IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Joanne Augst-Johnson, Nancy Reeves, Debra Shaw, Jan Tyler, Cheryl Giustiniano, Laurie Blackburn, Erna Tarantino, and Elizabeth Reinke, on behalf of themselves and all others similarly situated, Plaintiffs, v. Morgan Stanley & Co. Incorporated, formerly known as Morgan Stanley DW Inc., Defendant.	Case No. 1:06-cv-01142 (RWR) CLASS ACTION
Renee Fassbender Amochaev, Deborah Orlando, Kathryn N. Varner and Ivy So, on behalf of themselves and all others similarly situated, Plaintiffs, v. Citigroup Global Markets, Inc., d/b/a/ Smith Barney, Defendant.	Case No. C-05-1298 PJH (N.D. Cal.) CLASS ACTION

<u>MORGAN STANLEY SMITH BARNEY, LLC CONSOLIDATED SETTLEMENT AGREEMENT</u>

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I. INTRODUCTION

Subject to approval by the United States District Court for the District of Columbia (the "Court"), this Consolidated Settlement Agreement ("Consolidated Settlement Agreement," "Settlement" or "Agreement") sets forth the full and final terms by which the Named Plaintiffs in *Augst-Johnson, et al. v. Morgan Stanley & Co., Incorporated, formerly known as Morgan Stanley DW Inc.*, Case No. 1:06-cv-01142 (RWR) (D.D.C.) ("Morgan Stanley Action") and *Amochaev, et al. v. Citigroup Global Markets, Inc., d/b/a Smith Barney*, Case No. C-05-1298 PJH (N.D.Cal.) ("Smith Barney Action"), on behalf of themselves and members of the Class defined herein, and Morgan Stanley Smith Barney LLC ("MSSB", "Firm" or "Company")[1] have consolidated the remaining obligations set forth in the Morgan Stanley and Smith Barney Settlement Agreements defined herein. This Settlement applies to women Financial Advisors and Registered Financial Advisor Associates employed by MSSB.

II. BACKGROUND

A. The Morgan Stanley Action

1. Beginning in early 2005, Joanne Augst-Johnson, Nancy Reeves, Debra Shaw, Jan Tyler, Cheryl Giustiniano, Laurie Blackburn, Erna Tarantino, and Elizabeth Reinke (the "Morgan Stanley Named Plaintiffs") retained counsel ("Morgan Stanley Class Counsel") to investigate claims of sex discrimination in the Global Wealth Management Group of Morgan Stanley ("MS-GWMG"). Those Morgan Stanley Named

[1] As discussed in Section II, *infra*, after the Morgan Stanley and Smith Barney actions were resolved via Settlement Agreements executed in July 2007 and April 2008, respectively, Morgan Stanley & Co. Incorporated ("Morgan Stanley") and Citigroup Inc. ("Citigroup") entered into a joint venture which combined Morgan Stanley's Global Wealth Management Group with Citigroup's Smith Barney. The combined entity, Morgan Stanley Smith Barney LLC, is now the employer of the currently employed class members covered by the Morgan Stanley and Smith Barney Settlement agreements.

Plaintiffs each filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging, among other things, that MS-GWMG discriminated against them and a class of similarly situated persons throughout the United States on the basis of their sex in several aspects of their employment.

2. On June 22, 2006, the Morgan Stanley Named Plaintiffs filed a Complaint in the Court on behalf of themselves as individuals and on behalf of a nationwide class of women employees against Morgan Stanley pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq., ("Title VII"), and under parallel state and local laws prohibiting sex discrimination. In April 2007, the Named Plaintiffs filed an Amended Complaint naming Morgan Stanley & Co. Incorporated, the successor to Morgan Stanley DW Inc., as Defendant. In that Action, titled Augst-Johnson, et al. v. Morgan Stanley & Co. Incorporated, Civil Action No. 1:06-cv-01142 (RWR), the Morgan Stanley Named Plaintiffs, among other things, alleged, on behalf of themselves and members of the Class defined herein, that they were women who were employed with MS-GWMG as Financial Advisors or Registered Financial Advisor Trainees, that they had been afforded fewer business opportunities than comparable male Financial Advisors and comparable male Registered Financial Advisor Trainees, and that they experienced sex discrimination in numerous aspects of their employment. They further alleged, on behalf of themselves and members of the Class defined herein, that aspects of their employment in which they had experienced sex discrimination included, but were not limited to, career advancement, distribution of accounts, work assignments, compensation, and/or other terms and conditions of employment and/or termination. In addition to these class claims, the Morgan Stanley Named Plaintiffs asserted various

individual, non-class claims, including, for some, age discrimination, as set forth in the Amended Complaint.

3. On November 13, 2006, Morgan Stanley filed its answer and its affirmative defenses to the Complaint, denying that it engaged in a pattern or practice of sex discrimination against the Named Plaintiffs or any similarly situated current and former women Financial Advisors or Registered Financial Advisor Trainees. Morgan Stanley denied the allegations in the administrative charges, the Complaint and the Amended Complaint, and in connection therewith denied any liability under Title VII of the Civil Rights Act of 1964, as amended, or any other federal, state or local laws, and specifically denied that Morgan Stanley unlawfully discriminated against Plaintiffs or Class Members on the basis of sex, or that Plaintiffs or Class Members are otherwise entitled to the relief requested.

4. In an effort to determine whether the parties could settle this dispute prior to the commencement of litigation, the parties' counsel, who were experienced class action attorneys, participated in detailed and exhaustive discussions and negotiations over the course of two years. The parties engaged the services of Hunter Hughes, Esq., a highly experienced professional mediator, skilled in mediation of complex class actions, including employment discrimination litigation. Mr. Hughes became familiar with the case and conducted over ten mediation sessions between the parties. Those formal mediation sessions and follow-up settlement discussions between the parties concluded with the execution of a Settlement Agreement (the "Morgan Stanley Settlement Agreement"). During the negotiations, counsel bargained vigorously on behalf of their clients. All negotiations were conducted at arms' length and in good faith.

5. In order to facilitate settlement discussions, the parties executed tolling agreements covering the time period from December 27, 2004 to June 22, 2006, at which point the Complaint in this Action was filed.

6. For settlement purposes, Morgan Stanley Class Counsel sought, and Morgan Stanley produced, voluminous data and other information concerning MS-GWMG's workforce and work practices relevant to the claims asserted and damages sought by Plaintiffs and the Class. Class Counsel interviewed over 200 Class Members during the course of their investigation and retained an expert to conduct statistical analyses of the data. The expert worked with Class Counsel to review the data, ensure it was complete, request supplemental data, and analyze the data. The expert also conducted studies similar to those that would have been conducted in preparation for the trial of this matter. Class Counsel also retained a second expert to assist in analyzing industry practices and to provide input on crafting injunctive relief. Counsel for the parties have also conducted their own substantial investigations of the matter, including the facts underlying the claims and issues raised in the charges, the Complaint and the Amended Complaint. The investigations included, among other things, interviewing Class Member witnesses and reviewing a substantial number of relevant company records. As a result of the exchange of information, the investigation, and other activity both prior to and after filing the Complaint, counsel for the parties are familiar with the strengths and weaknesses of their respective positions, and have had a full opportunity to assess the litigation risks presented in this case.

7. All parties and their counsel recognized that, in the absence of an approved settlement, they faced a long litigation course, including motions to dismiss,

motions for class certification, formal discovery, motions for summary judgment, and trial and appellate proceedings that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. The parties wished to avoid these risks and uncertainties, as well as the consumption of time and resources, through settlement pursuant to the terms and conditions of the Morgan Stanley Settlement Agreement, which included the provision of monetary and programmatic relief. Morgan Stanley Class Counsel believed that the terms of the Morgan Stanley Settlement Agreement were in the best interests of the Class and were fair, reasonable, and adequate, and Morgan Stanley wished to bring the litigation to a conclusion on the terms set forth in the Morgan Stanley Settlement Agreement.

8. Without any admission or concession by Morgan Stanley of any liability or wrongdoing with respect to the allegations in any administrative charge or in the Complaint and the Amended Complaint, all released claims were finally and fully compromised, settled, and released subject to the terms and conditions of the Morgan Stanley Settlement Agreement, which were the subject of negotiation and agreement by the parties.

9. On July 17, 2007, the United States District Court for the District of Columbia granted the parties' Joint Motion for Preliminary Approval of Class Action Settlement Agreement.

10. On October 26, 2007, the United States District Court for the District of Columbia granted final approval of the Morgan Stanley Settlement Agreement.

11. Morgan Stanley has satisfied all obligations relating to the monetary relief provisions set forth in the Morgan Stanley Settlement Agreement.

B. The Smith Barney Action

1. The Smith Barney Class Action Complaint was filed on March 31, 2005 in the Northern District of California. The Complaint, filed by four named plaintiffs (the "Smith Barney Named Plaintiffs"),[2] asserted claims on behalf of a class of all women employed as Financial Advisors in (i) the United States branches of Smith Barney's retail brokerage division at any time from August 30, 2003 forward or (ii) the California branches of Smith Barney's retail brokerage division at any time from June 25, 2003 forward. The Complaint asserted claims for gender discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and, with respect to California Class Members, the California Fair Employment and Housing Act, Cal. Gov't Code § 12940 ("FEHA"). On November 9, 2006, pursuant to Stipulation, the Smith Barney Named Plaintiffs filed a First Amended Complaint that alleged substantially the same facts and legal claims.

2. Smith Barney denied the allegations in the Complaint and the First Amended Complaint, including alleged liability under Title VII of the Civil Rights Act of 1964 or any other federal, state or local laws, and specifically denied that it unlawfully discriminated against the Smith Barney Named Plaintiffs or Class Members on the basis of sex, or that the Smith Barney Named Plaintiffs of Class Members were otherwise entitled to the relief requested.

3. The parties conducted broad, extensive, and thorough discovery related to class certification throughout 2006 and 2007. Altogether, the written class

[2] The named plaintiffs at that time were Renee Fassbender Amochaev, Deborah Orlando, Kathryn Varner, and Judy Weil. Pursuant to Stipulation, Judy Weil voluntarily withdrew as a representative plaintiff on September 15, 2006. Subsequently, Ivy So was added as a named plaintiff on November 29, 2006.

certification discovery conducted in the case included six sets of document requests and three sets of interrogatories propounded by the Smith Barney Named Plaintiffs, and two sets of document requests and interrogatories propounded by Smith Barney. Smith Barney produced, and Smith Barney Class Counsel reviewed, over 160,000 pages of documents. Smith Barney Class Counsel also reviewed, and, with expert assistance, analyzed vast amounts of computerized data, including Smith Barney's client account data as well as personnel, compensation and payroll data for Financial Advisors. The discovery process was thorough, and it required the parties to engage in numerous and extensive meetings and conferences concerning the scope of discovery and the analysis regarding the various electronic data, policy documents, and complaint files produced.

4. Deposition discovery was also extensive. Smith Barney Class Counsel deposed 10 individuals, including 30(b)(6) deponents who testified on a variety of topics, including Smith Barney's compensation, account distribution, and partnership policies; organizational structure; EEO compliance; human resources functions; training; electronic data storage; retention of documents; and internal complaint and investigation procedures. Smith Barney took the depositions of Ms. Amochaev, Ms. Orlando, Ms. Varner and Ms. So.

5. Smith Barney Class Counsel and counsel for Smith Barney recognized the costs and risks of prosecuting the Smith Barney action through class certification, summary judgment, trial, and appeal. Smith Barney Class Counsel believed that it was in the interest of all members of the Smith Barney Settlement Class to resolve finally and completely the potential claims of the Class Members against Smith Barney. Smith Barney Class Counsel believed that the terms of the Settlement Agreement (the

"Smith Barney Settlement Agreement") were in the best interests of the Class and were fair, reasonable, and adequate. Smith Barney wished to bring the litigation to a conclusion on the terms set forth in the Smith Barney Settlement Agreement.

6. The Smith Barney Settlement Agreement was reached under the supervision of experienced mediator Hunter Hughes, Esq. Counsel for the parties were experienced class action lawyers who retained Mr. Hughes for his expertise in mediating many complex class actions, including those involving gender discrimination in employment. Mr. Hughes conducted multiple mediation sessions between the parties in San Francisco and New York. At least one of the Smith Barney Named Plaintiffs attended each of the mediation sessions, and all were actively involved in shaping the monetary and injunctive relief set forth in the Smith Barney Settlement Agreement. At all times during the process, counsel bargained vigorously and at arm's length on behalf of their clients.

7. Without any admission or concession by Smith Barney of any liability of wrongdoing with respect to the allegations in the Complaint or the First Amended Complaint, all released claims were finally and fully compromised, settled, and released subject to the terms and conditions of the Smith Barney Settlement Agreement, which were the subject of extensive negotiation and ultimate agreement by the parties.

8. On May 1, 2008, the United States District Court for the Northern District of California granted preliminary approval to the Smith Barney Settlement Agreement.

9. On August 13, 2008, the United States District Court for the Northern District of California granted final approval of the Smith Barney Settlement Agreement.

10. Smith Barney has satisfied all obligations relating to the monetary relief provisions set forth in the Smith Barney Settlement Agreement.

C. Morgan Stanley Smith Barney Joint Venture

1. On January 13, 2009, Morgan Stanley and Citigroup announced that they had reached an agreement to combine Morgan Stanley's Global Wealth Management Group and Citigroup's Smith Barney into a new joint venture to be called Morgan Stanley Smith Barney ("MSSB"). Under the terms of the agreement Citigroup exchanged 100 percent of its Smith Barney, Smith Barney Australia and Quilter units for a 49 percent stake in the joint venture, while Morgan Stanley exchanged 100 percent of its Global Wealth Management business for a 51 percent stake in the joint venture. All of the employees covered by the Morgan Stanley and Smith Barney Settlement Agreement are now employed by MSSB.

2. The contribution of employees to MSSB from Morgan Stanley and from Smith Barney necessitates a number of changes to the Morgan Stanley Agreement and Smith Barney Agreement to the extent they would be applicable to MSSB.

3. Most of the provisions in the Morgan Stanley and Smith Barney Settlement Agreements are substantially identical. However, there are a number which are different and, in some cases, inconsistent with each other.

4. MSSB recognized the importance of the programmatic relief set forth in both the Morgan Stanley and Smith Barney Settlement Agreements. Therefore, in an effort to consolidate the Morgan Stanley and Smith Barney Settlement Agreements, Morgan Stanley Class Counsel, Smith Barney Class Counsel, and counsel for MSSB, who all are experienced class action attorneys, participated in detailed and exhaustive

discussions and negotiations over the course of over twenty months. The parties engaged the services of Hunter Hughes, Esq., a highly experienced professional mediator, skilled in mediation of complex class actions, including employment discrimination litigation. Mr. Hughes was familiar with both the Morgan Stanley and Smith Barney Settlement Agreements and having served as the mediator for both settlements. Through these efforts the parties concluded the execution of this Consolidated Settlement Agreement. During the negotiations, counsel bargained vigorously on behalf of their clients. All negotiations were conducted at arms' length and in good faith, with the participation of Named Plaintiffs.

5. Morgan Stanley Class Counsel believes that the terms of this Consolidated Settlement Agreement are in the best interests of the Morgan Stanley Class, are consistent with the Morgan Stanley Settlement Agreement, and are fair, reasonable, and adequate.

6. Smith Barney Class Counsel believes that the terms of this Consolidated Settlement Agreement are in the best interests of the Smith Barney Class, are consistent with the Smith Barney Settlement Agreement, and are fair, reasonable, and adequate.

III. GENERAL TERMS OF THE SETTLEMENT AGREEMENT

A. Definitions. In addition to terms identified and defined elsewhere in this Consolidated Settlement Agreement, and as used in this Consolidated Settlement Agreement, the terms below shall have the following meanings:

1. "Class Member" means any person who meets the criteria set forth in the definition of "Settlement Class" below.

2. "Consolidated Settlement Agreement", "Settlement," and

"Agreement" each mean the settlement as reflected in this Consolidated Settlement Agreement.

3. "Court" means the United States District Court for the District of Columbia.

4. "Diversity Monitor" means the individuals appointed to carry out the duties specified in Section V.F.1. of this Agreement.

5. "Effective Date" is October 1, 2010.

6. "Final Approval" means the date on which the United States District Court grants final approval of the Consolidated Settlement Agreement.

7. "Financial Advisor" or "FA" means a person employed by MSSB as a financial advisor.

8. "Lead Class Counsel" means Kelly Dermody of Lieff, Cabraser, Heimann & Bernstein, LLP, Adam Klein of Outten & Golden, LLP, Cyrus Mehri of Mehri & Skalet, PLLC, and Steven M. Sprenger of Sprenger & Lang, PLLC.

9. "Morgan Stanley Class Counsel" means the law firms of Mehri & Skalet, PLLC, Sprenger & Lang, PLLC, and Moody & Warner, PC.

10. "MS-GWMG" refers to what was the Global Wealth Management Group of Morgan Stanley & Co. Incorporated and its predecessor, Morgan Stanley DW Inc.

11. "Financial Advisor Associate (FAA)" means a person employed by MSSB as a registered financial advisor associate who has not yet become a Financial Advisor. This position was previously referred to as "Registered Financial Advisor Trainee."

12. "Settlement Class" or "Class" means the class covered by this Consolidated Settlement Agreement, which is defined as all women employed as Financial Advisors or Registered Financial Advisor Associates by MSSB at any time during the Duration of the Settlement as defined below.

13. "Smith Barney Class Counsel" means the law firms of Altshuler Berzon, Lieff, Cabraser, Heimann & Bernstein, LLP, Mehri & Skalet, PLLC, and Outten & Golden, LLP.

B. Duration of the Settlement. The programmatic relief embodied in this Consolidated Settlement Agreement and the agreements incorporated in it shall remain binding on the parties and their agents and successors until October 1, 2015.

C. Cooperation. The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Consolidated Settlement Agreement, and exercise good faith efforts to accomplish the terms and conditions of this Consolidated Settlement Agreement. The parties agree to accept non-material and procedural changes to this Consolidated Settlement Agreement if so required by the Court in connection with Final Approval of the Settlement, but are not obligated to accept any changes in the substantive programmatic relief provided for herein, or any other substantive change.

D. Jurisdiction and Venue. The parties agree that the Court has jurisdiction over the parties and the subject matter of this Consolidated Settlement Agreement and that venue is proper. The Court shall retain jurisdiction of this Consolidated Settlement Agreement until October 1, 2015 solely for the purpose of entering all orders and judgments authorized hereunder that may be necessary to implement and enforce the relief provided herein.

E. **<u>Effect on Morgan Stanley and Smith Barney Settlement Agreements</u>**. As of the Effective Date of this Consolidated Settlement Agreement, the Morgan Stanley and Smith Barney Settlement Agreements will be superseded by this Agreement except as to the following provisions:

1. Smith Barney Settlement Agreement provisions not superseded:

   IV. Court Approval/Notice and Fairness Hearing
   V. Release/Bar of Claims
   IX. Monetary Relief
   X. Attorneys' Fees, Expenses of Class Counsel and Administrative Expenses
   XI. Termination of the Settlement Agreement

2. Morgan Stanley Settlement Agreement provisions not superseded:

   IV. Court Approval/Notice and Fairness Hearing
   V. Release/Bar of Claims
   VII. Monetary Relief
   XII. Attorneys' Fees and Expenses of Class Counsel

IV. <u>NO ADMISSION, NO DETERMINATION</u>

A. This Consolidated Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in the Morgan Stanley or Smith Barney cases. By entering into this Agreement, MSSB does not admit or concede, expressly or impliedly, but denies that it has in any way violated Title VII, parallel state and local laws prohibiting sex discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations, claims or defenses in this case.

B. Nothing in this Consolidated Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Consolidated Settlement Agreement, is intended by the parties to, nor shall any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other proceeding of whatsoever kind or nature (including, without limitation, the results of the Claims Process established under this Consolidated Settlement Agreement) as evidence of discrimination, retaliation or sexual harassment or as evidence of any violation of Title VII, parallel state and local laws prohibiting sex discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Consolidated Settlement Agreement may be used in any proceeding in the Court or in mediation or arbitration to enforce or implement any provision of this Consolidated Settlement Agreement or implement any orders or judgments of the Court entered into in connection herewith.

V. PROGRAMMATIC RELIEF

A. **Communications.** Morgan Stanley Smith Barney LLC ("MSSB") shall distribute its Non-Discrimination and Anti-Harassment Policy, including its prohibition against retaliation, to all employees upon hire (in hard copy or by electronic mail) and then on an annual basis via email from the CEO of Morgan Stanley. Employees shall be required to submit an acknowledgment of receipt.

In addition, the President of MSSB shall issue a separate statement in support of the Policy and its underlying tenets. The Policy will be available on the Firm's intranet site and will be incorporated into various other Firm policies including its Code of Conduct and its Internet and Electronic Communications Usage Policy.

The Non-Discrimination and Anti-Harassment Policy (including the prohibition against retaliation) and the behaviors it seeks to promote and prevent shall be the subject of a mandatory training that all employees will be required to complete upon hire.

B. Branch Management

1. **Mobility.** Field sales management positions for which Financial Advisors may be eligible will be posted on MSSB's Internal Job Bank. These positions currently are titled: Producing Branch Manager; Resident Manager; and Business Development Officer. Minimum requirements for qualification for a management position are available on MSSB's internal job bank. All positions will be posted for a minimum of five (5) business days. Either the hiring manager or Human Resources will follow up with each applicant/candidate in a timely manner. In addition, MSSB shall develop and implement a computerized system to generate an electronic mail notification to Financial Advisors who request to be informed of new entry level field sales management job postings.

MSSB shall develop and implement a comprehensive management assessment and development program which it will implement to the extent there are management openings and there is a need for management candidates. The program will provide candidates with a formal and transparent path to assessment and selection as Branch Managers, and provide field management with an established and tested protocol for selection of high-potential candidates by trained assessors. MSSB shall post a written description of the management assessment and development program and the criteria for admission on the Firm's intranet site.

The Industrial Psychologists shall review MSSB's branch management assessment program prior to its implementation, and, if appropriate, make recommendations for increasing the participation of females in the branch manager assessment program (including review of the criteria for admission) and also make recommendations for programs to increase the participation of women in branch management. These recommendations shall be made in accordance with Section V.F.2. below.

MSSB shall provide all management-level field sales personnel with diversity training no less than every other year. The format of such training may vary from jurisdiction to jurisdiction depending on the relevant legal requirements. However, all managers shall, at a minimum, be required to complete an interactive, customized, e-learning training program. MSSB will provide training to the following management-level field positions, or their equivalents: Division Directors, Regional Managers, Complex and other Non-Producing Managers, Business Development Officers, Producing Branch Managers, Resident Managers, Risk Officers, and Service Managers.

2. **Complex and Branch Manager Compensation.** Complex and Branch Manager (Non-Producing and Producing) compensation shall have a meaningful diversity component designed to measure and reward efforts at diversifying representation rates in the Financial Advisor position, including recruiting, training, and retaining qualified female Financial Advisors. MSSB agrees that it shall develop and implement a quarterly process whereby field sales management shall be required to report on their best

efforts and results in the areas of sourcing, recruiting, mentoring, training, and promoting a diverse workforce, including qualified female Financial Advisors and Registered Financial Advisor Associates (including, for example, their efforts to retain qualified female Financial Advisors) and their efforts to assist female Financial Advisors in, among other things, increasing their production, participating in partnerships in the branch, participating in teams, and encouraging and sponsoring women for leadership positions and whereby field sales management will be reviewed and held accountable by senior MSSB management for these efforts. The Diversity Monitor will review the diversity-related quarterly self-assessment process for field sales management and the diversity component of each Complex and Branch Manager's compensation.

C. Account Re-Distribution

1. MSSB will continue to use Morgan Stanley's "Power Ranking" system to rank Financial Advisors on performance factors to determine the distribution of the accounts of departing Financial Advisors and those who leave production. Under this Settlement, MSSB has made significant changes to the Power Ranking system, including reducing reliance on historical factors and more heavily weighting criteria which reflect recent performance. MSSB also agrees to automate the account re-distribution process based on the revised Power Rankings and to limit the exceptions that can be made to the Power Rankings. The revised Power Ranking factors are set forth in Appendix A filed under seal along with this Consolidated Settlement Agreement.

2. **Power Rankings**

a. All Power Ranking factors that measure performance from the previous twelve-month period will be adjusted to encompass a 12-month period exclusive of absence for parental leave or short-term disability leave. For example, if a Financial Advisor was on a leave of absence for four of the preceding twelve months, the previous 12 months measure will instead count the last twelve months that the employee was active.

b. The methodology for calculating the Power Rankings will be provided to each Financial Advisor, including the name of each factor, an explanation of each factor, and how each factor is weighted. Upon hire, each Financial Advisor will be individually provided with the methodology of the objective measures utilized in the Power Ranking calculation and the manner in which calculations are completed and this will be available to all Financial Advisors electronically. MSSB agrees to provide notice to Financial Advisors regarding any modification to the Power Ranking methodology.

c. MSSB shall inform each Financial Advisor of her or his individual ranking at the time any re-distribution is made. The actual re-distribution of a departing Financial Advisor's book will be made available to a Financial Advisor in the Branch confidentially upon a request to the Complex or Branch Manager, Complex or Branch Service Manager, Human Resources representative, or the Care Administrator, who shall obtain the information from MSSB without revealing the name of any requestor and such information shall include the rankings and (without identification of any particular Financial Advisor by name) the number of accounts and the assets distributed to each ranked Financial Advisor. MSSB shall inform Financial Advisors upon hire of the process by which and people from whom they may confidentially request the actual re-distribution information, including that their identity will not be revealed to anyone outside the Care Administrator's office if they make such request to the Care Administrator. This information will also be posted on the Firm's intranet site.

d. Review of Account Re-distributions. On an annual basis, the Industrial Psychologists to be appointed as set forth in Section V.F.2. below will review how the Account Re-distribution process has been operating, including performing a companywide statistical regression analysis of account distributions by gender and how women rank in each of the Power Ranking factors, as well as all exceptions and complaints and shall report their findings of deviation, if any, to the Diversity Monitor. In addition, the Industrial Psychologists will also review annually the account re-distribution data and related compensation data and the rankings of female Financial Advisors on each of the individual factors and related performance data and use such information in considering recommendations, if any, for changes to the Power Ranking formula. On an annual basis, the Industrial Psychologists shall report their findings of deviations, if any, to the Diversity Monitor. If, as a result of their analysis, the Industrial Psychologists recommend any changes to the Power Ranking factors or weightings, they shall report those recommendations to Lead Class Counsel and MSSB. If necessary, Lead Class Counsel and counsel for MSSB will reconvene to discuss the findings of the Industrial Psychologists and whether further appropriate changes to the Power Ranking criteria or distribution process should be made. The only changes to be made to the Power Ranking criteria are those agreed to by Lead Class Counsel and counsel for MSSB. If the parties are unable to come to agreement on any proposed changes, no changes will be made to the Power Ranking criteria.

3. **Account Re-distribution Policies**

a. MSSB senior management will issue a comprehensive account re-distribution policy statement, which shall include policies covering the re-distribution of the accounts of departing Financial Advisors, retiring Financial Advisors, departing partners, and leads, call-ins, and walk-ins. The statement shall be issued via email to all field employees and shall be posted on MSSB's intranet site and shall include a prohibition on discrimination. In addition, MSSB will train all current Branch Managers, or other branch personnel responsible for implementing account re-distribution policies, on account re-distribution policies and procedures at the time the settlement becomes effective, and will similarly train all new managers that are subsequently hired.

b. Financial Advisors are not eligible for account re-distributions if they are: (1) currently on "heightened supervision" as defined by MSSB policy; (2) subject to any regulatory action reportable as a 'yes' answer on Form U-4 questions 14C-G; (3) subject to discipline reported on Form RE-3 in the last 12 months; or (4) subject to any written performance or workplace conduct warning in the last 90 days. Lateral recruits to MSSB will be ineligible for account re-distributions during their first 12 months of employment with MSSB. MSSB has the discretion to uniformly extend this 12-month period. New hire Financial Advisor Associates are ineligible until they have successfully satisfied the preliminary production thresholds established under the Training Program; provided, however, that MSSB has the discretion to modify this policy to allow Financial Advisor Associates to receive account re-distributions, subject to limitations based on their length of experience as a Financial Advisor and size of account, during their first 12 months of employment. Financial Advisors on parental or short-term disability leave will have the option to elect prior to taking leave, or as soon as practicable after commencing such leave, whether they will receive account re-distributions while on leave, in which case they will participate as if they were not on leave with the distributed accounts handled in the same manner as their other accounts are handled while on leave, or whether they will receive credit for re-distributions while on leave.

c. Where an exception is made to the Power Ranking process because of, for example, a client relationship or client service needs, each individual exception shall be documented by the Branch Manager or his/her designee in writing, including the legitimate business reasons for the exceptions, and approved by the Regional or Complex Manager, or his or her designee. Customer preference based on bias against women cannot be used as a legitimate business reason for an exception; provided, however, that MSSB shall have no obligation to inquire as to or otherwise attempt to discover the reason for a customer preference for or against a Financial Advisor or Financial Advisor Associate. Records of all such exceptions shall be kept for purposes of monitoring policy compliance for the duration of this Agreement and shall be regularly reviewed by the Regional Manager, or his or her designee, and shall be included in the quarterly reports provided to the Diversity Monitor. MSSB shall provide the Diversity Monitor quarterly reports on exceptions being made in the branches, including information on the identity of the branches, the branch managers who approved the exceptions, and an explanation of the exception.

d. Except for a lateral recruit who receives a re-distribution in his or her first twelve (12) months of employment because of business exigencies, the Financial Advisor receiving a re-distribution through an exception will be disqualified from receiving other re-distributions of approximately equal asset value in the same or subsequent re-distributions ("Debit"). An individual Financial Advisor who does not receive a specific re-distribution as a result of an exception shall receive additional accounts in the same or subsequent re-distributions of approximately equal asset value ("Credit"). Provided, however, that MSSB may implement a system pursuant to which an account re-distribution will not result in a Debit or Credit for a subsequent re-distribution if the majority of the assets in the distributed account leave MSSB before the next re-distribution.

e. Branch Managers who are determined to have distributed an account pursuant to any improper exception shall receive appropriate discipline, which can include a material reduction in their annual bonus, and which shall be reviewed by the Diversity Monitor in accordance with Section V.F.1.

f. MSSB shall enhance its technology to allow its account re-distribution process to be computer automated, subject to Branch Manager review to ensure compliance with regulatory requirements. Account re-distributions will be made through this automated process, subject to exceptions described in Section V.C.3. above. The results of all account re-distributions shall be stored and readily retrievable for monitoring to ensure compliance with account re-distribution policies.

4. **Lateral Recruitment Packages**

a. The Industrial Psychologist shall review MSSB's processes for determining lateral FA recruitment compensation packages (including loans, bonuses, and other transitional compensation) and, if appropriate, make recommendations for improving these processes. These recommendations shall be designed to promote gender equity in the receipt and amount of transitional compensation packages—after taking into consideration factors such as the lateral recruit's production start date, production, assets under management, return on assets, product mix and any non-discriminatory factors—and shall be made in accordance with Section V.F.2. below.

b. MSSB shall provide a summary of data pertaining to lateral FA recruitment to the Diversity Monitor. The summary information will include comparative data on gender, and information on geographic location, amount of transitional compensation by component, methodology used to determine and any other factors taken into consideration in offering the transitional compensation, and any necessary explanatory information. The Diversity Monitor will review and report on this data to the Industrial Psychologists and Lead Class Counsel.

5. **Retiring Financial Advisors**

a. The book of business formerly serviced by a retiring Financial Advisor will be re-distributed through the Power Ranking system set forth above unless a Joint Production Arrangement/Agreement (JPA) has been in effect for twelve (12) months or longer at the time of retirement.

b. MSSB will consider the efforts made by branch management to increase participation by female Financial Advisors in JPAs with retiring Financial Advisors in determining the diversity component of Branch Manager compensation.

c. The Industrial Psychologists shall make recommendations for substantially increasing the participation of women in the receipt of retiring Financial Advisors' books of business. These recommendations shall be made in accordance with Section V.F.2. below.

d. MSSB will implement a system of documentation for all accounts retained through JPAs in effect between twelve (12) and twenty-four (24) months. MSSB will retain data about the assets retained, gender of the person who otherwise would have received re-distribution if Power Ranking had been followed, and any compensation paid to the retiring partner by the non-retiring partner. This data will be provided to the Diversity Monitor on a quarterly basis.

6. **Partnerships**

a. Unless a Joint Production Arrangement/Agreement ("JPA") has been in effect for twelve (12) months or longer at the time of departure, the book of business formerly serviced by a departing Financial Advisor will be distributed through the Power Ranking system.

b. MSSB will consider the efforts made and results achieved by branch management to increase participation by female Financial Advisors in partnerships in the branch in determining the diversity component of Branch Manager compensation.

c. The Industrial Psychologists shall review and, if appropriate, make recommendations for substantially increasing the participation of female Financial Advisors in teams. These recommendations shall be made in accordance with Section V.F.2. below.

d. For purposes of a Financial Advisor's Power Rankings, MSSB will count partnership assets under management based on the percentage of the commission split specified in the partnership agreement.

e. All Joint Production Agreements will include a plan for the re-distribution of partnership assets in the event of the partnership's or team's dissolution.

f. MSSB management and Human Resources personnel shall complete a "Partnership Dispute Report." A Partnership Dispute Report shall describe the date, names/genders of the affected FA's at issue, and the resolution for any time MSSB management and/or Human Resources intervene in, mediate, and/or resolve a dispute that includes at least one female and one male FA regarding partnership formation, dissolution or allocation of assets within a partnership. The Partnership Dispute Reports shall be provided to the Diversity Monitor on a quarterly basis.

g. The Diversity Monitor will review female FA participation in partnerships. The Diversity Monitor will receive copies of any complaints made to MSSB management or its legal counsel by female Financial Advisors regarding any aspect of partnerships. Female Financial Advisors shall be informed that they can report to the CARE program any partnership dissolution in which management was involved and in which they are dissatisfied with management's decision regarding the partnership dissolution, even if the Financial Advisor is not claiming discrimination. Training will be provided to Complex and Branch Managers about how to properly handle partnership formation and dissolution.

h. MSSB will implement a system of documentation for all accounts retained through a JPA in effect between twelve (12) and twenty-four (24) months. MSSB will retain data about the assets retained, gender of the person who otherwise would have received distribution if Power Ranking had been followed, and any compensation paid to the remaining partner by the departing partner. This data will be provided to the Diversity Monitor on a quarterly basis.

7. **Leads, Call-ins, and Walk-ins**

a. Each Branch Office shall implement a "Financial Advisor of the Day" program. Pursuant to this program, all client prospects who either walk in or telephone the branch and who are seeking a Financial Advisor shall be directed to the Financial Advisor serving as the Financial Advisor of the Day. The daily assignments shall be made alphabetically and announced on a monthly basis on or before the last day of the preceding month. The monthly roster shall be openly posted in a conspicuous location within the branch where all other Firm policies are posted. Participation among eligible Financial Advisors shall be voluntary each month.

b. Each Financial Advisor of the Day shall complete a "Financial Advisor of the Day Activity Log" that will detail all telephone calls and walk-in prospects fielded by the Financial Advisor and the disposition of each. The logs shall be maintained in a Branch Financial Advisor of the Day file for the duration of the Agreement.

c. If a prospect insists on speaking to the Branch Manager, the Branch Manager will direct the individual to the Financial Advisor of the Day. If the Financial Advisor of the Day is not qualified to handle the prospect's account based on the nature of the account, experience level of the Financial Advisor, or licensing, the Branch Manager shall refer the prospective client to the next available Financial Advisor of the Day on the monthly roster qualified to handle the account. Such referrals will not disqualify the receiving Financial Advisor from participating as Financial Advisor of the Day on her designated day on the monthly roster.

d. If the Branch Manager determines that the Financial Advisor of the Day is not qualified to handle a prospective client, the Branch Manager shall complete an exception report specifying the legitimate business reason why the Financial Advisor of the Day was not selected. The Diversity Monitor shall receive this exception report. Customer preference based on bias against women shall not be a legitimate reason for a prospect to be directed away from the Financial Advisor of the Day, provided, however, that MSSB shall have no obligation to inquire as to or otherwise attempt to discover the reason why a prospective client elects not to work with a particular Financial Advisor. The exception reports shall be maintained in a Branch Financial Advisor of the Day file for the duration of the Agreement.

e. All Financial Advisors and Registered Financial Advisor Associates who have successfully satisfied the preliminary production thresholds established under the Training Program shall be eligible to participate. Producing Branch Managers and Resident Managers may participate in the Financial Advisor of the Day program to the same extent as Financial Advisors and Financial Advisor Associates, except they too must comply with the process described in this Section, including use of exception reports described in paragraph V.C.7.d. above, and may receive call-ins, walk-ins and similar leads only when they are the designated Financial Advisor of the Day.

f. Unauthorized failure to perform Financial Advisor of the Day obligations as designated shall render a Financial Advisor ineligible to participate in the Program for a period of six (6) months. The branch shall maintain a list of those Financial Advisors who elected not to participate or who otherwise were ineligible.

8. **Distribution Upon Transfer to Non-Producing Manager**

a. Where no JPA has been in existence for at least twelve (12) months at the time of transfer, the book of business serviced by a producing manager who is transferred to a non-producing Branch Manager position or a Financial Advisor who moves to a non-producing Sales Manager position will be distributed through the Power

Ranking system as set forth in Sections V.C.2. above.

b. MSSB will implement a system of documentation for all accounts retained through a JPA in effect between twelve (12) and twenty-four (24) months, with reporting to the Diversity Monitor about the assets retained and gender of the person who otherwise would have received distribution if Power Ranking had been followed. This data will be provided to the Diversity Monitor on a quarterly basis.

9. **Disputes Concerning Account Re-distributions**

The parties agree that if at any time during the term of this Consolidated Settlement Agreement a dispute shall arise between MSSB and a Financial Advisor or a Registered Financial Advisor Associate concerning any account re-distribution, such dispute shall initially go through the MSSB's internal complaint process which includes access to mediation under MSSB's alternative dispute resolution mechanism ("CARE"). MSSB agrees to continue the existing tolling provisions under the CARE program guidelines for the duration of this Agreement; provided, however, that if a Financial Advisor submits a gender-related complaint through CARE, MSSB agrees that the statutes of limitations on her legal claims will be tolled for the greater of 120 days from the date of her CARE complaint or until the CARE complaint process is resolved. However, nothing herein shall prevent any Class Member or Named Plaintiff from individually pursuing any legal claim not released under this Settlement through any applicable governmental agency or court of law if she is otherwise entitled to do so.

D. Development Opportunities. MSSB shall work with the jointly appointed Industrial Psychologists to develop workplace initiatives designed to attract women to MSSB as Financial Advisors, and to retain them and enhance their success, including targeted mentoring and training. Training and mentoring may include, but is not limited to, training conference calls, online courses, and in person seminars. The Industrial Psychologists shall make recommendations to promote equitable participation of female Financial Advisors and Registered Financial Advisor Associates in development opportunities. These recommendations will be made in accordance with Section V.F.2. below.

MSSB additionally agrees to provide exit questionnaires to Financial Advisors and Registered Financial Advisor Associates who terminate voluntarily in order to gain a better understanding as to the reason for the departures. MSSB shall provide all of the information from the responses to the questionnaires of female Financial Advisors and Registered Financial Advisor Associates annually to the Industrial Psychologists, the Diversity Monitor and individuals within MSSB responsible for hiring Financial Advisors and Registered Financial Advisor Associates.

MSSB agrees to maintain its commitment to the biannual Women's Business Exchange and the Women's Management Forum preceding the biannual Financial Advisor conference, or equivalent programs.

E. **Complaint Process and Training.** The complaint process, including MSSB's prohibition against retaliation, as provided in the Non-Discrimination and Anti-Harassment Policy, shall be communicated in writing to all Financial Advisors and Financial Advisor Associates upon hire, and annually to all Financial Advisors. New hires shall be required to submit an acknowledgment of receipt of this communication.

MSSB will provide the Human Resources staff for the US Wealth Management Division supporting Financial Advisors and Registered Financial Advisor Associates with appropriate training regarding compliance with state, federal, and local EEO laws; MSSB's anti-discrimination and harassment policies; and this Consolidated Settlement Agreement.

MSSB will provide its US Wealth Management Human Resources staff with appropriate training regarding best practices for complaint investigation and resolution. Any reported allegations of gender discrimination or related retaliation will be investigated promptly. The investigation may include individual interviews with the parties involved and, when necessary, with individuals who may have observed the alleged conduct or may have other knowledge relevant to a determination or resolution of the underlying complaint. The employee making the complaint will be advised that the investigation is to be commenced. Confidentiality will be maintained throughout the investigation process to the greatest extent possible, and the individual making the complaint will be kept informed regarding the course of the investigation to the extent consistent with adequate investigation and appropriate corrective action. Individuals involved in the investigation will be directed to maintain confidentiality. At the conclusion of the investigation, the Firm will advise any individual who has made a complaint that the investigation has concluded and share other information as may be appropriate under the circumstances.

MSSB will retain documents sufficient to show complaints by female Financial Advisors of sex discrimination, sex bias, and/or retaliation related to such complaints for the term of the Consolidated Settlement Agreement. This includes, but is not limited to, complaints made directly to in-house or outside counsel. MSSB will provide copies of all sex discrimination, sex bias, and retaliation complaints to the Diversity Monitor on a monthly basis.

F. <u>Appointments</u>.

1. **Diversity Monitor.** The parties shall jointly appoint Cathy Pepe, Esq. as the diversity monitor ("Diversity Monitor"). The parties will jointly appoint J.H. (Rip) Verkerke, Esq. as a transitional diversity monitor for the purpose of monitoring specific compliance issues which arose under the Smith Barney Settlement Agreement prior to June 1, 2009. Professor Verkerke's role as transitional diversity monitor will continue for six months from the date of this Agreement after which he will meet with Cathy Pepe to provide her with information on any outstanding matters related to his role as transitional diversity monitor. The Diversity Monitor shall be external to and independent of MSSB, but will report directly to the President of MSSB. The Diversity Monitor shall monitor MSSB's efforts to carry out the terms of the Consolidated Settlement Agreement. This shall include the following:

a. The Diversity Monitor will receive monthly reports regarding complaints of women Financial Advisors and Registered Financial Advisor Associates alleging sex discrimination, sex bias or retaliation, and resolution of investigations of such complaints through the CARE program or otherwise.

b. The Diversity Monitor will review reports by the Company on the diversity-related annual assessment process for Complex and Branch Managers (Non-Producing and Producing), including the quarterly self-assessments completed by Complex and Branch Managers, and annual bonus data and information provided by the Company related to the diversity component of each Complex and Branch Manager's compensation.

c. The Diversity Monitor will review account re-distribution data, exception reports and complaints to monitor policy compliance, including information on the identity of the branches, the branch managers who approved the exceptions and an explanation of the exceptions.

d. If the Diversity Monitor identifies issues of potential non-compliance, the Diversity Monitor will inform MSSB and Lead Class Counsel. In consultation with Lead Class Counsel, MSSB will take appropriate corrective action to address all instances of non-compliance with the provisions herein unless MSSB can show that corrective action would be inconsistent with legitimate business and client needs and objectives. If Lead Class Counsel disagrees with MSSB's determination on the implementation of corrective action, Lead Class Counsel may initiate a meet and confer session with MSSB's counsel and, if necessary, seek mediation, pursuant to Section VII.B. herein. MSSB shall inform the Diversity Monitor and Lead Class Counsel of any corrective action taken pursuant to this paragraph. Where potential non-compliance has been identified, the Diversity Monitor shall have the right to audit the activities in a branch, by reviewing documents, asking branch management to provide explanations and, if necessary, speaking to Financial Advisors in the branch, and shall have the right to receive relevant information from MSSB headquarters upon reasonable request. Nothing herein shall alter or restrict Lead Class Counsel's right to enforce this Consolidated Settlement Agreement under the Dispute Resolution provisions of this Consolidated Settlement Agreement, set forth in Section VII.B. below.

e. On an annual basis, the Diversity Monitor will review the transitional compensation provided to lateral FA recruits, and will report on these records to the Industrial Psychologists. In addition, the Diversity Monitor will receive a copy of the summaries set forth in Section V.C.4.b. above and may interview personnel about the rationale for any particular transitional compensation package.

f. The Diversity Monitor will review the participation of female FAs in teams within and across branches. The Diversity Monitor will review the Partnership Dispute Reports and will report on these to the Industrial Psychologists.

g. The Diversity Monitor will monitor bi-annual training of management on EEO policies, and policies against discrimination and retaliation, and ensure that the training agreed to was implemented.

h. The Diversity Monitor will review how Human Resources handles investigations and the resolution process for inquiries and complaints.

i. The Diversity Monitor will review exception reports regarding the Financial Advisor of the Day program.

j. The Diversity Monitor will review the exit questionnaire responses completed by departing female Financial Advisors, as well as information regarding the retention of female Financial Advisors annually, and report his/her findings to Human Resources.

k. The Diversity Monitor will provide reports to Lead Class Counsel and MSSB at least semi-annually regarding the items monitored, including in this Section and including the analysis of the account re-distribution system. The Diversity Monitor may report incidents of potential material non-compliance with this Consolidated Settlement Agreement to Lead Class Counsel and MSSB on a more frequent basis.

l. The Diversity Monitor shall monitor on an annual basis the representation rates of women in the Financial Advisor Associate and Financial Advisor positions.

m. The Diversity Monitor shall review the actual implementation of the programs, policies, and initiatives that MSSB is obligated to undertake by virtue of this Agreement and shall, on an annual basis, report the results of this review to Lead Class Counsel.

n. The Diversity Monitor will maintain records for the term of this Consolidated Settlement Agreement.

2. **Industrial Psychologists**

a. The parties shall jointly appoint as Industrial Psychologists Drs. Kathleen Lundquist, Irwin Goldstein, and Harold Goldstein, who shall work with MSSB and Lead Class Counsel to develop innovative, meaningful, novel, state of the art programs and to make recommendations:

- Concerning policies and programs designed to recruit female Financial Advisors and Financial Advisor Associates to MSSB;
- For increasing participation of female Financial Advisors in the receipt of retiring Financial Advisors' books of business;
- For increasing participation of female Financial Advisors in teams and partnerships, including commission splits between male and female partners, and dissolution of partnerships and teams;
- Concerning transitional compensation offered to lateral recruits;
- Concerning policies and practices with respect to training, development, and mentoring, that will enhance opportunities for female Financial Advisors and Financial Advisor Associates. Training and development may include, but is not limited to, training conference calls, online courses, and in-person seminars;
- Concerning a mentoring program for all Financial Advisor Associates and Financial Advisors;
- For increasing the production and earnings of female Financial Advisors, including policies and practices with respect to training, development, mentoring, and business-related allocations;
- For increasing the participation of women in MSSB's management assessment and development program and in branch management; and

- Concerning a system of semi-annual internal data collection and a monitoring process.

b. The Diversity Monitor and Industrial Psychologists shall review on an annual basis the retention rates of women in the Financial Advisor position and shall report the results of this review to Lead Class Counsel.

c. The Industrial Psychologists shall report to the Diversity Monitor on the programs that the Industrial Psychologists have been involved in by virtue of this Consolidated Settlement Agreement. The three Industrial Psychologists shall coordinate their work to avoid unnecessary duplication.

d. The Industrial Psychologists shall present such recommendations to a senior executive panel of MSSB consisting of senior representatives from Talent Management, Diversity, Employment Law, Human Resources, and US Wealth Management. A copy of the recommendations will also be provided to Lead Class Counsel. If MSSB does not agree with the recommendations, but Lead Class Counsel still thinks they should be implemented notwithstanding MSSB's objections, the Industrial Psychologists, along with Lead Class Counsel, will have the opportunity to present the recommendations to the President of MSSB or the Head of US Wealth Management. MSSB shall decide in good faith consistent with the purposes of this Consolidated Settlement Agreement whether to implement such recommendations. All recommendations of the Industrial Psychologists will be designed to advance the purposes of this Consolidated Settlement Agreement consistent with MSSB's business needs and objectives.

e. On an annual basis, the Industrial Psychologists shall provide to the parties statistical analyses of the Power Ranking criteria as described in Section

V.C.2.d. Lead Class Counsel may use the statistical analysis solely for the purpose of monitoring the Settlement by providing recommendations to the Industrial Psychologists and/or meeting and sharing with the Industrial Psychologists, MSSB, the Mediator or the Diversity Monitor their thoughts on how concerns relative to the data might be addressed. The data shall not be admissible for use in other litigation.

f. The Industrial Psychologists shall evaluate the participation of women FAs in teams/partnerships, including, but not limited to, data regarding the gender composition of teams within and across branches, in order to identify methods or approaches to enhance and increase female participation and financial success in teams.

g. Subject to signing an appropriate confidentiality agreement, and upon reasonable advance notice, the Diversity Monitor and the Industrial Psychologists described in Sections V.F. above will have reasonable access to relevant documents, data, and MSSB employees. This specifically includes data with respect to female Financial Advisor participation in teams or partnerships, including commission splits between male and female partners and dissolution of partnerships and teams, and transitional compensation offered to lateral recruits.

h. The Diversity Monitor and the Industrial Psychologists will be compensated by MSSB.

i. If it becomes necessary to replace the Diversity Monitor or either Industrial Psychologist, the parties shall jointly select a replacement by mutual agreement.

G. <u>General Non-Discrimination Provisions</u>. Pursuant to MSSB's Non-Discrimination and Anti-Harassment Policy, women Financial Advisors and Registered

Financial Advisor Associates will enjoy terms and conditions of employment comparable to their male counterparts.

a. MSSB shall assert the following general policies using a method agreed to by the parties:

b. Prohibition against discrimination on the basis of sex in compensation and business opportunity allocations.

c. Prohibition against retaliation for reporting sex discrimination, participating in the CARE program, participating in this or any discrimination settlement, filing a lawsuit or complaint with any outside agency or entity alleging sex discrimination, or for refusing to participate in sex discrimination.

d. MSSB will not honor business expenses that are directly or indirectly related to male-only entertainment establishments.

e. The parties agree that it shall be a violation of this Consolidated Settlement Agreement for a MSSB supervisor to retaliate against any Class Member for her participation in the prosecution of the allegations contained in the charges underlying this Settlement or in the Settlement itself. However, nothing in this Settlement will prevent a Class Member from pursuing whatever legal rights or remedies she otherwise may have with respect to any individual claim not covered by the claims released through this Settlement.

VI. MONITORING

A. Data Collection. MSSB will collect data which will include, but not be limited to: (1) compensation of Financial Advisors; (2) account re-distributions, defined to include all transfers of accounts from one Financial Advisor to another within MSSB such as those of retiring and deceased Financial Advisors, not just the distribution of the accounts of departing Financial Advisor; (3) partnerships involving Financial Advisors; and (4) sourcing, recruitment and hiring of Financial Advisors; (5) sex discrimination complaints made by female Registered Financial Advisor Associates or Financial Advisors; (6) retention of Financial Advisors; and (7) any other areas agreed upon by MSSB and Lead Class Counsel. MSSB will include several variables in its data collection, including but not limited to, gender, production and length of experience.

B. **Monitoring System.** MSSB, with input from the Industrial Psychologists and consent from Lead Class Counsel, will create and implement a system of monitoring compliance with each policy described herein, including, without limitation, the account re-distribution policy using the Power Ranking methodology.

C. **Reports.** Lead Class Counsel will receive semi-annual reports from the Diversity Monitor.

D. **Meetings.** MSSB in-house Counsel and Lead Class Counsel will meet at least once every six (6) months, beginning six months after the Effective Date, regarding compliance, and may confer more frequently at their discretion or as dictated by information either side gathers.

VII. ENFORCEMENT

A. **No Third Parties.** Enforcement of this Consolidated Settlement Agreement shall be prosecuted by Lead Class Counsel or counsel for MSSB only, not third parties. Lead Class Counsel shall meet and confer with counsel for MSSB prior to commencement of any enforcement proceedings.

B. **Dispute Resolution.** The parties will work diligently and in good faith to resolve all disputes that may arise during the term of this Consolidated Settlement Agreement concerning the rights, obligations and duties of the parties to this Consolidated Settlement Agreement. In the event the parties cannot agree, the parties will attempt to resolve the dispute with the facilitation of a mutually selected mediator, paid for by MSSB. The Court shall retain jurisdiction to enforce the Settlement if the parties are unable to resolve a dispute through mediation.

VIII. CONFIDENTIALITY

A. Documents and Information Produced by Morgan Stanley, Smith Barney, MSSB and Class Counsel. All proprietary and confidential documents or information that have previously been provided to either Morgan Stanley, Smith Barney, MSSB or Class Counsel in the Morgan Stanley Action and Smith Barney Action as of the date this Consolidated Settlement Agreement is executed, or which are produced by Morgan Stanley, Smith Barney, MSSB Lead or Class Counsel pursuant to any provision of this Consolidated Settlement Agreement shall, unless otherwise agreed, be treated as, and thereafter remain, confidential. Said documents and information shall not be disclosed to anyone other than the Diversity Monitors, Industrial Psychologists, mediator, or the Court in connection with any proceeding to enforce any provision of this Consolidated Settlement Agreement. If such disclosure is deemed necessary by Lead Class Counsel or MSSB, Lead Class Counsel or MSSB shall identify and disclose to the other party such documents and information deemed necessary to disclose at least ten (10) business days prior to filing such documents with the Court, and, if a party so requests, shall seek permission to file said documents with this Court under seal.

B. Return or Disposal of Confidential Documents and Information. All proprietary and confidential documents or information that have previously been provided to Class Counsel or to Morgan Stanley, Smith Barney, or MSSB as of the date this Consolidated Settlement Agreement is executed, or which are produced by MSSB or Class Counsel pursuant to any provision of this Consolidated Settlement Agreement, shall be destroyed or returned to counsel as follows:

After the expiration of the Consolidated Settlement Agreement all proprietary and confidential documents or information provided to Class Counsel or Morgan Stanley, Smith Barney, and MSSB and designated "Confidential for Settlement Purposes Only" or similar designation pursuant to the Confidentiality Agreement, or that have been produced in confidence pursuant to any provision of this Consolidated Settlement Agreement, and all copies of such documents or information, shall, upon request, be returned to counsel for the producing party or be destroyed within thirty (30) days of the expiration of this Consolidated Settlement Agreement. Certification of such destruction shall be provided to counsel for the producing party.

The preceding paragraphs of this Section are intended to supersede those provisions of the "Confidentiality Agreement For Settlement Discussions" or similar agreements earlier executed by counsel for the parties that address the timing of the return or destruction of proprietary and confidential documents or information provided to Class Counsel or Morgan Stanley Smith Barney or MSSB. All other provisions of the "Confidentiality Agreement For Settlement Discussions" remain in full effect.

Nothing in the preceding paragraphs shall preclude any party from responding to a lawful discovery request, subpoena or court order; provided, however, that the party against whom such discovery is sought or such subpoena or order is directed agrees to provide immediate notice and a copy of same to counsel for the other parties to this Consolidated Settlement Agreement.

In the event that this Consolidated Settlement Agreement is terminated for any reason, all proprietary and confidential documents or information provided to Class Counsel or Morgan Stanley or Smith Barney and designated "Confidential for Settlement Purposes Only" or similar designation pursuant to the Confidentiality Agreement, or that have been produced in confidence pursuant to any provision of this Consolidated Settlement Agreement, and all copies of such documents or information, shall, upon request, be returned to counsel for the producing party or be destroyed within thirty (30) days of the date on which this Consolidated Settlement Agreement is terminated. Certification of such destruction shall be provided to counsel for the producing party.

IX. GOVERNING LAW

The parties agree that federal law shall govern the validity, construction and enforcement of this Consolidated Settlement Agreement. To the extent that it is determined that the validity, construction or enforcement of this Consolidated Settlement Agreement is governed by state law, the law of the District of Columbia shall apply.

This Consolidated Settlement Agreement contains the entire agreement and understanding of the parties with respect to the Settlement and supersedes the Morgan Stanley and Smith Barney Settlement Agreements. This Consolidated Settlement Agreement does not impose any obligations on the parties beyond the terms and conditions stated herein. Accordingly, this Consolidated Settlement Agreement shall not prevent or preclude MSSB from revising its employment practices and policies or taking other personnel actions during the term of this Consolidated Settlement Agreement so long as they are consistent with this Consolidated Settlement Agreement.

Except as specifically provided for herein, this Consolidated Settlement Agreement may not be amended or modified except with the express written consent of the parties.

X. OTHER CONDITIONS OF SETTLEMENT

A. Notices to Counsel. All notices to counsel required or desired to be given under this Consolidated Settlement Agreement shall be in writing and by overnight mail and e-mail to counsel for the respective parties (specifically, to Kelly Dermody of Lieff, Cabraser, Heimann & Bernstein, LLP, Adam Klein of Outten & Golden, LLP, Cyrus Mehri of Mehri & Skalet, PLLC, Steven M. Sprenger of Sprenger & Lang, PLLC, Mark Greenfield of Morgan Stanley, and Mark S. Dichter of Morgan, Lewis & Bockius LLP) at their respective addresses set forth below (or to such other address as any such party or counsel may designate in a notice). Notices sent to Mark Greenfield under this paragraph shall be addressed to Mr. Greenfield at the following address: 2000 Westchester Avenue, Purchase, New York, 10577-2530.

B. Failure to Insist on Strict Compliance. The failure of any party to insist in any one or more instances on strict compliance with the terms and conditions hereof shall not be construed to be a waiver of remedies available with respect to any prior or subsequent breach.

C. Consolidated Settlement Agreement Binding. This Consolidated Settlement Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, dependents, executors, administrators, trustees, legal representatives, personal representatives, agents, successors and assigns; provided, however, that this Consolidated Settlement Agreements shall not inure to the benefit of any third party.

D. **<u>No Drafting Presumption</u>.** All parties hereto have participated, through their respective counsel, in the drafting of this Consolidated Settlement Agreement and, therefore, this Consolidated Settlement Agreement shall not be construed more strictly against one party than another.

E. **<u>Dispute As To Meaning of Agreement Terms</u>.** In the event of any dispute or disagreement with respect to the meaning, effect or interpretation of this Consolidated Settlement Agreement hereto, or in the event of a claimed breach of the Consolidated Settlement Agreement, the parties agree that such dispute will be resolved and adjudicated only in accordance with the dispute resolution provisions of Section VII of this Consolidated Settlement Agreement.

F. **<u>Interpretation of Terms</u>.** Whenever possible, each provision and term of this Consolidated Settlement Agreement shall be interpreted in such a manner as to be valid and enforceable.

G. **<u>Paragraph and Section Headings</u>.** Paragraph and section headings are for convenience of reference only and are not intended to create substantive rights or obligations.

H. **<u>Counterparts</u>.** This Consolidated Settlement Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Consolidated Settlement Agreement.

I. **<u>Agreement Binding</u>.** As of the date on which counsel for the parties execute this Consolidated Settlement Agreement, this Consolidated Settlement Agreement will be binding in all respects, unless the Court fails to approve this Consolidated

Settlement Agreement and the Consolidated Settlement Agreement is thus vacated.

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DATED: May 20, 2011

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