

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

In the Matter of:

MORGAN STANLEY & CO.,
INCORPORATED (f/k/a
MORGAN STANLEY DW, INC.,)
DAVID SWARTZ,
MICHAEL RHODES AND
ARLEN JAY FOX,

RESPONDENTS.

Docket No. E-2006-0094

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section ("Enforcement Section") of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth ("Division") files this administrative complaint ("Complaint") in order to commence an adjudicatory proceeding against Morgan Stanley & Co., Incorporated, formerly known as Morgan Stanley DW, Inc. ("Morgan Stanley"), David Swartz ("Swartz"), Michael Rhodes ("Rhodes") and Arlen James Fox ("Fox") (collectively, "Respondents") for violating M.G.L. c. 110A, the Massachusetts Uniform Securities Act (the "Act") and 950 CMR 10.00 *et seq.* ("Regulations"). This Complaint is focused primarily on telephone prospecting activities conducted out of Morgan Stanley's Boston High Street Branch ("High Street Branch"). The evidence will show that one Morgan Stanley Financial Advisor ("FA") improperly accessed CareerBuilder.com ("CareerBuilder") and downloaded resumes containing sensitive personal and financial information in order to solicit business on behalf of Morgan Stanley. In addition, the evidence will demonstrate that Morgan Stanley

managers urged Financial Advisors (“FAs”) to employ overly aggressive telephone prospecting methods, including so-called “cold-calling,” without adequately monitoring the FAs compliance with the national and state Do-Not-Call (hereinafter “DNC”) registries. Further, Morgan Stanley and its agents engaged in practices violating NASD, NYSE and FCC rules regarding telephone solicitations conducted at the High Street Branch.

The Enforcement Section seeks an order instructing Respondents to permanently cease and desist from committing any further violations of the Act and Regulations, to require Morgan Stanley to pay an administrative fine in an amount and upon such terms and conditions as the Director or Hearing Officer may determine, take such other relief with respect to agents’ registrations as is deemed appropriate under sections 204 and 407A of the Act by the Director or Hearing Officer, to Censure Morgan Stanley and order Morgan Stanley to fairly compensate targets of their improper solicitations for any damages attributable to the alleged wrongdoing, as well as requiring Respondents pay the Enforcement Section’s investigatory costs. In addition, the Enforcement Section requests the Director or Hearing Officer take any other appropriate actions against Fox, Swartz, Rhodes and/or Morgan Stanley which may be in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY

Throughout a seventeen (17) month period of time between August 2005 and December 2006, Morgan Stanley failed to adequately monitor its Boston High Street Branch FAs telephone prospecting activities, commonly known as cold-calling, which resulted in several hundred violations of national and state DNC statutes and regulations.

The most glaring source of the violations stemmed from one Morgan Stanley FA, Arlen Jay Fox's, regular practice of accessing CareerBuilder's website to impermissibly download more than a thousand resumes, containing sensitive personal and financial information, for sales prospecting purposes. Fox conducted these activities with the active involvement and permission of at least one manager at the High Street Branch. Fox's use of the CareerBuilder resumes constituted a breach of the terms of Morgan Stanley's contract with CareerBuilder, which limited Morgan Stanley's access and use of the resume information for employment placement purposes only. Fox's use of the CareerBuilder resume information for solicitation purposes was not only in direct contravention of the contract between Morgan Stanley and CareerBuilder, but was also in violation of Morgan Stanley's own internal written policies, which forbid employees from borrowing the logon and passwords of others for their own use.

Morgan Stanley's High Street Branch management team exacerbated the matter by failing to adequately monitor the Fox's subsequent cold-calls to these targets. Because Fox failed completely in cross-checking the resume telephone numbers with national or state DNC lists, his subsequent cold-calls to hundreds of CareerBuilder customers resulted in violations of national and/or state DNC statutes and regulations.

Like many sales related businesses, Morgan Stanley uses a business model that relies, in part, on its employees cold-calling for new clients. Morgan Stanley runs national training sessions for its FAs that stress persistence and offer techniques designed to assist FAs in becoming successful cold-callers. Sales managers at the High Street Branch followed through by monitoring FAs' telephone activity for volume and at times singling out those persons who did not achieve the prospecting levels suggested by

management. Despite the attention paid to call volume, management failed to ensure that the High Street Branch employees, including Fox, were observing DNC requirements.

By emphasizing cold-calling as method of generating business, Morgan Stanley had a heightened duty to ensure that its representatives were complying with DNC requirements. Although Morgan Stanley possessed technological tools, such as telephone reporting databases, that could have monitored and ensured compliance with DNC regulations, branch management failed to identify potential issues with its representatives' cold-calling practices prior to the Division's investigation.

Fox and Morgan Stanley's violations of the DNC are compounded by the manner in which cold-call leads were developed. Indeed, in one meeting, Fox fully informed Assistant Branch Manager, David Swartz of his idea to access internet employment placement services websites for prospecting purposes. Fox even requested Swartz obtain a password for him to access the sites. However, rather than reviewing the terms of the CareerBuilder contract to ensure such a use was permitted, Swartz simply approved Fox's request and permitted him to use a Morgan Stanley management password to unlock sensitive personal and financial information for thousands of well-heeled prospects in search of new business for Morgan Stanley. The resumes were chock-full of valuable information, such as employment history (suggesting potential sources of 401K transfers), recent salary levels and vital contact information, such as cell phone telephone numbers, that might not otherwise be published.

Using the contact information contained in the resumes, Fox telephoned the prospects without observing the requirements of national and state DNC statutes and regulations. Fox accessed and printed thousands of resumes using internet employment

websites, such as CareerBuilder, and developed a significant cold-call lead list. He often used keywords such as “Chief,” “President,” “Director,” and/or “Principal” to search for and identify people who most likely were top wage earners or had accumulated significant assets. Between approximately August 2005 and December 2006, Fox made several hundred telephone calls soliciting business on behalf of Morgan Stanley to persons whose telephone numbers were registered with the national or state DNC registries. In other instances, Fox violated DNC statutes and regulations by failing to honor the requests and demands of those persons he contacted who wanted no further solicitations from Morgan Stanley. When targets requested no further solicitations, Fox merely made a note to himself, but did not inform his managers or add the name or telephone number to Morgan Stanley’s DNC list.

Morgan Stanley’s use of the resume information is particularly egregious in light of the stated purposes for which CareerBuilder, and other internet based employment service companies, exist. Persons who post their resume information on an employment search website do so because they are eager to be contacted by employers regarding potential employment opportunities. They provide sensitive information such like personal work history, contact information, including non-listed home, cell, present employment, e-mail, and/or fax numbers in the hopes of landing a job or an interview. Morgan Stanley, though it’s Assistant Branch Manager, Swartz and registered representative Fox made the conscious decision to access and convert this sensitive personal information for the improper purpose of soliciting new business. The method is a misleading, dishonest and an unethical means of prospecting persons, who in many

instances had already taken affirmative steps to curtail solicitors' calls by registering on the national or state DNC registries.

The High Street Branch management further ignored telephone solicitation guidelines, regulations and rules by advocating that all outgoing branch telephone calling information be hidden from caller identification services. The directive, noted in an e-mail on orders from High Street branch sales manager, Michael Rhodes, requested the change and sought to conceal the High Street branch telephone number or the name "Morgan Stanley" from call recipients for "cold-calling purposes." This request would ensure that members of the general public with caller id service who received a cold-call by an FA in the High Street Branch, would not be able to identify the origin of the call. Instead, the call would merely be identified as "unknown." Upon information and belief, during periods of time in 2005 and/or 2006 the High Street Branch had its caller id information hidden from the general public in violation of national and state DNC regulations, as well as FCC and NYSE rules and regulations.

The Division's investigation of the High Street Branch's prospecting activities began in November 2006 after receiving a complaint from Massachusetts resident, Ed Pilarski, who received a cold-call from Fox. Upon hearing how Fox obtained his information, Pilarski contacted the Division. The investigation that followed revealed a pattern of conduct by Morgan Stanley that contrasted sharply with the letter and spirit of the 1991 Federal Telephone Consumer Protection Act and its state counterpart, the Massachusetts Telemarketing Solicitation Act of 2002. The High Street Branch management team overemphasized maintaining high sales call volumes for their FAs and trainees, without observing their obligations to ensure compliance with the DNC

regulations, rules and Morgan Stanley's own written policies regarding telephone solicitation procedures.

The Division's investigation revealed that High Street sales managers regularly reviewed telephone call reports, which were designed to monitor FAs' and trainees' telephone use. Although certain call reports reviewed by the managers contained direct evidence demonstrating that some trainees were not using Morgan Stanley's automated telephone service designed to ensure DNC compliance, sales managers took no further action to investigate the issue. Instead, the call reports and logs were used merely to measure total call volume. Moreover, testimony before the Division by the High Street branch compliance manager and sales managers reveal a significant gap in supervisory duties regarding the DNC statutes and regulations. The complex administrative manager, who is also the chief compliance person for the High Street Branch, testified that the day-to-day oversight of telephone prospecting calls was performed by the sales managers. However, in testimony before the Division, the sales managers denied providing such oversight or even having responsibility for such functions.

High call volume is stressed not only at the branch level, but at Morgan Stanley's national level as well. For example, Morgan Stanley urged newer FAs and trainees, by way of its Professional Foundations Program (" PFP") and/or Wealth Management Analyst ("WMA") program, to make a minimum of 100 - 200 "dials" per day to prospects. Training manuals distributed to attendees, estimated that newer FAs should be spending at least six hours a day performing telephone prospecting. In the wake of one WMA national training workshop at Morgan Stanley's Learning Institute in Irving, Texas, which included a session on cold-calling, one WMA trainee in attendance later

questioned Morgan Stanley's emphasis on cold-calling practices in an e-mail to another trainee. In assessing the training, the e-mail provided:

We claim to be Wealth Advisors, Financial Advisors, Client Services Associate, but we train as sales people. I've read articles that argue against cold-calling in the Financial Industry because it causes prospects to view us as salesmen, not professionals. Doctors don't cold call sick people. Lawyers don't run seminars for potential criminals... There is a prevailing 'sink-or-swim' mentality in the training program. In fact, I believe the National Training Manager best illustrated this mindset when he referenced the good-old days when trainees were given 'a book and a phone'...

Upon being forwarded the e-mail by another attendee of the training session, Michael Rhodes ("Rhodes"), a High Street Branch sales manager, succinctly expressed Morgan Stanley's telephone prospecting philosophy by bluntly noting: "I love people that have excuses for their failures. *This business is what it is.*" (emphasis added) Rhodes then forwarded the trainee's e-mail to Morgan Stanley's National Training Manager, commenting: "[the Boston WMA trainee] thought the week was great. He sent me someone's feedback that will probably have a difficult time in the program."

Former Morgan Stanley employees assigned to the High Street Branch during the time period 2005 –2006, described an atmosphere at the branch level where sales managers overemphasized making cold-calls. During some sales meetings, sales managers armed with reports detailing telephone calling data singled out FAs or trainees who were not making enough cold-calls

During the Division's investigation of the above-referenced practices, Respondent, Morgan Stanley was not fully cooperative. Instead, the firm engaged in certain behavior designed to mislead, obstruct and/or and delay the Division in having

access to critical information and data concerning Fox's telephone activity. In particular, during an on the record interview of a Morgan Stanley employee, identified as the High Street Branch's liason and troubleshooter for telephone systems and records, the Division sought information concerning the record keeping capabilities of a particular phone system used by Morgan Stanley, known as Microcall. In response to questions from the Division, the witness misrepresented the search and reporting capabilities of Microcall. Further, attempts were made to conceal the existence of a particular Microcall telephone report the witness assembled concerning Fox during the investigation. Only after deeper investigation and follow-up requests for documents did the witness finally confess as to making untruthful and/or inconsistent statements confirming the existence of the report and Microcall's broader search and reporting capabilities. Further, once discovered and reviewed by the Division, the Microcall report revealed several hundred instances, between April 2006 and December 2006, where Fox dialed the telephone numbers and contacted Massachusetts residents for solicitation purposes, whose names were included on national and/or state DNC registries. Finally, Morgan Stanley admitted during the investigation that it failed to retain certain business related documents concerning trainees' signed acknowledgements of receiving and reviewing the company's policies regarding observing the DNC statute and regulations.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and

purchases of securities; 2) those individuals offering and/or selling securities; and 3) those individuals transacting business as investment advisers within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by §407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with §§204 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of August 2005 until December 2006 (“Relevant Time Period”).

V. RESPONDENTS

6. Morgan Stanley & Co., Incorporated (“Morgan Stanley”) is a Financial Industry Regulatory Authority (“FINRA”)¹ registered broker-dealer headquartered at 1585 Broadway, New York, NY. Morgan Stanley also has at least one Boston-based branch located at 125 High Street, Boston, Massachusetts, 02110. Morgan Stanley is registered

¹ FINRA was created in July 2007 through the consolidation of National Association of Securities Dealers (“NASD”) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange (“NYSE”).

as a broker-dealer with the Commonwealth of Massachusetts, and has Central Registration Depository (“CRD”) number 8209.

7. David Swartz (“Swartz”) is a Branch Manager for Morgan Stanley’s Wellesley Branch located at 45 William Street, Wellesley, MA. During a portion of the Relevant Time Period, Swartz was an Assistant Branch Manager at Morgan Stanley’s High Street Branch. Swartz has a CRD identification number of 4106959. Swartz is registered as a broker-dealer agent and currently possesses Series 3, 7, 9, 10, 31, 63 and 66 exam registrations.

8. Michael J. Rhodes (“Rhodes”) is a Sales Manager and registered representative of Morgan Stanley’s High Street Branch since March, 2006, and has a CRD number of 4066970. Rhodes is registered with the Commonwealth of Massachusetts as a broker dealer agent of Morgan Stanley and he currently possesses the Series 7, 9, 10, 31 and 66 exam registrations.

9. Arlen Jay Fox (“Fox”) is a Senior Vice President and registered representative of Morgan Stanley since approximately 1996 and has a CRD number 2775296. Fox is registered with the Commonwealth of Massachusetts as a securities agent of Morgan Stanley.

VI. OTHER INVOLVED AND RELATED PARTIES

10. Jeffrey Swartz (“J. Swartz”) is the Branch Manager of Morgan Stanley’s Boston High Street branch located at 125 High Street, Boston, MA. J. Swartz has been a registered representative of Morgan Stanley since approximately 1990, and has CRD number 1971874. J. Swartz served as the branch manager of the High Street branch

during the a portion of the Relevant Time Period beginning in May 2006 and had supervisory responsibility over Rhodes and Fox. J. Swartz is registered as a broker-dealer agent and currently possesses the Series 3, 7, 8, and 63 registrations.

11. Dennis Hogan (“Hogan”) is a Complex Administration Manager of Morgan Stanley’s High Street branch. Hogan has been a registered representative of Morgan Stanley since approximately 1985 and has a CRD number of 1380822. Hogan is primarily responsible for overseeing the High Street branch’s compliance and risk functions. Hogan is registered as a broker-dealer agent and possesses the Series 3, 7, 9, 10, 63 and 65 registrations.

12. Ian MacNeill (“MacNeill”) is presently a sales manager of Morgan Stanley’s High Street branch. MacNeill has served in this capacity since approximately June 2006 and has a CRD number of 3112990. MacNeill is registered as a broker-dealer agent and possesses the Series 7, 9, 10 and 63 registrations.

13. Kevin Stewart (“Stewart”) is a Client Service Manager of Morgan Stanley’s High Street branch. Stewart is a non-registered fingerprint person and has a CRD number of 3135908. Stewart has served in this capacity since approximately March 2003.

VII. FACTS AND ALLEGATIONS

A. Cold Calling Practices At Morgan Stanley

1. Telephone Prospecting Training

14. Morgan Stanley trains its financial advisors from the outset that “Telephone Prospecting,” as it is known at Morgan Stanley, is a vital tool to succeed in building business.

15. Telephone Prospecting includes cold-calling, which consists of a solicitation telephone call to a prospect whom the solicitor has had no prior relationship or referral.
16. Upon information and belief, during the time period January 2005 through December 2006, Morgan Stanley conducted a training program for new financial advisors known as the Professional Foundations Program (“PFP”) designed to develop newer FAs at Morgan Stanley.
17. At the time, Morgan Stanley also had another training program known as the “Wealth Management Analyst” (“WMA”) program. Upon information and belief, the WMA was discontinued in or about Fall 2006.
18. Upon information and belief, the WMA served, in part, as a pipeline for junior candidates’ entry into the PFP program.
19. Through the PFP and/or WMA programs, Morgan Stanley provided significant sales training at the branch level, as well as through national training seminars at Morgan Stanley’s Learning Institute in Irving, Texas.
20. As part of the nationally run training, Morgan Stanley and a third-party vendor known as “The Next Level” conducted intensive week long training seminars entitled “Business Planning and Prospecting for ILT1” (hereinafter “National Training”) at Morgan Stanley’s Irving, Texas facility.
21. As part of the training, the National Training provided “statistical data about what it takes to be successful in the first year from a prospecting perspective.”
22. The National Training set “production goals” for the PFP participants, stating:

To do this, you will need to bring in \$4 million in assets under management and generate \$30,000.00 in revenue between the month 4 and month 12 [of production]. This means you need to bring in at least \$125,000 in assets under management per week.

23. The training materials provide a chart that outlines the estimated number of telephone calls that need to be made to reach the goal of \$125,000.00 in assets under management per week.

24. The materials provide for between “15-35 dials per hour” and that generally, it takes “100 dials to make 20 contacts” and directs FAs to make “30 contacts with qualified prospects per day” to maintain that pace.

25. The materials stress the importance of making as many telephone calls as possible:

Every dial, every exposure helps. This visual demonstrates that every attempt has a value and can contribute to your reaching your overall goals. **New FAs should be prospecting for a minimum of 6 hours per day.** (emphasis added)

26. Moreover, Morgan Stanley stresses that the level of telephone prospecting directly correlates to succeeding at Morgan Stanley. “As an [FA], you will be doing a lot of prospecting **because the more you prospect the more you prosper.**”

27. By multiplying the stated number of dials per hour needed to meet the production goal by the minimum number of hours urged for telephone prospecting, FAs would need to make between ninety (90) and (210) cold-calls per day in order to satisfy the prospecting goals for the PFP. Likewise, if it takes 100 dials to make 20 contacts, it would take approximately one hundred and fifty (150) calls a day to meet Morgan Stanley’s expected pace for cold-calling prospects.

28. In 2006, one National Training dedicated nearly an entire day of training to “Prospecting,” with an afternoon dedicated to “Telephone Prospecting,” which included a “live session” where the FAs called prospects using the training tips provided in the sessions.

29. Later on in the training, a module was dedicated to a video presentation entitled, “Vignettes on Frequently Asked Questions,” which dealt with common cold-calling responses of prospects.
30. The vignettes were created to assist Morgan Stanley in “strengthen[ing] the sales training elements of the PFP training curriculum” and depicted telephone prospects resisting sales efforts by either asking questions or otherwise objecting to the FA.
31. After each question/objection, the vignette offered “Sample Responses” to the questions/objections.
32. The materials, which were restricted “for internal use only” and were “not to be given or shown to members of the public,” contained a transcript of the scripts used in the video vignettes.
33. The vignettes and training materials contained examples of questions/objections as well as suggested techniques to address the issue. One sample response included:

| Question | Technique | Sample Response |
|---|--|--|
| <p>Cold Call</p> <p>“I don’t like being cold called and I don’t want to buy anything.”</p> | <ul style="list-style-type: none"> • Keep the conversation going. • Get them to understand that you are there to help, not to sell anything • Be respectful and associate with them, say “I understand sir/ma’am. I don’t like being sold on the phone either. I’m really not selling anything” | <p>“I understand Mrs. Nash, and here’s the good news: I’m not trying to sell you anything. Instead, I’m calling to discuss ways that Morgan Stanley can help you reach your financial goals.</p> |
| | | |

34. Additionally, in the instance that a telephone prospect stated that he or she was “not interested,” the materials urge the FA to continue the pitch and make further attempts at setting an appointment, rather than observing the stated wishes of the prospect.

35. While the materials inform the FA that “[r]emember, you are not selling products and services over the phone; you are selling appointments”; the materials, also instruct FAs to actually “[a]void the word ‘appointment.’”

36. By distinguishing the appointment from services, Morgan Stanley attempts to justify its technique of telling objecting prospects that the FA is “really not selling anything.”

37. In the wake of one national training program conducted in July 2006 for the WMA program, one WMA trainee who participated in the session objected to Morgan Stanley’s emphasis on cold calling. The WMA trainee wrote:

We claim to be Wealth Advisors, Financial Advisors, Client Services Associate, but we train as sales people. I’ve read articles that argue against cold-calling in the Financial Industry because it causes prospects to view us as salesmen, not professionals. Doctors don’t cold call sick people. Lawyers don’t run seminars for potential criminals... There is a prevailing ‘sink-or-swim’ mentality in the training program. In fact, I believe the National Training Manager best illustrated this mindset when he referenced the good-old days when trainees were given ‘a book and a phone’...

38. Upon being forwarded the e-mail, Boston High Street Sales Manager, Rhodes opined: “I love people that have excuses for their failures. This business is what it is.” A copy Rhodes’ August 7, 2006 e-mail is attached hereto as Exhibit A.

39. In forwarding the WMA’s observations to Morgan Stanley’s National Training Manager, Craig Vandergrift, Rhodes opined: “[the Boston WMA trainee] thought the week was great. He sent me someone’s feedback that will probably have a difficult time in the program.”

40. Rhodes' response to both the Boston WMA trainee and Morgan Stanley's National Training Manager highlight Morgan Stanley Management's opinion of the integral nature of cold-calling in developing trainees.

41. Rhodes' responses illustrate the point that trainees who were opposed to making cold-calls would not be well received in the High Street Branch.

42. Rhodes endorsement of the national training seminars is apparent from his participation in two of the trainings, one as a coach and the other as a closing speaker, as well as his adoption and use of certain materials at the High Street branch that were consistent with the principles taught in the training.

2. Morgan Stanley Cold Calling Policies, Procedures and Supervision

43. With regard to telephone prospecting, Section 6.8.2.1 of Morgan Stanley's Compliance Manual provides, in part:

You must obtain prior approval from your Branch Manager before making calls to prospective clients. Your Branch Manager will advise you of any restrictions or special requirements such as the use of pre-approved talking outlines.

A copy of Section 6.8.2.1 is attached hereto as Exhibit B.

44. Section 6.8.2.2 of Morgan Stanley's Compliance Manual sets out the procedures for cold-calling, which include:

- Use of Gryphon Network. When making calls to prospective clients, you must use the Gryphon Network to determine if those prospective clients are on the Firms Do Not Call (DNC) List, which incorporates all state, federal and other applicable DNC Lists. You may not call any person on the Firms DNC List without that person's prior express invitation or permission. You may, however, call any person with whom the Firm has established a business relationship (such as current client of Firm).

If a prospective client requests not to receive future calls from an FA [Financial Advisor], CSA [Customer Service Assistant],

or the Firm, the prospective clients name and telephone number must be immediately added to the Firms Do-Not-Call List by pressing #0 on the telephone keypad while using the Gryphon networks.

A copy of Section 6.8.2.2 is attached hereto as Exhibit B.

45. Gryphon Networks, Corp. (“Gryphon”) is a company that specializes in, among other things, providing telemarketing businesses, including Morgan Stanley, with products and assistance in observing the law mandates of the national and state DNC registries. The Gryphon system works by having the telemarketers (in Morgan Stanley’s case FAs) dial into the Gryphon database and then dial the telephone number of the prospective client. If the dialed telephone number is on either the national or state DNC list, the dialed call gets rejected. As such, only if the dialed number is not on the DNC registries, will the call actually get through to the prospect.

46. Each High Street Branch FA and trainee was assigned a specific log in and password that allowed Gryphon to compile and maintain elaborate statistics on each Morgan Stanley representative’s calling histories.

47. Morgan Stanley typically assigns two sales managers to its High Street branch. One sales manager is primarily responsible for assisting newer trainees and FAs (with zero to three years of experience) with building their business, while the second sales manager assists the middle tier and senior FAs with their business development.

48. On or about August 14, 2006, Rhodes sent an e-mail to the High Street trainees of the WMA and PFP programs in which he directed them to Morgan Stanley’s policy regarding use of the Gryphon Network for all cold-calls.

49. Rhodes required the trainees to print out a copy of the policy, sign it and return it to Rhodes.

50. In testimony before the Division, Rhodes confirmed that each and every trainee signed the policy and returned it to him. Further, Rhodes testified that he maintained the records in his office records.

51. However, in a request for copies of the records maintained by Rhodes, the Division was informed by Morgan Stanley that the records could not be located and are presumed discarded.

52. Outside of Rhodes' self-serving notice letter attempting to shift responsibility solely to the FAs and trainees, the High Street Branch management did nothing to monitor compliance with the Do-Not Call statute and regulations, despite having access to sophisticated software and databases to assist them in completing the task.

53. As part of its service contract, Gryphon provided Morgan Stanley with excellent search capabilities into the call histories of all Morgan Stanley FAs and trainees that used the system.

54. Gryphon's system maintained a complete database containing every phone call made by Morgan Stanley's FAs and trainees, as well as critical additional information.

55. By performing a simple database search of Gryphon's system, Morgan Stanley's Managers could monitor key information in a summary format for all its FAs and Trainees, including:

- Dates of calls;
- Total number of dials attempted in each session;
- Number of dials rejected due to being in the Do-Not-Call registries;
- Contacts made;
- Total time of telephone session;

- Number of telephone numbers added to the Do-Not-Call Registries.

56. In addition, Morgan Stanley managers had the capability to perform more in-depth reviews of specific FAs or trainees for additional information such as:

- Specific telephone numbers dialed;
- Length of each telephone call;
- Date and time of specific number dialed;
- Specific telephone numbers added by the FA or trainee to the Do-Not-Call Registries.

57. Gryphon's call history database would also inform Morgan Stanley managers if any specific FA or trainee was *not* using the Gryphon Network for its telephone prospecting.

58. The Division's investigation revealed that despite having the ability to create detailed reports to monitor its representatives calling histories, Morgan Stanley's High Street branch rarely, if ever, used the reports to ensure compliance with DNC registries during the years 2005 and 2006.

59. However, Morgan Stanley, through its sales managers Rhodes and MacNeill, used the Gryphon databases to monitor the call volume of the FAs and trainees in the PFP and to a lesser extent the WMA programs.

60. In explaining why such a supervisory review of the Gryphon reports were not performed, Rhodes, in his testimony before the Division, denied having any responsibility for monitoring the FAs and trainees compliance with the DNC statutes and regulations.

61. In this regard, the Division's investigation revealed a significant gap in the supervisory chain with regard to monitoring cold calling and other telephone prospecting

to ensure compliance with Morgan Stanley procedures and national and state DNC statutes and regulations.

62. Specifically, in testimony before the Division, Complex administrative Manager, Dennis Hogan (“Hogan”), who is charged with overseeing the High Street Branch’s compliance department, stated that oversight of cold-calling was performed by the High Street Sales Managers.

63. Further, Hogan denied he did any day-to-day supervisory oversight of the FAs and trainees’ cold-calling efforts.

64. Finally, Hogan denied any knowledge of any records or reports that would assist in reviewing the cold-calling histories of Morgan Stanley FAs and/or trainees.

65. Although Morgan Stanley FAs and trainees were supposed to use Gryphon for any and all telephone prospecting, documents received by the Division during the investigation confirm that many FAs and trainees did not regularly use Gryphon.

66. Sales Managers MacNeill and Rhodes regularly received telephone reports summarizing the calling activity of the FA trainees for the office. Typically, these reports reflected call activity for a month at a time.

67. The sole purpose for the sales managers’ requesting these reports was to monitor the call volume of the trainees.

68. Former Morgan Stanley employees testified that sales managers used the information contained in the call reports during sales meetings to single out those FAs and trainees that were not making enough cold-calls.

69. The telephone call reports came in two forms; the first was the Gryphon summary report, which would detail the names of trainees that were processing their prospecting calls through Gryphon.

70. The other database, identified as “Microcall,” was a regularly consulted to compile reports that monitored the call volume of FA and trainee calls that were made from their Morgan Stanley extensions. This report captured all calls made from the extension, which included calls that were not processed through Gryphon.

71. Upon information and belief, MacNeill and Rhodes only monitored the calling activities of trainees. Calling activities for FAs with more than three years experience were not monitored for any reason.

3. Morgan Stanley’s Telephone Monitoring—Two Reporting Systems – One Purpose

72. The existence of two phone call database systems such as Gryphon and Microcall, with extensive search and reporting capabilities and that maintained a record of every single phone call made from each extension, provided Morgan Stanley with effective tools to ensure its FAs complied with DNC statutes and regulations.

73. However, Morgan Stanley’s High Street sales and compliance managers failed to identify those FAs and trainees, whose high call volumes noted in the Microcall report, were not being processed through Gryphon.

74. Morgan Stanley sales and compliance have the capability to generate individual reports to follow-up and ensure each FA and trainee’s compliance with both Morgan Stanley’s own policies regarding telephone prospecting and the requirements of the DNC statutes and regulations.

75. However, the Division's investigation revealed that no such review was ever performed by High Street Branch managers during the relevant time period.

76. On the contrary, Morgan Stanley managers themselves, in some instances, took specific actions that likely resulted in further violations of the DNC statutes and regulations.

4. Morgan Stanley's High Street Branch Concealed Caller ID Information From Being Received By Telephone Prospects.

77. On or about August 30, 2006 in an e-mail to Morgan Stanley's help desk, at the behest of Sales Manager Rhodes, Kevin Stewart, a Complex Service Manager ("Stewart"), requested the phone company to change the telephone trunk exchange for all outgoing telephone calls from the Boston High Street branch to read "unknown" as opposed to "Morgan Stanley." A copy of the August 30, 2006 e-mail is attached hereto as Exhibit C.

78. The request sought to have any outgoing call from the High Street branch hide Morgan Stanley's name and telephone number from its intended target's caller identification box.

79. Stewart's e-mail request stated that the reason for the request was "for cold calling purposes."

80. High Street branch Sales Manager Rhodes was cc'd on the communication.

81. In the e-mail to the Help Desk, Stewart also reminded the Help Desk that the same request was made the previous year, "but for some reason the unknown label keeps falling off."

82. In responding, Morgan Stanley's Help Desk representative asked Stewart if he was sure he really wanted to make the change noting: "[I]f you recall, about a year and a half

ago you had us change from Morgan Stanley to unknown and back to Morgan Stanley. I believe the reason was because many have “Unknown” blocked on there (sic) phones.”

83. Despite the reminder, Stewart, on Rhodes’ continuous orders, insisted on proceeding forward with the request to change the trunk id to “unknown.”

84. Upon information and belief, Morgan Stanley’s trunk id was changed for a period of time during 2005 and again in or after September, 2006, so that the caller id information was hidden from persons receiving telephone calls from the High Street branch.

B. Morgan Stanley’s Use Of Internet Employment Service Contractors For Prospecting.

1. Morgan Stanley’s Employment Services Contract With CareerBuilder.Com

85. On or about October 8, 2004, Morgan Stanley entered into a contract with CareerBuilder.com to assist in filling employment positions at Morgan Stanley. A redacted copy of the CareerBuilder contract is attached hereto as Exhibit D.

86. At the time the contract permitted Morgan Stanley to post jobs on CareerBuilder’s website and permitted up to twenty-five (25) licenses to Morgan Stanley’s personnel to search CareerBuilder’s Resume Database.

87. The contract contained express Terms and Conditions governing Morgan Stanley’s access to and use of CareerBuilder’s website. In particular, Section 4 addressed “Acceptable Uses” of CareerBuilder’s website and resume database.

88. According to the contract’s express terms, CareerBuilder’s website access was “intended for individuals seeking employment and for employers or recruiters seeking candidates for employment.” Exhibit D. at Section 4.

89. Section 4.2 of the contract specified that the licenses to access the website authorized Morgan Stanley

“to view and download a single copy of the material on the Site solely for [Morgan Stanley]’s personal use **directly related to using the Site for the purpose of searching and recruiting job prospects.**”

(emphasis added)

90. Further, pursuant to Section 4.3 of the contract, Morgan Stanley “represent[ed], warrant[ed] and agree[d]” that it would “not use (or plan, encourage or help others to use) the Site for any purpose on in any manner that is prohibited by these Terms and Conditions or by applicable law.”

91. It was Morgan Stanley’s duty to ensure that its use of the website complied with the Terms and Conditions of the contract.

92. Additionally, pursuant to CareerBuilder’s “Resume Database Subscription Agreement” in effect in 2006, use of the resumes for solicitation purposes was expressly addressed and forbidden. In particular, Section 1.3 provided in part:

You may not use the Resume Database for any purpose other than as an employer seeking employees, including but not limited to using the information in the Resume Database to sell or promote any products or services.

C. Arlen Jay Fox And Morgan Stanley’s Inappropriate Use Of CareerBuilder Resume Information.

93. Fox began working as a FA in the High Street Branch in or about July 1996.

94. During his time at Morgan Stanley, Fox has maintained high cold-call volume in his efforts at generating new business.

95. Fox testified that sometime in 2002, he received access two internet based employment services websites for prospecting purposes from a former co-worker who had left Morgan Stanley to become an employment recruiter.

96. The former co-worker provided Fox with his personal password to access the websites whenever Fox wanted.

97. During the time period 2002 through 2004, Fox used the websites to download hundreds, if not thousands, of resumes for cold-calling purposes.

98. During this time period, Fox's use of the websites went undetected by Morgan Stanley managers at the High Street Branch.

99. At some point in time in 2004, the passwords expired and Fox no longer had access to resumes using his former co-worker's login and passwords.

100. In late 2004, Fox had a one-on-one meeting with Swartz, the High Street branch's Assistant Branch Manager at the time.

101. Swartz testified that he tried to meet with all the FAs of the High Street branch on an annual basis to go through their entire business.

102. During his meeting with Fox, Swartz asked what he could do to help Fox grow his business. Fox replied that Swartz could get him access to Monster.com.

103. Fox then explained how he had been using the site to print resumes and identify potential sales prospects.

104. Swartz testified that the request seemed reasonable under the circumstances and he informed Fox he would look into it further.

105. After looking into the matter further, including possibly consulting other managers and compliance staff, Swartz again spoke with Fox and provided him with a sales manager's log in and password to access the CareerBuilder.com website.

106. Pursuant to Section 6.3.1 of Morgan Stanley's Compliance Manual sharing of passwords is forbidden.

107. Swartz informed Fox that the CareerBuilder site was the only option because Morgan Stanley was not using Monster.com at that time.

108. Swartz further directed Fox that the log in and password were for his use only.

109. In turn, Fox used the CareerBuilder website resume search function to search thousands of resumes and generated lead lists geared toward developing new clients and business for Morgan Stanley.

110. Fox often used keywords such as "Chief," "President," "Director," and/or "Principal," to identify people who most likely were top wage earners or who had accumulated significant assets.

111. Fox would typically print out up to 100 resumes per session.

112. Fox estimated that he would visit CareerBuilder's site at least once a month or up to 15 times per year.

113. The resume profiles on CareerBuilder's site contained extensive information about each person including, but not limited to, name, address(es), e-mail address(es), telephone number(s), salary history, job history, academic history and whether or not the person was ever convicted of a felony.

114. Fox regularly called the persons on his lead list and kept significant notes on the contacts in the form of his own Excel spreadsheet.

115. Fox testified what he used for a specific introductory statement:

“My name is AJ Fox. I’m a Vice President of Morgan Stanley in Boston. I saw your resume online. I’m assuming that over the years of your employment you have contributed to a retirement or brokerage account.”

116. Fox testified that although he would make a personal note for his own records of those persons who did not want to be solicited, he did not regularly add those names to Morgan Stanley’s, DNC registry or any state or national DNC registry.

117. Moreover, Fox did not regularly consult the national or state DNC list to confirm that the persons he was attempting to contact were permitted to be called.

118. Fox’s use of the resumes printed from the CareerBuilder website for solicitation purposes was in direct contravention of the contract and the terms of service agreement for the websites between CareerBuilder and Morgan Stanley.

119. Upon information and belief, Fox over the course of the years, downloaded the personal information of thousands of job seekers who were registered with internet employment service entities such as: Monster.com, Bostonworks and CareerBuilder for purposes of soliciting financial services agreements and bringing clients to Morgan Stanley.

120. A review of the Morgan Stanley’s phone records for Fox demonstrates that for the time period August 2005 through December 2006, Fox failed to process telephone calls through Gryphon.

121. Further, Fox made no attempts on his own to manually cross-check the telephone numbers on his prospecting lists with any DNC list.

122. As such, for hundreds of calls made between August 2005 and December 2006, Fox failed to observe the DNC requirements.

123. Upon information and belief, during that time period Fox telephoned hundreds of persons whose telephone numbers were contained in the DNC registries in violation of state and federal DNC regulations.

D. Complaints Against Fox And Morgan Stanley's Inadequate Response.

124. On or about October 27, 2006, Fox sent an e-mail to a prospective customer he cold-called a day earlier. Fox's e-mail read:

_____,
Please send me a list of all your investments and the number of shares of each for your free portfolio review.

The following is my contact information;

AJ Fox
Vice President Financial Advisor
Morgan Stanley...

125. The next day, the sales target responded, via e-mail, with the following written complaint:

Dear 'Vice President Financial Advisor' Fox

I find this sort of approach---your call yesterday, this email presuming that I would be willing to share such information with you, highly suspicious.

If I suspend for a moment, my non-belief that you actually work for Morgan Stanley, I would give you this advice: abandon this approach.

It is at best, damaging to your credibility as well as that of your firm; further, it is intrusive.

I wonder, does your sales manager know you are employing such tactics?

Cruising the internet in search of personal information (from resumes!!) and cold calling to presume to demand to ‘discuss my investments’, is not the way any reputable broker would do business.

Now, Get Lost !

A redacted copy of the October 28, 2006 e-mail is attached hereto as Exhibit E.

126. Section 9.3.2 of Morgan Stanley’s Compliance Manual requires that an FA “immediately bring all client complaints to [the branch management’s] attention whether or not the FA thinks the complaint is justified.” A copy of Section 9.3.2 of the Compliance Manual is attached hereto as Exhibit F.

127. However, since the target was not considered a *client* yet, Fox did not bring the complaint to the Branch Management’s attention.

128. Further, consistent with Section 6.8.2 of Morgan Stanley’s Compliance Manual, “if a prospective client requests not to receive future calls from an FA...the prospective clients name and telephone number must be immediately added to the Firms Do-Not-Call List...”

129. Sales Manager Rhodes testified that a response from a prospect which included the direction to “Get Lost” should result in placing the prospect’s name on the DNC list.

130. Even though the sales target’s e-mail, constituted a request not to be contacted in the future, Fox failed to add the prospect’s name or number to Morgan Stanley’s DNC list.

131. Upon receiving the prospect’s complaint, Fox took no further action.

132. Two days later, on October 30, 2006, Fox was again cold-calling leads culled from CareerBuilder resumes.

133. During the session, Fox contacted a prospect named Ed Pilarski by calling Pilarski's cell phone number.
134. Pilarski was unable to speak at the time, but spoke again with Fox the next day.
135. After hearing Fox's explanation as to how Pilarski's information was obtained, Pilarski strenuously objected to Fox use of his information for cold-calling purposes.
136. Pilarski then informed Fox that he would be complaining to Morgan Stanley about Fox's behavior.
137. Again, Fox failed to bring a telephone prospect complaint to the attention of any High Street Branch manager.
138. Pilarski, still upset about Fox's use of the information contained on his resume for solicitation purposes, called the High Street Branch and filed a complaint with a Complex Administrative Manager named Brandon Lamb ("Lamb").
139. Lamb in turn reported the incident to Rhodes, the sales manager and Hogan, the High Street Branch Compliance manager.
140. In his review of the matter, Hogan first went to CareerBuilder's website and looked up the privacy terms and the terms of service.
141. In reviewing the terms of service, Hogan's conclusion that CareerBuilder's "primary purpose was for employers to view resumes for people looking to be hired to post them."
142. Hogan testified that he then may have discussed the matter again briefly with Rhodes but then talked directly with Fox.

143. During his discussion with Fox, Hogan recalled that Fox thought his use of the CareerBuilder website for prospecting purposes was pretty innocuous and that Fox thought his use of the website was “a pretty effective approach to finding prospects.”

144. After having a brief discussion with Fox about the incident, Hogan testified that he informed Fox that upon his review of the CareerBuilder website’s terms and conditions, that Fox shouldn’t be using CareerBuilder for prospecting and “that he should stop doing that.”

145. Fox’s memory of the meeting was quite different. Specifically, Fox testified that Hogan stated: “I’m going to go on record as saying you probably shouldn’t do that.”

146. When asked what he understood Hogan’s statement to mean, Fox testified: “I understood it as he wasn’t going to stop me but he wanted to go on record stating that.”

147. Indeed, Hogan’s testimony is unconvincing in that he acknowledged that he was already aware that Fox was accessing CareerBuilder with a management password prior to Pilarski’s complaint, but did nothing about it.

148. After speaking with Fox regarding Pilarski’s complaint, Hogan took no further action against Fox.

149. Further, Hogan conducted absolutely no inquiries into whether or not Fox was observing the DNC list when he was making his prospecting calls to the CareerBuilder customers.

150. Instead, because Hogan deemed the matter “a foul on both sides” he did not even communicate the outcome of his investigation to Pilarski.

151. Hogan opined in testimony before the Division that because Pilarski voluntarily posted his resume on CareerBuilder’s website, he did not “really have an expectation of

privacy” in his information, and that he “didn’t feel it warranted a call back to the prospect.”

152. Hogan testified that after his investigation, he informed High Street Branch Manager, Jeffrey Swartz (“J. Swartz”), of the chronology of his involvement in the situation.

153. In response, J. Swartz informed Hogan “to keep in touch with him on it if there were any more issues,” rather than ordering any further action or sanction.

154. Upon information and belief, there was no further investigative or disciplinary action taken regarding the matter until after the Division began its own investigation of Pilarski’s complaint.

155. Instead, Fox testified that he was able to continue using Morgan Stanley’s management log-in and password to access CareerBuilder and download resumes for prospecting purposes in the days immediately following Morgan Stanley’s internal inquiry.

156. It was not until Fox became aware of the Division’s subpoena for his testimony regarding the matter, that he stopped downloading resumes from CareerBuilder’s website.

E. Morgan Stanley’s Failure to Cooperate/ Obstruction During The Investigation.

157. During the investigation, the Division requested certain categories of documents including documents relative to Fox’s cold-calling practices, e-mail of key persons at Morgan Stanley’s High Street Branch and internal, as well as third-party telephone reports relative to Morgan Stanley’s observance of DNC statutes and regulations.

158. Morgan Stanley prepared telephone reports using both the Gryphon and Microcall.

159. In response to the Division's telephone records request concerning the DNC, Morgan Stanley forwarded reports generated from Gryphon, but not Microcall.

160. The Division first learned of the existence of the Microcall telephone database by way of the on the record testimony of Sales Manager, Rhodes.

161. Rhodes testified that he reviewed two types of telephone reports in monitoring his FAs and trainees. Rhodes stressed that he reviewed call volume only and did not review the reports for DNC compliance.

162. Rhodes testified that Stewart, a Customer Service Manager, prepared the reports for him periodically, usually on a monthly basis.

163. In the wake of Rhodes' testimony, the Division subpoenaed Stewart, in part, to develop further information concerning the search capabilities of the Microcall database.

164. During his testimony, Stewart identified himself as the High Street Branch's liason and troubleshooter for telephone systems and records.

165. Among other areas of inquiry, the Division sought information from Stewart concerning the record keeping capabilities of Microcall and any Microcall reports created by Stewart pertaining to individual Morgan Stanley FAs.

166. In his responses, Stewart made material misrepresentations to the Division concerning the search capabilities of Microcall and the existence of a Microcall report concerning Fox.

167. For example, with regard to Microcall's search capability, Stewart testified that the Microcall reports limited him and provided call information only from "the last month."

168. Stewart's responses were frequently obtuse and seemed designed to confuse or frustrate the Division's interviewers. In one example, the following exchange took place:

Q. With regard to the telephone reports that you compiled, a Microcall report, when was the last time that you requested a Microcall report to be generated?

A. When was the last time I printed one?

Q. No, when was the last time you requested one?

A. Oh, I was asked to print one?

Q. Let me separate that out. When was the last time you did some sort of research to create a report for the Microcall system?

A. Well, there's no research, either I print it or I don't.

Q. Okay, and when did you last print it?

A. I don't recall.

169. The following exchange took place when Stewart was asked whether he ever compiled a Microcall report for any other Morgan Stanley FAs, other than the trainees:

Q. Is there ever any reason to request, or for you to compile a report for registered representatives who are not trainees?

A. Is there ever a reason?

Q. Yes.

A. I don't know.

Q. Have you ever created one for the other registered representatives other than the trainees?

A. I don't recall.

Q. Well, you mentioned that you have a folder that has the names of all the trainees in it?

A. That list --

Q. Yes.

A. -- correct.

Q. Do you have any other lists?

A. I don't have any other list, but I can get any call record that they ask me to, **and they have not.**

Q. Okay, that's what I'm asking you.

A. **They have not.**

(emphasis added)

170. By way of this response, Stewart essentially denied he ever created any Microcall report concerning Fox.

171. However, when asked whether there were any other Microcall reports, other than the trainee reports that he typically compiled for the sales managers, Stewart identified one other report he compiled in December 2006 for an in-house counsel at Morgan Stanley.

172. As to the specifics of the telephone report he gave to the attorney, Stewart was vague in his memory:

Q. How many pages was that report?

A. I don't know.

Q. More than one?

A. I don't recall.

Q. Was it in hard copy or e-mail?

A. I don't recall, I don't remember.

173. When pressed for more specific information about this particular Microcall report, Stewart changed his earlier testimony with the following exchange:

Q. What information did you request from the Microcall system in December of '06?

A. Dates, and I printed it, it will only give you the number of calls made.

Q. What was the time span that you asked for for the dates?

A. Actually, I don't -- now that I recall, I don't believe Microcall was printed, because it would only give you a month's worth of data. So, it was only the Gryphon.

174. However, contrary to his sworn testimony, Stewart did compile a Microcall telephone report in response to a request either from either the Compliance Department or for Morgan Stanley's in-house counsel. Further, the report contained far more than merely "a month's worth of data."

175. The report, a 400 page detailed Microcall report on Fox, detailed every call made from Fox's High Street Branch extensions for the time period April –December 2006².

176. The Microcall report was relevant in determining whether any or all of Fox's thousands of outgoing calls were violating company policies, federal regulations or state statutes concerning the DNC.

177. Later in his testimony, Stewart again circled back and again acknowledged the Microcall report he prepared for in-house counsel:

Q. So, other than the trainee list that you have, have there been any other requests for any other call reports on other financial advisors at the Morgan Stanley Boston office?

A. Just the one that I spoke of earlier from -- from [in-house counsel].

Q. Okay. And did you keep a copy of that report?

A. Nope.

Q. Did you provide it to [in-house counsel]?

A. I believe I did, in hard copy.

178. With that the Division ended its examination of Stewart. After a very brief break, Stewart's counsel asked Stewart one follow up question. The transcript of the interview recorded the event as follows:

[DIVISION COUNSEL]: Any questions? I think that's all the questions that we have for you.

[STEWART/MORGAN STANLEY COUNSEL]: Can I just take two minutes, step outside? And I may have one or two clarifying questions.

[DIVISION COUNSEL]: Okay.

(Off the record at 1:10)

(On the record at 1:11)

[DIVISION COUNSEL]: We'll go back on the record. [Counsel] has had an opportunity to talk with his client outside. Are there any follow-up questions?

[STEWART/MORGAN STANLEY COUNSEL]: Yes. Just on that last

² The 400 page document initially produced to the Division included calls between 4-1-06 and 8-7-06. Counsel for Morgan Stanley later forwarded a complete copy of the report which included calls for the entire time range of 4-1-06 – 12-31-06.

line of questioning, when you testified about the report that you ran for [in-house counsel], do you know if that was a Gryphon report or a Microcall report?

(BY THE WITNESS)

A. It was a Gryphon report.

[STEWART/MORGAN STANLEY COUNSEL]: Thank you. Okay, I have nothing else.

179. Stewart's Microcall report was retained by Morgan Stanley in its e-mail records.

The e-mail and attached Microcall report were previously withheld from a production to the Division, on alleged grounds of attorney work product.

180. The e-mail and attachments were each singularly referenced in a 400 page privilege log produced in April 2007, which contained more than four thousand seven hundred (4,700) e-mails and attachments.

181. In the wake of Stewart's on the record testimony, the Division reviewed Morgan Stanley's privilege log again with an emphasis on any e-mails involving Stewart.

182. Upon identifying a Stewart e-mail to Hogan, which contained a 400 page attachment referencing Fox, the Division requested the documents again.

183. On June 12, 2007, Morgan Stanley's outside counsel produced the report and cover e-mail from Stewart to Hogan. However, in-house counsel's name was not referenced anywhere in the e-mail or attachment.

184. The Microcall report concerned Fox ("Fox Microcall Report") exclusively and was approximately four hundred (400) pages, covering a several month period of Fox's outgoing telephone calls from April 2006 to December 2006.

185. The Fox Microcall report detailed thousands of calls dialed out from Fox's extensions.

186. Because Fox had not been using Gryphon at all during that time period (and thus, not recording any calling information), the Fox Microcall report contained critical information documenting Fox's calling patterns for much of 2006.

187. The Fox Microcall report included finely detailed information such as: date of call, telephone number called, town/city called, duration of call and charge for every call from Fox's extensions.

188. The Division reviewed the thousands of telephone numbers contained in the Fox Microcall report.

189. The Fox Microcall report contained more than five hundred (500) telephone numbers that were registered on the DNC at the time Fox dialed them.

190. Fox dialed the vast majority of these numbers for purposes of soliciting new business for Morgan Stanley.

191. In his testimony before the Division, Stewart failed to disclose the true monitoring capabilities of the Microcall system beyond thirty (30) or sixty (60) days, even though he performed a specific search and created a detailed nine (9) month call report regarding Fox.

192. In his testimony before the Division, Stewart failed to disclose that in January 2007, he created an individualized Microcall report for Fox for a nine (9) month period from April – December 2006.

VIII. APPLICABLE LAW

Federal Code of Regulations –Telemarketing - Do Not Call Registry Rules

195. 47 CFR §64.1200 (c) provides in pertinent part:

No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section, to:...

(2) a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years.

196. 47 CFR §64.1200(d) provides in pertinent part:

No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

- (1) *Written policy.* Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.
- (2) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
- (3) *Recording, disclosure of do-not-call requests.* If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A

person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

197. 47 CFR §64.1200(e) provides in pertinent part:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

198. 47 CFR §64.1200(f) provides in pertinent part:

(6) The term telemarketer means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(7) The term telemarketing means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

199. 47 CFR §64.1601 provides in pertinent part:

(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(7) must transmit caller identification information.

(1.) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. The telephone number

so provided must permit any individual to make a do-not-call request during regular business hours.

(2.) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

200. MGL ch. 159C provides in pertinent part:

Section 2. Unsolicited telephonic sales calls; consumer listing; updates

The [Office of Consumer Affairs and Business Regulation] shall establish and maintain a no sales solicitation calls listing of consumers who do not wish to receive unsolicited telephonic sales calls. The office may contract with a private vendor to establish and maintain such listing, provided that: (i) the private vendor has maintained national no sales solicitation calls listings for more than 2 years; and (ii) the contract requires the vendor to provide the no sales solicitation calls listing in a printed hard copy format and in any other format offered at a cost that does not exceed the production cost of the format offered. The office shall provide notice to consumers of the establishment of a no sales solicitation calls listing. A consumer who wishes to be included on the listing shall notify the office by calling toll-free number provided by the office, or in such other manner and at such times as the office may prescribe, which may include electronic notification. A consumer on such listing shall be deleted from such listing upon the consumer's written request or in such other manner and at such times as the division may prescribe, which may include electronic notification. The office shall update such listing not less than quarterly and shall make such listing available to telephone solicitors and other persons for a fee as the office shall prescribe.

Section 3. Unsolicited telephonic sales calls; limitations

A telephone solicitor shall not make or cause to be made an unsolicited telephonic sales call to a consumer: (i) if the consumer's name and telephone number appear on the then current quarterly no sales solicitation calls listing made available by the office under section 2; (ii) to be received between the hours of 8:00 p.m. and 8:00 a.m., local time, at the consumer's location; (iii) in the form of electronically

transmitted facsimiles; or (iv) by use of a recorded message device.

Section 4. Use of blocking devices or services prohibited

No telephone solicitor shall intentionally cause to be installed or shall intentionally use a blocking device or service to circumvent a consumer's use of a call identification service or device.

Section 7. National consumer database; inclusion of commonwealth portion in no sales solicitation calls listing

If the Federal Communications Commission establishes a single national database of telephone numbers of consumers who do not wish to receive unsolicited telephonic sales calls pursuant to 47 U.S.C. section 227 (c)(3), the office shall include that part of such single national database that relates to the commonwealth in the listing established pursuant to this chapter.

IX. VIOLATIONS OF SECURITIES LAWS

201. The NASD's Telemarketing Rule 2212 provides in pertinent part:

(a) General Telemarketing Requirements

No member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to:

(2) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or

(3) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(d) Procedures

Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the member on whose behalf the telemarketing call is made, the member on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A member making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for 5 years from the time the request is made.

(e) Wireless Communications

The provisions set forth in this rule are applicable to members telemarketing or making telephone solicitations calls to wireless telephone numbers.

202. NASD Rule 2110 provides:

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

203. New York Stock Exchange (“NYSE”) is a self-regulatory body approved by the Securities and Exchange Commission.³

204. NYSE Rule 440A, provides in pertinent part:

(a) General Telephone Solicitation Requirements

No employee of a member organization shall initiate any telephone solicitation, as defined in paragraph (j)(2) of this rule, to:

(2) Firm-Specific Do-Not-Call List - Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member organization; or

(3) National Do-Not-Call List - Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) Procedures

Prior to engaging in telephone solicitation or telemarketing, a member organization must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Member organizations must have a written policy available upon demand for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list, including the policies and procedures of the firm regarding communications with the public.

(3) Recording, honoring of do-not-call requests. If a member organization making a call for telemarketing purposes receives a request from a person not to receive calls from that member organization, the member organization must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Member organizations must honor a person's do-not-call request within a reasonable time from the date such request is

³ Since July 31, 2007, NYSE member regulation, enforcement and arbitration functions are being administered by FINRA.

made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the member organization on whose behalf the telemarketing call is made, the member organization on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request....

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product or service being advertised.

(6) Maintenance of do-not-call lists. A member organization making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(f) Wireless Communications

(2) The requirements are applicable to member organizations telemarketing or making telephone solicitation calls to wireless telephone numbers.

(h) Caller Identification Information

(1) Any member organization that engages in telemarketing, as defined in paragraph (j)(2) of this rule, must transmit caller identification information. Such caller identification information must include either the Calling Party Number ("CPN") or the calling party's billing number, also known as the Charge Number ("ANI"), and, when available from the telephone carrier, the name of the member organization. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. Whenever possible, CPN is the preferred number and should be transmitted.

(2) Any member organization that engages in telemarketing, as defined in paragraph (j)(2) of this rule, is prohibited from blocking the transmission of caller identification information.

(3) Provision of caller identification information does not obviate the requirement for a caller to verbally supply identification information during a call.

(j) Definitions

(B) A person's specific do-not-call request, as set forth in paragraph (a)(2) of this rule, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the person continues to do business with the member organization.

(C) A person's established business relationship with a member organization does not extend to the member organization's affiliated entities unless the person would reasonably expect them to be included, given the nature and type of products or services offered by the affiliate and the identity of the affiliate. Similarly, a person's established business relationship with an affiliate of a member organization does not extend to the member or member organization unless the person would reasonably expect them to be included, given the nature and type of products or services offered, and the identity of, the member organization...

(2) The terms "telemarketing" and "telephone solicitation" mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

205. Rule 17a-3 of the Securities Exchange Act of 1934 provides in pertinent part:

(a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 . . . shall make and keep current . . . books and records relating to its business.

206. Rule 17a-4 of the Securities Exchange Act of 1934 provides in pertinent part:

(b) Every member, broker and dealer subject to Sec. 240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place . . . [o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.

207. M.G. L. ch. 110A, Section 204 (a)(2)(G) of the Act provides in pertinent part

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

208. 950 CMR §12.204 provides a non-exhaustive list of acts and practices that constitute violations of Section 204(a)(2)(G). Among them:

(26) Failing to refrain from soliciting prospective customers who have informed the broker-dealer that such person does not want to be solicited, and conducting business by telephone at unreasonable times.

(28) Failing to comply with any applicable provision of the NASD Rules of Fair Practice or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

209. M.G.L. ch. 110A, Section 204 (a)(2)(J) provides in pertinent part:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant (J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter.

210. M.G.L. ch. 110A, Section 203 of the Act provides in pertinent part:

(a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934.

211. 950 CMR § 12.203(3)(a) provides in pertinent part:

Each broker-dealer must comply with the supervision requirements set forth in the NASD's Rules of Fair Practice.

212. 950 CMR § 12.203(2) provides in pertinent part:

(2) Record Keeping Requirements. Each broker-dealer shall maintain the following records:

(b) All records required to be maintained by SEC Rules 17a-3 and 4(17 CFR 240.17a-3 and 17 CFR 240.17a-4).

(c) All records required to be maintained by any SRO or national exchange of which the broker-dealer is a member.

**A. COUNT I – VIOLATION OF § 204 (a)(2)(G)
(Fox's Improper Use of Resume Information For Solicitation Purposes)**

213. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

214. The conduct of Respondent, Fox, as described above, regarding his improper access and use of resumes from internet based employment services companies in violation of the terms and conditions of the contract between Morgan Stanley and the companies, constitutes a violation of NASD Rule 2110.

215. Consequently, pursuant to 950 CMR 12.204(a)(28), the actions also constitute a violation of M.G.L. ch. 110A, §204 (a)(2)(G).

**B. COUNT II – VIOLATION OF § 204 (a)(2)(G)
(Swartz's Improper Use of Resume Information For Solicitation Purposes)**

216. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

217. The conduct of Respondent, Swartz, in relation to his permitting Fox, for solicitation purposes, to access and print Resume information from internet based employment services companies in violation of the terms and conditions of the contract between Morgan Stanley and the companies, constitutes violation of NASD Rule 2110.

218. Consequently, pursuant to 950 CMR 12.204(a)(28), the actions also constitutes a violation of M.G.L. ch. 110A, §204 (a)(2)(G).

**C. COUNT III – VIOLATION OF § 204 (a)(2)(G)
(Morgan Stanley’s Improper Use of Resume Information For Solicitation Purposes)**

219. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

220. The conduct of Respondent, Morgan Stanley, in relation to its permitting Fox, for solicitation purposes, to access and print Resume information from internet based employment services companies in violation of the terms and conditions of the contract between Morgan Stanley and the companies, constitutes violation of NASD Rule 2110.

221. Consequently, pursuant to 950 CMR 12.204(a)(28), the actions also constitutes a violation of M.G.L. ch. 110A, §204 (a)(2)(G).

**D. COUNT IV – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Fox’s Improper Telephone Solicitations to DNC Registered Persons)**

222. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

223. The conduct of Respondent, Fox in soliciting by telephone hundreds, if not thousands, of persons whose names appeared on either a state or federal do-not-call

registry, as described above, constitute separate and distinct violations of M.G.L. ch 159C, as well as federal regulations including 47 CFR 64.1200.

224. The conduct of Respondent, Fox in soliciting by telephone hundreds, if not thousands, of persons whose names appeared on either a state or federal do-not-call registry, as described above, constitute separate and distinct violations of NASD Rule 2212 and NYSE Rule 440A.

225. Fox's actions as described above, therefore, also constitute separate and distinct violations of M.G.L. c. 110A, §204 (a)(2)(G).

**E. COUNT V – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Fox's Failure To Add Prospects' Names To DNC Upon Their Request)**

226. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

227. The conduct of Respondent, Fox in failing to add the names to DNC lists of those persons who requested that they not be contacted by Morgan Stanley in the future, as described above, constitute separate and distinct violations of M.G.L. ch 159C, as well as federal regulations including 47 CFR 64.1200.

228. The conduct of Respondent, Fox in failing to add the names to DNC lists of those persons who requested that they not be contacted by Morgan Stanley in the future constitute separate and distinct violations of NASD Rule 2212 and NYSE Rule 440A.

229. Fox's actions as described above, therefore, also constitute separate and distinct violations of M.G.L. c. 110A, §204 (a)(2)(G).

F. COUNT VI – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Rhodes Improper Actions Relative To Morgan Stanley’s Caller ID)

230. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

231. The conduct of Respondent, Rhodes in requiring Morgan Stanley’s High Street Branch telephone trunk id numbers be hidden, as described above, constitutes a violation of M.G.L. ch 159C §4, as well as federal regulations including 47 CFR 64.1601(e).

232. The conduct of Respondent, Rhodes in requiring Morgan Stanley’s High Street Branch telephone trunk id numbers be hidden, as described above, constitutes separate and distinct violations of NASD Rule 2212 and/or NYSE Rule 440A for any telephone prospecting call made during the time in which the telephone trunk id numbers were concealed.

233. Rhodes’s actions as described above, therefore, also constitute separate and distinct violations of M.G.L. c. 110A, §204 (a)(2)(G).

G. COUNT VII – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Morgan Stanley’s Improper Actions Relative To Morgan Stanley’s Caller ID)

234. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

235. The conduct of Respondent, Morgan Stanley in arranging for its High Street Branch telephone trunk id numbers be hidden for periods of time in 2005, as described above, constitute violations of M.G.L. ch 159C §4 as well as federal regulations including 47 CFR 64.1601(e).

236. The conduct of Respondent, Morgan Stanley in arranging for its High Street Branch telephone trunk id numbers be hidden for periods of time in 2005, as described

above, constitute violations of NASD Rule 2212 and/or NYSE Rule 440A for any telephone prospecting call made during the time in which the telephone trunk id numbers were concealed.

237. Morgan Stanley's actions as described above, therefore, also constitute separate and distinct violations of M.G.L. c. 110A, § 204 (a)(2)(G).

**H. COUNT VIII – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Morgan Stanley's Obstruction of the Division's Investigation)**

238. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

239. The conduct of Respondent, Morgan Stanley in misleading, delaying or misrepresenting facts concerning the search capabilities of the Microcall database and the existence of the Fox Microcall telephone report, as described above, constitute a violation of M.G.L. c. 110A, § 204 (a)(2)(G).

**I. COUNT IX – VIOLATION OF § 204 (a)(2)(G)
(Respondent, Morgan Stanley's Failure to Retain Books and Records)**

240. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

241. The conduct of Respondent, Morgan Stanley, in failing to retain records confirming that trainees in the High Street Office received and reviewed and signed Morgan Stanley's telephone solicitation policy, constitutes a violation of Rule 17a-3 and 17a-4 of the Securities Exchange Act of 1934.

242. The conduct of Respondent, Morgan Stanley, as described above, constitutes a violation of 950 CMR § 12.203(3)(a) and M.G.L. c. 110A, § 204 (a)(2)(G).

J. COUNT X – VIOLATION OF § 204 (a)(2)(J)

(Morgan Stanley's Failure to Establish and Maintain Reasonable Supervisory Procedures Concerning Record Keeping)

243. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

244. The Respondent, Morgan Stanley's, conduct, as described above, in failing to establish and maintain reasonable supervisory procedures concerning record keeping, violated M.G.L. c. 110A, §204(a)(2)(J).

**K. COUNT XI – VIOLATION OF § 204 (a)(2)(J)
(Morgan Stanley's Failure to Supervise Fox's Misuse of Internet Employment Information)**

245. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

246. The conduct of Respondent, Morgan Stanley, as described above, in failing to prevent Fox's misuse of CareerBuilder.com's website, in violation of the contractual terms between the website and Morgan Stanley, constitutes a violation of M.G.L. c. 110A, §204 (a)(2)(J).

**L. COUNT XII- VIOLATION OF § 204 (a)(2)(J)
(Morgan Stanley's Failure to Supervise Fox in Properly Observing the Do-Not-Call Registries and Morgan Stanley's Policies and Procedures Relative to the Do-Not-Call Registries)**

247. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

248. The conduct of Respondent, Morgan Stanley, as described above, in failing to ensure that Fox observed the DNC registries and Morgan Stanley's policies and

procedures concerning the DNC statutes and regulations, constitute a violation of M.G.L. c. 110A, §204 (a)(2)(J).

X. STATUTORY BASIS FOR RELIEF

249. Violations, Cease and Desist Orders and Costs

Section 407A(a) of the Act provides in pertinent part that:

If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

250. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 192 above.

251. Respondent, Fox, directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Division's belief that Respondent, Fox, will continue to engage in acts and practices similar in subject and purpose which constitute violations if not ordered to cease and desist.

252. Respondent, Swartz, directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Division's belief that Respondent, Swartz, will continue to engage in acts and practices similar in subject and purpose which constitute violations if not ordered to cease and desist.

253. Respondent, Rhodes, directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Division's belief that

Respondent, Rhodes, will continue to engage in acts and practices similar in subject and purpose which constitute violations if not ordered to cease and desist.

254. Respondent, Morgan Stanley, directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above and it is the Division's belief that Respondent, Morgan Stanley, will continue to engage in acts and practices similar in subject and purpose which constitute violations if not ordered to cease and desist.

XI. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to:

- A. Require Respondent, Fox, to cease and desist from further violations of the Act;
- B. Require Respondent, Swartz, to cease and desist from further violations of the Act;
- C. Require Respondent, Rhodes, to cease and desist from further violations of the Act;
- D. Require Respondent, Morgan Stanley, to cease and desist from further violations of the Act;
- E. Censure Respondent, Morgan Stanley;
- F. Impose an administrative fine against Respondent, Morgan Stanley, in an amount and upon such terms and conditions as the Director or Hearing Officer may determine; and

- G. Take such further actions against Fox, Swartz, Rhodes and/or Morgan Stanley which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

XII. RELIEF REQUESTED

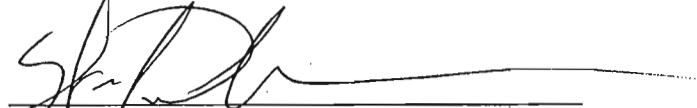
Wherefore, the Enforcement Section of the Division requests that the Director or Hearing Officer take the following action:

- A. Find that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- B. Find as fact the allegations set forth in paragraphs 1 to 192 of the Complaint;
- C. Enter an order requiring Respondent, Fox, to cease and desist from further violations of the Act;
- D. Enter an order requiring Respondent, Swartz, to cease and desist from further violations of the Act;
- E. Enter an order requiring Respondent, Rhodes, to cease and desist from further violations of the Act;
- F. Enter an order requiring Respondent, Morgan Stanley, to cease and desist from further violations of the Act;
- G. Censure Respondent, Morgan Stanley;
- H. Impose an administrative fine against Respondent, Morgan Stanley, in an amount and upon such terms and conditions as the Director or Hearing Officer may determine; and

- I. Take such further actions against Fox, Swartz, Rhodes and/or Morgan Stanley as may be deemed just and appropriate to carry out the purposes of the Act.

**ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION**

By its attorneys,



William J. Donahue, Enforcement



Michael Regan, Enforcement



Patrick J. Ahearn, Chief of Enforcement

Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, Massachusetts 02108
(617) 727-3548
(617) 248-0177 fax

Dated: September 12, 2007