1221 Avenue of the Americas
New York, NY 10020

Morgan Stanley

February 9, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Fiduciary Definition Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

To Whom It May Concern:

We respectfully request an opportunity for Jim McCarthy, Managing Director, Morgan Stanley Smith Barney, to testify on Morgan Stanley's behalf at the Department's March 1-2, 2011 hearing.

Mr. McCarthy's testimony will track the points raised in Morgan Stanley's comment letter dated February 2, 2011 as follows:

The Department should, at a minimum, defer the Proposed Regulation for the following reasons:

- The Department's Efforts Should Be Coordinated with Congressional Intent and the Directives Given to the CFTC and SEC: Concurrent regulatory efforts addressing institutional market conduct (with the CFTC) and fiduciary status (with the SEC) have been undertaken by other regulatory organizations, and the Proposed Regulation has not been drafted to coordinate and interact effectively with such regulatory efforts. We believe that the Proposed Regulation, on the institutional side, directly conflicts with the CFTC's "business conduct" standard, rendering the ability of plans as "major swap participants" to continue to do such activity in question. We also believe that the Department has overlooked the importance of preserving continued access by plans and IRAs to existing products, fee structures and services specifically cited by the SEC in its fiduciary report as necessary and desirable for investors.

- Cost Analysis: The Department's efforts, we believe, do not fully consider the impact that this Proposed Regulation would have on market participants (including plans), the costs of the Proposed Regulation have not been clearly vetted, and we believe they far exceed any of those identified by the Department.

- The Proposed Regulations' Scope Is Not Supported By the Department's Findings: The reach of the Proposed Regulation goes far beyond any problems identified by the Department in its justification for this regulatory action. One example, but not the only, is that the primary justification for the Proposed Regulation relates to enforcement issues, but the Department does not have the authority to enforce rules on a significant portion of the retirement accounts (namely IRAs) now affected.

We appreciate the opportunity to testify.

Sincerely,

William E. Ryan III
Executive Director,
Legal and Compliance (ERISA Law)