[Type text]

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 12, 2024

Steven R. Peikin
Alexander J. Willscher
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Counsel for Morgan Stanley & Co. LLC

Re: Non-Prosecution Agreement with Morgan Stanley & Co. LLC

Dear Counsel:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will not criminally prosecute Morgan Stanley & Co. LLC ("Morgan Stanley" or the "Firm"), or its parent, subsidiaries, and affiliates for any crimes (except for criminal tax violations, as to which this Office cannot and does not make any agreement) related to the making, by two former Morgan Stanley employees, of untrue statements of material fact to certain individuals and companies that wished to sell large equity blocks to Morgan Stanley ("block trades"), namely, agreeing with, or representing to, the potential sellers that Morgan Stanley would keep information concerning their potential sales confidential, knowing that the two former Morgan Stanley employees would disclose certain of that information to prospective buyers of the securities, and that the prospective buyers would use the information to trade in advance of the block sales, during the period from approximately 2018 to August 2021. This conduct is described more fully in the Statement of Facts attached hereto as Exhibit A and incorporated herein by reference.

Morgan Stanley admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, employees, and agents as set forth in the Statement of Facts, and that the facts described in the Statement of Facts are true and accurate.

Term of the Agreement

This Agreement is effective for a period beginning on the date on which it is signed and ending three years from that date (the "Term"). Morgan Stanley agrees, however, that, in the event the United States determines, in its sole discretion, that Morgan Stanley has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of Morgan Stanley's obligations under this Agreement, an extension or extensions of the Term may be imposed by the United States, in its sole discretion, for up to a total additional time period of one year, without prejudice to the right of the United States to proceed as provided below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

Relevant Considerations

The United States enters into this Agreement based on the individual facts and circumstances presented by this case and Morgan Stanley, including:

a. Morgan Stanley did not receive voluntary disclosure credit pursuant to the FCPA Corporate Enforcement Policy in the Department of Justice Manual 9-47.120, or pursuant to the United States Sentencing Guidelines ("Sentencing Guidelines"), because it did not voluntarily disclose to the United States the conduct described in the Statement of Facts attached hereto as Attachment A;

b. Morgan Stanley received full credit for its extensive cooperation with the United States' independent investigation, which has included: conducting an internal investigation, voluntarily making employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information for this Office;

c. Morgan Stanley engaged in, and continues to engage in, extensive remedial efforts, including its discipline and termination of employees, and its enhancement of its compliance and ethics program designed to prevent and detect violations of securities fraud statutes and/or applicable anti-fraud laws;

d. Morgan Stanley has agreed to continue to cooperate with this Office in this and any related matters;

e. the nature and seriousness of the offense conduct, as set forth in the Statement of Facts, the seniority of the individuals involved, and the duration of the conduct;

f. Morgan Stanley has agreed to accept full responsibility for its conduct and resolve with the U.S. Securities and Exchange Commission (the "SEC") through an administrative Order Instituting Proceedings that will become effective on January 12, 2024, relating to conduct described in the Statement of Facts, and has agreed to pay $138,297,046 in disgorgement and pre-judgment interest of $28,057,775;

g. Morgan Stanley has no prior criminal history; and

h. Morgan Stanley has agreed to continue to cooperate with the United States in any ongoing investigation as described below.

Accordingly, after considering (a) through (h) above, the United States believes that the appropriate resolution in this case is a non-prosecution agreement with Morgan Stanley; a criminal monetary penalty of $16,900,000, which reflects an aggregate discount of thirty-five (35) percent off the bottom of the otherwise-applicable United States Sentencing Guidelines fine range; and Morgan Stanley's agreement to report to the United States as set forth in the Agreement.

Future Cooperation and Disclosure Requirements

Morgan Stanley shall cooperate fully with the United States in any and all matters relating to the conduct described in this Agreement and the Statement of Facts at any time during the Term until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term. At the request of the United States, Morgan Stanley shall also cooperate fully with other domestic or foreign law enforcement, regulatory authorities, and agencies in any investigation of Morgan Stanley or its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and any other conduct under investigation by this Office at any time during the Term. Morgan Stanley's cooperation pursuant to this Paragraph is subject to applicable laws and regulations, including relevant data privacy and national security laws, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, Morgan Stanley must provide to the United States a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and Morgan Stanley bears the burden of establishing the validity of any such an assertion. Morgan Stanley agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. Morgan Stanley shall truthfully disclose all factual information about which Morgan Stanley has any knowledge related to (i) the conduct described in the Statement of Facts, (ii) any conduct disclosed by Morgan Stanley pursuant to this Agreement, and (iii) any other matter about which this Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of Morgan Stanley to provide to this Office, upon request, any document, record, or other tangible evidence about which the United States may inquire of Morgan Stanley.

b. Morgan Stanley shall promptly bring to this Office's attention any evidence of a criminal violation of U.S. federal law or any violation of the anti-fraud provisions of the United States securities laws by Morgan Stanley, its present and former directors, officers, employees, and agents acting within the scope of their role.

c. Upon request of the United States, Morgan Stanley shall designate knowledgeable employees, agents, or attorneys to provide to the United States the information and materials described in Paragraph (a) above on behalf of Morgan Stanley. It is further understood that Morgan Stanley must at all times provide complete, truthful, and accurate information.

d. Morgan Stanley shall use its best efforts to make available for interviews or testimony, as requested by the United States, present or former officers, directors, employees, agents, and consultants of Morgan Stanley. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of Morgan Stanley, may have material information regarding the matters under investigation.

e. With respect to any information, testimony, documents, records, or other tangible evidence provided to the United States pursuant to this Agreement, Morgan Stanley consents to

any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the United States, in its sole discretion, shall deem appropriate.

Financial Obligations

As a result of the conduct described in the Statement of Facts, Morgan Stanley agrees to make payments in total of $153,431,223 to the United States (the "Total Financial Payment"). Specifically, Morgan Stanley agrees to make a payment of restitution for the benefit of certain block sellers in the amount of $64,016,082; forfeit $72,515,141; and pay a fine of $16,900,000 to the United States, as set forth below.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate that Guidelines provisions in effect as of November 1, 2023, apply to this case. Morgan Stanley further stipulates that the Government's Guidelines calculations, set forth below, shall be used to calculate the applicable Guidelines Range in connection with sentencing and further agrees not to contest such Guidelines calculations.

1. Pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is 7.

2. Pursuant to U.S.S.G. § 2B1.1(b)(1)(L), 22 levels are added because the loss resulting from the offense is more than $25 million and less than or equal to $65 million.

3. Pursuant to U.S.S.G. § 2B1.1(b)(10)(C), 2 levels are added because the offense involved sophisticated means and Morgan Stanley intentionally engaged in or caused the conduct constituting sophisticated means.

4. Pursuant to U.S.S.G. § 2B1.1(b)(20)(A)(iii), 4 levels are added because the offense involved a violation of securities law and, at the time of the offense, Morgan Stanley was an investment adviser, or a person associated with an investment adviser.

5. Accordingly, the total offense level pursuant to U.S.S.G. § 2B1.1 is 35.

6. Pursuant to U.S.S.G. § 8C2.4(a)(1), the base fine is the amount from the table in § 8C2.4(d) that corresponds to an offense level of 35, which is $65 million.

Culpability Score and Fine Range

1. Pursuant to U.S.S.G. § 8C2.5(a), the culpability score starts with 5 points.

2. Pursuant to U.S.S.G. § 8C2.5(b)(4), 2 points are added because the organization had 50 or more employees and an individual within substantial authority personnel of the organization participated in, condoned, or was willfully ignorant of the offense.

3. Pursuant to U.S.S.G. § 8C2.5(f)(1), 3 points are subtracted because the offense occurred even though the organization had in place at the time of the offense an effective compliance and ethics program.

4. Pursuant to U.S.S.G. § 8C2.5(g)(2), 2 points are subtracted because the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.

5. Accordingly, the culpability score is 2.

6. Pursuant to U.S.S.G. § 8C2.6, with a culpability score of 2, the fine multiplier is 0.40 to 0.80 times the base fine, to wit, $26 million to $52 million.

In consideration of all the factors under the Sentencing Guidelines, Section 8C2.8(a), and Title 18, United States Code, Section 3553(a), and after considering the individual facts and circumstances presented by this case, the parties agree that Morgan Stanley should receive a discount of thirty-five (35) percent off of the bottom of the otherwise-applicable Sentencing Guidelines fine range for the conduct described in the Statement of Facts. This results in an agreed-upon fine amount of $16,900,000. This Office agrees to credit against the fine amount the civil monetary penalty to be paid by Morgan Stanley to the SEC in connection with Morgan Stanley's parallel resolution with the SEC.

Morgan Stanley agrees to pay the Total Financial Payment to the United States Treasury no later than ten (10) business days after the Agreement is fully executed. The Total Financial Payment is final and shall not be refunded. Morgan Stanley acknowledges that no tax deduction may be sought in connection with the payment of the forfeiture or fine components of the Total Financial Payment. Morgan Stanley shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that Morgan Stanley pays pursuant to this Agreement or any other agreement entered into with an enforcement authority or regulator, including the SEC, concerning the facts set forth in the Statement of Facts.

Conditional Release from Liability

The United States agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against Morgan Stanley or any of its direct or indirect affiliates, subsidiaries, or joint ventures relating to any of the conduct described in the Statement of Facts. This Agreement does not provide any protection against prosecution for any future conduct by Morgan Stanley or any of its direct or indirect affiliates, subsidiaries, or joint ventures. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with Morgan Stanley.

Breach of the Agreement

If, during the Term, Morgan Stanley (a) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (b) fails to cooperate as set forth in this

Agreement; (c) otherwise fails to completely perform or fulfill each of Morgan Stanley's obligations under the Agreement; or (d) anyone working within Morgan Stanley's Equity Capital Markets Group commits any felony under U.S. federal law or any violation of the anti-fraud provisions of the United States securities laws, regardless of whether the United States becomes aware of such a breach after the Term is complete, Morgan Stanley shall thereafter be subject to prosecution for any federal criminal violation of which the United States has knowledge, which may be pursued by the United States in the U.S. District Court for the Southern District of New York or any other appropriate venue. Determination of whether Morgan Stanley has breached the Agreement and whether to pursue prosecution of Morgan Stanley shall be in the United States' sole discretion. Any such prosecution may be premised on information provided by Morgan Stanley or its personnel. Any such prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the United States prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Morgan Stanley, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, Morgan Stanley agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, Morgan Stanley agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the United States is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event the United States determines that Morgan Stanley has breached this Agreement, the United States agrees to provide Morgan Stanley with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Morgan Stanley shall have the opportunity to respond to the United States in writing to explain the nature and circumstances of such breach, as well as the actions Morgan Stanley has taken to address and remediate the situation, which explanation the United States shall consider in determining whether to pursue prosecution of Morgan Stanley.

In the event that the United States determines that Morgan Stanley has breached this Agreement: (a) all statements made by or on behalf of Morgan Stanley to the United States or to the Court, including the Statement of Facts, and any testimony given by Morgan Stanley before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the United States against Morgan Stanley; and (b) Morgan Stanley shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of Morgan Stanley prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, Morgan Stanley, will be imputed to Morgan Stanley for the purpose of determining whether Morgan Stanley has violated any provision of this Agreement shall be in the sole discretion of the United States.

Morgan Stanley acknowledges that the United States has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if Morgan Stanley breaches this Agreement and this matter proceeds to judgment. Morgan Stanley further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

On the date that the Term specified in this Agreement expires, Morgan Stanley, by the Chief Executive Officer of Morgan Stanley, will certify to the United States that Morgan Stanley has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by Morgan Stanley to the executive branch of the United States for purposes of Title 18, United States Code, Sections 1001 and 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

Sale, Merger, or Other Change in Corporate Form of Company

Except as may otherwise be agreed by the parties in connection with a particular transaction, Morgan Stanley agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to Morgan Stanley's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the Statement of Facts, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the United States' ability to enforce a breach under this Agreement is applicable in full force to that entity. Morgan Stanley agrees that the failure to include these provisions in the transaction will make any such transaction null and void. Morgan Stanley shall provide notice to the United States at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The United States shall notify Morgan Stanley prior to such transaction (or series of transactions) if the United States determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term Morgan Stanley engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the United States may deem it a breach of this Agreement pursuant to Paragraphs 14 through 18 of this Agreement. Nothing herein shall restrict Morgan Stanley from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the United States.

Public Statements by Morgan Stanley

Morgan Stanley expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for Morgan Stanley, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility

by Morgan Stanley set forth above or the facts described in the Statement of Facts. Any such contradictory statement shall, subject to cure rights of Morgan Stanley described below, constitute a breach of this Agreement, and Morgan Stanley thereafter shall be subject to prosecution as set forth in this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to Morgan Stanley for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the United States. If the United States determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the United States shall so notify Morgan Stanley, and Morgan Stanley may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. Morgan Stanley shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of Morgan Stanley in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of Morgan Stanley.

Morgan Stanley agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, Morgan Stanley shall first consult with the United States to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the United States and Morgan Stanley; and (b) whether the United States has any objection to the release.

The United States agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of Morgan Stanley's cooperation and remediation. By agreeing to provide this information to such authorities, the United States is not agreeing to advocate on behalf of Morgan Stanley, but rather is agreeing to provide facts to be evaluated independently by such authorities.

Limitations on Binding Effect of Agreement

This Agreement is binding on Morgan Stanley and this Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the United States will bring the cooperation of Morgan Stanley and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by Morgan Stanley.

Complete Agreement

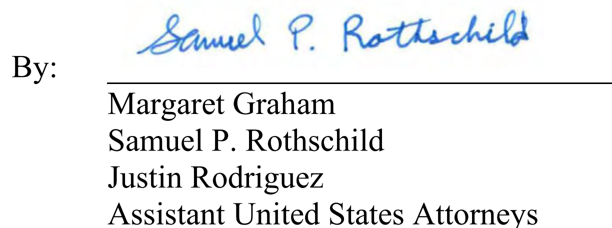
This Agreement, including its attachments, sets forth all the terms of the agreement between Morgan Stanley and the United States. No amendments, modifications, or additions to

this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for Morgan Stanley, and a duly authorized representative of Morgan Stanley.

This Agreement may be executed in one or more counterparts, including by scanning, faxing, photocopying, or similarly reproducing a copy of an original document containing original handwritten signature of the executing party, each of which shall be considered effective as an original signature.

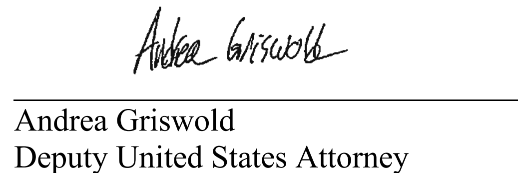
Very truly yours,

DAMIAN WILLIAMS
United States Attorney



By: ______________________________
Margaret Graham
Samuel P. Rothschild
Justin Rodriguez
Assistant United States Attorneys

APPROVED:



____
Andrea Griswold
Deputy United States Attorney

AGREED AND CONSENTED TO:

__________________________ ______________________________
Eric Grossman DATE
Chief Legal Officer, Morgan Stanley & Co. LLC

APPROVED:

__________________________ ______________________________
Steven R. Peikin, Esq. DATE
Alexander J. Willscher, Esq.
Sullivan & Cromwell LLP

this Agreement shall be valid unless they are in writing and signed by the United States, the attorneys for Morgan Stanley, and a duly authorized representative of Morgan Stanley.

This Agreement may be executed in one or more counterparts, including by scanning, faxing, photocopying, or similarly reproducing a copy of an original document containing original handwritten signature of the executing party, each of which shall be considered effective as an original signature.

Very truly yours,

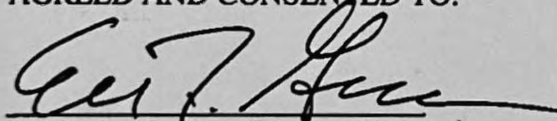
DAMIAN WILLIAMS
United States Attorney

By: ______________________________
Margaret Graham
Samuel P. Rothschild
Justin Rodriguez
Assistant United States Attorneys

APPROVED:

____
Andrea Griswold
Deputy United States Attorney

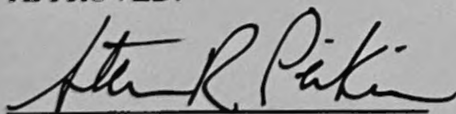
AGREED AND CONSENTED TO:



Eric F. Grossman
Chief Legal Officer, Morgan Stanley
On behalf of Morgan Stanley & Co. LLC

January 11, 2024
DATE

APPROVED:



Steven R. Peikin, Esq.
Alexander J. Willscher, Esq.
Sullivan & Cromwell LLP

1/11/2024
DATE

STATEMENT OF FACTS

1. Morgan Stanley & Co. LLC ("Morgan Stanley") is an SEC-registered broker-dealer of a global financial services firm headquartered in New York City. One service offered by Morgan Stanley is the purchase of large amounts of shares of publicly traded stock, known as a "block" of shares, in privately arranged transactions known as "block trades." In block trades, Morgan Stanley generally purchases the block of shares from a counterparty seller at an agreed upon discount to the prevailing market price. Morgan Stanley purchases the block of shares with the intention of re-selling the shares at a higher price. At the time of the relevant conduct, from 2018 to 2021, Morgan Stanley was a Wall Street leader in block trades. Indeed, between January 1, 2018, and August 31, 2021, the U.S. Equity Syndicate Desk (the "Desk"), the group primarily responsible for Morgan Stanley's block trade business, generated approximately $1.4 billion in revenue from executing block trades.

2. Morgan Stanley marketed to certain potential block sellers that they would be engaged in a "confidential dialogue" with Morgan Stanley, which would limit the risk that the news of an impending block trade would be "leaked to the market." Such a leak could negatively impact the price of the stock at issue. And because block trades are generally priced at a discount to the market close on the date the sale is concluded, this could also negatively impact the price the seller received for its block of shares. Morgan Stanley explained the risk of leaks to sellers, noting that "[w]hen soliciting bids for a block transaction, the seller exposes themselves and the issuer" to potential price decline in part due to "potential leakage of information." Morgan Stanley marketed its process as less prone to leaks and therefore less risky than the processes run by other banks, who Morgan Stanley claimed were more likely to leak information to the market. As one marketing presentation explained, Morgan Stanley's "team's depth of knowledge" let it "execute at a tight discount, without testing the market."

3. But the service that Morgan Stanley promised block sellers was not always what it delivered. From at least 2018 through August 2021, while negotiating purchases of sixteen block trades (the "Relevant Blocks"), the senior-most Morgan Stanley employee then assigned to supervise the Desk (the "Head of the Desk") and a senior employee on the Desk ("Employee-1") knowingly solicited the block trades by making representations about confidentiality that were both false and material. In particular, during negotiations leading up to the Relevant Blocks, the Head of the Desk and Employee-1 falsely promised certain sellers that the Desk would not disclose the upcoming block sale to buy-side investors, to avoid the risk that the price of the shares would drop if the market learned of the impending sale, which would reduce the sale price and harm the seller.

4. Contrary to these promises, the Head of the Desk and Employee-1 shared highly specific information about the Relevant Blocks with certain hedge funds before the block trades were executed. This included detailed information about the expected size, price, and precise timing of the trades, so that the hedge funds could trade on the information, generally by taking large short positions in the stock. Indeed, on multiple occasions the Head of the Desk suggested to the hedge funds exactly how to trade to make the best use of the information. In exchange, the hedge funds purchased large amounts of shares from Morgan Stanley when it executed the resulting block trade. Indeed, the Head of the Desk expressly promised certain favored buy-side investors that they would receive allocations of shares after block trades that would be sufficient

to cover the investors' short selling. This leaking of confidential information benefited the hedge funds, who had the opportunity to profit from their short-selling. This arrangement also benefited the Desk, because the assurance that the hedge funds would purchase large amounts of shares in a block trade meant that Morgan Stanley's risk on the transaction was lower, which gave the Desk comfort to offer a tighter and more competitive bid. Indeed, the Desk generated more than $72 million in profits for Morgan Stanley from the Relevant Blocks. But this conduct harmed the block seller, because the hedge funds' short selling increased the risk that the public market prices of the stock would decline before the block was priced and executed, which could mean less money for the seller.

Background

5. Morgan Stanley's parent corporation is organized into three principal business segments: Institutional Securities, Wealth Management, and Investment Management. The Institutional Securities Group ("ISG") provides a variety of products and services to corporations, governments, financial institutions, and individual clients. One component of ISG is Global Capital Markets ("GCM"), and one component of GCM is U.S. Equity Capital Markets ("ECM"), of which the Desk is a part.

6. The Desk executes various equity underwriting transactions, including block trades. During the relevant time period, from approximately 2018 to 2021, approximately ten to twelve Morgan Stanley employees worked on the Desk under the supervision of the Head of the Desk.

7. A "block trade" refers to the sale of a large amount of shares of stock in a privately arranged transaction, typically with a broker-dealer at a large financial institution. Selling shareholders, which include private equity firms, corporate insiders, or other large shareholders of the relevant security, may engage in block trades in order to transact at a price certain (typically expressed as a discount to the closing market price on the day of the trade), rather than take on the market risk of selling a large number of shares in the open market. Shareholders who opt to sell their shares in a block trade accept a discount to the prevailing market price, in part to gain this price certainty.

8. There are different types of block trades. A "primary block" refers to a transaction in which the seller is the issuer of the newly-issued stock, whereas a "secondary block" refers to the re-sale of a block of previously issued stock. A "negotiated block" describes a scenario in which the seller negotiates the sale of a block with only one bank, whereas a "competitive block" is one for which the seller has solicited bids from multiple banks, who are competing with one another to offer the most competitive price. A "registered block" requires registration of the shares under the Securities Act, whereas an "unregistered block" does not have to be registered under the Securities Act, because the shares were previously registered or there is an applicable registration exemption. A "Rule 144 affiliate block" is a particular type of unregistered block, governed by SEC Rule 144 ("Rule 144"). Rule 144 provides company affiliates a safe harbor to sell restricted shares if certain requirements are met. One such requirement is the manner of sale provision, under which neither the seller nor the bank can solicit orders to buy the securities in anticipation of or in connection with the sale, with certain limited exceptions.

9. Block trades can occur prior to the opening of market, after the close of market, or intraday. One or more banks, including Morgan Stanley, offer the seller a bid for some or all of the shares the seller wishes to sell, priced at a discount to the current share price (or share price in the near future, such as at close). If the seller agrees, the bank then purchases the shares at that price, as a principal. Because the bank purchases the shares as a principal and is not merely brokering a deal between the seller and another buyer, the bank assumes the risk associated with price fluctuations in these shares until it sells them to one or more investors on the "buy side." The bank makes money if it is able to sell the shares at a smaller discount to market price than the discount at which the bank purchased the shares.

10. When a bank such as Morgan Stanley offers for sale shares that it has acquired in a block trade, the increase in supply, and the fact that the bank is offering shares at a discount to the market price, generally depresses the share price. In situations where information about an upcoming block trade leaks to buy-side investors ahead of the transaction, investors may engage in trading strategies designed to profit from both the expected price decline and the ability to purchase shares at a discount in the block trade. For example, investors may "short" a security in anticipation of an upcoming block or sell out of an existing long position, hoping to cover their short positions or replace the shares they sold with less expensive shares that may be available after the block is executed. Such trading strategies can harm the seller of the block, by driving down the market price and thus potentially the price at which the block trade is executed. The Government has proffered, and Morgan Stanley does not dispute, that sellers have stated that confidentiality was also important because the sellers often continued to hold a significant position in the issuer's stock after a block trade.

Marketing Materials

11. As discussed above, Morgan Stanley marketed its block trades business to potential sellers in part by suggesting that its process was characterized by a greater degree of confidentiality than that of other banks, which would reduce the chances of a price decline leading up to the block sale. Although the vast majority of the sellers of the Relevant Blocks received no marketing materials addressing confidentiality in the block trading context, Morgan Stanley's marketing materials in general discussed the benefits of "confidential dialogue" with Morgan Stanley in the context of "negotiated" block transactions, which would involve telling only Morgan Stanley about the block, rather than "competitive" or auction processes, which would involve telling multiple banks about the block so that they could bid against each other. One example of this narrative was found in a frequently used Morgan Stanley marketing slide, which touted the merits of negotiated trades with Morgan Stanley and explained that "confidential dialogue leads to tight pricing and no slippage vs. +120bps of price leakage in auctions." A second slide, which highlighted the success of a particular negotiated block, noted that "MS's advice to keep the bid process to a single bank stopped information from leaking into the market and ultimately allowed [the seller] to receive a tight bid against an unaffected price."

12. A third slide, shown below, contrasted Morgan Stanley's success at negotiated blocks with an example of a competitive block, where Morgan Stanley alleged that after the seller solicited bids from five banks, the "trade [was] leaked to the market, driving [the stock price] down into the close." Morgan Stanley explained that, "[w]hen soliciting bids for a block transaction, the seller exposes themselves and the issuer to intraday price risk," in part due to "potential leakage

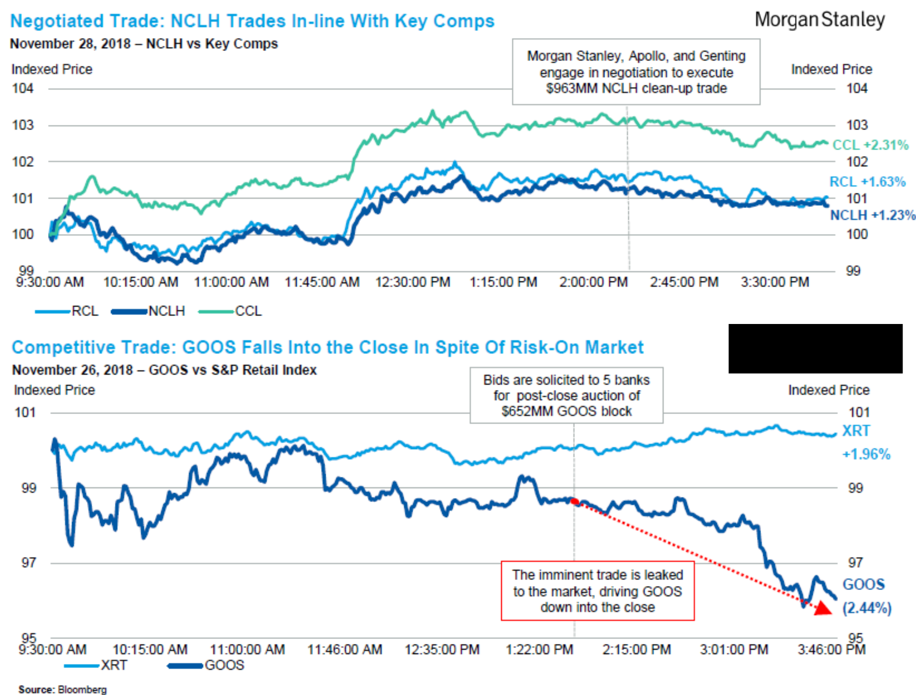
of information." Working with only "one bank," in contrast, allowed a seller to "avoid information leakage." Morgan Stanley stated that its "syndicate's sector expertise and leading equity distribution platform allow[ed]" it "to effectively price your stock without 'testing the waters' in the open market."

Morgan Stanley

Avoid The Intraday Fade with a Negotiated Trade

NCLH Negotiated Block vs. GOOS Competitive Block – November 2018

- When soliciting bids for a block transaction, the seller exposes themselves and the issuer to intraday price risk due to potential leakage of information and/or exogenous market effects
- Working with one bank on a negotiated basis allows seller to:
  - Achieve an absolute price or targeted discount
  - Hold optionality on the execution timeline
  - Avoid information leakage
- Morgan Stanley syndicate's sector expertise and leading equity distribution platform allows our desk to effectively price your stock without "testing the waters" in the open market



13. In May 2021, two Morgan Stanley employees referred to similar slides as "bad boy" slides in an email exchange involving the Head of the Desk, concerning how to convince a potential seller to do a negotiated block with Morgan Stanley. An ECM employee suggested showing the potential seller "some of the examples of what happens if you bring others into the loop as we have many examples (incl 1 last week) of where our competitors leak the deal, push the share price down, and then offer a tight discount as if that was a good sequence for the client." The suggested "bad boy" slides included a slide titled "How Much Would An Auction Cost You?" This slide highlighted a particular block whose share price had declined during the auction process, and blamed the price decline on "the poor behavior of [Bank-1]," who the slide claimed "Tests Levels & Assembles Demand at the Cost of Your Closing Price." The slide contrasted Bank-1 with Morgan Stanley, noting that "Morgan Stanley was able to execute" a different block "at a tight discount, without testing the market given the team's depth of knowledge in the security, Chinese ADR market, and current buy-side appetite."

14. Sellers were also told that the Desk's location on the private side of Morgan Stanley's business provided further assurance that news of their block would not leak. An IBD employee sent a deck to a seller that contained the "confidential dialogue leads to tight pricing"

language discussed above, and further wrote: "attaching our creds in the block space. MS continues to be #1 by a wide margin. As far as what differentiates us, we're the only shop who does everything (pricing / sizing) fully on the private side. All others will wall-cross traders to inform views, which leads to leaks / selloffs. [The Head of the Desk], cc'd, who heads our ECM syndicate desk (and sits on the private side), has the full authority to size and price each trade." In this message, the IBD employee touted Morgan Stanley's handling of blocks entirely on the "private side" of its business, which it argued avoided "leaks" and resulting "selloffs" in the stock. In another example, an ECM employee sent a seller a slide deck in November 2018 noting that "Morgan Stanley's process utilizes investment banking relationships via its Capital Markets group (private side of the wall) to manage confidential risk processes separately from sales & trading, with an ability to take $1Bn+ of risk on any given day." Later in the same deck, Morgan Stanley touted as one of its key assets its "Discretion," described as "Information Barriers that separate the private and public sides of the Firm allow[] for a nimble risk process with decisions made within capital markets, not by personnel in Sales and Trading Distribution."

15. This messaging about confidentiality was reinforced by the way in which the Desk described Morgan Stanley's financial stake in block trades. The Desk repeatedly described Morgan Stanley as being "on risk" for the shares, until it was able to allocate them. When explaining how it made money on blocks, the Desk stated that it would "aim to distribute the shares at a marginally higher price to compensate for the risk of the transaction and balance sheet use." Other marketing slides reiterated that in a block trade, "Morgan Stanley acts as principal and commits balance sheet capital to purchase the stock." In other words, the Desk held out the discount it required from sellers against the market price (effectively, its pricing for the block trade) as justified, at least in part, by Morgan Stanley taking on the risk of purchasing blocks and having to later find willing buyers. However, with respect to the Relevant Blocks, Morgan Stanley reduced that risk because the Head of the Desk and Employee-1 had already secured willing purchasers by providing them with information about the blocks—information that the Desk had promised the sellers would be kept confidential— for the purchasers to use to their own advantage. But when Employee-1 described in an email to a potential block seller how the Desk arrived at its discount, Employee-1 described none of this, and instead claimed that the Desk's "methodology of coming up with the discount is fairly straightforward: we take into account the size of shares sold, the typical volume the stock trades, the volatility of the stock, and how stable the stock has been or not in the prior week or two," and assured the potential seller that "[w]e don't speak to people ahead of time to avoid leaks etc."

16. When Morgan Stanley's marketing materials referenced investor outreach, the materials suggested that such outreach would be done only to investors that had been wall-crossed. Sellers were told that while block trades were one option for selling their shares, another option was an "overnight with wall-cross and backstop," which was described as a registered sale that would "launch[] publicly after wall-crossing several investors capable of acting as anchor investors." The stated advantage of this "overnight with a wall-cross" was that "anchor investor feedback helps provide early pricing insight ahead of public launch." In other slides shown to potential sellers, the possibility of wall-crossing a select number of investors "ahead of launch to maximize demand visibility/pricing" was offered as a possible way to execute a registered block trade. But the Head of the Desk and Employee-1 did not wall cross any investors before sharing confidential information about the Relevant Blocks with them.

17. The Head of the Desk and Employee-1 engaged in conduct that was inconsistent with these marketing materials and unknown to the other Morgan Stanley employees who made the representations discussed above. The Head of the Desk and Employee-1 understood how Morgan Stanley intended its employees to conduct the blocks business, in part because Morgan Stanley described its expectations in these marketing materials. In addition, the Head of the Desk and Employee-1 were aware of and received training concerning Morgan Stanley's policies on the treatment of confidential information, which clearly prohibited their conduct. Yet, the Head of the Desk and Employee-1 ignored and violated these principles and policies when dealing in the Relevant Blocks.

Offense Conduct

18. From at least 2018 through August 2021, while negotiating purchases of the Relevant Blocks, the Head of the Desk and Employee-1 knowingly made representations regarding confidentiality to block sellers that were both false and material to the relevant transactions. In particular, the Head of the Desk, Employee-1, and other employees on the Desk promised confidentiality to the sellers of the Relevant Blocks. These representations of confidentiality were important to block sellers because leaks to the market risked driving down the market price of the stock, which could decrease the money the sellers received for the block sales. The Head of the Desk, Employee-1, and other employees on the Desk were aware of these risks and knew of the importance of confidentiality to sellers. As described above, the Head of the Desk, Employee-1, and other employees on the Desk also marketed their blocks service as superior to that of other banks, who they claimed were more likely to leak information about an upcoming block trade to the market prior to assuming ownership of the shares.

19. But instead of keeping the information about the Relevant Blocks confidential, as sellers were promised, the Head of the Desk and Employee-1 shared highly specific information about the Relevant Blocks with buy-side investors, including information about the size and precise timing of the trades in the Relevant Blocks. In the days leading up to the execution of the Relevant Blocks, the Head of the Desk often called his favored investors multiple times per day, keeping them apprised of each development in the Head of the Desk's conversations with block sellers. On multiple occasions, after getting off the phone with a potential seller, the Head of the Desk's very next call was to a buy-side investor, to share the updates.

20. Certain of these calls are described below. These calls were not recorded by Morgan Stanley, nor did they take place on a regularly-recorded line, unless otherwise noted. Rather, the Government obtained the calls described below, as well as other calls in which Morgan Stanley employees discussed block trades, in the course of its investigation.

21. Using the confidential information that the Head of the Desk and Employee-1 provided to them, buy-side investors made trades in advance of the Relevant Blocks, such as short selling the relevant stock or selling down their long positions.

22. The Head of the Desk and Employee-1's conversations with buy-side investors about the Relevant Blocks were not merely to gather information about buy-side interest in a potential block. Rather, as noted above, the Head of the Desk and Employee-1 provided buy-side investors with detailed, specific information about the timing of the blocks, the sizes of the blocks,

the sellers, the sellers' reasons for trading, the likely pricing, and the seller's price sensitivity levels. Further, the Head of the Desk at times also counseled investors on how they should trade. For example, the Head of the Desk at times told investors how many shares they should sell short in advance of the block, suggested that an investor hedge a registered block beforehand with a comparable stock, assured investors that they could continue to short a stock because they were promised a large allocation in the upcoming block, and discussed how an investor's trading could keep a stock price above or below a certain level. For example, in a series of conversations about an upcoming block trade, the Head of the Desk gave a New York-based trader at a large hedge fund ("Investor-1") detailed information about the Head of the Desk's discussions with a block seller about an impending block trade. Investor-1 then shared with the Head of the Desk detailed information about Investor-1's short sale of 1.5 million shares of the stock, and obtained reassurances that when the block occurred, the Head of the Desk would give Investor-1 a block allocation large enough to cover Investor-1's short position. Investor-1 and the Head of the Desk referred to this practice as "protecting" Investor-1.

23. This practice benefited Morgan Stanley by allowing it to bid on blocks with greater confidence in the bank's ability to quickly resell the shares that it acquired in block trades and thus reduce the risk to the bank's balance sheet posed by price movement in the stock.

24. But that benefit to the bank came at the expense of the sellers of the Relevant Blocks. The product that the Head of the Desk and other Morgan Stanley employees promised those sellers was not the one that the Desk delivered. After marketing the Desk's services to block sellers with promises of confidentiality, the Head of the Desk and Employee-1 violated those promises. This deprived the sellers of the confidential treatment that they had negotiated for, and which they deemed important. It also reduced the risk to Morgan Stanley of purchasing the shares and increased the risk to the seller of a price decline, unbeknownst to the seller.

Examples of Misconduct

25. The Star Bulk Carriers Corporation ("SBLK") blocks that Morgan Stanley executed on May 25 and June 21, 2021 provide an illustrative example of these express promises of confidentiality by the Head of the Desk, immediately followed by leaks to buy-side investors.

- The Government has proffered, and Morgan Stanley does not dispute, that beginning in April 2021, when the SBLK seller expressed interest in selling shares in a block, multiple Morgan Stanley employees, including the Head of the Desk, committed to keeping the fact of the upcoming block confidential. Indeed, the Desk highlighted confidentiality in materials prepared in advance of a conversation with the seller. In addition to the Head of the Desk's own conversations about confidentiality with the SBLK seller, the Head of the Desk also received an email from another Morgan Stanley employee on April 29, 2021, noting that the SBLK seller "was VERY focused on confidentiality."

- In contravention of these promises and representations proffered by the Government and undisputed by Morgan Stanley, the Head of the Desk kept the founder of a New York-based hedge fund ("Investor-2") updated on an almost daily basis about the specific details of Morgan Stanley's discussions with the seller. For example, during a call at 10:56 a.m. on May 17, 2021, the Head of the Desk told Investor-2 to "take a look at" SBLK. The

Head of the Desk said that Morgan Stanley was in discussions with a seller about a 10 million-share unregistered block trade, that SBLK was expected to announce earnings the following week, and that he thought the seller could "give it to me soon thereafter, I think want to go pretty soon thereafter."

- At 8:43 p.m. the same day, the Head of the Desk confirmed with Investor-2 that the SBLK block would be happening after the company announced earnings and that "the trade size is like nine million shares." The Head of the Desk also sought to confirm that Investor-2 would be taking an allocation from Morgan Stanley, by asking Investor-2 whether SBLK "felt okay" to him. Investor-2 confirmed that SBLK was "fine," and that "everything that we talked about today I think is fine. If anything happen I will be . . . ." The Head of the Desk responded: "You'll be decent size."

- In a subsequent call on May 19 at 6:23 p.m., the Head of the Desk confirmed to Investor-2 that the block would be "probably Friday morning." Investor-2 responded, "10 million shares . . . count me in for two at least."

- During these conversations, beginning on May 17 and continuing through May 20, 2021, Investor-2 shorted SBLK stock, shorting 280,225 shares on May 17; 255,927 shares on May 18; 181,512 shares on May 19; and 506,843 shares on May 20. The Government has proffered, and Morgan Stanley does not dispute, that prior to these trades, Investor-2 had never traded in SBLK.

- The Government has proffered, and Morgan Stanley does not dispute, the following: The seller was prepared to execute a block sale to Morgan Stanley on May 20, but between the close of the market on May 19 and the close of the market on May 20, SBLK's share price dropped approximately 6.8%. The seller was surprised, since similar companies and the relevant index had not experienced any decline. The seller told Morgan Stanley that it would not be going ahead with the block. The seller later confronted the Head of the Desk about whether Morgan Stanley had leaked the upcoming block to the market. The Head of the Desk lied, falsely assuring the seller that no Morgan Stanley employees had disclosed the upcoming block to the buy side.

- On May 20 at 11:18 a.m., the Head of the Desk told Investor-2, "Star Bulk I think with it being down 10, look, they– it got extended, uhm, but I think the right advice is probably not to go tomorrow morning, so you know, uh, uh, I still think it's topical but just, just FYI."

- By May 24, 2021, the stock's price had rallied. At 3:22 p.m., the Head of the Desk again updated Investor-2 about the Head of the Desk's discussion with the SBLK seller, but cautioned Investor-2 about shorting the stock in a way that could push down the stock price and decrease the seller's desire to transact. Specifically, the Head of the Desk told Investor-2 that he was going to call the seller and that he thought the seller "would want to go here, but I, you know, who knows, and there may be a way [unintelligible ("U/I")] – just, whatever there you're doing, just you know, don't go any faster, don't go any slower. Just let me figure out what to do there."

- The seller and Morgan Stanley executed a block trade of 10,630,000 shares of SBLK after the close of the market that day, and Morgan Stanley thereafter allocated two million shares to Investor-2. Investor-2 used some of these two million shares to cover the short position that he entered into on the recommendation of the Head of the Desk. When Investor-2 told the Head of the Desk that he had needed one million SBLK shares to cover his short position, the Head of the Desk responded "Ok, fine. So not so bad."

- The Government has proffered, and Morgan Stanley does not dispute, the following: In June 2021, the same seller decided to explore selling another SBLK block to Morgan Stanley on a negotiated basis. The seller again discussed the importance of confidentiality with Morgan Stanley, including the Head of the Desk, and specifically cited concerns about the May 20 stock price decline. Morgan Stanley employees assured the seller that Morgan Stanley would execute the sale "the right way."

- On June 16 at 8:35 a.m., the seller reached out to Morgan Stanley, including the Head of the Desk, to schedule a call about SBLK for 12:30 p.m. At 12:04 p.m., shortly before his scheduled call with the seller, the Head of the Desk told Investor-2 that the seller was contemplating the sale of SBLK shares in a registered block of two million shares, and suggested that Investor-2 sell a portion of the shares that Investor-2 currently owned, so that Investor-2 could "replac[e] what you have with cheaper stock," meaning SBLK stock that Investor-2 could purchase at a discount in the block.

- The Head of the Desk then spoke with the seller at 12:30 p.m. Shortly thereafter, at 1:03 p.m., he called Investor-2 and told him that the seller could not execute the block until Monday. The Head of the Desk also gave Investor-2 suggestions for how to trade to maximize his ability to profit from the block:

  Head: So they can't go until Monday.

  Inv-2: Okay.

  Head: Uhh so I would still sell it up there. Maybe you go back to like a 24 low uhh or something along those lines. And obviously now you've got a couple days, but uh just FYI.

  Inv-2: Okay. Got it, got it. So it's a Monday thing. Okay.

  Head: Yeah they got to go do– they haven't done any of the things they need to get done to go. So they're not ready to do it yet and it's about 2 million shares.

- Investor-2 sold large quantities of SBLK stock following these calls, at prices ranging from $23.80 to $22.09 per share: 127,257 shares on June 16; 5,200 shares on June 17; 49,880 shares on June 18; and 199,629 shares on June 21.

- On June 21, Morgan Stanley executed the SBLK block after the markets had closed. That day at 5:54 p.m., the Head of the Desk asked if Investor-2 had sold the "full 600" thousand

shares Investor-2 owned on June 16, and Investor-2 confirmed that Investor-2 had sold "500" thousand shares, as suggested by the Head of the Desk in their previous calls. Investor-2 then accepted an allocation of 1.1 million shares of SBLK for $22.00 per share. In other words, as suggested by the Head of the Desk on June 16, Investor-2 had sold out of SBLK shares and then replaced them in the block "with cheaper stock," since the block shares were sold at a discount.

26. Another example concerns Morgan Stanley's handling of a potential block of stock in iHeartMedia, Inc. ("IHRT") beginning in June 2021:

- The Government has proffered, and Morgan Stanley does not dispute, the following: After promising the seller confidentiality, the Head of the Desk called Investor-2 on a regular basis to update Investor-2 of the status of block discussions. In a call on July 20, 2021, the Head of the Desk told Investor-2 that IHRT was one that he was "looking at" and Investor-2 responded that he did not "have too strong a view on that one," and that he would "look at it." Beginning that same day, Investor-2 began shorting hundreds of thousands of shares of IHRT. The Government has proffered, and Morgan Stanley does not dispute, that prior to that call from the Head of the Desk, Investor-2 had not traded in IHRT since July 2020, a year prior.

- On August 5, 2021, the Head of the Desk asked Investor-2 about Investor-2's position in IHRT, and advised Investor-2 on how to trade to preposition for the block:

Head: Quick question for you. So iHeart.

Inv-2: Yes.

Head: Do you have a position on yet?

Inv-2: I do. Short.

Head: Short.

Inv-2: Let's see how much. 350K.

Head: Ok. So here's the thing. If the stock is like north of 27, I can bring like 6 million shares down uh a dollar.

Inv-2: Ok.

Head: The stock reported– earnings were good. The stock was trading for two seconds at 27. Then it stopped trading.

Inv-2: Mhmm.

Head: Just keep an eye on it tomorrow morning.

Inv-2: Mhmm.

> Head: But if it gets above 27 on earnings I could have something to do.
>
> Inv-2: Ok. That could trade intraday and all that, right?
>
> Head: Could trade intraday. It's free stock. It was originally 7 million shares– now it's 6.
>
> Inv-2: Mhmm.
>
> Head: I know of at least one other guy that needs to buy a million. (U/I) another two. So my view would be on a 6 million share trade you need to buy 350 now. Maybe find a way to– you need to buy another 350 so you buy 2 million in total. We go out to the room or we go out quietly.
>
> Inv-2: Mhmm.
>
> Head: As long as you get your supply. I think there's other people that are definitely aware of it. No question.
>
> Inv-2: Some other people shopped this as well.
>
> Head: Yeah. No I think, yeah. I think it was us versus [another bank] on this thing. But the way I have it lined up with somebody now. If I can do the trade down a buck meaning a buck to the buyers I have to buy down 5. So I make 25 cents, the buyers make (U/I), they're fine with that as long as they can get pretty close to a 27 stock price. So let's catch up in the morning. Let's see how it's trading then.
>
> Inv-2: Sounds good.
>
> Head: And then we can go from there.
>
> Inv-2: Ok. Works.

Around thirty minutes after this call, the Head of the Desk told Employee-1 "iHeart tomorrow. But I got [Investor-2] on the case." Employee-1 responded "Oh, good."

- On the same day, the Head of the Desk called Employee-1 and told Employee-1 that Morgan Stanley was going to execute an intraday block purchase of IHRT the next day. The Head of the Desk asked Employee-1 to "think about iHeart with" Investor-1, and to figure out "what [Investor-1] wants to do." Employee-1 and Investor-1 were sharing a rental house in the Hamptons at the time. The next day, around 8:12 a.m., the Head of the Desk informed Investor-1 directly that Morgan Stanley would be executing a 6 million share unregistered block intraday, and Investor-1 told the Head of the Desk "however much you need me to take I'll take."

- When confronted about whether he was leaking information, the Head of the Desk made misleading statements suggesting he had not. As described above, by 9:30 a.m. on August 6, 2021, the Head of the Desk had leaked information about the IHRT block to Investor-2 and Investor-1. That day, the price of IHRT shares declined, even though IHRT had just announced favorable earnings and the broader market that day was flat or up. At 9:56 a.m., the seller messaged the Head of the Desk that they were "pencils down" on the block, and that, "[t]his stock performance smells fishy though. My gut says the block potential was not quite 100% private." The Head of the Desk did not admit to leaking the information to at least two different hedge funds, and instead responded "You could be right. But there really is not enough volume on tape to know anything." At 1:04 p.m., the Head of the Desk and the seller again messaged about the price decline, and the Head of the Desk stated "I know [Bank-2] was out there two weeks ago talking about supply. But not heard anything today." Ultimately, the seller decided not to do a block trade in August 2021.

27. Hedge fund investors who received confidential information from the Head of the Desk and Employee-1 about upcoming blocks recognized that this information allowed them to profit in ways they otherwise would not have. For example, an investor working at a Nevada-based hedge fund ("Investor-3") told the Head of the Desk in an August 2021 call, "I know who my daddy is," referring to the assistance that the Head of the Desk had provided Investor-3 in profiting from block trades. Investor-3 stated in the same call, again referring to block trades, that the Head of the Desk had "put [Investor-3] in the fucking game," and that Investor-3 "would be at the kiddie table if it wasn't for" the Head of the Desk.

28. The Head of the Desk even lied to other Morgan Stanley employees about his leaks to buy-side investors. At 7:17 a.m. on August 6, 2021, the Head of the Desk had a call with a Morgan Stanley employee on the public side of the bank ("Employee-2"). During the call, the Head of the Desk told Employee-2 that certain buy-side investors, including Investor-2, needed to buy shares in the coming IHRT block to cover their short positions. As described above, by this time, the Head of the Desk had informed Investor-2 of the upcoming IHRT block, and had instructed Employee-1 to inform Investor-1 of the block. Employee-2 expressed astonishment that so many investors were "set up," or prepositioned, ahead of blocks, asking "how are they set up for every one of these fucking things?!" The Head of the Desk blamed another bank for leaking information about the IHRT block to buy-side investors, and stated, "some of my counterparts at other places are taking no blind risk." The Head of the Desk did not explain that in fact he was the one avoiding "blind risk" to Morgan Stanley by getting his preferred investors "set up," or prepositioned, in advance of blocks by disclosing confidential information.

BWIC Emails

29. In the examples of Relevant Blocks discussed above, certain Morgan Stanley personnel promised certain sellers confidentiality orally, or led certain sellers to believe that Morgan Stanley would keep the information confidential, and then the Head of the Desk leaked information about the impending block trade to certain buy-side investors. For other Relevant Blocks, Morgan Stanley personnel promised a seller confidentiality via a bid wanted in competition email ("BWIC Email"). Before sending these BWIC Emails, the seller or its representative called Morgan Stanley to ask if Morgan Stanley wanted to participate in a competitive bidding process for a block. If Morgan Stanley said that it wished to participate, the

seller sent the BWIC Email, which generally included language stating that, by opening the email, Morgan Stanley agreed to keep the information confidential. On at least three occasions, the Head of the Desk or Employee-1 leaked information to buy-side investors after Morgan Stanley received BWIC Emails with express confidentiality language.

30. To take one example of a Relevant Block, on June 20, 2018, a representative of a block seller of 10 million shares of Canada Goose ("GOOS") called a member of the Desk shortly before 2 p.m., then sent a BWIC Email to the Desk at 2:01 p.m. stating, "By opening these documents you agree to treat them as highly confidential, and neither their contents nor the existence of this potential transaction will be shared or discussed with anyone outside your firm." At 2:36 p.m., Investor-3 called Employee-1 using Investor-3's recorded desk line[1] and asked if there was anything Investor-3 "should be focusing on for, uh, tonight, tomorrow." Employee-1 responded, "How is your store of cold weather jackets," and chuckled. They continued to discuss the potential block, and Investor-3 ended the call by stating, "That will be a big focus then, you know? All right, I appreciate it, I'll go to work on it. Thanks, man." From approximately 2:42 p.m. to 4:00 p.m., Investor-3 used swaps to synthetically short 199,989 shares of GOOS. Between 2:00 p.m., when the BWIC Email was sent out, and the market close that day, the share price of GOOS declined approximately 4.25%. Investor-3 covered his short position over the next three days using an allocation from the block, which was executed by another financial institution, resulting in a total profit to Investor-3 of approximately $760,000.

Controls

31. At all relevant times, Morgan Stanley had in place controls that were designed, in part, to prevent or to detect the type of conduct described above and related misconduct in the block trades business. Those controls, however, were not effective in several important respects.

32. First, Morgan Stanley failed to take steps to ensure that confidentiality commitments that the ECM personnel made to block sellers were being documented and disseminated to others within ECM, thereby increasing the risk that those commitments would not be honored. For example, ECM coverage employees, who were often the first point of contact at Morgan Stanley for potential block sellers, frequently promised these potential block sellers that Morgan Stanley would keep information about impending blocks completely confidential, but Morgan Stanley had no system in place to document that such commitments had been made or to ensure that Desk personnel were aware of such commitments.

33. Second, Morgan Stanley did not have effective controls in place to ensure that the Desk was complying with SEC Rule 144 for Rule 144 affiliate blocks. A number of Desk personnel—including long-tenured employees and the Head of the Desk's supervisor—were unfamiliar with, or misunderstood, the pre-solicitation restrictions imposed by Rule 144. When executing Rule 144 affiliate blocks, Morgan Stanley employees sent signed letters to the sellers, certifying that Morgan Stanley had met Rule 144's manner of sale restrictions because, among other things, Morgan Stanley had not "solicited or arranged for the solicitation of . . . customers' orders to buy the Stock in anticipation of or in connection with the sale of the Stock by the Seller," except for, among several exceptions, "inquiries of customers who have indicated an unsolicited

[1] In 2018, Investor-3 worked at a Hong Kong-based hedge fund in London.

bona fide interest in the Company's stock within the preceding 10 business days" (the "Broker Rep Letters"). These Morgan Stanley employees signed the Broker Rep Letters on behalf of Morgan Stanley on the assumption that others on the Desk, including the Head of the Desk and Employee-1, had abided by Rule 144's manner of sale requirements with respect to the block at issue. But Morgan Stanley had no process in place to verify whether Morgan Stanley employees abided by those requirements, and the Head of the Desk in fact did not abide by those requirements with respect to certain block trades.

Remediation

34. After Morgan Stanley learned of the Department of Justice's investigation into its block trading practices, it took significant steps to remediate the problems on the Desk, including by issuing a new U.S. GCM Equity Capital Markets Block Trade Information Policy, and training the Desk on the new policy. The new policy makes clear that Morgan Stanley employees cannot engage in single-name discussions regarding a specific issuer or its security if (i) a "Two-Way Dialogue" with a seller has occurred or a confidentiality obligation has been established with a seller, unless the employee obtains advance approval from GCM management and LCD. "Two-Way Dialogue" is defined as "a circumstance in which Personnel (i) have communicated with an issuer or seller about its potential Block Trade and (ii) the issuer or seller has provided any indication that it may transact in the potential Block Trade (even if such transaction remains contingent or conditional or otherwise uncertain)." The policy notes that, "[f]or the avoidance of doubt," Two-Way Dialogue includes the receipt of a BWIC Email or a "Mandate," defined as a communication by a seller or issuer to engage the Desk with a block trade. The policy also requires that all employees log with the Desk, in a block tracker database, any Two-Way Dialogue or confidentiality obligation. In the subsequent training, the Desk was provided with a summary flowchart telling them when single-name discussions with buy-side investors are permissible.