excluded from the class.

### General Overview

- Eight women (“Plaintiffs”), on behalf of themselves and all other current and former Morgan Stanley women Financial Advisors and Registered Financial Advisor Trainees, have sued Morgan Stanley for sex discrimination. After extensive discussions over more than two years, the Plaintiffs and the Company have agreed on the terms of a Settlement.
- Morgan Stanley denies that it has done anything wrong, and the Court did not make a determination on that issue. However, the Company has agreed to be bound by the terms of this Settlement.
- The Court has reviewed the Settlement and has given it preliminary approval. Before deciding whether to grant final approval to the Settlement, the Court wishes to inform you of the general terms of the Settlement, what actions you need to take to participate in the monetary provisions of the Settlement, and of your rights to opt-out of the monetary relief portion of the Settlement or to object to the Settlement, if you would like to do so.
- The Court has allowed the following Class to assert claims for monetary relief:

All women who were employed as Financial Advisors or Registered Financial Advisor Trainees in the Global Wealth Management Group of Morgan Stanley & Co. Incorporated or its predecessor(s) at any time from August 5, 2003 through June 30, 2007.
- If you fit the above definition, then you are a Class Member. This Notice will explain the terms of the Settlement to be presented to the Court for final approval.
- If the Court grants final approval to the Settlement, the changes to be made to the Company’s policies and practices, known as “programmatic relief,” will apply to all women who are currently employed by Morgan Stanley as Financial Advisors or Registered Financial Advisor Trainees, including Class Members who opt-out of the monetary relief portion of the Settlement. It is not possible to opt-out of the programmatic relief portion of the Settlement.
- If, after reviewing the terms of the Settlement you would like to participate in the Settlement by making a claim for monetary relief, then you must fill out the attached Claim Form.
- If you want to opt-out of the monetary relief provisions of the Settlement and not receive any monetary relief through this Settlement, or you want to object to the Settlement before the Court, this Notice will describe the procedures to do so.
- The Court will hold a Settlement Hearing to consider whether the Settlement is fair, reasonable, and adequate, and to decide whether to give final approval to this Settlement. The hearing will be held at 10:30 a.m. on October 11, 2007, in the courtroom of the Honorable Richard W. Roberts at the United States District Court for the District of Columbia, Courtroom 9, U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, DC 20001. If the Settlement is granted final approval by the Court after the Settlement Hearing, the Court’s judgment will be final and binding.



• You are not required to appear at the hearing. If you are a Class Member you will be represented by attorneys for the Class at no cost to you. If you wish to opt-out of the monetary relief provisions of the Settlement, you must submit a request to opt-out in writing, but you do not need to appear at the hearing. If you wish to object to the Settlement, you must submit a written objection. Those who wish to object to the Settlement may present their objection in writing only, or may, in addition to a written objection, appear and be heard by the Court, either by yourself or, at your own expense, with an attorney of your choice.

- If you wish to remain a Class Member and to have an opportunity to receive a share of the monetary relief, you must return the attached Claim Form postmarked no later than September 24, 2007.
- If you wish to opt-out and exclude yourself from the monetary relief, your opt out request must be received by September 10, 2007.
- If you wish to object to the Settlement, your objection must be received by September 10, 2007.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>Submit a Claim Form</b>	<b>The only way to be eligible to receive money from the Settlement.</b>
<b>Do Nothing</b>	<b>Stay in this lawsuit. Receive no money from the Settlement. Give Up Certain Rights.</b> By doing nothing, you will not receive any money from the Settlement, and you give up any right to pursue claims against Morgan Stanley separately about the sex discrimination claims covered by the Settlement.
<b>Ask to Be Excluded (Opt Out)</b>	<b>Opt out of the monetary provisions of this lawsuit (opt out). Receive no money from the Settlement. Keep any rights you might have to pursue monetary claims against Morgan Stanley separately.</b> If you ask to be excluded, you will not be eligible to receive any money from the Settlement, but you keep any rights you might have to pursue claims against Morgan Stanley separately about the legal claims covered by this Settlement.
<b>Object</b>	<b>Write to the Court about why you don't think the settlement is fair to the class.</b> Unless you opt out, you may object to the Settlement whether or not you submit a Claim Form
<b>Go to the Hearing</b>	<b>Ask to speak in Court about the fairness of the settlement.</b>

- For additional information, you may visit [www.findjustice.com/cases/rights-discrimination/morgan-stanley/](http://www.findjustice.com/cases/rights-discrimination/morgan-stanley/) or [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com).

**WHAT THIS NOTICE CONTAINS**

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## **BASIC INFORMATION**

### **1. Purpose of this Notice**

The purpose of this Notice is to inform you about this litigation, the certification of a class (the “Class”), the terms of a proposed settlement (the “Settlement”), and your rights in connection with a hearing to be held before the Court on October 11, 2007, to consider the fairness, reasonableness, and adequacy of the Settlement and related matters. This Notice also describes the steps to be taken by those who wish to be excluded from the Class and, for those who remain Class members, the steps necessary to seek a share in the distribution of the Settlement in the event the Settlement is approved by the Court.

### **2. Background: About the Lawsuit**

In early 2005, Joanne Augst-Johnson contacted the law firm of Mehri & Skalet, PLLC because she believed that she had suffered sex discrimination as a Financial Advisor at Morgan Stanley. After an initial investigation of Ms. Augst-Johnson’s claims by Mehri & Skalet, two other law firms, Sprenger + Lang and Moody & Warner joined Mehri & Skalet in the investigation and prosecution of these claims. During a two year period, the firms interviewed over 200 women from over 35 states who were working as or had worked as Financial Advisors or Registered Financial Advisor Trainees at Morgan Stanley in over 35 states. During that time, seven other women joined Ms. Augst-Johnson as Named Plaintiffs in order to prosecute these claims and help bring about change in the treatment of women Financial Advisors and Registered Financial Advisor Trainees at Morgan Stanley. These women are Nancy Reeves, Debra K. Shaw, Jan Tyler, Cheryl Giustiniano, Laurie Blackburn, Erna Tarantino and Elizabeth Reinke.

As a result of this investigation, on June 22, 2006, this group of current and former women Financial Advisors and Registered Financial Advisor Trainees sued Morgan Stanley for sex discrimination in the United States District Court in Washington, D.C. The lawsuit is known as Augst-Johnson, et al., v. Morgan Stanley & Co. Incorporated f/k/a Morgan Stanley DW Inc., Case No.1:06-cv-01142 (RWR). Because these women brought this action on behalf of a group, or “class” of women who have similar claims, they filed the case as a “class action,” and are referred to as “Named Plaintiffs.”

In this lawsuit, the Named Plaintiffs claim that women Financial Advisors and Registered Financial Advisor Trainees at Morgan Stanley received less compensation than similarly situated men as a result of account distributions, partnerships, acquisition of the books of business of retiring Financial Advisors, and other opportunities which were not afforded to women in a manner equal to their male counterparts. The Named Plaintiffs also claim that Morgan Stanley denied them equal opportunities to acquire branch management positions, denied them equal terms and conditions of employment, and terminated them on the basis of sex. Some of the Named Plaintiffs assert other individual, non-class claims, such as age discrimination. You can read all of the plaintiffs’ claims in the Named Plaintiffs’ Amended Complaint, which can be found at <http://www.morganstanleygendercase.com> or <http://www.findjustice.com/cases/rights-discrimination/morgan-stanley/>

Morgan Stanley denies that it discriminated against women or that it otherwise did anything wrong. The Company maintains that women were compensated based solely on their production, just as

similarly situated men were. Morgan Stanley also maintains that opportunities for movement from Registered Financial Advisor Trainee into Financial Advisor positions, and movement from Financial Advisor into branch management positions, were equally available to women and men, and that women were not denied equal terms and conditions of employment or terminated on the basis of their sex. Morgan Stanley maintains that it does not allow or condone discrimination against women and that it is an equal opportunity employer. By entering into the proposed Settlement, Morgan Stanley does not admit any wrongdoing.

The Court has not made and will not make any determination regarding whether or not Morgan Stanley discriminated against women. This Notice should not be regarded as an expression of any opinion by the Court on the merits of any claims or defenses of the Parties. No trial has occurred. There has been no finding or determination by the Court that Morgan Stanley has violated any law or obligation, or that, in the event that the Settlement does not become effective, a recovery could or could not be made by the Named Plaintiffs or other members of the Class. Because the Named Plaintiffs and the Company together came to the Court to ask that the Court approve the Settlement that the two sides agreed to, the Court will simply examine the Settlement Agreement to determine whether or not it is fair, adequate and reasonable.

The Settlement resolves claims of sex discrimination in compensation, promotions to branch management positions, terms and conditions of employment, and termination brought under Title VII of the Civil Rights Act of 1964 or any state or local anti-discrimination law. The Settlement also resolves any and all individual, non-class claims the Named Plaintiffs made in the Complaint and Amended Complaint.

The Court has reviewed the Settlement and has preliminarily approved it as being fair, adequate and reasonable. Before deciding whether to give the Settlement final approval, the Court wishes to inform you of the general terms of the Settlement and of your right to comment on the Settlement, if you so desire, as well as your right to opt-out, or be excluded, from participating in the monetary portion of the Settlement.

### **3. Class Definition—You are Part of the Class**

You are a member of the Class affected by the Settlement if you fit within this definition:

All women who were employed as Financial Advisors or Registered Financial Advisor Trainees in the Global Wealth Management Group of Morgan Stanley & Co. Incorporated or its predecessor(s) at any time from August 5, 2003 through June 30, 2007.

If you received this Notice in a mailing addressed to you, then Morgan Stanley's records show that you are currently employed, or were previously employed, by Morgan Stanley as a Financial Advisor or Registered Financial Advisor Trainee at some time from August 5, 2003 through June 30, 2007. Therefore, you are considered a Class Member. You have legal rights and options that you may exercise before the Court finally approves the Settlement.

## **Do I Have to Be Part of this Lawsuit?**

You may exclude yourself from, or “opt-out” of, the monetary provisions of this lawsuit. If you do so, you will not be required to give up any legal rights that you would otherwise have to sue Morgan Stanley individually, and you will not be permitted to share in the monetary portion of the Settlement. Information about how to opt-out is included below.

## **4. Summary Of Settlement Terms**

### **What Are the Terms of the Settlement?**

The Settlement requires Morgan Stanley to establish a Settlement Fund and for its Global Wealth Management Group (“GWMG” or “MS-GWMG”) to implement changes to its policies and practices. The programmatic portions of the Settlement will last for five years.

### **The Settlement Fund**

Under the Settlement, Morgan Stanley will pay forty-six million dollars (\$46,000,000) into a an interest bearing Settlement Fund. The Settlement Fund is expected to earn in excess of one million dollars in interest. A portion of the Settlement Fund will be used to reimburse costs and expenses of the litigation, pay Class Counsel’s fees as awarded by the Court, and pay for the administration of the settlement process. The remainder of the Settlement Fund will be distributed to the eligible Named Plaintiffs and Class Members who submit a Claim Form to compensate them for the asserted claims.

### **What Does Morgan Stanley Have to Do Under the Settlement?**

Morgan Stanley's Global Wealth Management Group has agreed to implement various revisions to its policies and practices. These revisions are intended to further enhance opportunities for employment, earnings and advancement of women Financial Advisors and Registered Financial Advisor Trainees, and to provide a workplace that promotes fairness for all employees.

The parties anticipate that Morgan Stanley's Global Wealth Management Group will spend approximately seven and one-half million dollars (\$7,500,000) on diversity efforts during the period of this Settlement Agreement. Furthermore, the parties anticipate that, as a result of actions to be taken by the Global Wealth Management Group pursuant to the Settlement, the earnings of women Financial Advisors will increase by at least sixteen million dollars (\$16,000,000) over the five-year term of the Settlement.

Under the Settlement, Morgan Stanley's Global Wealth Management Group will make the following revisions to its policies and practices, or perform the following tasks, during the five-year term of the Settlement Agreement:

- A. Revise the calculations used to determine account distributions, known as the Power Rankings, to ensure equitable and fair account distribution without regard to sex. The methodology for calculating a Financial Advisor’s Power Ranking will be

provided to each Financial Advisor, including an explanation of each factor and how each factor is weighted;

- B. Implement account distribution policies covering the distribution of accounts of departing Financial Advisors, retiring Financial Advisors, departing Financial Advisor partners, and leads, call-ins and walk-ins. The policy statement will be issued via e-mail to all field employees and will be posted on the Global Wealth Management Group's intra-net site. Morgan Stanley's Global Wealth Management Group will also train all Branch Managers on the account distribution policy;
- C. Computer-automate the account distribution process;
- D. Require that the accounts held by (a) a retiring Financial Advisor, (b) a departing partner in a Financial Advisor partnership, or (c) a manager transferred to a non-producing manager position will be distributed through the Power Ranking account distribution process described above, unless a Joint Production Agreement has been in effect for twenty-four (24) months or longer;
- E. Implement a "Financial Advisor of the Day" Program to handle leads, call-ins and walk-ins in each branch office equitably and without regard to sex;
- F. Maintain the Branch Management Mobility project which includes posting all branch management positions on the Global Wealth Management Group's Internal Job Bank for a minimum of 5 business days. The positions to be posted currently include: Branch Manager; Financial Advisor in Charge; Sales Manager; and Assistant Branch Manager;
- G. Develop and implement a comprehensive management assessment and development program to provide candidates a path to assessment and selection as branch managers;
- H. Provide all management-level field personnel with diversity training no less than every other year. Branch Manager compensation will also have a diversity component designed to measure and reward efforts at recruiting, training, and retaining women Financial Advisors;
- I. Appoint two external, independent expert Industrial Psychologists whose tasks will be to:
  - i. Develop innovative, meaningful, novel, state of the art programs and make recommendations for developing workplace initiatives designed to attract and retain women to Morgan Stanley's Global Wealth Management Group and to retain them and enhance their success, including targeted mentoring and training;

- ii. Develop programs and make recommendations for increasing participation of women Financial Advisors in the receipt of retiring Financial Advisors' accounts;
  - iii. Develop programs and make recommendations for increasing participation of women Financial Advisors in partnerships;
  - iv. Develop programs and make recommendations concerning policies and practices regarding training, development and mentoring that will enhance opportunities for women Financial Advisors and Financial Advisor trainees; and
  - v. Review how the revised account distribution process has been operating and provide the Diversity Monitor with findings of any deviations for the account distribution system.
- J. Appoint an external, independent Diversity Monitor whose tasks will be to:
- i. Review account distribution data, exception reports and complaints, and inform Morgan Stanley's Global Wealth Management Group and Lead Class Counsel of any potential non-compliance;
  - ii. Review monthly reports regarding complaints of Financial Advisors and Registered Financial Advisor Trainees alleging sex discrimination and the resolution of investigations of such complaints through the Morgan Stanley's CARE program or otherwise;
  - iii. Monitor annual training of management on EEO policies, and policies against discrimination and retaliation, and ensure that the training agreed to is implemented;
  - iv. Review how Human Resources handles investigations and the resolution process for inquiries and complaints;
  - v. Provide reports to Class Counsel and Morgan Stanley's Global Wealth Management Group at least twice per year regarding all the items monitored, including the analysis of the account distribution system;
  - vi. Maintain records for the five-year term of the Settlement Agreement.
- K. Provide Human Resources staff supporting Financial Advisors and Registered Financial Advisor Trainees with appropriate training regarding best practices for complaint investigation and resolution, compliance with state, federal, and local EEO laws; the Global Wealth Management Group's anti-discrimination and harassment policies; and the proposed Settlement Agreement;



- L. Collect data regarding (a) compensation of Financial Advisors, (b) account distributions, (c) partnerships between active Financial Advisors or partnerships between active and retiring Financial Advisors, (d) any other areas agreed upon by Morgan Stanley's Global Wealth Management Group and Class Counsel;
- M. Meet with Class Counsel at least once every six (6) months regarding compliance; and
- N. With input from the Industrial Psychologists and consent from Lead Class Counsel, create and implement a system of monitoring compliance with each policy described the Settlement Agreement, including, without limitation, the account distribution policy using the Power Ranking methodology.

## **5. Settlement Hearing**

The Court will decide whether or not to give final approval to this Settlement after the Settlement Hearing to be held at 10:30 a.m. on October 11, 2007, before the Honorable Richard W. Roberts at the United States District Court for the District of Columbia, Courtroom 9, U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, DC 20001. At this hearing, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The Court will also consider whether the motion of the Plaintiffs' attorneys, or "Class Counsel," for an award of attorneys' fees and expenses should be approved, and whether, in accordance with the Settlement, an order and judgment should be entered bringing the litigation to a conclusion.

### **Do I Have To Come To The Settlement Hearing?**

You are not required to appear at the hearing. Attorneys representing the Class will appear at the hearing on behalf of all Class Members at no cost to you. However, if you would like to comment on or object to the Settlement, you may appear and be heard at the Settlement Hearing, either by yourself or, at your own expense, with an attorney of your choice. Information about how to comment on or object to the Settlement is included below. If the Court gives final approval to this Settlement, the Court's judgment will be final and binding on all Class Members who have not opted out.

## **6. How to Proceed: Your Options**

After reviewing the terms of the Settlement set forth in this Notice, you have three options. You must decide at this stage whether you want to A) remain a Class Member with respect to the monetary relief portion of the Settlement and retain an opportunity to share in the distribution of the Settlement; B) opt-out and exclude yourself from sharing in the monetary relief portion of the Settlement; or C) object to the Settlement at the Settlement Hearing.

### **Option A: Remain a Class Member**

If you do not request to be excluded, you will remain a part of the Class. The Court will hold the Settlement Hearing and you, as a Class Member, will be represented by Class Counsel at no cost to you. In order to be eligible to receive a share of the Settlement, you must fill out the Claim Form



and Form W-9 attached to this Notice and return them to the Claims Administrator postmarked by no later than September 24, 2007. If you are a Class Member and you file a timely Claim Form, you may be eligible to obtain money from this Settlement. The Claim Form asks for information about your employment with Morgan Stanley, and the share of money that you will receive, if any, if the Settlement is finalized, will be determined partly based on your answers to the questions on this Claim Form. Additionally, once your Claim Form has been received, you will receive an Employment Verification Form which you must review for accuracy. If there are any corrections to be made to that Form, you must return a corrected version of that Form to the Claims Administrator. After completing a Claim Form and correcting for errors in the Employment Verification Form, you will not have a right to present any further information concerning your particular situation, nor any right to challenge the final allocation and distribution proposed by the Special Master that is based upon a rationale and methodology approved by the Court.

Each Class Member, including each Named Plaintiff, who is eligible to receive a monetary award from the Settlement will be required to sign a "release" before receiving the settlement award. This release will terminate any sex discrimination claims you have or could have brought against Morgan Stanley arising out of your employment, or termination of employment, with the Company through June 30, 2007. In the case of the Named Plaintiffs, the Named Plaintiff Release will terminate any and all claims you have or could have brought against Morgan Stanley in addition to sex discrimination claims. If you are a Class Member but have already signed a document that releases claims against Morgan Stanley, it is possible that you may have lost your right to recover any money under the Settlement for the claims you released.

Whether or not you submit a Claim Form, unless you opt out, all sex discrimination claims that you may have up through June 30, 2007, arising out of your employment, or termination of employment, with Morgan Stanley, will be barred by this Settlement. Unless you opt out, you remain eligible to object to the Settlement pursuant to Option C, below, whether or not you submit a Claim Form.

#### **Option B: Opt-Out: How Do I Exclude Myself from the Settlement?**

You may request to opt-out, or be excluded, from the monetary relief provisions of this case. If you opt out, you will not be eligible for any monetary award as part of this Settlement. Any Class Member who wishes to opt out must mail a written, signed statement that she is opting out of the monetary portion of the Settlement to each of the following addresses:

Cyrus Mehri, Esq.  
Mehri & Skalet, PLLC  
1250 Connecticut Avenue, NW, Suite 300  
Washington, DC 20036

Steven M. Sprenger, Esq.  
Sprenger + Lang, PLLC  
1400 Eye Street, N.W., Suite 500  
Washington, DC 20005

AND

Mark S. Dichter, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

To be effective, this opt out statement must be received by the above counsel on or before September 10, 2007, and must contain each of the following:

- (a) your name, social security number, current address and telephone number;
- (b) the name and number of this case (Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated f/k/a Morgan Stanley DW Inc., No. 1:06-cv-01142);
- (c) a statement that you wish to be excluded from the monetary relief provisions of the Settlement, including the following language, which must be contained in your request:

“I understand that, by this request to be excluded from the monetary settlement in this case, I am foregoing all monetary benefits from this Settlement and will receive no money from the Morgan Stanley Financial Advisor Sex Discrimination Settlement Fund. I understand that I may bring a separate legal action seeking damages, but might receive nothing or less than what I would have received if I had filed a claim under the class monetary settlement procedure in this case. I also understand that I may not seek exclusion from the class for injunctive relief and that I am bound by the injunctive provisions of the Settlement Agreement.”

If you choose to opt-out, and submit the necessary information to do so, but later decide to re-join the Class, you may rescind your opt-out request. To be effective, such a rescission must be in writing and signed, and must be received on or before September 24, 2007 by any one of the following:

Cyrus Mehri, Esq.  
Mehri & Skalet, PLLC  
1250 Connecticut Avenue, NW, Suite 300  
Washington, DC 20036  
OR

Claims Administrator  
Morgan Stanley Gender Litigation  
P.O. Box 10646  
Tallahassee, FL 32302-2646

Steven M. Sprenger, Esq.  
Sprenger + Lang, PLLC  
1400 Eye Street, N.W., Suite 500  
Washington, DC 20005  
OR

Mark S. Dichter, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Please note that Class Members who submit timely and valid requests for exclusion will have no right to object to the Settlement in court and will no longer be represented by Class Counsel.

### **Option C: Object to the Settlement**

The Court must assess the overall fairness and reasonableness of the Settlement to the Class. Class Members who have not opted out of the monetary relief portion of the Settlement may object to the Settlement. However, in order to speak at the hearing, or have your objection to the Settlement considered by the Court, you must submit a written objection to the Settlement prior to the Settlement Hearing. This statement must be signed, and must include the name and number of this case (Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated f/k/a Morgan Stanley DW Inc., No. 1:06-cv-01142) and a detailed description of the basis for the objection. This statement must be received by the Court on or before September 10, 2007 at:

Clerk of U.S. District Court  
RE: Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated (No. 1:06-cv-01142)  
P.O. Box 34782  
Washington, DC 20043

You need not appear at the Settlement Hearing for your written comments or objections to be considered by the Court, but you may appear if you so desire. If you plan to comment on or object to the Settlement in person at the Settlement Hearing, you must file a written notice of appearance identifying yourself and any attorney you may retain at your own expense with your objection, which must be signed, include a detailed description of the basis for the objection, and be received by the Court on or before September 10, 2007, at the above address.

In order for your objection to be considered, copies must also be received by Lead Class Counsel and counsel for Morgan Stanley on or before September 10, 2007 at:

Cyrus Mehri, Esq.  
Mehri & Skalet, PLLC  
1250 Connecticut Avenue, NW, Suite 300  
Washington, DC 20036

Steven M. Sprenger, Esq.  
Sprenger + Lang, PLLC  
1400 Eye Street, N.W., Suite 500  
Washington, DC 20005

AND

Mark S. Dichter, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

Please note that no one may appear at the Settlement Hearing for the purpose of objecting to the Settlement without first having filed and served her objection(s) in writing within the time period described above.

**7. How Will My Settlement Award Be Calculated?**

Class Members, including the Named Plaintiffs, who file a timely Claim Form will have their claim reviewed by a Special Master appointed by the Court. Class Members who submit a Claim Form will be eligible to receive monies based on a formula (the "Allocation Formula") which will have two components: (1) an Earnings Regression Component developed by Class Counsel's statistical expert and (2) a Claim Form Survey Component to be determined by the Special Master. Each of these two components will constitute fifty percent (50%) of the Allocation Formula. You will not have a right to challenge the allocation and distribution proposed by the Special Master that is based upon the rationale and methodology approved by the Court.

**Earnings Regression Component.** A Financial Advisor Class Member, including a Named Plaintiff, whose annual earnings in any year during the liability period fall below an annual earnings curve which is set at two standard deviations above the mean earnings curve for male Financial Advisors (controlling for registration date and branch/office location), shall be eligible to receive a monetary award from the earnings regression component for that year.

Once it is determined that a Claimant is eligible for a monetary award from the earnings regression component for a particular year, the calculation of the monetary award will take into account the Claimant's earnings during that year and shall control for the following variables: a) the Claimant's length of tenure at MS-GWMG as a Financial Advisor; b) the Claimant's registration date; and c) the Claimant's branch office location.

A separate, comparable earnings regression model will be conducted with respect to Registered Financial Advisor Trainees. The earnings regression component will be developed by Class Counsel's expert with input from MS-GWMG.

**Claim Form Survey Component.** The Special Master shall make allocations under the Claim Form survey component by taking into consideration: (1) information provided by Class Counsel and information contained in the Claim Form submitted to the Special Master concerning the Claimant's (i) individual contribution to the prosecution of this action; (ii) individual evidence of alleged sex discrimination presented on the Claimant's Claim Form; (iii) individual evidence supporting an award of compensatory damages; and (2) the release of individual claims that were filed in an EEOC charge on or before December 31, 2006 and that go beyond the scope of the settled class claims. Based on information provided by MS-GWMG, the Special Master may modify allocations to be made under the Allocation Formula based on any data or information specific to the Claimant's branch/office, including information regarding persons who previously signed a release that covered sex discrimination claims. Subject to Court approval of the rationale and methodology used by the Special Master, the Special Master will have sole and final authority as to the final distribution.

The information provided on the Claim Form may be verified for accuracy against Morgan Stanley's computerized personnel, payroll, commission, or account data, or documents provided by claimants. The claims of Claimants will then be determined by the Special Master, with 50% of the funds distributed based on a statistical analysis comparing the claimant's earnings with earnings of similarly situated men, and 50% of the funds distributed based on individual responses to questions on the Claim Form.

The Court will approve the rationale and methodology upon which the final distributions to Claimants are based. The final distributions will be filed with the Court under seal to protect Claimants' confidentiality. At this time, it is not possible to predict how much money a particular Claimant will receive. You will not be entitled to contest the amount of the award you receive under this process.

### **Are There Tax Consequences For Any Money I Might Get?**

Any award you receive from the Settlement will have tax consequences for you. The Claims Administrator will be responsible for withholding, remitting and reporting each Claimant's share of payroll taxes from the Settlement Fund. Morgan Stanley will be responsible to pay for the employer's share of taxes and costs, including FICA, FUTA, SUTA and Medicare. The Claims Administrator will withhold the employee's share of taxes and costs, including any applicable FICA, FUTA, SUTA and/or Medicare, from Claimants' awards and remit those amounts to the appropriate taxing authorities. Class Counsel are not tax advisors and cannot give you advice on any tax matters. Class Counsel urge you to consult your tax advisor for answers to any questions you may have about the tax implications of any potential award.

### **8. The Lawyers Representing You And The Class**

As a Class Member, you are represented in this litigation by Class Counsel, led by Cyrus Mehri of Mehri & Skalet and Steven M. Sprenger of Sprenger + Lang:

**Mehri & Skalet, PLLC**  
1250 Connecticut Avenue NW, Suite 300  
Washington, DC 20036  
Phone: (202) 822 5100  
Facsimile: (202) 822 4997  
Toll Free (866) 464 9097

**Moody & Warner, PC**  
4169 Montgomery Blvd. N.E.  
Albuquerque, NM 87109  
Phone: (505) 944 0033  
Facsimile: (505) 944 0034

**Sprenger + Lang, PLLC**  
1400 Eye Street, N.W., Suite 500  
Washington, DC 20005  
Phone: (202) 265 8010  
Facsimile: (202) 332 6652

310 Fourth Avenue South, Suite 600  
Minneapolis, MN 55415  
Phone: (612) 871 8910  
Facsimile: (612) 871 9270  
Toll Free (800) 950 6231

Unless you elect to exclude yourself from the Settlement, you will continue to be represented by Class Counsel in connection with implementation and monitoring of the Settlement throughout the five-year duration of the terms of the Settlement at no cost to you. Although it is not necessary, you may, if you wish to do so, retain your own attorney at your own expense.

### **How Will The Lawyers Be Paid?**

In connection with the Settlement, the Court will award Class Counsel reasonable attorneys' fees and expenses out of the Settlement. If you are a Class Member and receive an award from the Settlement, you will not owe any fees or expenses to the lawyers who have represented you as part of the Class. The attorneys' fees and expenses of Class Counsel, as awarded by the Court, will be paid only from the Settlement and only if and after the Settlement has been approved by the Court.

As is routine in class action cases, Class Counsel has filed a motion for an award of attorneys' fees and expenses already incurred as well as the fees and expenses that will be incurred during the five-year term of the Settlement. In its motion, Class Counsel have requested that the Court award them attorneys' fees and expenses in the amount of 26% of the proposed \$46 million monetary settlement, plus \$300,000 per year during the five-year term of the Settlement to cover future fees and expenses relating to monitoring and enforcing the Settlement, plus interest accruing on all fees and expenses from the date on which the Settlement is funded until such fees and expenses are disbursed to Class Counsel.

Class Counsel have pursued these claims on behalf of Plaintiffs and the Class without receiving any compensation for their services or reimbursement of their out-of-pocket expenses. Class Counsel have undertaken substantial risks in pursuing this matter. They have done so with the understanding that, if they obtained a recovery for the class, their expenses would be reimbursed and they would receive fees from the fund recovered.

### **9. Getting More Information**

If you have further questions or are still not sure whether you are included, you can get free help at [www.findjustice.com/cases/rights-discrimination/morgan-stanley/](http://www.findjustice.com/cases/rights-discrimination/morgan-stanley/) or [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com), or by calling or writing to Class Counsel in this case, at the following phone number or address:

Cyrus Mehri, Esq.  
Mehri & Skalet, PLLC  
1250 Connecticut Avenue, NW  
Suite 300  
Washington, DC 20036  
(202) 822-5100

Toll Free: 866-464-9097  
E-mail: [info@findjustice.com](mailto:info@findjustice.com)

This Notice contains only a summary of the terms of the Settlement, the provisions of the releases and related matters. For further information, the Settlement Agreement (which includes the complete terms of the Settlement), the Claim Form, the Release, and numerous other documents connected with the Settlement are available for review and/or downloading on the web at either: [www.findjustice.com/cases/rights-discrimination/morgan-stanley/](http://www.findjustice.com/cases/rights-discrimination/morgan-stanley/) or [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com) or can be viewed in hard copy in the Office of the Clerk of the United States District Court, 333 Constitution Avenue, N.W., First Floor, Washington, DC 20001. Other orders that the Court may issue from time to time regarding the administration of the Consent Decree will also be on file with the Court and available on the web at [www.findjustice.com/cases/rights-discrimination/morgan-stanley/](http://www.findjustice.com/cases/rights-discrimination/morgan-stanley/) and [www.morganstanleygendercase.com](http://www.morganstanleygendercase.com).

PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, OR MORGAN STANLEY WITH QUESTIONS REGARDING THIS NOTICE.

Dated: July 17, 2007

/s/  
\_\_\_\_\_  
RICHARD W. ROBERTS  
United States District Judge

**Exhibit B**



**AUGST-JOHNSON, ET AL. v. MORGAN STANLEY & CO.  
INCORPORATED CLAIM FORM**

**You must postmark this Claim Form  
by no later than September 24, 2007  
in order for it to be considered.**

[fname] [lname] [mailid]  
[address1] [address2]  
[city], [state] [zip]

**IF YOU ARE A WOMAN AND WERE EMPLOYED AS A FINANCIAL ADVISOR OR REGISTERED FINANCIAL ADVISOR TRAINEE IN THE GLOBAL WEALTH MANAGEMENT GROUP OF MORGAN STANLEY & CO. INCORPORATED OR ITS PREDECESSOR(S) AT ANY TIME FROM AUGUST 5, 2003 THROUGH JUNE 30, 2007, YOU MAY BE ELIGIBLE FOR A MONETARY AWARD OUT OF THE SETTLEMENT CREATED IN THIS CASE.**

**NOTE: Claims based on facts occurring before August 5, 2003 or after June 30, 2007 are not eligible for any award under the Settlement Fund.**

If your address is different than printed on the label above or if you did not receive this Claim Form in the mail, please complete your accurate and complete address information below.

Full Name: \_\_\_\_\_  
*First/Middle Initial/Last Name*

Address: \_\_\_\_\_  
*Street Address, including any apartment or box number*

\_\_\_\_\_  
*City State Zip Code*

**CLAIM FORM INSTRUCTIONS**

**All information contained in this Claim Form will be kept strictly confidential. You will not be subject to any retaliation for your completion of these questions. Your answers to Sections A and G are required for you to participate in the claims process. Answer Sections B through F to the extent that they apply to you. Fill in only what applies to you. The monetary award that you receive will be determined based on a combination of your answers to these questions and your work history at Morgan Stanley.**

Make sure to ***sign and date*** your Claim Form. You may use additional sheets of paper to answer any question on the Claim Form. If you do so, please be sure to put your name, social security number, and the question number on each additional sheet of paper you include with your Claim Form.



**IMPORTANT:** In order to be eligible to receive a settlement award, you must return this Claim Form postmarked on or before September 24, 2007, to:

CLAIMS ADMINISTRATOR  
MORGAN STANLEY FINANCIAL ADVISOR  
SEX DISCRIMINATION LITIGATION  
POST OFFICE BOX 10646  
TALLAHASSEE, FL 32302-2646

## **SECTION A**

### **REQUIRED BACKGROUND AND JOB HISTORY INFORMATION**

#### **REQUIRED BACKGROUND INFORMATION**

You must complete Questions Nos. 1 through 19 in order for your Claim Form to be processed.

1. \_\_\_\_\_  
*Home Telephone*
2. \_\_\_\_\_  
*Work/Day-time Telephone*
3. \_\_\_\_\_  
*Cell Phone (if any)*
4. E-mail Address: \_\_\_\_\_  
(if any)
5. \_\_\_\_\_  
Social Security Number
6. Date of Birth: \_\_\_\_\_  
Month /Day / Year
7. Please list any previous names you have used, including any used while you were employed by Morgan Stanley:
8. Please list any Central Registration Depository ("CRD") Number(s) you have or ever had:
9. Please list the date you were first registered ("registration date") with the NASD as a Series 7 broker/financial advisor:
10. Please list all Financial Advisor Number(s) ("FA Nos.") you have ever had while employed by Morgan Stanley, including any Joint Production FA Nos., Partnership FA Nos., etc.:
11. Are you female? Yes No

**SECTION A (CONTINUED)**

**REQUIRED JOB HISTORY**

12. Please list the approximate date you began working at Morgan Stanley as a Financial Advisor or Registered Financial Advisor Trainee:
13. Please list the approximate date you began production at Morgan Stanley:
14. Are you currently a Registered Financial Advisor Trainee with Morgan Stanley? Yes No
15. If you were, but are no longer, a Registered Financial Advisor Trainee with Morgan Stanley, please indicate the reason and the approximate date you ceased being a Registered Financial Advisor Trainee at Morgan Stanley:

Date:

Reason:

Terminated Left industry Went to competition Took another position at Morgan Stanley

Other (explain):

16. Are you currently a Financial Advisor with Morgan Stanley? Yes No
17. If you were but are no longer a Financial Advisor with Morgan Stanley, please indicate the reason and approximate date you ceased being a Financial Advisor with Morgan Stanley.

Date:

Reason:

Terminated Left industry Went to competition Took another position at Morgan Stanley

Other (explain):

18. Have you passed your Series 7 exam? Yes No  
Date Passed:
19. List all Morgan Stanley branch offices where you worked during your tenure with Morgan Stanley, including the branch identification numbers, if known, and the dates you worked in each branch office:

## **SECTION B**

### **COMPENSATION**

**WOMEN FINANCIAL ADVISOR CLASS MEMBERS WHO BELIEVE  
THEY EXPERIENCED DISCRIMINATION IN COMPENSATION  
AT MORGAN STANLEY ON THE BASIS OF THEIR SEX  
PLEASE ANSWER QUESTIONS 20 - 25**

20. Please list all accounts which you believe you didn't receive because of your sex from August 5, 2003 through June 30, 2007. These accounts may have been available as the result of:

Call-ins  
Walk-ins  
Financial Advisor leaving for another company  
Financial Advisor being terminated  
Retiring Financial Advisor  
Deceased Financial Advisor  
Partnership dissolution  
Other

21. For each account please include the following information: Name of Account, Approximate Date, Approximate Asset Value, Source, Receiving Financial Advisor (name/sex).

22. Has any Morgan Stanley manager ever asked you if you wanted to receive assigned accounts?  
Yes No

23. Did you sign or enter into an Account Distribution Acknowledgement?  
Yes No

a. If "Yes," approximately when did you sign or enter into an Account Distribution Acknowledgement?

b. If "Yes," did you receive any accounts after signing that Account Distribution Acknowledgement?  
Yes No

c. If "No," did you ever ask any Morgan Stanley manager to receive assigned accounts?  
Yes No

(i) If "Yes," did you receive any accounts after asking that manager for assigned accounts?  
Yes No

o If "Yes," please state the number and asset value of any account(s) you received.

o If "No," please describe the manager's response to your request for assigned accounts.

24. Did a Branch Manager ever refuse to approve a Joint Production Agreement/Arrangement or a partnership that you proposed?
- a. If "Yes," please describe, including the approximate date(s), the name and sex of the Branch Manager, the names of the other Financial Advisors involved and any reason(s) the Branch Manager gave for his or her actions or decisions.
25. Did you ever ask to be part of a Joint Production Agreement/Arrangement or a partnership and were told by a Branch Manager that you could not?
- a. If "Yes," please describe, including the approximate date(s), the name and sex of the Branch Manager, the names of the other Financial Advisors involved and any reason(s) the Branch Manager gave for his or her actions or decisions.

**WOMEN REGISTERED FINANCIAL ADVISOR TRAINEE CLASS MEMBERS WHO  
BELIEVE THEY EXPERIENCED DISCRIMINATION IN COMPENSATION  
AT MORGAN STANLEY ON THE BASIS OF THEIR SEX  
PLEASE ANSWER QUESTIONS 26 - 30**

26. How long have you been or were you a Series 7 licensed Trainee employed with Morgan Stanley?  
0-6 months      6-12 months      12-18 months      18-24 months      over 24 months
27. Are you aware of any male Registered Financial Advisor Trainees who were permitted to complete the training period and become full-fledged Financial Advisors in less time than you? Yes No
- a. If "Yes," when were those male Registered Financial Advisor Trainees permitted to complete the training period and become full-fledged Financial Advisors in less time than you?
- b. If "Yes," please describe, including the name of the male Registered Financial Advisor Trainee(s), the branch identification number (if known), and the name(s) and sex(es) of any managers you believe were involved.

28. Are you aware of any male Registered Financial Advisor Trainees who were permitted to join teams, partnerships or joint production agreements while still trainees? Yes No
- a. If "Yes," approximately when were those male Registered Financial Advisor Trainees permitted to join teams, partnerships or joint production agreements while still trainees?
- b. If "Yes," please describe, including the name of the male Registered Financial Advisor Trainee(s), the branch identification number (if known), and the name(s) and sex(es) of any managers you believe were involved.
- c. If "Yes," did you ever seek to join teams, partnerships or joint production agreements while still a trainee and were told by a manager that you could not?
- If "Yes," please describe, including the approximate date(s), the name and sex of the manager, and any reason(s) the manager gave for his or her actions or decisions.
29. Do you believe you were unfairly paid less than any male Registered Financial Advisor Trainee because you are female? Yes No
- a. If "Yes," identify the male Registered Financial Advisor Trainee(s), the training class he/they were in, his branch identification number, if known, and amount of base salary.
30. Did you request a higher base salary at the time you were hired? Yes No
- a. If "Yes," to whom did you make the request, what was the response, and what reason were you given for the response?

## **SECTION C**

### **PROMOTIONS/BRANCH MANAGEMENT OPPORTUNITIES**

**WOMEN FINANCIAL ADVISOR CLASS MEMBERS  
WHO BELIEVE THEY EXPERIENCED DISCRIMINATION IN OPPORTUNITIES TO MOVE  
INTO BRANCH MANAGEMENT ON THE BASIS OF THEIR SEX  
PLEASE ANSWER QUESTIONS 31 – 35.**

31. Please list any branch management positions that you applied for from August 5, 2003 through June 30, 2007 and did not receive. Please include the position title, approximate date, whether or not you were interviewed, and the name and sex of the person who received the position, if known.

TITLE	DATE APPLIED	INTERVIEWED	SEX	NAME
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- a. How did you apply for the positions identified in response to Question 31?

32. During your tenure at Morgan Stanley, and from August 5, 2003 through June 30, 2007, please list any management positions (Branch Manager, Assistant Branch Manager, Sales Manager, etc.) that you would have been interested in but you did not know were available until they were filled, the approximate date each was filled, and the name and sex of the person placed in that position.

DATE	POSITION	NAME	SEX
------	----------	------	-----

33. Did you ever indicate interest in a management position to any management individuals? Yes  
No

- a. If "Yes," please list who you communicated with, when you communicated with him or her, and what response you received.

34. Were there any other branch management positions that you were interested in and knew about, but did not apply for? Yes No

- a. If so, please list the position, approximate date it was available, who got the position, the gender of that person, and the reason you did not apply.

35. If you believe opportunities to move into management were unfair in any manner not already addressed above, please explain.

**WOMEN REGISTERED FINANCIAL ADVISOR TRAINEE CLASS MEMBERS WHO  
BELIEVE THEY EXPERIENCED DISCRIMINATION IN OPPORTUNITIES TO ADVANCE  
INTO A FINANCIAL ADVISOR POSITION ON THE BASIS OF THEIR SEX  
PLEASE ANSWER QUESTIONS 36 - 37.**

36. From August 5, 2003 through June 30, 2007, did you move from Registered Financial Advisor Trainee to Financial Advisor at Morgan Stanley? Yes No

If "No," why not? (check all that apply)

\_\_\_\_\_ Left Morgan Stanley before training completed. Reason: \_\_\_\_\_

\_\_\_\_\_ Did not make production goals during training

\_\_\_\_\_ Met production goals, but branch manager did not change my title or status.

Please provide any reason any manager gave for not changing your title or status.

\_\_\_\_\_ Other (describe)

37. If you believe opportunities to move into management were unfair in any manner not already addressed above, please explain the basis of that belief.

**SECTION D**

**TERMINATIONS**

**WOMEN FINANCIAL ADVISOR CLASS MEMBERS OR REGISTERED FINANCIAL  
ADVISOR TRAINEE CLASS MEMBERS WHO BELIEVE THEY WERE TERMINATED ON  
THE BASIS OF THEIR SEX.**

**PLEASE ANSWER QUESTIONS 38 - 43.**

**If you were *not* terminated by Morgan Stanley, please skip this section.**

38. Were you terminated as part of the Morgan Stanley Reduction-in-Force ("RIF") of Financial Advisors in August 2005?                      Yes                      No
- a. If "Yes," did you know any male Financial Advisors who were in a similar situation to you in terms of productivity but were not terminated, but who you believe should have been? Please list names and reasons.
39. Were you terminated as part of the Morgan Stanley Reduction-in-Force ("RIF") of Registered Financial Advisor Trainees in May 2006?                      Yes                      No
- a. If "Yes," did you know any male Registered Financial Advisor Trainees who were in a similar situation to you in terms of productivity but were not terminated, but who you believe should have been? Please list names and reasons.
40. If you were not terminated as part of a RIF, when were you terminated? Date \_\_\_\_\_
- What was the stated reason for your termination:
41. Do you believe that you were unfairly terminated because of your sex?      Yes      No
- If "Yes," please explain:
42. After you were terminated from Morgan Stanley, approximately how long were you out of work:  
\_\_\_\_\_ years \_\_\_\_\_ months \_\_\_\_\_ weeks
43. Did you seek alternative employment?                      Yes      No



## **SECTION E**

### **TERMS AND CONDITIONS OF EMPLOYMENT**

**WOMEN FINANCIAL ADVISOR CLASS MEMBERS OR REGISTERED FINANCIAL ADVISOR TRAINEE CLASS MEMBERS WHO BELIEVE THEY WERE DISCRIMINATED AGAINST IN THE TERMS AND CONDITIONS OF THEIR EMPLOYMENT ON THE BASIS OF THEIR SEX.**

**PLEASE ANSWER QUESTIONS 44 - 47.**

44. Did any male Financial Advisors or Registered Financial Advisor Trainees receive *training or mentoring opportunities* at Morgan Stanley that you did not receive? Yes No

- a. If "Yes," please explain, including approximate date(s) of each occurrence, the manager(s) involved, and any specifics about the situation.

45. Did any male Financial Advisors or Registered Financial Advisor Trainees receive *marketing opportunities* at Morgan Stanley that you did not receive? Yes No

- a. If "Yes," please explain, including approximate date(s) of each occurrence, the manager(s) involved, and any specifics about the situation.

46. Did any male Financial Advisors or Registered Financial Advisor Trainees receive *administrative support or other sales assistance* at Morgan Stanley that you did not receive? Yes No

- a. If "Yes," please explain, including approximate date(s) of each occurrence, the manager(s) involved, and any specifics about the situation.

47. Do you believe that, because of your sex, you unfairly received an *office assignment* that was not commensurate with your production ranking in your office? Yes No

- a. If "Yes," were other Financial Advisors or Registered Financial Advisor Trainees unfairly assigned a better or more desirable office that should have been assigned to you? Yes No

If "Yes," identify the Financial Advisor(s) or Registered Financial Advisor Trainee(s), their sex(es), the approximate date of each occurrence, the manager(s) involved, and the reasons why you believe the better or more desirable office assigned to the other advisor(s) should have been assigned to you.

## **SECTION F**

### **MEDICAL AND/OR PSYCHOLOGICAL EFFECTS OF DISCRIMINATION (COMPENSATORY DAMAGES)**

**WOMEN FINANCIAL ADVISOR CLASS MEMBERS OR REGISTERED FINANCIAL  
ADVISOR TRAINEE CLASS MEMBERS WHO BELIEVE THEY EXPERIENCED MEDICAL  
AND/OR PSYCHOLOGICAL EFFECTS OF DISCRIMINATION ON THE BASIS  
OF THEIR SEX**

**PLEASE ANSWER QUESTIONS 48 – 51.**

48. Do you contend that any of the sex discrimination you allege in this Claim Form resulted in emotional or physical effects or damages to you? Yes No

**If you answered “No” to question 48, please skip the remainder of this section.**

49. At any time from August 5, 2003 through June 30, 2007, did you see a medical doctor, medical practitioner, psychiatrist, psychologist or any other mental health professional because of any physical, emotional or psychological effects you believe were caused by any conduct you allege in this Claim Form as sex discrimination? Yes No
- a. If “Yes,” please provide the name(s) and address(es) of each medical or mental health professional you have seen as well as the number of times you sought treatment, and the duration (time period) of any treatment.
50. Have you been prescribed any medication or other treatment for symptoms or conditions related to the physical, emotional or psychological effects of any conduct you allege in this Claim Form as sex discrimination. Yes No
- a. If “Yes,” please describe, including the number of times you sought treatment, the duration (time period) of any treatment, any prescription medications you were prescribed, and any diagnosis.
51. Have you incurred any costs for any medical or psychological treatments or prescriptions you sought as a result of the physical, emotional or psychological effects of any conduct you allege in this Claim Form as sex discrimination. Yes No
- a. If “Yes,” please describe, including the amount of cost(s) and what any cost(s) was/were incurred for.

**SECTION G**

**SWORN AFFIRMATION AND SIGNATURE**

**I DECLARE UNDER PENALTY OF PERJURY THAT THE PRECEDING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

**I understand that I must keep the Claims Administrator informed of my current address and of any change in my home address. If I do not do so, I understand that I may not receive any award that I might otherwise be entitled to receive.**

Executed this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Typed or Printed Name of Claimant

\_\_\_\_\_  
Social Security Number of Claimant

**WHEN YOU HAVE COMPLETED THIS CLAIM FORM,  
PUT IT IN THE ENVELOPE PROVIDED, PUT POSTAGE ON IT, AND MAIL IT  
BY NO LATER THAN SEPTEMBER 24, 2007 TO:**

**CLAIMS ADMINISTRATOR  
MORGAN STANLEY FINANCIAL ADVISOR SEX DISCRIMINATION LITIGATION  
POST OFFICE BOX 10646  
TALLAHASSEE, FL 32302-2646**

**RELEASE AND INDEMNIFICATION AGREEMENT**  
**(CLASS MEMBERS, EXCLUDING NAMED PLAINTIFFS)**

In consideration of my receipt of a court-approved monetary distribution from the Claims Portion of the Settlement Fund in *Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated*, Case No. 1:06-CV-01142, I hereby agree to be bound by the terms of this Release and Indemnification Agreement (the "Agreement"), as follows:

**I. DEFINITIONS**

Unless otherwise specified in this Agreement, the terms used herein shall have the same meanings as those set forth in the Settlement Agreement.

**II. LIMITED RELEASE OF CLAIMS AGAINST MORGAN STANLEY & CO. INCORPORATED**

I hereby waive, release and discharge Morgan Stanley & Co. Incorporated ("Morgan Stanley"), including its officers, directors, subsidiaries, affiliates, predecessors, successors, fiduciaries, insurers, employees and agents ("Released Parties"), from any and all claims of sex discrimination that I may have against the Released Parties relating to my employment or the termination thereof. I understand that this release includes all sex discrimination claims that I have or may have arising at any time on or before **[INSERT DATE OF PRELIMINARY APPROVAL]**, 2007. I also understand that my release includes all related claims for monetary damages, injunctive, declaratory or equitable relief, and costs and attorneys' fees, whether arising under Title VII of the Civil Rights Act of 1964, as amended, or any other federal, state, local or common laws or regulations.

I understand that my release does not include other claims of discrimination such as claims of race, age, or national origin discrimination, or claims arising under the Fair Labor Standards Act or the Employment Retirement Income Security Act.

**III. INDEMNIFICATION**

I understand that I am responsible for payment of any and all federal, state or local taxes (excluding the employer share of employment taxes and unemployment taxes and excluding amounts properly withheld from the distributions) resulting from or attributable to the distributions that I receive. Accordingly, I agree to indemnify and hold harmless the Released Parties, Class Counsel, and the Depository Bank from any tax liability, including penalties and interest and costs of any proceedings. I further agree to indemnify and hold harmless the Claims Administrator and Trustee of the Settlement Fund from any tax liability, including penalties and interests and costs of any proceedings, that is attributable to my own acts or omissions. In the event a tax liability arises with respect to my monetary award that is not attributable to my own acts or omissions, I agree to indemnify and hold harmless the Claims Administrator and Trustee of the Settlement Fund from any tax liability only to the extent of the taxes due and payable, but not with respect to penalties and interest, or the costs of any proceedings related to such tax liability.

**IV. OTHER AGREEMENTS AND REPRESENTATIONS**

A. Confidentiality. I agree to keep the amount of any and all distributions I receive from the Settlement Fund strictly confidential to the fullest extent permitted by law, except that I may disclose the same to my attorneys, tax advisors and immediate family members.

B. Ownership of Claims. I represent and warrant that I have not assigned or transferred any claim I am purporting to release, nor have I attempted to do so.

C. Entire Agreement. This Agreement may not be modified in any manner, except by a writing signed by both me and an authorized Morgan Stanley attorney. I acknowledge that Morgan Stanley has made no representations or promises to me, other than those in or referred to by this Agreement and the Settlement Agreement.

D. Successors and Assigns. This release binds my heirs, administrators, representatives, executors, successors, and assigns.

E. Interpretation. This Agreement shall be construed as a whole according to its fair meaning. Unless the context indicates otherwise, the term "or" shall be deemed to include the term "and" and the singular or plural number shall be deemed to include the other. This Agreement shall be governed by the statutes and common law of the District of Columbia (excluding any that mandate the use of another jurisdiction's laws).

F. Knowing and Voluntary Waiver and Release of Claims. I understand and agree that:

- a. I am entering into this Agreement knowingly and voluntarily;
- b. I understand the terms of this Agreement;
- c. I have been advised of my right to consult with an attorney prior to signing this Agreement; and
- d. I have had a sufficient amount of time to consider this Agreement before signing it.

**AGREED:**

\_\_\_\_\_  
[SIGNATURE]

\_\_\_\_\_  
[PRINT NAME]

DATE \_\_\_\_\_

<b>Form W-9</b> (Rev. November 2005) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer Identification Number and Certification</b>	Give form to the requester. Do not send to the IRS.
---------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------	-----------------------------------------------------------

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	<input type="checkbox"/> Exempt from backup withholding
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								

or

Employer identification number								

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

**Purpose of Form**

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt recipients 1 through 7 <sup>2</sup>

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.socialsecurity.gov](http://www.socialsecurity.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.



## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.