

GIBSON C SCOTT  
Form 4  
May 21, 2009

**FORM 4**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

OMB APPROVAL

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**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
GIBSON C SCOTT

(Last) (First) (Middle)

16760 SW UPPER BOONES  
FERRY RD, SUITE 101

(Street)

PORTLAND, OR 97224

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
PIXELWORKS, INC [PXLW]

3. Date of Earliest Transaction  
(Month/Day/Year)  
05/19/2009

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director  10% Owner  
 Officer (give title below)  Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D)	Price		
				Code	V	Amount	
Common Stock					5,000	D	
Common Stock					4,333	I	by Spouse

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	Amount or Number of Shares
Non-Qualified Stock Option (right to buy)	\$ 1.37	05/19/2009		A	6,000	(1) 05/19/2016	Common Stock	6,000
Non-Qualified Stock Option (right to buy)	\$ 2.43					(1) 05/20/2018	Common Stock	3,333
Non-Qualified Stock Option (right to buy)	\$ 4.14					(1) 05/22/2017	Common Stock	3,333

## Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
GIBSON C SCOTT 16760 SW UPPER BOONES FERRY RD SUITE 101 PORTLAND, OR 97224	X			

## Signatures

C. Scott Gibson                      05/21/2009  
 \*\*Signature of                      Date  
 Reporting Person

## Explanation of Responses:

- \* If the form is filed by more than one reporting person, see Instruction 4(b)(v).
- \*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) 25% vest on the last day of the month of the first anniversary of the date of grant, with the remaining 75% vesting ratably on a monthly basis thereafter over three years.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. center and also employs information barriers to prevent the dissemination of confidential and nonpublic information outside the Citi Adviser.

The Funds and their investors are also protected from any undue influence, among other things, by the substantial separation and independent operation of the Trading Entities from each other and from MSSB. Independent operation generally consists of separate profit centers, separate capitalization, separate books and records and a separate compensation system that does not reward employees based on (i) a factor that treats the Funds differently than unaffiliated counterparties (for example, no Trading Entity will provide any additional compensation to any employee solely based on such employee's transacting business with a Fund that would not generally be provided to employees performing similarly with respect to transactions with unaffiliated parties) or (ii) the amount of business done by the Citi Funds with the MS Trading Entity (in the case of Citigroup) or the MS Funds with the Citi Trading Entity (in the case of Morgan Stanley), except to the extent such business might affect indirectly the profits or losses of the Advisers (such as where Securities Transactions result in higher profits to a Fund that increase the net asset value of such Fund, based upon which an Adviser generally receives a percentage fee).<sup>(9)</sup> The Advisers will not cause the Funds to engage in portfolio transactions with MSSB. Further, the information barriers described above with respect to the Advisers and their affiliates will prevent the exchange of confidential information between the Advisers and MSSB.

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

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

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

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

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

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

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

V.

V.

**Consolidation in the Financial Services Industry**

A. The Impact of Consolidation

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

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

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

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



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

**B. Consolidation has Increased the Applicants' Need for Relief**

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

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

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

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

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

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

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

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

VI.

VI.

**The Securities Transactions**

**A. The Securities Transactions Generally**

The Funds have a variety of investment objectives, but each may to a greater or lesser degree invest a portion of its assets in fixed-income securities. The secondary market for fixed-income securities is typically a dealer market in which trades are effected on a principal basis. New issues of fixed-income securities are typically offered in underwritten or private placement transactions. The MS Funds engage extensively, and are expected in the future (if the Order is granted) to engage extensively, in transactions that involve the Citi Trading Entity. The LMP Fund engages in syndicated loan transactions that involve the MS Trading Entity and, as additional Citi Funds are organized, such funds are expected (if the Order is granted) to engage in a wide array of transactions involving the MS Trading Entity. These Securities Transactions include the following: (i) the purchase of fixed-income securities by an MS Fund or a Citi Fund in underwritten offerings in which the Citi Trading Entity or the MS Trading Entity, as applicable, is a manager or member of the underwriting syndicate, and where a MS Fund purchases underwritten fixed-income securities from the Citi Trading Entity, or a Citi Fund purchases underwritten fixed-income securities from the MS Trading Entity; (ii) the purchase by a MS Fund or a Citi Fund of fixed-income securities from, or the sales of fixed-income securities to, the Citi Trading Entity or the MS Trading Entity, respectively, in transactions in which the Citi Trading Entity or the MS Trading Entity, respectively, is acting as a principal; and (iii) participation in certain specific, and other types of, arrangements or transactions that the MS Funds presently participate in with the Citi Trading Entity, or that a Citi Fund may participate in with the MS Trading Entity. These arrangements and transactions (as described in section VI(B))

below) are tender option bond trust structures ( TOBs ), certain asset-backed or mortgage-backed securitization structures, loan syndicates, and investments in the same company.

If the Citi Trading Entity were considered to be a second-tier affiliate of the MS Funds (or the MS Trading Entity were considered to be a second-tier affiliate of the Citi Funds), a Securities Transaction would potentially violate one or more of Section 17(a) or Section 17(d) of the Act and Rule 17d-1 thereunder. The inability of the MS Funds to execute Securities Transactions involving the Citi Trading Entity and of the Citi Funds to execute Securities Transactions involving the MS Trading Entity would impose a hardship on the Funds by prohibiting the Funds from engaging in Securities Transactions with a broker-dealer with which such Funds had engaged in transactions in fixed-income securities prior to there being any affiliation between Citigroup and Morgan Stanley (which arises exclusively as a result of the Joint Venture) and by preventing the Funds from purchasing or selling securities that the Funds would have purchased or sold prior to that affiliation in transactions in which the Citi Trading Entity or the MS Trading Entity, as applicable here, has some involvement.

**B. Joint Transactions**

Applicants are requesting an Order pursuant to Rule 17d-1 under the Act to the extent necessary to permit the Citi Trading Entity to participate jointly with the MS Funds (and the MS Trading Entity with the Citi Funds) in (i) TOBs transactions involving municipal bonds, (ii) asset-backed or mortgage-backed securities transactions, (iii) syndicated loan transactions, and (iv) investments in the same company.

(i) Tender Option Bond Trust Structures

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Each of the MS Funds investing in long-term municipal bonds may engage, and/or has in the past engaged, in transactions with the Citi Trading Entity involving tender option bond trusts ( TOBs ). TOBs are derivative securities that (as relevant here) are created by a fund placing



municipal bonds into a trust arrangement established by a dealer on behalf of the fund. In exchange, each respective fund receives cash and a residual interest security. In a typical TOBs transaction, the trust funds the purchases of the municipal bonds by issuing securities (floaters) which are purchased by third-party investors (often tax-exempt money market funds) and which pay interest (generally quarterly or semi-annually) based on interest rates that are typically reset weekly. The floaters are remarketed typically on a weekly basis by a remarketing agent, which receives a fee from the trust for such service. During that activity, the remarketing agent may also own floaters for a brief period of time while the fund holds the residual interest. In addition, the remarketing agent, or a separate entity, which may or may not be affiliated with the remarketing agent, also serves as the liquidity provider by committing to hold a floater the remarketing agent is unable to place with an investor until such time as the floater can be placed or the trust is collapsed and the municipal bond is delivered back into the fund or otherwise sold, events which can be triggered by the liquidity provider under certain circumstances.<sup>(16)</sup> Where floaters are tendered back to the liquidity provider, the liquidity provider would hold the floaters at the same time the fund held the residual interest in the underlying bond. If the Citi Trading Entity establishes the trust to which a MS Fund wishes to sell its long-term security and serves as remarketing agent and/or liquidity provider, and such MS Fund holds the residual interest in the underlying bond, such a transaction could be considered a joint transaction and therefore subject to Section 17(d) and Rule 17d-1 thereunder. Situations could also arise in which a Citi Trading

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(16) For example, a termination event may encompass a wide variety of circumstances, certain of which may be objectively determined and certain of which involve an element of subjectivity. For example, such an event may include (i) the inability of the remarketing agent to sell all or a specified percentage of the floating rate securities after a specified amount of time has passed; (ii) a downgrade in the rating of the underlying bond or the insurer of the bond; (iii) a determination by the liquidity provider that the financial condition of the issuer of the underlying bond has deteriorated to an extent that is in the judgment of the liquidity provider materially adverse to the trust; or (iv) certain changes in laws or regulations that, in the judgment of the liquidity provider, may increase its costs or reduce its returns. In the event the liquidity provider determines to terminate the trust, the liquidity provider will be required to make payments on the floating rate securities.

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Entity establishes a TOBs structure for itself or a related party and holds the residual and a MS Fund (*e.g.*, a tax-exempt money market fund) holds the floater. (Section 17(a) also may be involved where, for example, a Citi Trading Entity, as liquidity provider, is to purchase a floater held by such MS Fund.) The above analysis would also apply to future TOBs transactions involving the MS Trading Entity and a Citi Fund.

(ii) Asset- and Mortgage-Backed Securities

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In a typical asset-backed securities (ABS) or mortgage-backed securities (MBS) transaction, a financial institution which sponsors the ABS or MBS sells a pool of loans (which may have been originated by the sponsor or its affiliates) to a special purpose entity, which in turn sells such loans to a trust. The trust issues interest-bearing notes or pass-through certificates (of which the sponsor or its affiliate may serve as underwriter) backed by the trust's assets; the sponsor or its affiliate may retain an equity or residual interest in the trust. The assets continue to be serviced, and the income received from such assets is used to make distributions to the holders of the ABS or MBS and the holder of the residual interest.

The MS Funds, as consistent with their investment policies, may enter into transactions involving ABS or MBS, including those that are issued by special purpose entities sponsored by the Citi Trading Entity (or an affiliate), and the Citi Funds may do so with respect to ABS or MBS of entities sponsored by the MS Trading Entity (or an affiliate), respectively, under circumstances in which both (i) the residual interest in the special purpose entity is owned directly or indirectly by the respective Trading Entity (or an affiliate) and (ii) the respective Trading Entity (or an affiliate) acts as the servicer of assets.

Though Applicants do not necessarily concede that such transactions fall under Section 17(d) of the Act and Rule 17d-1 thereunder, such transactions could arguably fall under those

provisions due to the various roles played by the respective Trading Entity (or an affiliate). (17) The Applicants submit, however, that there is little opportunity or, indeed, economic incentive to overreach a Fund when acting in those capacities. Nevertheless, the scenario is more complicated than a straightforward purchase or sale of a third-party sponsored ABS or MBS from the Trading Entity. Thus, to the extent an independent check may be necessary, a Fund will only engage in ABS or MBS transactions in which (i) the residual interest in the special purpose entity sponsored by a Trading Entity is owned directly or indirectly by the respective Trading Entity (or an affiliate) and (ii) the respective Trading Entity (or an affiliate) acts as the servicer of assets, if, based on relevant information that is reasonably available to the Fund's Adviser, the Adviser believes that, upon the close of the transaction, Funds (and other discretionary advisory accounts) managed by the Adviser will purchase less than 50% of the dollar amount of securities of each class acquired by the Fund in the aggregate and the Fund participates in each such class on the same terms as other purchasers of that class.

(iii) Syndicated Loan Facilities

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A Fund may also participate as a member of a syndicated loan facility (*i.e.*, as a lender to the borrower under the facility) in which a Trading Entity is also (i) an agent with responsibility (either solely or with one or more co-agents) for structuring, arranging, placing, or administering the loan facility or for other functions related to the loan syndicate, (ii) a syndicate member or (iii) both. As such an agent, a Trading Entity might, among other things, negotiate with the Fund over its initial participation in the syndicate or over its subsequent approval of a waiver or other amendments to the loan facility requested by the borrower. A Trading Entity would likely receive fees from the borrower under the loan facility for acting as an agent, which the Fund, as a

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(17) The Applicants note that a Trading Entity (or its affiliate) may act in other capacities with respect to an ABS or MBS vehicle. For example, the Trading Entity (or an affiliate) might serve as custodian, trustee, hedging counterparty, paying agent or administrator for the vehicle.

non-agent member of the loan syndicate would not receive. Similarly, where a Trading Entity and a Fund took different actions as members of a loan syndicate (e.g., one approving a requested amendment and the other not) or committed to fund different amounts of the loan, they might receive different levels of fees in respect of the loan. Though Applicants do not necessarily concede that all such syndicated loan transactions fall under Section 17(d) of the Act and Rule 17d-1 thereunder, such transactions could arguably come within the scope of those provisions in light of the fact that a Fund and a Trading Entity could have an interest in the same loan facility.

As a condition to the requested relief for syndicated loan facilities in which a Fund and a Trading Entity participate and that may otherwise be prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder, (a) their participation would involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated participants in such facility, (b) the terms of the Fund's participation in the facility (to the extent within the knowledge and control of the Trading Entity) would be on a basis no less advantageous than that of other similarly situated participants (*i.e.*, the Fund will receive the same priority, security, interest rate and fees as other participants in the same tranche or other portion of the loan in which the Fund is a participant), except to the extent such difference is related to services performed with respect to the facility or their role in the facility and (c) in the case of the primary syndication of a loan facility where the Trading Entity is lead agent with primary responsibility for structuring, arranging or placing such facility, the Fund will participate in the facility only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon conclusion of allocations to holders of record in the

primary syndication of the facility, less than 50% of the participations will be held by Funds (and other discretionary advisory accounts) managed by the Adviser.

(iv) Investments in the Same Company.



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It is also possible that a Fund could make an investment in a company (or other issuer) in which a Trading Entity also has invested. In such a situation, the Fund and the Trading Entity might hold the same securities issued by the company or one could hold securities of a different class or even a different type (e.g., debt vs. equity) than the other. Again, while the Applicants do not necessarily concede that all such situations fall under Section 17(d) of the Act and Rule 17d-1 thereunder, some situations where a Fund and a Trading Entity have invested in the same company could arguably come within the scope of those provisions, given the fact that the Fund and the Trading Entity would have an interest in the same company.

As a condition to the requested relief for investments by a Fund and a Trading Entity in the same company (or other issuer) that would otherwise be prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder (except in the case of syndicated loan transactions, which, as discussed above, will be subject to a separate condition), (a) the Fund's and the Trading Entity's investment will involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated investors in such company and (b) the Fund will participate or invest in a type or class of securities (e.g., equity securities) of the company only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the investment transaction, less than 50% of the dollar amount of the securities of such type or class will be owned by Funds (and other discretionary advisory accounts) managed by the Adviser.

As for all transactions pursuant to the Order, Joint Transactions would be subject to procedures adopted by the Fund's Board, including the majority of the Fund's disinterested directors or trustees, as applicable.

**VII.**

**VII.**

**Relevant Provisions and Relief Requested**

**A. Relevant Provisions**

(i) Section 2(a)(3)

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As a result of the Joint Venture, the Citi Trading Entity would arguably become a second-tier affiliate of the MS Funds (and the MS Trading Entity a second-tier affiliate of the Citi Funds) within the meaning of Section 2(a)(3) of the Act. Section 2(a)(3) of the Act, in relevant part, defines "affiliated person" of another person as:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned by, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such person is an investment company, any investment adviser thereof . . . .

If the MS Funds are assumed to be under the control of the MS Advisers, and Morgan Stanley also controls MSSB, then MSSB and the MS Funds are affiliated persons ( "first-tier affiliates" ) by virtue of being under common control. The Citi Trading Entity could also be viewed as a first-tier affiliate of MSSB, and a second-tier affiliate of the MS Funds, because of CGMI's ownership of more than five percent of the voting securities of MSSB, and, moreover, its control of MSSB. The affiliation analysis would be generally the same with respect to the Citi Funds and the MS Trading Entity. In reaching the above conclusion, Applicants also

assume that the presumption in Section 2(a)(9) of the Act that ownership of greater than 25% of an entity constitutes control cannot be rebutted on the facts of the present case.

(ii) Section 17(a)

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Section 17(a) of the Act, among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company any security or other property and from borrowing money or other property from such investment company.

The primary purpose of Section 17(a) is to prevent a person with the power to control an investment company from essentially engaging in self-dealing, to the detriment of the investment company's shareholders.<sup>(18)</sup> In that regard, Section 1(b)(2) of the Act declares that it is against the public interest and the interest of investors when:

investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders . . . .

When the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, then the abuse that Section 17(a) is designed to prevent is not present. The MS Funds and the Citi Funds propose to engage in Securities Transactions with the Citi Trading Entity and the MS Trading Entity, respectively, following closing of the Joint Venture, just as they have previously. Applicants submit that just as in previous transactions, as is discussed in section VIII below, no risk of self-dealing would present itself in any Securities Transaction, as the Citi Trading Entity and the MS Trading Entity will

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<sup>(18)</sup> See, e.g., S. Rep. No. 1775, 76th Cong. 3d Sess. 6 (1940).

have no influence over portfolio decisions by the MS Advisers and the Citi Adviser, respectively, and the MS Advisers and the Citi Adviser would receive no unfair pecuniary advantage from engaging in the Securities Transactions with the Citi Trading Entity and the MS Trading Entity, respectively.

(iii) Section 17(d)



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Section 17(d) of the Act and Rule 17d-1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any second-tier affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Rule 17d-1 provides that, in passing upon an application for such an order, the Commission will consider whether the participation of a registered investment company in a joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other applicants.

Section 17(d), and Rule 17d-1 thereunder, were intended to prohibit abuses arising from conflicts of interest where rather than being on opposite sides of a transaction, an investment company and its affiliates share some element of combination in a transaction.<sup>(19)</sup> As noted above and explained further below, the Applicants submit that in no event will the Citi Trading Entity or the MS Trading Entity have the ability to influence the decisions of the MS Advisers on behalf of the MS Funds or the Citi Adviser on behalf of the Citi Funds, respectively. Moreover, participation by the MS Funds or the Citi Funds in such transactions with the Citi Trading Entity

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<sup>(19)</sup> *SEC v. Talley Industries, Inc.*, 399 F.2d 396, 403 (2d Cir. 1968), *cert denied*, 393 U.S. 1015 (1969); *see also*, Investment Company Act Release No. 17534 (June 15, 1990) (Sections 17(a) and 17(d) were designed to protect investment companies from self-dealing and overreaching by insiders).

or the MS Trading Entity, respectively, would be on a basis similar to the Citi Trading Entity or the MS Trading Entity, respectively, unless any difference is related to the differing nature of their participation in the transaction.(20)

**B. Authority for the Order**

Section 17(b) of the Act permits any person to file an application for an order of the Commission exempting a proposed transaction of the applicant from the provisions of Section 17(a). Such applications are to be granted by the Commission if evidence establishes that:

- (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;
- (2) the proposed transaction is consistent with the policy of each registered investment company concerned . . . ; and
- (3) the proposed transaction is consistent with the general purposes of [the Act].

Section 6(c) of the Act, in relevant part, authorizes the Commission to exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act. Relief is being requested pursuant to Section 6(c), as well as Section 17(b) because, among other things, the Order would cover certain classes of transactions.

Rule 17d-1 provides that, in passing upon an application for an order of the Commission permitting a proposed joint venture or joint arrangement otherwise proscribed by Section 17(d), the Commission will consider whether the participation of a registered investment company in a joint venture or joint arrangement is consistent with the provisions, policies and purposes of the

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(20) For example, in a syndicated loans transaction, the participation of various parties may differ where a party plays an additional role, such as lead agent, in the transaction.

Act and the extent to which such participation is on a basis different from or less advantageous than that of the other applicants.

**C. Relief Requested**

Due to their second-tier affiliation, any Securities Transaction by the MS Funds involving the Citi Trading Entity, and by the Citi Funds involving the MS Trading Entity, would be subject to Section 17(a) of the Act where it constitutes a principal transaction between them, and for Joint Transactions, Section 17(d) of the Act and Rule 17d-1 thereunder.

The inability of the MS Funds and the Citi Funds to execute Securities Transactions involving the Citi Trading Entity and the MS Trading Entity, respectively (exclusively as a result of Citigroup's and Morgan Stanley's direct or indirect interest in MSSB) would significantly limit the universe of securities broker-dealers and banks available to the Funds, the universe of underwritings in which the Funds may participate and the level and number of Securities Transactions in which the Funds may engage.

In order to permit the Funds to be managed as effectively as possible, Applicants seek relief from the provisions of Sections 17(a) and an Order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder. Applicants request an Order, pursuant to Sections 6(c) and 17(b) of the Act exempting Securities Transactions entered into in the ordinary course of business by a MS Fund involving the Citi Trading Entity and by a Citi Fund involving the MS Trading Entity under the circumstances described herein from the provisions of Sections 17(a) of the Act, and pursuant to Rule 17d-1 under Section 17(d) of the Act permitting the Securities Transactions described above. The Order would apply only where the Citi Trading Entity is deemed to be a second-tier affiliate of a MS Fund, and the MS Trading Entity is deemed to be a second-tier affiliate of a Citi Fund, solely because of Citigroup's and Morgan Stanley's direct or indirect ownership interest in MSSB.

VIII.

VIII.

**Rationale for Relief**

Applicants submit that the policies which Sections 17(a) and 17(d) of the Act, and Rule 17d-1 thereunder, were meant to further are not implicated here because Citigroup and the Citi Trading Entity are not in a position to cause a MS Fund to enter into a Securities Transaction or otherwise influence portfolio decisions by the MS Advisers on behalf of the MS Funds; and, similarly, Morgan Stanley and the MS Trading Entity are not in a position to cause a Citi Fund to enter into a Securities Transaction or otherwise influence portfolio decisions by the Citi Adviser on behalf of the Citi Fund. As a result, no Trading Entity is in a position to engage in self-dealing or otherwise cause any of the relevant Funds to enter into transactions that are not in the best interests of its shareholders. In addition, there is an existing separation and information barrier between the MS Advisers and the MS Funds on the one hand and other units of Morgan Stanley on the other (and between the Citi Adviser and the Citi Funds on the one hand and other units of Citigroup on the other).

Moreover, Applicants submit that the circumstances under which the Securities Transactions would be conducted, including in particular the proposed conditions for the Order, satisfy the statutory standards for relief. The proposed conditions will be of two general types, and are reflected in the proposed conditions for the Order. The Applicants refer to the first type of conditions as structural, and they are intended to assure that the MS Advisers and the MS Funds continue to operate independently of, and free of any undue influence by, Citigroup and the Citi Trading Entity and similarly, that the Citi Adviser and the Citi Funds continue to operate independently of, and free of any undue influence by, Morgan Stanley and the MS Trading Entity.

The Applicants refer to the second type of conditions as “transactional” conditions. Those conditions are designed to assure that the terms of the individual transactions are fair from the perspective of the Funds. At the outset, the conditions require each Fund’s Board, including a majority of its disinterested directors or trustees, as applicable, to approve, and the Fund to implement, procedures governing all Securities Transactions pursuant to the Order. Pursuant to such procedures, among other things, the Securities Transactions will be subject to ongoing review by each Fund’s Chief Compliance Officer, and will be reviewed by its Board, including a majority of the disinterested directors/trustees, on a quarterly basis. The Fund’s Adviser will provide a report to the Board, subject to review and approval by the Fund’s Chief Compliance Officer, that will indicate that the conditions of the Order have been satisfied and, to the extent there have been any changes in the volume, type or terms of such transactions between the relevant Fund and Trading Entity, a determination that legitimate reasons exist for such change. Such reasons might include, for example, an increase in the volume of transactions involving fixed-income securities due to interest rate changes or a change in the number of dealers in a fixed-income security, or changes in the number and/or type of issuers the securities of which the Trading Entity acts as underwriter or dealer. Further, the Advisers adhere to a “best execution” standard. In the case of each Securities Transaction, the relevant Adviser will make a determination that such transaction is consistent with the investment objectives of the relevant Fund and in the best interests of such Fund’s shareholders. The conditions also require price quotes from unaffiliated sources to assure fairness of price. Particular types of transactions, including possible joint transactions, will be subject to additional controls, as described in section X(B), in order to ensure that such transactions are not entered into on terms disadvantageous to the Funds.

- (i) The Securities Transactions are Reasonable and Fair and Do Not Involve the Risk of Overreaching



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The independence of the Citi Trading Entity from the MS Advisers and all MS Entities and of the MS Trading Entity from the Citi Adviser and all Citi Entities demonstrates that no risk of overreaching or self-dealing by the Citi Trading Entity or the MS Trading Entity would be present if the MS Funds and the Citi Trading Entity or the Citi Funds and the MS Trading Entity engaged in Securities Transactions. Citigroup and Morgan Stanley operate and, after the Joint Venture will continue to operate, independently. The MS Trading Entity will operate independently of the Citi Adviser and all Citi Entities. The Citi Adviser will operate independently of the MS Trading Entity and all MS Entities. The MS Advisers will operate independently of the Citi Trading Entity and all Citi Entities. The Citi Trading Entity will operate independently of the MS Adviser and all MS Entities. Similarly, as relevant to this Application, the Citi Entities and the MS Entities will each operate separately from MSSB. As a condition to the relief requested by this Application, none of Citigroup, the Citi Trading Entity or MSSB will control (within the meaning of Section 2(a)(9) of the Act), directly or indirectly, the MS Advisers or the MS Funds. Similarly, none of Morgan Stanley, the MS Trading Entity or MSSB will control (within the meaning of Section 2(a)(9) of the Act), directly or indirectly, the Citi Adviser or the Citi Funds. Further, there is not, and will not be, any express or implied understanding between Citigroup and Morgan Stanley, the Trading Entities or any Adviser that the Adviser will cause a Fund to enter into Securities Transactions or give preference to a Trading Entity in effecting such transactions between the Fund and the Trading Entity.

The Joint Venture will not effect any substantial change in the personnel or operations of the Advisers. The Citi Trading Entity and the MS Advisers, and the MS Trading Entity and the Citi Adviser, respectively, have and will have their own separate officers and employees, each

has been and will continue to be separately capitalized and each has maintained and will maintain its own separate books and records and physically separate offices. Similarly, the MS Advisers operate as distinct entities and independent profit centers under the umbrella of Morgan Stanley, and the Citi Adviser operates as a distinct entity and independent profit center under the umbrella of Citigroup. Thus, the Advisers will have no economic incentive to place orders with an opposing Trading Entity unless it is in a Fund's best interests to do so. In sum, the formation of MSSB will not affect the operations of the Advisers or influence the decisions of the Advisers on behalf of the Funds to engage in Securities Transactions with the Trading Entities.

If an MS Adviser or a Citi Adviser were to purchase securities on behalf of a MS Fund or a Citi Fund, respectively, in a transaction involving the Citi Trading Entity or the MS Trading Entity, respectively, the benefits afforded the Trading Entities by engaging in such transactions would differ from, and would not be shared by, the Advisers. That is, the Adviser benefits from a transaction only where such transaction is beneficial to the Fund (by increasing the assets under management by the Adviser and therefore, the Adviser's fee, and by positively affecting the Adviser's performance record). Further, personnel of the MS Advisers and the Citi Adviser will be compensated based on the performance of the MS Funds and the Citi Funds, respectively, managed by them and profitability of the MS Advisers and the Citi Adviser will not be affected in any way by the profitability of the Citi Trading Entity and the MS Trading Entity, respectively.

(ii) The Funds' Participation in Joint Transactions Will Be on a Basis No Less Advantageous Than That of Similarly Situated Trading Entities

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The complete separation of the MS Advisers from the Citi Trading Entity and the Citi Adviser from the MS Trading Entity, and the inability of the Trading Entities to influence the Advisers prevents each party in a Joint Transaction from obtaining an unfair advantage. In

addition, the entity separation and the information barriers in place between the Advisers and the Trading Entities assures that no Adviser will have an economic incentive to trade with an opposing Trading Entity unless it is in the best interest of a Fund. Moreover, for any Joint Transaction effected pursuant to the Order, the Applicants will follow procedures, described in further detail in section X below, designed to ensure the fairness of such transactions. For example, in a Joint Transaction involving ABS or MBS that are newly issued by special purpose entities sponsored by the Citi Trading Entity (or an affiliate) or the MS Trading Entity (or an affiliate), respectively, under circumstances in which both (i) the residual interest in the special purpose entity is owned directly or indirectly by the respective Trading Entity (or an affiliate) and (ii) the Trading Entity (or an affiliate) acts as the servicer of assets, a Fund will purchase such ABS or MBS only where Funds (and other discretionary advisory accounts) managed by the Adviser purchase less than 50% of the dollar amount of securities of each class acquired by the Fund, and the Fund participates in each such class on the same terms as other purchasers of that class. Such a condition will reflect the arms-length nature of the terms upon which the Fund will participate. In addition, the power of the Trading Entity to collapse the trust in a transaction involving TOBs would be limited to the occurrence of certain events.(21)

With respect to investments in a company or syndicated loan facility in which a Fund and a Trading Entity participate in a manner that may be prohibited by Section 17(d) of the Act, the terms of the Fund's investment or participation, respectively, will involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated investors in the company or participants in the facility, respectively. With respect to participation in a syndicated loan facility, the terms of the Fund's participation in the

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(21) See note 16, *supra*.

facility (to the extent within the knowledge and control of the Trading Entity) will be on a basis no less advantageous than that of other similarly situated participants (*i.e.*, the Fund will receive the same priority, security, interest rate and fees as other participants in the same tranche or other portion of the loan in which the Fund is a participant), except to the extent such difference is related to services performed with respect to the facility or their role in the facility; (22) and in the case of the primary syndication of a loan facility where the Trading Entity is lead agent with primary responsibility for structuring, arranging or placing such facility, the Fund will participate in the facility only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon conclusion of allocations to holders of record in the primary syndication of the facility, less than 50% of the participations will be held by Funds (and other discretionary advisory accounts) managed by the Adviser. With respect to investments in the same company (other than syndicated loan transactions), the Fund will invest in a type or class of securities (*e.g.*, equity securities) of the company only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the investment transaction, less than 50% of the dollar amount of the securities of such type or class will be owned by Funds (and other discretionary advisory accounts) managed by the Adviser.

(iii) The Order Would be Appropriate in the Public Interest and Consistent with the Policies of the Funds

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Prohibiting the MS Funds from engaging in Securities Transactions involving the Citi Trading Entity (and the Citi Funds with the MS Trading Entity) can harm the interests of the shareholders of the Funds by preventing the Adviser from investing in a way which is most beneficial to the shareholders, policies which Sections 17(a) and 17(d) of the Act were meant to

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(22) *See, e.g., note 20, supra.*

further. Given that the Securities Transactions do not involve the threat of overreaching, it would be contrary to the interests of the Funds shareholders to prohibit them.

The Trading Entities typically are leading broker-dealers (or banks) in transactions involving a wide variety of asset classes, including the types of securities in which the Funds seek to invest. Further, consolidation in the financial services industry has led funds and their advisers to rely increasingly on a smaller number of institutions for reliable information and access to the securities markets. Permitting the Securities Transactions that would be prohibited or restricted by Section 17 of the Act would enable the Funds to continue to engage in transactions with the same universe of securities dealers as prior to formation of the Joint Venture, allowing the Funds to achieve better transaction terms and portfolio diversification and liquidity than if relief were not granted. Prohibiting the Securities Transactions would significantly narrow this universe and potentially impair the ability to diversify and to achieve favorable terms or best price and execution, resulting in potential harm to shareholders of the Funds. Finally, as noted earlier, each of the Funds may engage in transactions in fixed-income securities and, consequently, granting the Order would further the policies of the Funds.

(iv) The Securities Transactions Are Consistent With the Purposes of the Act and the Protection of Investors

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As noted above, the independence of the businesses of Morgan Stanley and Citigroup generally will provide protection to investors, and transactions will be conducted on essentially the same arm's-length basis as existed prior to the closing of the Joint Venture. Moreover, the Advisers and the Funds will adopt and monitor procedures designed to ensure that the terms of particular Securities Transactions involving the relevant Trading Entities are fair and reasonable and do not involve overreaching. For example, before a Fund and a Trading Entity enter into any principal transaction, the Adviser will obtain competitive quotations for the same securities



(or in the case of securities for which quotations for the same securities are not available, competitive quotations for Comparable Securities)(23) from at least two other unaffiliated dealers that are in a position to quote favorable prices. For each such Securities Transaction, the Adviser will determine, based upon the information reasonably available to the Fund and the Adviser and deemed relevant by it, that the price available from the Trading Entity is at least as favorable as that available from other sources. In addition, each Fund's Board, including a majority of its disinterested Directors/Trustees, will approve, and the Fund will implement, procedures governing all Securities Transactions, including principal transactions between the applicable Trading Entity and the Funds. In a TOBs transaction proposed to be structured after the closing of the Joint Venture, the relevant Fund's Board will adopt procedures designed to assure that such transaction is in the best interests of the Fund, taking into consideration aspects unique to such arrangement.

**IX.**

**Precedent**

Applicants submit that the policy considerations that supported the Commission's grant of relief from Section 17(a) of the Act and permitting certain transactions pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder in *Keeper Holdings, LLC, et al.* ( *Keeper* ), Investment Company Act Release Nos. 25145 (August 29, 2001) (Notice) and 25171 (Sept. 25, 2001) (Order), are particularly relevant to Applicants request for relief. In *Keeper*, as discussed further below, the Commission required few conditions for the relief sought, presumably because it determined that the risks of self-dealing and overreaching that Section 17 is designed to prevent were sufficiently *de minimis* in covered transactions between two entities which were

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(23) The term *Comparable Securities* refers to securities with substantially identical maturities, credit risk and repayment terms (including floating or fixed-rate coupons, attached options, or any other provisions that affect the expected size or timing of the payments from the securities) as the securities to be purchased or sold.

second-tier affiliates solely by virtue of a joint venture between the parent company of each such entity. Of the relevant exemptive orders, *Keeper* is the most structurally similar to Applicants' situation. Applicants note that *Keeper* contained far fewer and less burdensome conditions than *American Century* (described below); however, Applicants have included in section X below conditions based on *American Century* (and certain other precedent) to establish fully the basis for exemption due to the nature and scope of the Joint Venture. In contrast, the Joint Venture in *Keeper* provided primarily recordkeeping and administrative services to retirement plans and health and welfare benefit plans, and, to a lesser extent, provided investment advisory, broker-dealer and outsourcing services to such plans.

Applicants also refer the Commission to the order granted in *American Century Companies, Inc., et al.* ( *American Century* ), Investment Company Act Release Nos. 25449 (March 1, 2002) (Notice) and 25501 (March 27, 2002) (Order). In *American Century*, in effect, the Commission determined that the risks of self-dealing and overreaching that Section 17 is designed to prevent were mitigated sufficiently in transactions between certain funds and certain broker-dealer entities, where the funds and the broker-dealer entities were second-tier affiliates solely by virtue of the interest of the parent company of the broker-dealer entities in the parent company of the funds' advisers.

The applicants in *Keeper* and *American Century* were able to avoid self-dealing and overreaching in large part due to the separation maintained between each entity desiring to engage in the relevant transactions and the implementation of procedures designed to prevent conflicts of interest. Similarly, as addressed above, the MS Advisers will operate independent of the Citi Trading Entity, and the Citi Adviser of the MS Trading Entity, and Applicants have proposed conditions for relief that will ensure ample separation, prevent self-dealing and

overreaching and avoid conflicts of interest. In addition, the affiliation between the broker-dealer entities and the advisers in *American Century* was more direct than the second-tier affiliation between MS Funds and MS Advisers and the Citi Trading Entity (and the Citi Funds and Citi Adviser and the MS Trading Entity) created by the closing of the Joint Venture. In *American Century*, the parent of the broker-dealer entities held a 45% economic interest (approximately 8.7% of the voting interests) in the parent of the advisers, which parent was controlled by the Stowers family. By contrast, the affiliation between the MS Funds, the MS Advisers and the Citi Trading Entity (and the Citi Funds, the Citi Adviser and the MS Trading Entity) will result solely from the interests of CGMI, and the parent of the MS Advisers, Morgan Stanley, in an independently operated entity, the Joint Venture. The Citi Trading Entity will have no interest in Morgan Stanley and Morgan Stanley will have no interest in the Citi Trading Entity. Thus, while *American Century* required board approval for each joint transaction involving material negotiation between the relevant parties, Applicants submit that such a requirement in this case would place an unfair burden on a Fund's Board given the breadth of transactions in which the Funds are expected to engage, and, moreover, is unnecessary given the other conditions imposed on the Funds, the Advisers and the Trading Entities in order to prevent the Funds and their Advisers from engaging in any trades as a result of an incentive based on the existence of the Joint Venture.

In addition to *Keeper* and *American Century*, for reasons discussed above relating to the underlying purpose of Section 17(a) and the absence of the potential for self-dealing, Applicants submit that the policy considerations that supported the Commission's issuances of other orders granting relief from Section 17(a) apply equally here, including: *Morgan Stanley Investment Management Inc., et al.*, Investment Company Act Release Nos. 28125 (Jan. 18, 2008) (Notice)

and 28150 (Feb. 13, 2008) (Order); *Lehman Brothers Asset Management LLC, et al.*, Investment Company Act Release Nos. 27920 (Aug. 1, 2007) (Notice) and 27957 (Aug. 28, 2007) (Order); *J.P. Morgan Investment Management Inc., et al.*, Investment Company Act Release Nos. 26446 (May 10, 2004) (Notice) and 26466 (June 8, 2004) (Order); *J.P. Morgan Fleming Asset Management (USA), Inc., et al.*, Investment Company Act Release Nos. 25574 (May 15, 2002) (Notice) and 25608 (June 11, 2002) (Order); *Goldman Sachs Trust, et al.*, Investment Company Act Release Nos. 24834 (Jan. 23, 2001) and 24877 (Feb. 21, 2001) (Order); and *MONY Life Insurance Company, et al.*, Investment Company Act Release Nos. 24073 (October 5, 1999) (Notice) and 24120 (November 2, 1999) (Order). Applicants note that the Commission has granted relief in the above orders for transactions between both second- and first-tier affiliates. While Applicants recognize that the conditions in such orders may be more strict in certain respects, the affiliation between the parties was also more direct. By contrast, Applicants request relief to engage in Securities Transactions between second-tier affiliates only.

For reasons discussed above relating to the underlying purpose of Section 17(d) and the absence of the potential for self-dealing, Applicants submit that the policy considerations that supported the Commission's issuances of the *Keeper* and *American Century* orders granting relief from Section 17(d) also apply here. See also *Massachusetts Mutual Life Insurance Company, et al.* ( *MassMutual* ), Investment Company Act Release Nos. 24557 (July 13, 2000) (Notice) and 24595 (August 8, 2000) (Order), permitting coinvestments by certain registered and unregistered funds and their investment advisers. Applicants note that *MassMutual* contained more conditions than in this Application, however, the affiliation in that situation was more direct than the second-tier affiliations involved here.

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Applicants Conditions



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

**A. Structural**

(1) **Citigroup will control none of the MS Advisers or the MS Funds or any principal underwriter for the MS Funds,(24) directly or indirectly, within the meaning of Section 2(a)(9) of the Act. The Order will remain in effect only so long as Morgan Stanley, or such other entity not controlling, controlled by or under common control with Citigroup, primarily controls the MS Advisers.**

(2) **Morgan Stanley will control none of the Citi Adviser or the Citi Funds or any principal underwriter for the Citi Funds,(25) directly or indirectly, within the meaning of Section 2(a)(9) of the Act. The Order will remain in effect only so long as Citigroup, or such other entity not controlling, controlled by or under common control with Morgan Stanley, primarily controls the Citi Adviser.**

(3) **Citigroup will not directly or indirectly consult with Morgan Stanley, the MS Advisers or any portfolio manager of the MS Advisers concerning securities purchases or sales or the selection of a broker or dealer for any Securities Transaction placed or to be placed on behalf of a MS Fund, or otherwise seek to influence the choice of broker or dealer for any Securities Transaction by a MS Fund other than in the normal course of sales activities of the same nature that are**

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(24) Other than with respect to certain newly organized closed-end funds, described *supra* at note 3.

(25) Other than with respect to certain newly organized closed-end funds, described *supra* at note 3.

being carried out during the same time period with respect to unaffiliated institutional clients of the Citi Trading Entity, or that existed between the Citi Trading Entity and the MS Advisers prior to consummation of the Joint Venture.

(4) Morgan Stanley will not directly or indirectly consult with Citigroup, the Citi Adviser or any portfolio manager of the Citi Adviser concerning securities purchases or sales or the selection of a broker or dealer for any Securities Transaction placed or to be placed on behalf of a Citi Fund, or otherwise seek to influence the choice of broker or dealer for any Securities Transaction by a Citi Fund other than in the normal course of sales activities of the same nature that are being carried out during the same time period with respect to unaffiliated institutional clients of the MS Trading Entity, or that existed between the MS Trading Entity and the Citi Adviser prior to consummation of the Joint Venture.

(5) No officer, director or employee of MSSB will seek to influence in any way the terms of any Securities Transaction covered by the Order.

(6) The MS Advisers and the Citi Trading Entity will operate as separate organizations, with separate capitalization, separate books and records, separate officers and employees, and physically separate offices. The Citi Trading Entity will adopt, and implement, policies that prohibit the Citi Trading Entity from (i) linking any approval or action relating to MSSB to any action by any MS Fund or by any MS Adviser relating to any MS Fund or (ii) using the existence of MSSB as a basis for seeking to persuade any MS Fund or MS Adviser to engage in business with the Citi Trading Entity. The MS Advisers have adopted policies

(3) Citigroup will not directly or indirectly consult with Morgan Stanley, the MS Advisers or any portfolio manager

designed to keep information about client holdings and transactions on a confidential basis, prior to any public disclosure. Pursuant to these policies, the MS Advisers will designate information regarding investment advisory and portfolio execution matters relating to the MS Funds as information that may not be communicated between MSSB, on one hand, and the MS Advisers, on the other hand, prior to any public disclosure.

(7) The Citi Adviser and the MS Trading Entity will operate as separate organizations, with separate capitalization, separate books and records, separate officers and employees, and physically separate offices. The MS Trading Entity will adopt, and implement, policies that prohibit the MS Trading Entity from (i) linking any approval or action relating to MSSB to any action by any Citi Fund or by any Citi Adviser relating to any Citi Fund or (ii) using the existence of MSSB as a basis for seeking to persuade any Citi Fund or Citi Adviser to engage in business with the MS Trading Entity. The Citi Adviser has adopted policies designed to keep information about client holdings and transactions on a confidential basis, prior to any public disclosure. Pursuant to these policies, the Citi Adviser will designate information regarding investment advisory and portfolio execution matters relating to the Citi Funds as information that may not be communicated between MSSB, on the one hand, and the Citi Adviser, on the other hand, prior to any public disclosure.

(8) Citigroup will not adopt any compensation scheme any component of which is based on (i) a factor that treats the MS Funds differently than unaffiliated counterparties or (ii) the amount of business done by the Citi Funds with the MS

Trading Entity except to the extent such business might affect indirectly the profits or losses of the Citi Adviser.

(9) Morgan Stanley will not adopt any compensation scheme any component of which is based on (i) a factor that treats the Citi Funds differently than unaffiliated counterparties or (ii) the amount of business done by the MS Funds with the Citi Trading Entity except to the extent such business might affect indirectly the profits or losses of the MS Advisers.

(10) The respective legal/compliance departments of the MS Advisers and the Citi Trading Entity, and of the Citi Adviser and the MS Trading Entity, will prepare guidelines for their respective personnel to make certain that Securities Transactions effected pursuant to the Order comply with its conditions, and that the respective Advisers and Trading Entities maintain an arms-length relationship. The respective compliance departments of the Advisers and Trading Entities will monitor periodically the activities of the Advisers and Trading Entities, respectively, to make certain that the conditions to the Order are met.

**B. Transactional**

With respect to each Securities Transaction entered into or effected pursuant to the Order:

(1) Each Fund's Board, including a majority of its disinterested directors/trustees (the Required Majority ) or their designee, shall approve, and the Fund shall implement, procedures governing all transactions pursuant to the Order and the Fund's Board shall no less frequently than quarterly review all such transactions and receive and review a report of those transactions. Such report, which will be

(8) Citigroup will not adopt any compensation scheme any component of which is based on (i) a factor that

prepared by the Fund's Adviser, and reviewed and approved by the Fund's Chief Compliance Officer, will indicate for each transaction that the conditions of the Order have been satisfied, and will include a discussion of any significant changes in the volume, type or terms of transactions between the relevant Fund and Trading Entity, and a determination that legitimate reasons exist for such changes.

(2) For each transaction, the MS Advisers will adhere to a best execution standard and will consider only the interests of the MS Funds and will not take into account the impact of a MS Fund's investment decision on the Citi Trading Entity or its affiliates. For each transaction, the Citi Adviser will adhere to a best execution standard and will consider only the interests of the Citi Funds and will not take into account the impact of a Citi Fund's investment decision on the MS Trading Entity or its affiliates. Before entering into any such transaction, the Adviser will determine that the transaction is consistent with the investment objectives and policies of the Fund and is in the best interests of the Fund and its shareholders.

(3) Each Fund will (i) for so long as the Order is relied upon, maintain and preserve in an easily accessible place a written copy of the procedures and conditions (and any modifications thereto) that are described herein, and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Securities Transaction in which the Fund's Adviser knows that both a Trading Entity and the Fund directly or indirectly have an interest occurs, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold by the Fund, a

**description of the Trading Entity's interest or role in the transaction, the terms of the transaction, and the information or materials upon which the determination was made that each such transaction was made in accordance with the procedures set forth above and conditions in this Application.**

**(4) Except as otherwise provided in 4(a) and 4(b) below, before any secondary market principal transaction is entered into between a Fund and a Trading Entity, the Fund's Adviser must obtain a competitive quotation for the same securities (or in the case of securities for which quotations for the same securities are not available, a competitive quotation for Comparable Securities) from at least two unaffiliated dealers that are in a position to quote favorable market prices. For each such transaction, the Adviser will determine, based upon the quotations and such other relevant information (such as available transaction prices and any other information regarding the value of the securities) as is reasonably available to the Adviser, that the price available from the Trading Entity is at least as favorable as that available from other sources.**

**(a) With respect to each such transaction involving repurchase agreements, a Fund will enter into such agreements only where the Adviser has determined, based upon relevant information reasonably available to the Adviser, that the income to be earned from the repurchase agreement is at least equal to that available from other sources. Before any repurchase agreements are entered into pursuant to the exemption, the Fund or the Adviser must obtain competitive quotations from at least two unaffiliated dealers with respect to repurchase agreements comparable to the type of**

**(3) Each Fund will (i) for so long as the Order is relied upon, maintain and preserve in an easily**

repurchase agreement involved, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required.

(b) With respect to each such transaction involving variable rate demand notes for which dealer quotes are not ordinarily available, a Fund will only undertake purchases and sales where the Adviser has determined, based on relevant information reasonably available to the Adviser, that the income earned from the variable rate demand note is at least equal to that of variable rate demand notes of comparable quality that are available from other sources.

(5) With respect to securities offered in a primary market underwritten transaction, a Fund will undertake such purchase from the Trading Entity only where the Adviser has determined, based upon relevant information reasonably available to the Adviser, that the securities were purchased at a price that is no more than the price paid by each other purchaser of securities from the Trading Entity or other members of the underwriting syndicate in that offering or in any concurrent offering of the securities, and on the same terms as such other purchasers (except in the case of an offering conducted under the laws of a country other than the United States, for any rights to purchase that are required by law to be granted to existing securities holders of the issuer).

(6) In the case of an arrangement regarding a tender option bond trust for which a Trading Entity acts as a liquidity provider or remarketing agent and owns an interest (or may own an interest as a result of such capacity):

(a) With respect to each such transaction involving repurchase agreements, a Fund will enter i

(a) where such arrangement was structured prior to the closing of the Joint Venture, the terms of such arrangement will not change after such closing without the approval of the Required Majority of the Fund's Board, based on a finding that it is in the best interests of the Fund to continue such arrangement, as proposed to be modified; provided that if the Trading Entity owns the residual interest and a Fund owns the floating rate interest, such Board approval will not be required if: (i) the Fund is eligible to participate in any discretionary tender on the same basis as any similarly situated holder of floating rate interests, (ii) the Fund must participate in any mandatory tender on the same basis as each similarly situated holder and (iii) less than 50% of the floating rate interests are owned by Funds (and other discretionary accounts) managed by the Fund's Adviser.

(b) in the case of such arrangements proposed to be structured after the closing of the Joint Venture:

(i) the Required Majority of the Fund's Board will adopt procedures designed to assure that it is in the best interests of the Fund to participate in any such arrangements. Such procedures will take into consideration, among other things, the terms of the arrangement, the nature of the respective interests in the trusts that may be held by the Trading Entity and the Funds, and the circumstances under which the Trading Entity may cause termination of the trust and the transfer of the underlying bonds back to the Fund; and



(ii) where a Trading Entity owns the residual interest and a Fund owns a floating rate interest: (1) the Fund must be eligible to participate in any discretionary tender on the same basis as any similarly situated holder of floating rate interests, (2) the Fund must participate in any mandatory tender on the same basis as each similarly situated holder and (3) less than 50% of the floating rate interests must be owned by Funds (and other discretionary accounts) managed by the Fund's Adviser.

(c) before any such arrangements are entered into pursuant to the exemption, where the Fund holds the residual interest, the Fund or the Adviser must obtain competitive quotations from at least two unaffiliated institutions with respect to fees charged by such institutions for acting as liquidity provider or remarketing agent, except that if quotations are unavailable from two such institutions, only one other competitive quotation is required. Any fees paid to the Trading Entity as liquidity provider or remarketing agent will be no greater than the lowest of such quotations, unless the Board finds that such difference is justified by a corresponding difference in the nature of the services provided.

**(7) With respect to ABS or MBS that are newly issued by special purpose entities sponsored by a Trading Entity (or an affiliate) under circumstances in which both the following are true: (i) the residual interest in the special purpose entity is owned directly or indirectly by the Trading Entity (or an affiliate), and (ii) the Trading Entity (or an affiliate) acts as the servicer of assets, purchases of such**

securities will be made by a Fund only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the transaction, Funds (and other discretionary advisory accounts) managed by the Adviser will purchase less than 50% of the dollar amount of securities of each class acquired by the Fund in the aggregate, and the Fund participates in each such class on the same terms as other purchasers of that class.

(8) With respect to a syndicated loan facility in which a Fund and a Trading Entity participate in a manner that might otherwise be prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder, (a) their participation will involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated participants in such facility, (b) the terms of the Fund's participation in the facility (to the extent within the knowledge and control of the Trading Entity) will be on a basis no less advantageous than that of other similarly situated participants (*i.e.*, the Fund will receive the same priority, security, interest rate and fees as other participants in the same tranche or other portion of the loan in which the Fund is a participant), except to the extent such difference is related to services performed with respect to the facility or their role in the facility and (c) in the case of the primary syndication of a loan facility where the Trading Entity is lead agent with primary responsibility for structuring, arranging or placing such facility, the Fund will participate in the facility only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon conclusion of allocations to holders of record in the primary syndication of the facility, less than 50% of the participations will be

held by Funds (and other discretionary advisory accounts) managed by the Adviser.

(9) With respect to situations in which a Fund and a Trading Entity have knowingly invested in the same company and that might otherwise be prohibited by Section 17(d) of the Act and Rule 17d-1 thereunder (other than a syndicated loan transaction, which is subject to Transactional Condition (8) above), (a) the Fund s and the Trading Entity s investment will involve no coordination between the Trading Entity and the Fund beyond that of a type the Trading Entity engages in with other unaffiliated investors in such company and (b) the Fund will participate or invest in a type or class of securities (*e.g.*, equity securities) of the company only where, based on relevant information that is reasonably available to the Adviser, the Adviser believes that, upon the close of the investment transaction, less than 50% of the dollar amount of the securities of such type or class will be owned by Funds (and other discretionary advisory accounts) managed by the Adviser.

XI.

**Conclusion**

Applicants submit that the Securities Transactions described in this Application satisfy the standards of Sections 6(c) and 17(b) and Rule 17d-1. There is no danger of overreaching or self-dealing by a Trading Entity in connection with a Securities Transaction, and there will be no conflict of interest associated with an Adviser's decision to engage in a Securities Transaction with a Trading Entity on behalf of a Fund. Moreover, the Order is consistent with the policies of the Funds and the protection of investors, as the Advisers will manage the Funds in accordance

with the policies and investment objectives of the Funds absent any influence by the Trading Entities. Finally, permitting the Securities Transactions will be appropriate in the public interest and consistent with general purposes of the Act because the ability to engage in Securities Transactions increases the likelihood of a Fund achieving best price and execution in such transactions and results in none of the abuses that the Act was designed to prevent.(26)

Based upon the foregoing, Applicants respectfully submit that it is appropriate in the public interest and consistent with the protection of investors and the purposes and policies underlying the Act to issue an Order pursuant to Sections 6(c) and 17(b) of the Act exempting Securities Transactions from the provisions of Section 17(a) of the Act and, in the case of Joint Transactions, permitting such Securities Transactions pursuant to Section 17(d) and Rule 17d-1 of the Act on the basis also that the Fund's participation is no less advantageous than the Trading Entity's unless such difference is justified by services performed or role in the transaction.

**XII.**

**Procedural Matters**

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Pursuant to Rule 0-2(f) under the Act, Applicants state that written or oral communications regarding this Application should be directed to the names and addresses indicated on the cover page of this Application.

The address of each Applicant is as follows: The principal offices of each of the MS Funds are currently located at 522 Fifth Avenue, New York, New York 10036. The principal offices of each of the MS Advisers are currently located at 522 Fifth Avenue, New York, New York 10036. The principal office of MS & Co. is currently located at 1585 Broadway, New York, New York 10036. The principal office of LMP Corporate Loan Fund Inc. is currently

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(26) *See* Section 1(b)(2) of the Act, *supra*.



located at 55 Water Street, New York, New York 10041. The principal office of Citigroup Alternative Investments LLC is located at 399 Park Avenue, New York, New York 10043. The principal office of CGMI is located at 388 Greenwich Street, New York, New York 10013. The principal office of Citibank, N.A. is located at 399 Park Avenue, New York, New York 10043. The principal office of Citibank Canada is located at 123 Front Street West, Toronto, Ontario M5J 2M3. The principal office of Citibank International plc is located at Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB. The principal office of Citigroup Global Markets Limited is located at Citigroup Centre, Canada Square, Canary Wharf, London E14 5LB. The principal office of Citigroup Financial Products Inc. is located at 388 Greenwich Street, New York, New York 10013.

Applicants desire that the Commission issue the Order pursuant to Rule 0-5 under the Act without conducting a hearing.

All requirements of the charter documents of each Applicant have been complied with in connection with the execution and filing of this Application. Each person signing the Application is fully authorized to do so. The verifications on behalf of each Applicant required by Rule 0-2(d) are attached hereto as Exhibits A-1 to A-13. A statement of authorization with respect to the filing of this Application by each Applicant and accompanying resolutions by each Fund's Board required by Rule 0-2(c)(1) are attached hereto as Exhibits B-1 to B-2.

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The parties have executed this Second Amended and Restated Application in one or more counterparts.

Signed on behalf of each of the funds listed in Schedule A

Date: August 7, 2009

By: /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu  
Title: Vice President

MORGAN STANLEY INVESTMENT MANAGEMENT INC.

Date: August 7, 2009

By: /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu  
Title: Managing Director

MORGAN STANLEY INVESTMENT ADVISORS INC.

Date: August 7, 2009

By: /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu  
Title: Managing Director

VAN KAMPEN ASSET MANAGEMENT

Date: August 7, 2009

By: /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu  
Title: Managing Director

MORGAN STANLEY & CO. INCORPORATED

Date: August 7, 2009

By: /s/ Roger Gilbert  
Name: Roger Gilbert  
Title: Managing Director

	LMP CORPORATE LOAN FUND INC.	
Date: August 7, 2009	By:	/s/ Robert Frenkel
	Name:	Robert Frenkel
	Title:	Secretary and Chief Legal Officer
	CITIGROUP ALTERNATIVE INVESTMENTS LLC	
Date: August 7, 2009	By:	/s/ Millie Kim
	Name:	Millie Kim
	Title:	General Counsel
	CITIGROUP GLOBAL MARKETS INC.	
Date: August 7, 2009	By:	/s/ Scott L. Flood
	Name:	Scott L. Flood
	Title:	Co-General Counsel
	CITIGROUP GLOBAL MARKETS LIMITED	
Date: August 7, 2009	By:	/s/ Jeanne Campanelli
	Name:	Jeanne Campanelli
	Title:	Authorized Signatory
	CITIGROUP FINANCIAL PRODUCTS INC.	
Date: August 7, 2009	By:	/s/ Scott L. Flood
	Name:	Scott L. Flood
	Title:	Co-General Counsel

CITIBANK, N.A.

Date: August 7, 2009

By: /s/ Scott L. Flood  
Name: Scott L. Flood  
Title: Vice President

CITIBANK CANADA

Date: July 21, 2009

By: /s/ Charles Alexander  
Name: Charles Alexander  
Title: General Counsel

CITIBANK INTERNATIONAL PLC

Date: July 21, 2009

By: /s/ Jill Robson & Simon Cumming  
Name: Jill Robson & Simon Cumming  
Title: Attorneys

**MORGAN STANLEY**  
**RETAIL AND INSTITUTIONAL FUNDS**  
**AS OF AUGUST 7, 2009**

**RETAIL FUNDS**

**OPEN-END RETAIL FUNDS**

TAXABLE MONEY MARKET FUNDS

Active Assets Government Securities Trust

Active Assets Institutional Government Securities Trust

Active Assets Institutional Money Trust

Active Assets Money Trust

Morgan Stanley Liquid Asset Fund Inc.

Morgan Stanley U.S. Government Money Market Trust

TAX-EXEMPT MONEY MARKET FUNDS

Active Assets California Tax-Free Trust

Active Assets Tax-Free Trust

Morgan Stanley California Tax-Free Daily Income Trust

Morgan Stanley New York Municipal Money Market Trust

Morgan Stanley Tax-Free Daily Income Trust

EQUITY FUNDS

Morgan Stanley Capital Opportunities Trust

Morgan Stanley Dividend Growth Securities Inc.

Morgan Stanley Equally-Weighted S&P 500 Fund

Morgan Stanley European Equity Fund Inc.

Morgan Stanley Focus Growth Fund

Morgan Stanley Fundamental Value Fund

Morgan Stanley Global Advantage Fund

Morgan Stanley Global Dividend Growth Securities

Morgan Stanley Global Infrastructure Fund

Morgan Stanley Health Sciences Trust

Morgan Stanley International Fund

Morgan Stanley International Value Equity Fund

Morgan Stanley Mid Cap Growth Fund

Morgan Stanley Mid-Cap Value Fund

Morgan Stanley Natural Resource Development Securities Inc.

Morgan Stanley Pacific Growth Fund Inc.

Morgan Stanley Real Estate Fund

Morgan Stanley S&P 500 Index Fund

Morgan Stanley Series Funds

- Morgan Stanley Commodities Alpha Fund
- Morgan Stanley Alternative Opportunities Fund
- Morgan Stanley U.S. Multi-Cap Alpha Fund

Morgan Stanley Small-Mid Special Value Fund

Morgan Stanley Special Growth Fund

Morgan Stanley Special Value Fund

Morgan Stanley Technology Fund

Morgan Stanley Value Fund

BALANCED FUND

Morgan Stanley Balanced Fund

ASSET ALLOCATION FUND

Morgan Stanley Strategist Fund

TAXABLE FIXED-INCOME FUNDS

Morgan Stanley Convertible Securities Trust

Morgan Stanley Flexible Income Trust

Morgan Stanley FX Series Funds

- Morgan Stanley FX Alpha Plus Strategy Portfolio
- Morgan Stanley FX Alpha Strategy Portfolio

Procedural Matters

Morgan Stanley High Yield Securities Inc.

Morgan Stanley Limited Duration U.S. Government Trust

Morgan Stanley Mortgage Securities Trust

Morgan Stanley U.S. Government Securities Trust

TAX-EXEMPT FIXED-INCOME FUNDS

Morgan Stanley California Tax-Free Income Fund

Morgan Stanley Limited Term Municipal Trust

Morgan Stanley New York Tax-Free Income Fund

Morgan Stanley Tax-Exempt Securities Trust

SPECIAL PURPOSE FUNDS

Morgan Stanley Select Dimensions Investment Series, on behalf of its series

- Balanced Portfolio
- Capital Growth Portfolio
- Capital Opportunities Portfolio
- Dividend Growth Portfolio
- Equally-Weighted S&P 500 Portfolio
- Flexible Income Portfolio
- Focus Growth Portfolio



- Global Infrastructure Portfolio
- Mid Cap Growth Portfolio
- Money Market Portfolio

Morgan Stanley Variable Investment Series

- Aggressive Equity Portfolio
- Capital Opportunities Portfolio
- Dividend Growth Portfolio
- European Equity Portfolio
- Global Dividend Growth Portfolio
- Global Infrastructure Portfolio
- High Yield Portfolio
- Income Builder Portfolio
- Income Plus Portfolio
- Limited Duration Portfolio
- Money Market Portfolio
- S&P 500 Index Portfolio
- Strategist Portfolio

**CLOSED-END RETAIL FUNDS**

TAXABLE FIXED-INCOME CLOSED-END FUNDS

Morgan Stanley Income Securities Inc.

Morgan Stanley Prime Income Trust

TAX-EXEMPT FIXED-INCOME CLOSED-END FUNDS

Morgan Stanley California Insured Municipal Income Trust

Morgan Stanley California Quality Municipal Securities

Morgan Stanley Insured California Municipal Securities

Morgan Stanley Insured Municipal Bond Trust

Morgan Stanley Insured Municipal Income Trust

Morgan Stanley Insured Municipal Securities

Morgan Stanley Insured Municipal Trust

Morgan Stanley Municipal Income Opportunities Trust

Morgan Stanley Municipal Income Opportunities Trust II

Morgan Stanley Municipal Income Opportunities Trust III

Morgan Stanley Municipal Premium Income Trust

Morgan Stanley New York Quality Municipal Securities

Morgan Stanley Quality Municipal Income Trust

Morgan Stanley Quality Municipal Investment Trust

Morgan Stanley Quality Municipal Securities

**INSTITUTIONAL FUNDS**

**OPEN-END INSTITUTIONAL FUNDS**

Morgan Stanley Institutional Fund, Inc., on behalf of its series

- Active International Allocation Portfolio
- Capital Growth Portfolio
- Emerging Markets Debt Portfolio
- Emerging Markets Portfolio
- Focus Growth Portfolio
- Global Franchise Portfolio
- Global Real Estate Portfolio
- Global Value Equity Portfolio
- International Equity Portfolio
- International Growth Equity Portfolio
- International Real Estate Portfolio
- International Small Cap Portfolio
- Large Cap Relative Value Portfolio
- Small Company Growth Portfolio
- U.S. Real Estate Portfolio
- U.S. Small/Mid Cap Value Portfolio

Morgan Stanley Institutional Fund Trust, on behalf of its series

- Advisory Portfolio
- Advisory Portfolio II
- Balanced Portfolio

- Core Fixed Income Portfolio
- Core Plus Fixed Income Portfolio
- Intermediate Duration Portfolio
- International Fixed Income Portfolio
- Investment Grade Fixed Income Portfolio
- Limited Duration Portfolio
- Long Duration Fixed Income Portfolio
- Mid Cap Growth Portfolio
- Municipal Portfolio
- U.S. Mid Cap Value Portfolio
- U.S. Small Cap Value Portfolio
- Value Portfolio

Morgan Stanley Institutional Liquidity Funds, on behalf of its series

- Government Portfolio
- Money Market Portfolio
- Prime Portfolio
- Tax-Exempt Portfolio
- Treasury Portfolio
- Government Securities Portfolio
- Treasury Securities Portfolio

The Universal Institutional Funds, Inc., on behalf of its series

- Core Plus Fixed Income Portfolio

- Emerging Markets Debt Portfolio
- Emerging Markets Equity Portfolio
- Equity and Income Portfolio
- Capital Growth Portfolio
- Global Franchise Portfolio
- Global Real Estate Portfolio
- Global Value Equity Portfolio
- High Yield Portfolio
- International Growth Equity Portfolio
- International Magnum Portfolio
- Mid Cap Growth Portfolio
- Small Company Growth Portfolio
- U.S. Mid Cap Value Portfolio
- U.S. Real Estate Portfolio
- Value Portfolio

**CLOSED-END INSTITUTIONAL FUNDS**

Morgan Stanley Asia-Pacific Fund, Inc.

Morgan Stanley China A Share Fund, Inc.

Morgan Stanley Eastern Europe Fund, Inc.

Morgan Stanley Emerging Markets Debt Fund, Inc.

Morgan Stanley Emerging Markets Domestic Debt Fund, Inc.

Morgan Stanley Emerging Markets Fund, Inc.

Morgan Stanley Frontier Emerging Markets Fund, Inc.

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Morgan Stanley Global Opportunity Bond Fund, Inc.

Morgan Stanley High Yield Fund, Inc.

Morgan Stanley India Investment Fund, Inc.

The Latin American Discovery Fund, Inc.

The Malaysia Fund, Inc.

The Thai Fund, Inc.

The Turkish Investment Fund, Inc.

**VAN KAMPEN FUNDS**

**AS OF AUGUST 7, 2009**

**OPEN-END FUNDS**

Van Kampen Capital Growth Fund

Van Kampen Comstock Fund

Van Kampen Corporate Bond Fund

Van Kampen Enterprise Fund

Van Kampen Equity and Income Fund

Van Kampen Equity Trust, on behalf of its series

- Van Kampen Asset Allocation Conservative Fund
- Van Kampen Asset Allocation Growth Fund
- Van Kampen Asset Allocation Moderate Fund
- Van Kampen Core Equity Fund
- Van Kampen Global Growth Fund
- Van Kampen Leaders Fund
- Van Kampen Mid Cap Growth Fund
- Van Kampen Small Cap Growth Fund
- Van Kampen Small Cap Value Fund
- Van Kampen Utility Fund
- Van Kampen Value Opportunities Fund

Van Kampen Equity Trust II, on behalf of its series

- Van Kampen American Franchise Fund
- Van Kampen Equity Premium Income Fund

- Van Kampen International Growth Fund
- Van Kampen International Advantage Fund
- Van Kampen Technology Fund
- Van Kampen Core Growth Fund

Van Kampen Exchange Fund

Van Kampen Government Securities Fund

Van Kampen Growth and Income Fund

Van Kampen Harbor Fund

Van Kampen High Yield Fund

Van Kampen Life Investment Trust, on behalf of its series

- LIT Capital Growth Portfolio
- LIT Comstock Portfolio
- LIT Global Tactical Asset Allocation Portfolio
- LIT Government Portfolio
- LIT Growth and Income Portfolio
- LIT Mid Cap Growth Portfolio
- LIT Money Market Portfolio

Van Kampen Limited Duration Fund

Van Kampen Money Market Fund

Van Kampen Pennsylvania Tax Free Income Fund

Van Kampen Real Estate Securities Fund



Van Kampen Retirement Strategy Trust, on behalf of its series

- Van Kampen 2010 Retirement Strategy Fund
- Van Kampen 2015 Retirement Strategy Fund
- Van Kampen 2020 Retirement Strategy Fund
- Van Kampen 2025 Retirement Strategy Fund
- Van Kampen 2030 Retirement Strategy Fund
- Van Kampen 2035 Retirement Strategy Fund
- Van Kampen 2040 Retirement Strategy Fund
- Van Kampen 2045 Retirement Strategy Fund
- Van Kampen 2050 Retirement Strategy Fund
- Van Kampen In Retirement Strategy Fund

Van Kampen Senior Loan Fund

Van Kampen Series Fund, Inc., on behalf of its series

- Van Kampen American Value Fund
- Van Kampen Emerging Markets Fund
- Van Kampen Equity Growth Fund
- Van Kampen Global Equity Allocation Fund
- Van Kampen Global Franchise Fund
- Van Kampen Global Value Equity Fund

Van Kampen Tax-Exempt Trust

Van Kampen Tax Free Money Fund

Van Kampen Tax Free Trust, on behalf of its series

- Van Kampen California Insured Tax Free Fund
- Van Kampen Insured Tax Free Income Fund
- Van Kampen Intermediate Term Municipal Income Fund

- Van Kampen Municipal Income Fund
- Van Kampen New York Tax Free Income Fund
- Van Kampen Strategic Municipal Income Fund

Van Kampen Trust

Van Kampen Trust II, on behalf of its series

- Van Kampen Global Bond Fund
- Van Kampen Global Tactical Asset Allocation Fund

Van Kampen Partners Trust, on behalf of its series

- Van Kampen O Shaughnessy All Cap Core Fund
- Van Kampen O Shaughnessy Enhanced Dividend Fund
- Van Kampen O Shaughnessy Global Fund
- Van Kampen O Shaughnessy International Fund
- Van Kampen O Shaughnessy Large Cap Growth Fund
- Van Kampen O Shaughnessy Small/Mid Cap Growth Fund

Van Kampen U.S. Government Trust

#### **CLOSED-END FUNDS**

Van Kampen Advantage Municipal Income Trust II

Van Kampen Bond Fund

Van Kampen California Value Municipal Income Trust

Van Kampen Dynamic Credit Opportunities Fund

Van Kampen High Income Trust II

Van Kampen Massachusetts Value Municipal Income Trust

Van Kampen Municipal Opportunity Trust

Van Kampen Municipal Trust

Van Kampen Ohio Quality Municipal Trust

Van Kampen Pennsylvania Value Municipal Income Trust

Van Kampen Select Sector Municipal Trust

Van Kampen Senior Income Trust

Van Kampen Trust for Insured Municipals

Van Kampen Trust for Investment Grade Municipals

Van Kampen Trust for Investment Grade New Jersey Municipals

Van Kampen Trust for Investment Grade New York Municipals

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the "Act"), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of each of the funds listed in Schedule A (each, a "Fund"); that she is the Vice President of each Fund; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:       /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Morgan Stanley Investment Management Inc. (the Company ); that she is Managing Director of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:     /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Morgan Stanley Investment Advisors Inc. (the Company ); that she is Managing Director of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:     /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Van Kampen Asset Management (the Company ); that she is Managing Director of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:     /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Morgan Stanley & Co. Incorporated (the Company ); that he is a Managing Director of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Roger Gilbert  
Name:  Roger Gilbert



VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of LMP Corporate Loan Fund Inc. (the Fund ); that he is Secretary and Chief Legal Officer of the Fund; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Robert Frenkel  
Name:  Robert Frenkel

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the "Act"), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citigroup Alternative Investments LLC (the "Company"); that she is General Counsel of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:       /s/ Millie Kim  
Name: Millie Kim

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citigroup Global Markets Inc. (the Company ); that he is Co-General Counsel of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Scott L. Flood  
Name:  Scott L. Flood

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that she has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citigroup Global Markets Limited (the Company ); that she is an Authorized Signatory of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of her knowledge, information and belief.

By:     /s/ Jeanne Campanelli  
Name:  Jeanne Campanelli

**VERIFICATION**

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citigroup Financial Products Inc. (the Company ); that he is Co-General Counsel of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Scott L. Flood  
Name:  Scott L. Flood

**VERIFICATION**

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citibank, N.A. (the Company ); that he is a Vice President of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Scott L. Flood  
Name:  Scott L. Flood

VERIFICATION

STATE OF NEW YORK                    )  
  )  
COUNTY OF NEW YORK                )

The undersigned states that he has duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citibank Canada (the Company ); that he is the General Counsel and Corporate Secretary of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:     /s/ Charles Alexander  
Name: Charles Alexander

VERIFICATION

LONDON )  
          )  
ENGLAND )

The undersigned state that they have duly executed the attached second amended and restated application for an order pursuant to Sections 17(a) and 17(e) of the Investment Company Act of 1940 (the Act ), and pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, dated August 7, 2009, for and on behalf of Citibank International plc (the Company ); that they are Attorneys of the Company; and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further say that they are familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of their knowledge, information and belief.

By: /s/ Jill Robson  
Name: Jill Robson

By: /s/ Simon Cumming  
Name: Simon Cumming



**OFFICER'S CERTIFICATE**

The undersigned, being duly elected Vice President of each fund listed on Schedule A (each, a Fund ), DOES HEREBY CERTIFY that the attached resolutions were adopted by the Board of Directors or Trustees of such Fund at a meeting duly held on April 17, 2009 with respect to the Van Kampen Funds and on April 23, 2009 with respect to the Morgan Stanley Funds, and that such resolutions have not been amended, modified or superseded in any way as of the date of this Certificate.

IN WITNESS WHEREOF, I have set my hand this 7th day of August, 2009.

By: /s/ Stefanie V. Chang Yu  
Name: Stefanie V. Chang Yu  
Title: Vice President

**The Funds Listed on Schedule A**

RESOLVED, that this Board hereby authorizes the funds listed on Schedule A (the Funds ) to file an application for an order from the Securities and Exchange Commission to permit the Funds to engage in securities transactions with Citigroup Global Markets Inc. or an affiliate (collectively, the Citi Trading Entity ), including (i) the purchase of securities from, or the sales of securities to, the Citi Trading Entity in both primary market (including underwritten) and secondary market transactions in which the Citi Trading Entity is acting as a principal and (ii) participation in arrangements or transactions that the Funds presently participate in with the Citi Trading Entity, subject to such terms and conditions as are agreed to by the Securities and Exchange Commission; and further

RESOLVED, that all officers of these Funds are, and each hereby is, authorized from time to time to do, or cause to be done, all such other acts and things, and to execute and deliver all such instruments and documents, as each officer shall deem necessary or appropriate, to carry out the purpose and intent of the foregoing resolution.

**OFFICER S CERTIFICATE**

The undersigned, being duly elected Chief Legal Officer of LMP Corporate Loan Fund Inc. (the Fund ), DOES HEREBY CERTIFY that the attached resolutions were adopted by the Board of Directors of the Fund at a meeting duly held on April 23, 2009, and that such resolutions have not been amended, modified or superseded in any way as of the date of this Certificate.

IN WITNESS WHEREOF, I have set my hand this 7th day of August, 2009.

By: /s/ Robert Frenkel  
Name: Robert Frenkel  
Title: Secretary and Chief Legal Officer

**LMP Corporate Loan Fund Inc.**

RESOLVED, that the Board of Directors of LMP Corporate Loan Fund Inc. (the Fund ) hereby authorize the filing of an application for an order from the Securities and Exchange Commission to permit the Fund to engage in securities transactions (including for this purpose, loans and interests therein) with Morgan Stanley & Co. Incorporated or an affiliate (collectively, the MS Trading Entity ), including (i) the purchase of securities from, or the sales of securities to, the MS Trading Entity in both primary market (including underwritten) and secondary market transactions in which the MS Trading Entity is acting as a principal and (ii) participation in arrangements or transactions that the Fund presently participates in with the MS Trading Entity, subject to such terms and conditions as are agreed to by the Securities and Exchange Commission and which shall not be objectionable to counsel to the Fund; and further

RESOLVED, that all officers of the Fund are, and each hereby is, authorized from time to time in consultation with counsel to the Fund to do, or cause to be done, all such other acts and things, and to execute and deliver all such instruments and documents, as each officer shall deem necessary or appropriate, to carry out the purpose and intent of the foregoing resolution.