



# Department of Justice

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AT  
(202) 514-2007  
TTY (866) 544-5309

## **JUSTICE DEPARTMENT REQUIRES MORGAN STANLEY TO DISGORGE \$4.8 MILLION IN PROFITS FROM ANTICOMPETITIVE AGREEMENT**

### ***Derivative Contract Led to Higher Prices for Electricity Generating Capacity in New York City***

WASHINGTON – The Department of Justice today announced a settlement with Morgan Stanley that requires Morgan to pay \$4.8 million for violating the antitrust laws by entering into an agreement with KeySpan Corporation that restrained competition in the New York City electricity capacity market. The department said the agreement likely resulted in a price increase for electricity retailers, which, in turn, led to increased electricity prices for consumers.

The department's Antitrust Division today filed a civil antitrust complaint in U.S. District Court for the Southern District of New York and submitted a proposed settlement that, if approved by the court, would resolve the lawsuit. The settlement provides for disgorgement of profits for a violation of the antitrust laws and requires Morgan to pay \$4.8 million to the United States. The department previously entered into a settlement with KeySpan that required the company to disgorge \$12 million in profits for its role in the agreement, which was approved by the court in February 2011.

"This settlement with a major financial institution will signal to the financial services community that use of derivatives for anticompetitive ends will not be tolerated," said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "Disgorgement of ill-gotten gains, as was paid here, is an effective Antitrust Division tool to remedy harm to competition."

According to the complaint, in January 2006, KeySpan and Morgan executed a financial derivative for New York City capacity while Morgan simultaneously entered into an off-setting derivative with Astoria Generating Company, KeySpan's largest competitor in the capacity market. The agreements effectively transferred to KeySpan a financial interest in Astoria's capacity, thereby ensuring that KeySpan would withhold substantial output from the capacity market and increase prices. For its part, Morgan earned revenues by retaining the spread between the fixed prices of the two derivative agreements. The anticompetitive effects of the Morgan/KeySpan agreement lasted until March 2008, when regulatory conditions eliminated KeySpan's ability to affect the market price of electricity capacity.

New York City's electricity generating capacity market was created to ensure that sufficient generation capacity exists to meet expected electricity needs. Electricity retailers serving consumers in the city are required to purchase capacity from generators in amounts related to their expected peak energy demand. Electricity generators offer to sell their capacity to electricity retailers in regularly held auctions.

Morgan Stanley is a Delaware corporation with its principal place of business in New York City. Morgan provides diversified financial services, operating a global asset management business, investment banking services and a global securities business, including a commodities trading division.

The proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to William Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 5<sup>th</sup> St. N.W., Suite 8000, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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