

**ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER**

IN THE MATTER OF:

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**MORGAN STANLEY & CO.
INCORPORATED,**

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File No. 2005-0299

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Respondent.

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CONSENT ORDER

WHEREAS, the Maryland Securities Commissioner (the “Commissioner”), pursuant to the authority granted by Section 11-701 of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (2007 Repl. Vol.) (the “Securities Act” or “Act”) initiated an investigation into the activities of George L. Divel, III (“Divel”) (CRD #3102446), registered as a broker-dealer agent and investment adviser representative through Morgan Stanley DW Inc., predecessor in interest to Morgan Stanley & Co. Incorporated (CRD #8209) (“Morgan Stanley” or respondent); and

WHEREAS, the Maryland Securities Division (“Division”) initiated an investigation in about May 2005, after an article appeared in the Baltimore Business Journal about Divel; and

WHEREAS, in the course of its investigation of Divel, the Division investigated Morgan Stanley’s supervision of Divel; and

WHEREAS, Morgan Stanley previously conducted an internal investigation of Divel relating to his activities in connection with certain trust accounts and, based on that investigation, discharged Divel on February 4, 2005 for violating firm policies; and

WHEREAS, on March 10, 2005, Morgan Stanley commenced an interpleader action in

federal court to safeguard and determine the disposition of client assets; and

WHEREAS, Morgan Stanley has cooperated with the Division by producing records, making its employees available for interview, and meeting with representatives of the Division; and

WHEREAS, without holding a hearing and without trial or adjudication of any issue of fact or law, and prior to the initiation of any formal proceeding, the Commissioner and respondent have reached an agreement to resolve this matter; and

WHEREAS, Morgan Stanley, without admitting or denying any findings of fact or conclusions of law, except that Morgan Stanley expressly consents to the Commissioner's jurisdiction over the subject matter and personal jurisdiction over respondent in this proceeding pursuant to Section 11-701.1 of the Securities Act, and consents to the terms of this Order; and

WHEREAS, the Commissioner has determined that it is in the public interest to issue this Consent Order.

NOW, THEREFORE, THE COMMISSIONER FINDS, CONCLUDES AND ORDERS:

**I.
JURISDICTION**

1. The Commissioner has jurisdiction in this proceeding pursuant to § 11-701.1 of the Securities Act.

**II.
FINDINGS OF FACT**

Respondent and George Divel

2. Morgan Stanley is a Delaware corporation maintaining a principal place of business in Purchase, New York. Morgan Stanley is a broker-dealer registered with FINRA and the Division. Morgan Stanley employs registered representatives, called Financial Advisers, in

branch offices located throughout the country, including in Maryland.

3. Divel was hired by Morgan Stanley in June 1998, and became a registered representative on August 28, 1998 and a registered investment advisor on September 9, 1999. He was discharged by Morgan Stanley on February 4, 2005. He worked in the Baltimore office of Morgan Stanley located at 250 W. Pratt Street, Baltimore, Maryland 21201.

George Divel's Activities at Morgan Stanley

4. While he was employed by Morgan Stanley, Divel built up a clientele of elderly persons. Many of these clients lived in retirement communities.

5. On August 2, 2001, Divel opened trust accounts (the "Accounts") at Morgan Stanley for two German-born sisters, Myrtle Letas ("Letas") and Elsie Schaefer ("Schaefer"). Letas and Schaefer were 95 and 93 years old, respectively. They had no children and no relatives in the United States.

6. Also on August 2, 2001, Letas and Schaefer amended their respective grantor revocable trust agreements. According to these amendments, each sister was to serve as trustee of her own trust, and Morgan Stanley was designated successor trustee. Letas and Schaefer were also intended beneficiaries of each other's trusts, with the remainder to be distributed to beneficiaries in Germany after their deaths.

7. Copies of these amended grantor revocable trust agreements were forwarded to and maintained by Morgan Stanley Trust Co., an affiliate of Morgan Stanley.

8. On or about August 6, 2003 and August 21, 2003, respectively, Letas and Schaefer gave Divel durable general powers of attorney with complete authority to act on their behalf. They also amended their grantor revocable trust agreements to give Divel the power to appoint a corporate trustee or attorney to serve as trustee for each of the sisters' trusts and to

make Divel the 75% remainder beneficiary after the deaths of both sisters and of German relatives who had life interests in the corpus of the trusts for “such amount as the Trustee may deem appropriate for the health, maintenance and support of such individuals as determined in the sole discretion of the Trustee.” Morgan Stanley Trust Co. has no record of ever receiving copies of the 2003 amendments to the grantor revocable trusts.

9. Letas and Schaefer died within a couple of weeks of each other in January 2004.

Compliance Issues Regarding Divel’s Handling of Letas and Schaefer’s Trusts

10. Morgan Stanley states that Divel did not inform his branch supervisors or Morgan Stanley’s compliance department of Letas and Schaefer’s deaths until August and September 2004, respectively.

11. Further, Divel did not inform Morgan Stanley that he had been granted durable powers of attorney over Letas and Schaefer’s affairs or was a beneficiary of their trusts until months after Letas and Schaefer had died.

12. During the period in which Divel served as Financial Advisor to Letas and Schaefer, Morgan Stanley had written compliance and supervisory procedures, including procedures requiring its Financial Advisors to obtain written permission from the compliance department before serving in a fiduciary capacity with respect to a client or client’s account.

13. Despite these policies and procedures, Divel failed to disclose or misrepresented his fiduciary capacity with respect to Letas and Schaefer. He did not apply for permission to serve in any fiduciary capacity with respect to the Accounts until August 2, 2004, almost a year after Letas and Schaefer gave him durable powers of attorney and made him remainder beneficiary.

14. Before applying for permission to serve in a fiduciary capacity, Divel misstated to

Morgan Stanley his relationship to Letas and Schaefer.

15. On March 17, 2004, almost two months after the sisters had died, Divel changed the addresses of record for the Accounts to his home address.

16. Morgan Stanley had policies and procedures intended to detect unauthorized address changes. Morgan Stanley's policy required that a client affirm authorization for an address change by signing and returning a notification letter sent to both the old and the new address.

17. At the time Divel changed the addresses on the Accounts, the sisters were already deceased and Divel picked up Letas and Schaefer's mail from their retirement home. As a result, he was able to intercept the notification sent out by Morgan Stanley relating to the changes of address. He returned the notices to Morgan Stanley, signing his own name as "personal representative."

18. Morgan Stanley's personnel did not detect this change of address to Divel's home address. Morgan Stanley's compliance and branch personnel did not learn of the address change until the late spring or early summer of 2004.

19. On April 13, 2004, in response to a Morgan Stanley compliance questionnaire asking employees to identify fiduciary relationships with clients, Divel again misstated his relationship with Letas and Schaefer by noting that he was "executor."

20. Morgan Stanley has procedures governing accounts when a client dies. Upon a client's death, the financial advisor is required to change the account title to show that the client is deceased. All account activity is to cease until the trustee or executor or administrator of the estate presents proof of authority. Divel did not retile the Accounts after Letas and Schaefer died.

21. Divel executed unauthorized transactions in the Accounts after Letas and Schaefer's deaths, even trading after Morgan Stanley had specific information that the sisters had died. Altogether, Divel purchased securities after the sisters' deaths valued at about \$800,000 for Letas' account and \$681,000 for Schaefer's account.

22. Divel continued to receive fees and commissions with respect to the Accounts. Morgan Stanley, without request from the Commissioner, reimbursed the Accounts for all fees and commissions. Morgan Stanley, however, permitted Divel to keep the fees and commissions that were paid to him after Letas and Schaefer died.

23. Morgan Stanley removed the Accounts from Divel's control on September 24, 2004.

The Interpleader Action

24. On March 10, 2005, Morgan Stanley initiated an interpleader action in federal court, naming as defendants all persons who had an interest in the Accounts. At the time the interpleader was filed, the Accounts were jointly valued at approximately \$3.25 million.

25. Morgan Stanley also successfully petitioned the Court to appoint an independent Trustee to oversee the handling of the Accounts pending the resolution of the interpleader action.

26. In October of 2007, persons with an interest in the Accounts reached an agreement as to the distribution of the assets. The interpleader action filed by Morgan Stanley was voluntarily dismissed by stipulation on December 20, 2007. At the time of dismissal, the value of the Accounts exceeded \$4 million.

Order Against George Divel

27. The Securities Commissioner issued a Consent Order on November 21, 2007, pursuant to which Divel paid the Office of the Attorney General a fine of \$50,000, had his

securities and investment advisory licenses suspended for three months, and agreed to strict supervision of his future securities business.

III. CONCLUSIONS OF LAW

THE COMMISSIONER CONCLUDES, but Morgan Stanley neither admits nor denies the following:

28. Morgan Stanley failed reasonably to supervise Divel, subjecting the firm to sanction in accordance with Section 11-412(a) (10) of the Securities Act.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, and Morgan expressly consents to the terms of this Order:

IV. SANCTIONS

29. Morgan Stanley shall pay to the Office of the Attorney General a civil monetary penalty of \$35,000, payable to the Office of the Attorney General on or before the date of this Order.

V. CONSEQUENCES OF VIOLATING CONSENT ORDER

30. If Morgan Stanley fails to comply with any terms of this Order, the Commissioner may institute administrative or judicial proceedings against Morgan Stanley to enforce this Order or to sanction Morgan Stanley for violating an order of the Commissioner, and may take any other action authorized under the Securities Act or any other applicable law, including the issuance of fines or penalties as provided by the Act. For the purpose of determining those sanctions, the Findings of Fact and violations of the Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against respondent.

31. In the event that judicial intervention in this matter is sought by the Commissioner or Morgan Stanley, subject matter jurisdiction will lie in the Circuit Court for Baltimore City

pursuant to Section 11-702 of the Securities Act. That Court will have personal jurisdiction over Morgan Stanley pursuant to Md. Courts and Judicial Proceedings Code Ann., Section 6-103 (2006 Repl. Vol.). Venue will be properly in that Court pursuant to Section 6-201(a) and 6-202(11) of the article.

**VI.
MODIFICATION OF CONSENT ORDER**

IT IS FURTHER ORDERED that the terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Commissioner.

DATE OF THIS ORDER:

SO ORDERED:

Melanie Senter Lubin
Maryland Securities Commissioner

Consented to:

Morgan Stanley & Co. Incorporated
By:

Date

On this _____ day of _____, 2008, personally appeared _____, signer of the foregoing Consent Order, who did acknowledge his/her signature to be his/her free act and deed.

Notary Public

My Commission expires: _____