UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. **MORGAN STANLEY** *Defendant.*	Civil Action No.

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDINGS

The United States brought this lawsuit against Defendant Morgan Stanley ("Morgan") on September 30, 2011, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. In January 2006, Morgan Stanley Capital Group Inc. ("MSGC"), a subsidiary of defendant Morgan Stanley,[1] executed agreements with KeySpan Corporation ("KeySpan") and Astoria Generating Company Acquisitions, L.L.C. ("Astoria") that would effectively combine the economic interests of the two largest competitors in the New York City electric capacity market. By creating this combination, the likely effect of the agreements was to increase capacity prices for the retail

[1] MSCG and Morgan Stanley are collectively referred to hereinafter as "Morgan."

electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.

The proposed Final Judgment remedies this violation by requiring Morgan to disgorge profits obtained through the anticompetitive agreement. Under the terms of the proposed Final Judgment, Morgan will surrender $4.8 million to the Treasury of the United States. Disgorgement will deter Morgan and others from future violations of the antitrust laws.

The United States and Morgan have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

A. The Defendant

Morgan Stanley is a Delaware corporation with its principal place of business in New York City. Morgan Stanley provides diversified financial services, operating a global asset management business, investment banking services, and a global securities business, including a commodities trading division. In 2010, Morgan Stanley had revenues of $31.6 billion. Morgan Stanley Capital Group, Inc., a wholly owned subsidiary of Morgan Stanley, functions as and is publicly referred to as the commodities trading division for the parent company Morgan Stanley.

B. <u>The Market</u>

In the state of New York, sellers of retail electricity must purchase a product from generators known as installed capacity ("capacity").[2] Electricity retailers are required to purchase capacity in an amount equal to their expected peak energy demand plus a share of reserve capacity. These payments assure that retail electric companies do not use more electricity than the system can deliver and encourage electric generating companies to build new facilities as needed. Because transmission constraints limit the amount of energy that can be imported into the New York City area from the power grid, the New York Independent System Operator ("NYISO") requires retail providers of electricity to customers in New York City to purchase 80% of their capacity from generators in that region. Thus, the New York City Installed Capacity ("NYC Capacity") Market constitutes a relevant geographic and product market.

The price for installed capacity has been set through auctions administered by the NYISO. The NYISO organizes the auctions to serve two distinct seasonal periods, summer (May though October) and winter (November through April). For each season, the NYISO conducts seasonal, monthly, and spot auctions in which capacity can be acquired for all or some of the seasonal period. Capacity suppliers offer price and quantity bids in each of these three auctions. Supplier bids are "stacked" from lowest-priced to highest. The stack is then compared to the amount of demand. The offering price of the last bid in the "stack" needed to meet requisite demand establishes the market price for all capacity sold into that auction. Any capacity bid at higher than this price is unsold, as is any excess capacity bid at what becomes the market price.

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[2] Except where noted otherwise, this description pertains to the market conditions that existed from May 2003 through March 2008.

The NYC Capacity Market was highly concentrated during the relevant period, with three firms – Astoria, NRG Energy, Inc., and KeySpan – controlling a substantial portion of the market's generating capacity. These three were designated as pivotal suppliers by the Federal Energy Regulatory Commission, meaning that at least some of each of these three suppliers' output was required to satisfy demand. The three firms were subject to bid and price caps – KeySpan's being the highest – for nearly all of their generating capacity in New York City and were not allowed to sell their capacity outside of the NYISO auction process.

C. The Alleged Violation

1. KeySpan Assesses Plans For Changed Market Conditions

From June 2003 through December 2005, almost all installed capacity in the market was needed to meet demand. With these tight market conditions, KeySpan could sell almost all of its capacity into the market, even while bidding at its cap. KeySpan did so, and the market cleared at the price established by the cap, with only a small fraction of KeySpan's capacity remaining unsold.

KeySpan anticipated that the tight supply and demand conditions in the NYC Capacity Market would end in 2006 due to the entry into the market of approximately 1000 MW of generation capacity, and would not return until 2009 with the retirement of old generation units and demand growth.

KeySpan could no longer be confident that "bid the cap" would remain its best strategy during the 2006-2009 period. The "bid the cap" strategy would keep market prices high, but at a significant cost. KeySpan would have to withhold a significant additional amount of capacity to account for the new entry. The additional withholding would reduce KeySpan's revenues by as much as $90 million per year. Alternatively, KeySpan could compete with its rivals for sales by bidding more capacity at lower prices. KeySpan considered various competitive bidding strategies. These could potentially produce much higher returns for KeySpan than bidding the cap but carried the risk that competitors would undercut its price and take sales away, making the strategy potentially less profitable than bidding the cap.

KeySpan also considered acquiring Astoria's generating assets from Reliant Energy, Inc., which was putting them up for sale. This would have solved the problem that new entry posed for KeySpan's revenue stream, as Astoria's capacity would have provided KeySpan with sufficient additional revenues to make continuing to "bid the cap" its best strategy. Simultaneously, Morgan was interested in buying the same assets and seeking a strategic partner with whom to bid. Morgan and KeySpan discussed such a partnership and the market power issues of a bid involving KeySpan. KeySpan soon concluded that its acquisition of its largest competitor would raise serious market power issues and communicated that conclusion to Morgan.

2. Morgan Facilitates the Anticompetitive and Unlawful Agreement

Instead of purchasing the Astoria assets, KeySpan decided to acquire a financial interest in substantially all of Astoria's capacity. KeySpan would pay Astoria's owner a fixed revenue stream in return for the revenues generated from Astoria's capacity sales in the auctions.

KeySpan realized that it could not approach the owner of Astoria assets directly, so it turned to Morgan to act as a counter-party. Morgan agreed to serve as the counter-party but informed KeySpan that the agreement was contingent on it entering into an offsetting agreement with the owner of the Astoria generating assets.

On or about January 9, 2006, KeySpan and Morgan finalized the terms of a financial derivative arrangement between the two companies, "the Morgan/KeySpan Swap." Under the agreement, if the market price for capacity was above $7.57 per kW-month, Morgan would pay KeySpan the difference between the market price and $7.57 times 1800 MW; if the market price was below $7.57, KeySpan would pay Morgan the difference times 1800 MW. The Morgan/KeySpan Swap was executed on January 18, 2006. The term of the Morgan/KeySpan Swap ran from May 2006 through April 2009.

On or about January 9, 2006, Morgan and Astoria finalized the terms of the offsetting agreement ("Morgan/Astoria Hedge"). Under that agreement, if the market price for capacity was above $7.07 per kW-month, Astoria would pay Morgan the difference times 1800 MW; if the market price was below $7.07, Astoria would be paid the difference times 1800 MW. The Morgan/Astoria Hedge was executed on January 11, 2006. The term of the Morgan/Astoria Hedge ran from May 2006 through April 2009, matching the duration of the Morgan/KeySpan Swap.

Morgan earned approximately $21.6 million in net revenues from the Morgan/KeySpan Swap and the Morgan/Astoria Hedge.

3. The Effect of the Morgan/KeySpan Swap

After the Morgan/KeySpan Swap went into effect in May 2006, KeySpan consistently bid its capacity into the capacity auctions at its cap even though a significant portion of its capacity went unsold. Despite the addition of significant new generating capacity in New York City, the market price of capacity did not decline.

The clear tendency of the Morgan/KeySpan Swap was to alter KeySpan's bidding in the NYC Capacity Market auctions. The swap effectively eliminated KeySpan's incentive to compete for sales in the same way a purchase of Astoria or a direct agreement between KeySpan and Astoria would have done. By adding revenues from Astoria's capacity to KeySpan's own, the Morgan/KeySpan Swap made bidding the cap KeySpan's most profitable strategy regardless of its rivals' bids. Without the swap, KeySpan likely would have chosen from a range of potentially profitable competitive strategies in response to the entry of new capacity and, had it done so, the price of capacity would have declined. The swap produced no countervailing efficiencies.

III. UNITED STATES V. KEYSPAN CORPORATION

On February 22, 2010, the United States filed suit against KeySpan for its role in the Morgan/KeySpan Swap. Simultaneous with the filing of its Complaint, the United States filed a proposed Final Judgment requiring KeySpan to pay to the United States $12 million as disgorgement of ill-gotten gains. *See Complaint*, *United States v. KeySpan Corp.*, No. 10-1415 (S.D.N.Y. Feb. 22, 2010). After completion of the procedures set forth in the Tunney Act, including public notice and comment, the United States moved for entry of the proposed Final Judgment. In the course of making its public interest determination, the Court found that disgorgement is available to remedy violations of the Sherman Act. *See United States v.*

KeySpan Corp., 763 F. Supp. 2d 633, 638-641. The KeySpan Final Judgment was entered on February 2, 2011.

IV. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires Morgan to disgorge profits gained as a result of its unlawful agreement restraining trade. Morgan is to surrender $4.8 million to the Treasury of the United States.

KeySpan, pursuant to a Final Judgment sought by the United States, has surrendered $12 million as a result of its role in the Morgan/KeySpan Swap.[3] *See United States v. KeySpan Corp.,* 763 F. Supp. 2d 633, 637-38 (S.D.N.Y. 2011). Securing similar disgorgement from the other responsible party to the anticompetitive agreement will protect the public interest by depriving Morgan of a substantial portion of the fruits of the agreement. The effect of the swap agreement was to effectively combine the economic interests of KeySpan and Astoria, thereby permitting KeySpan to increase prices above competitive rates, and this result could not have been achieved without Morgan's participation in the swap agreement. Requiring disgorgement in these circumstances will thus protect the public interest by deterring Morgan and other parties from entering into similar financial agreements that result in anticompetitive effects in the underlying markets, or from otherwise engaging in similar anticompetitive conduct in the future.

[3] Had the *KeySpan* case proceeded to trial, the United States would have sought disgorgement of the approximately $49 million in net revenues that KeySpan received under the Swap, contending that these net revenues reflected the value that KeySpan received from trading the uncertainty of competing for the certainty of the bid-the-cap strategy. *See Plaintiff United States's Response to Public Comments* at 14-18, *United States v. KeySpan Corp.*, No. 10-1415 (S.D.N.Y. June 11, 2010).

The $4.8 million disgorgement amount is the product of settlement and accounts for litigation risks and costs. While the disgorged sum represents less than all of Morgan's net transaction revenues under the two agreements,[4] disgorgement will effectively fulfill the remedial goals of the Sherman Act to "prevent and restrain" antitrust violations as it will send a message of deterrence to those in the financial services community considering the use of derivatives for anticompetitive ends.

V. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Morgan.

VI. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the

[4] Had the case against Morgan proceeded to trial, the United States would have sought disgorgement of the $21.6 million in net transaction revenues Morgan earned under both the Morgan/KeySpan Swap and the Morgan/Astoria Hedge. At trial, Morgan – in addition to raising arguments as to its lack of liability in general – would have disputed that the entire $21.6 million earned under both agreements would be cognizable as ill-gotten gains.

United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW; Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the disgorgement of profits is an appropriate remedy in this matter. A disgorgement remedy should deter Morgan and others from engaging in similar conduct and thus achieves a significant portion of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of discovery and a full trial on the merits of the Complaint.

VIII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court is directed to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B); *see generally United States v. KeySpan Corp.,* 763 F. Supp. 2d 633, 637-38 (S.D.N.Y. 2011) (WHP) (discussing Tunney Act standards); *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir.

1995).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, the court's function is "not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest." *KeySpan*, 763 F. Supp. 2d at 637 (quoting *United States v. Alex Brown & Sons, Inc.*, 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (internal quotations omitted). In making this determination, "[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable." *Id.* at 637-38 (quoting *United States v. Abitibi–Consolidated Inc.*, 584 F. Supp. 2d 162, 165 (D.D.C. 2008).[5] The government's predictions about the efficacy of its remedies are entitled to deference.[6]

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[5] *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981) ("The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General."). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

[6] *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *KeySpan*, 763 F. Supp. 2d at 638 ("A court must limit its review to the issues in the complaint . . . ."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[7]

IX. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

[7] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone").

Dated: September 30, 2011

Respectfully submitted,

FOR PLAINTIFF
THE UNITED STATES OF AMERICA

Jade Eaton

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EXHIBIT 1 TO THE COMPETITIVE IMPACT STATEMENT:

STIPULATION AND PROPOSED FINAL JUDGMENT

[In accordance with the ECF Rules, this document has been submitted separately to judgments@nysd.uscourts.gov for entry]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. **MORGAN STANLEY** *Defendant.*	Civil Action No. 11-Civ-6875

STIPULATION BY THE UNITED STATES AND MORGAN STANLEY

It is hereby stipulated by and between the undersigned parties that:

1. The Court has jurisdiction over the subject matter of this action and over Defendant Morgan Stanley ("Morgan"); Morgan waives service of summons on the Complaint; and venue is proper in the Southern District of New York.

2. A proposed Final Judgment in the form attached hereto as Exhibit A may be filed with this Court by the United States and may be entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Morgan and by filing that notice with the Court.

3. Morgan represents that the payment ordered in the proposed Final Judgment can and will be made, and that Morgan will later raise no claim of mistake, hardship, or difficulty of

compliance as grounds for asking the Court to modify any of the provisions contained therein.

4. The parties' execution of this Final Judgment settles any and all claims of the United States against Morgan arising from the specific events giving rise to the allegations described in the Complaint.

5. In the event that the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall become null and void and shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated this 29th day of September 2011.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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STIPULATION BY THE UNITED STATES AND MORGAN STANLEY

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil Action No.
MORGAN STANLEY	)	
Defendant.	)	

FINAL JUDGMENT

WHEREAS Plaintiff United States of America filed its Complaint alleging that Defendant Morgan Stanley ("Morgan") violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff and Morgan, through their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by Morgan for any purpose with respect to any claim or allegation contained in the Complaint:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against Morgan under Sections 1 and 4 of the Sherman Act, 15 U.S.C. §§ 1 and 4.

II. APPLICABILITY

This Final Judgment applies to Morgan and each of its successors, assigns, and to all other persons in active concert or participation with it who shall have received actual notice of the Settlement Agreement and Order by personal service or otherwise.

III. RELIEF

A. Within thirty (30) days of the entry of this Final Judgment, Morgan shall pay to the United States the sum of four million eight hundred thousand dollars ($4,800,000.00).

B. The payment specified above shall be made by wire transfer. Before making the transfer, Morgan shall contact Janie Ingalls, of the Antitrust Division's Antitrust Documents Group, at (202) 514-2481 for wire transfer instructions.

C. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

IV. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions. Upon notification by the United States to the Court of Morgan's payment of the funds required by Section III above, this Section IV will have no further force or effect.

V. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:___________

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United States District Judge