

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. LLC

Respondent.

Docket No. 2012-0042

SECURITIES DIVISION

2012 DEC 17 PM 1:25

SECRETARY OF THE
COMMONWEALTH

CONSENT ORDER

This Consent Order ("Order") is entered into by the Massachusetts Securities Division ("Division") and Morgan Stanley & Co. LLC ("Morgan Stanley") in connection with an investigation by the Division into matters related to Morgan Stanley's role as lead underwriter for the initial public offering ("IPO") of Facebook, Inc. ("Facebook").

On December 17, 2012, Morgan Stanley submitted an Offer of Settlement for the purpose of disposing the allegations set forth in the Offer of Settlement. Morgan Stanley, neither admitting nor denying the Statement of Facts set forth in Section V herein, and neither admitting nor denying the Violations of Law set forth in Section VI, herein consents for the purpose of these proceedings, to the entry of this Order by the Division, consistent with the language and terms of the Offer of Settlement, settling these claims thereby with prejudice.

I. 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 Massachusetts Uniform Securities Act, MASS. GEN. LAWS. ch. 110A (the "Act"). The Act authorizes the Division to regulate: 1) the offers and/or sales of securities; 2) those individuals offering and/or selling securities within the Commonwealth; and 3) those individuals transacting business as broker-dealer agents within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by Section 407A of the Act and MASS. GEN. LAWS. ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and 950 MASS. CODE REGS. 10.00 *et seq.* (the "Regulations") and rules promulgated thereunder.

3. This proceeding is brought in accordance with Sections 204 and 407A of the Act and its Regulations.

II. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of December 22, 2010 through present.

III. RESPONDENT

5. Morgan Stanley & Co. LLC, ("Morgan Stanley"), is a Financial Industry Regulatory Authority ("FINRA") registered broker-dealer with its main address located at 1585 Broadway, New York, New York 10036-8293. Morgan Stanley's Central Registration Depository ("CRD") identification number is 8209. Morgan Stanley has been registered to conduct business as a broker-dealer in Massachusetts since July 31, 1981. Morgan Stanley's businesses include securities underwriting and distribution through its Investment Banking Division ("IBD") and equity research through its Research Department.

IV. RELATED PARTIES

A. Morgan Stanley

6. Senior Investment Banker has been a Managing Director since 1998. Senior Investment Banker has been employed by Morgan Stanley since May 1995 and currently works from Morgan Stanley's offices located at 2725 Sand Hill Road, Bldg. C., Ste. 200, Menlo Park, California 94025. Senior Investment Banker possesses the Series 7, 24, and 63 registrations.

7. Research Analyst is an Executive Director and research analyst in Morgan Stanley's Research Department. Research Analyst has been employed by Morgan Stanley since April 2009 and currently works out of Morgan Stanley's office at 1585 Broadway, New York, New York 10036. Research Analyst has been a registered agent of Morgan Stanley in Massachusetts since April 2009. Research Analyst covers mostly U.S.-based companies in the internet sector and as of June 2012 covered approximately 24 companies. Research Analyst possesses the Series 7, 63, 86, and 87 registrations.

B. Facebook

8. Facebook, Inc., ("Facebook"), is a social networking service that owns and operates www.facebook.com. Facebook incorporated in Delaware in July 2004. The principal executive offices of Facebook are located at 1601 Willow Road, Menlo Park, California 94025. Facebook held its IPO of securities on May 18, 2012 and its securities trade on NASDAQ under the ticker symbol "FB."

9. CFO is Facebook's Chief Financial Officer. Prior to joining Facebook in September 2009, CFO worked at Genentech, Inc. ("Genentech"), a biotechnology

company, for fifteen years and last served as the CFO from March 2005 until April 2009. Prior to joining Genentech, CFO was a research analyst at Oppenheimer & Co., Inc.

10. **Treasurer** is Facebook's former Vice President of Finance and Treasurer.

Treasurer was employed at Facebook from September 2007 to October 2012. Prior to joining Facebook, Treasurer was at Yahoo! Inc. from 2003 through 2007 as the Director of Corporate Treasury and Manager, then the Assistant Treasurer, last serving as the Vice President of Finance and Treasurer.

V. **STATEMENT OF FACTS**

A. **Relevant Disciplinary History**

11. In 2003, Morgan Stanley and nine other brokerage firms agreed to settle enforcement actions "arising from an investigation of research analyst conflicts of interest." It was alleged that Morgan Stanley and the other firms violated NASD and NYSE rules from at least July 1999 through June 2001 and that its **"research analysts [] were subject to inappropriate influence by investment banking at the firm."**

(emphasis added).

12. On October 10, 2003, Morgan Stanley signed an Administrative Consent Order (Docket No. 2003-042) with the Division ("2003 MSD Consent Order").

13. The 2003 MSD Consent Order noted that "Morgan Stanley engaged in acts and practices that created conflicts of interest for its research analysts with respect to investment banking activities and considerations. Morgan Stanley failed to manage those conflicts in an adequate or appropriate manner."

14. On October 31, 2003, Morgan Stanley settled civil and regulatory actions brought by the Division, the U.S. Securities and Exchange Commission ("SEC"), the New York

Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD" now known as "FINRA"), the Attorney General of New York ("NYAG") and other state regulators, which alleged violations of certain federal and state securities laws and regulations and certain NASD and NYSE rules by Morgan Stanley arising out of business practices concerning: (1) influence by investment banking over research analysts; (2) promising, implicitly or explicitly, favorable research coverage to investment banking clients or potential clients; (3) failing to disclose or cause to disclose in offering documents or elsewhere the use of proceeds from offerings to make payments to third parties for research coverage; and (4) failed to adequately supervise employees who engaged in those practices.

15. Solely for the purpose of settling each proceeding and without admitting or denying the facts or conclusions alleged in the regulators' documents, Morgan Stanley consented and agreed to the sanctions described below. Morgan Stanley consented to the imposition of censures by the NASD and NYSE, the issuance of cease and desist orders in state proceedings prohibiting the firm from violating certain state laws and regulations, the entry of a final judgment enjoining Morgan Stanley from violating certain provisions of the federal securities laws and certain self-regulatory rules and ordering Morgan Stanley to pay a penalty of \$25,000,000; disgorgement of \$25,000,000; and \$75,000,000 to be used for the procurement of Independent Research.

16. As a result of both settlements with the SEC and the Division, Morgan Stanley agreed to undertakings including:

1. The firm may **not knowingly do indirectly that which it cannot do directly** under this Addendum.

2. The firm will adopt and implement policies and procedures designed to ensure that its associated persons (including but not limited to the firm's **investment banking personnel**) **cannot and do not seek to influence the contents of a research report or the activities of Research personnel for purposes of obtaining or retaining investment banking business.** The firm will adopt and implement procedures instructing firm personnel to report immediately to a member of the firm's legal or compliance staff any attempt to influence the contents of a research report or the activities of Research personnel for such a purpose.

(emphasis added).

17. The final judgment, as modified, also ordered Morgan Stanley to comply with its undertakings and implement certain structural reforms relating to the operation of the firm's research and investment banking departments.

18. The 2003 MSD Consent Order and related federal and state proceedings described in paragraphs 11 to 17 shall collectively be referred to as the "Global Research Analyst Settlement."

B. Relevant U.S. Research Settlement Policies and Procedures

19. Morgan Stanley has implemented policies and procedures as a result of the Global Research Analyst Settlement called "U.S. Research Settlement – Equity Research and IBD Compliance and Supervisory Policies and Procedures."

20. Morgan Stanley's U.S. Research Settlement Policies and Procedures provide that, "in connection with discussions about the merits of a proposed transaction or a potential candidate for a transaction, [Equity Research] personnel and IBD personnel may have company-specific discussions regarding individual companies, public or private, and may discuss published Research reports or the impact of a company event."

21. Equity Research personnel are permitted to communicate with company personnel and other third parties of the company. The policies provide, that:

(1) if IBD personnel "are present or participate in any such communications by [Equity Research] personnel with the company and other third parties,

a) such joint communications must be for the due diligence purpose of gathering or confirming information about the company or otherwise related to the proposed transaction,

b) the joint communications must (i) take place after the receipt by the Firm of an investment banking mandate, . . .

c) in the case of subclause (b)(i) above, such communications are held in the presence of either Chaperones or Outside Counsel Chaperones and

d) in the case of subclause (b)(i) above, the Legal and Compliance Division reasonably believes that the Firm will not have a meaningful opportunity to conduct separate due diligence communications with the relevant parties prior to the award of a mandate for the transaction and such communications are held in the presence of Chaperones;
and

(2) To the extent such communications are later communicated by [Equity Research] personnel to IBD personnel, such communication shall only be made in the presence of either Chaperones or Outside Counsel Chaperones.

22. The U.S. Research Settlement Policies and Procedures set forth that,

IBD transaction documents that are relevant to an assessment of the adequacy of the disclosure documents (e.g., registration statement, financial information, contracts; press release), including drafts and markups thereof, may only be exchanged by [Equity Research] personnel and IBD personnel through Chaperones or Outside Counsel Chaperones . . . provided that the purpose of the exchange is to advance the process of confirming the adequacy of disclosure.

(emphasis added).

23. Morgan Stanley's U.S. Research Settlement Policies and Procedures

provide:

[Equity Research] personnel and IBD personnel may not communicate in person or by telephone, voice mail, email, instant messaging, internal Firm mail, external mail, LiveMeeting or any other means other than as expressly permitted by these Policies, and, where required, in the presence of a Chaperone. **For purposes of these Policies, 'communication' includes indirect communications made through any other person, entity or system.**

(emphasis added).

24. The U.S. Research Settlement Policies and Procedures additionally hold that, “[n]o Firm personnel may seek to influence the contents of a Research report or the activities of [Equity Research] personnel for purposes of obtaining or retaining IBD business.” (emphasis added).

C. Morgan Stanley and Facebook

25. On February 1, 2012, Facebook filed its S-1 registration statement with the SEC and Morgan Stanley was announced as the lead underwriter.

26. A joint due diligence session for Facebook underwriters and analysts at those firms was scheduled for March 19, 2012 at Facebook offices (“Joint Diligence Session”).

27. An Analyst Diligence Session (not including IBD) took place at Facebook’s offices in Menlo Park, California on April 16, 2012.

28. At the Analyst Diligence Session, CFO informed the syndicate research analysts that Facebook’s internal revenue forecast for second quarter 2012 (“2Q12”) ranged from \$1.1 to \$1.2 billion.

29. CFO gave the syndicate research analysts a **single number** of \$5 billion for Facebook’s 2012 revenue forecast in lieu of a range.

30. The models that syndicate research analysts prepared and submitted to Facebook included revenue estimates that took into account the estimates CFO provided to them at the Analyst Diligence Session.

31. The syndicate research analysts' 2Q12 revenue estimates were on the high end or above the range of \$1.1 billion to \$1.2 billion that CFO had provided to them.

32. Morgan Stanley, JP Morgan, and Goldman Sachs' revenue estimates for 2Q12 and 2012 were as follows:

Underwriter	2Q12 Analyst FB Revenue Estimates	2012 Analyst FB Revenue Estimates
Morgan Stanley	\$1.175	\$5.036
JP Morgan	\$1.182	\$5.044
Goldman Sachs	\$1.207	\$5.169
Numbers in the billions		

D. Facebook's May 3, 2012 amendment to its S-1

33. On May 3, 2012, Facebook filed a fifth amended S-1 registration statement with the SEC ("May 3, 2012 S-1") that stated "[w]e anticipate that the initial public offering price will be between \$28.00 and \$35.00 per share."

34. Facebook's May 3, 2012 S-1 disclosed that revenue **may** be negatively affected due to mobile usage outpacing the number of ads delivered.

35. Facebook's May 3, 2012 S-1 stated:

Our culture also prioritizes our user engagement over short-term financial results, and **we frequently make product decisions that may reduce our short-term revenue** or profitability if we believe that the decisions are consistent with our mission and benefit the aggregate user experience and will thereby improve our financial performance over the long term.

(emphasis added).

36. In addition, Facebook's May 3, 2012 S-1 addressed mobile usage and sponsored stories:

We have historically not shown ads to users accessing Facebook through mobile apps or our mobile website. **To the extent that increasing usage of Facebook through mobile apps or our mobile website substitutes for the use of Facebook through personal computers where we do show ads, the number of ads that we deliver to users and our revenue may be negatively affected unless and until we are successful with monetization strategies for mobile usage of Facebook, such as the implementation of sponsored stories in users' mobile News Feeds, which we began in March 2012.** We believe that people around the world will continue to increase their mobile usage of Facebook, and that some of this mobile usage has been and will continue to be a substitute for use of Facebook through personal computers.

(emphasis added) [chart omitted].

37. The May 3, 2012 S-1 also included the following risk factors:

Our advertising revenue could be adversely affected by a number of other factors, including:

- decreases in user engagement, including time spent on Facebook;
- **increased user access to and engagement with Facebook through our mobile products, where we do not currently directly generate meaningful revenue,** particularly to the extent that mobile engagement is substituted for engagement with Facebook on personal computers where we monetize usage by displaying ads and other commercial content;

(emphasis added).

38. Following Facebook's May 3, 2012 S-1, Research Analyst conducted his "teach-in" to Morgan Stanley's institutional sales force about his Facebook analysis.

39. Research Analyst's Facebook financial estimates were incorporated into an institutional selling memorandum and distributed to Morgan Stanley's institutional sales employees.

E. May 7, 2012

40. The Facebook roadshow began in New York City on May 7, 2012, four days after Facebook filed the May 3, 2012 S-1.

41. IBD representatives first found out that Facebook's revenue estimates for 2Q12 were going to be lower than previously estimated during the evening of May 7, 2012.

42. Senior Investment Banker testified "I believe Monday night, May 7, 2012, [CFO] informed me that based upon their experience Q2 to date that he was less confident in his financial projections – in reaching or exceeding his financial projections than previously."

43. Additionally, CFO communicated to Senior Investment Banker that he was less confident in Facebook achieving the original revenue forecast of \$5 billion for 2012.

44. Senior Investment Banker further testified:

Q: And what was the original forecast communicated to analysts at the April meeting you referred to?

A: I believe the guidance he communicated to analysts was approximately \$5 billion for the year and 1.1 to 1.2 billion dollars for the second quarter; that's what I was told by [CFO]. I was not present in the meeting.

Q: Why were you asking him what was communicated to analysts in the April meeting?

A: Because I wanted to see if I would provide him input to provide updated analyst guidance to the analysts.

45. Senior Investment Banker testified that CFO conveyed that his lower confidence in the 2Q12 projections was due to user growth outpacing ad growth.

46. Senior Investment Banker testified that CFO gave him two reasons why user growth was outpacing ad growth: 1) "the company had only recently begun showing

mobile sponsored stories...” and 2) “certain product decisions showing fewer ads per page.” These risks and trends had been previously disclosed in the May 3, 2012 S-1.

47. A Morgan Stanley Global Capital Markets Banker (“Capital Markets Banker”) testified that late in the evening on May 7, 2012, Senior Investment Banker communicated over the telephone to him that CFO had less confidence in Facebook’s 2Q12 revenue estimates.

48. A Capital Markets Banker testified that Senior Investment Banker “indicated that [CFO] and his team, as they had looked at their revenue forecasts, felt that those revenue forecasts were a little bit lighter than they anticipated them being at the time.”

F. May 8, 2012

49. On May 8, 2012, the Facebook roadshow continued in Boston and Baltimore.

50. Facebook’s revenue estimates had changed from what CFO had originally conveyed to syndicate research analysts: the second quarter was now coming in at the low end of the \$1.1 to \$1.2 billion range and the full year was 3 to 3 and a half percent lower than the previously forecasted \$5 billion.

51. Treasurer copied a Capital Markets Banker on her email request to Facebook finance employees, requesting in the subject: “Q2 estimates from analysts IMPORTANT PLS THIS MORNING.”

52. Treasurer specifically requested:

[c]an you please summarize the q2-q4 by quarter revenue estimates from the analysts for whom we have detailed models? [Facebook finance employee] has updated our forecast and we’re trying to gauge how far off our new forecast is from where the analysts are coming out....Copying [a Capital Markets Banker] from MS on this so we can get some efficiency – I don’t want to be the bottleneck in getting the info to MS.

53. The Facebook finance employee distributed the 2Q12 and 2012 syndicate research analyst estimates to a Capital Markets Banker, noting, “the spread among the group is pretty narrow –only about \$120M from min[imum] to max,[imum] or ~2% of revenue.”

54. Senior Investment Banker testified to the Division that after consulting with Capital Markets Bankers:

I had advised CFO that my input was that based upon what he had told me about his uncertainty in his ability to meet revenue projections that **updating analyst guidance would be a good idea.**

(emphasis added).

55. Senior Investment Banker testified that he then:

had a discussion with counsel individually and after that spoke to [CFO] about [a] potential solution to being able to update analyst guidance without **creating the appearance of not providing the underlying trend information to all investors** and that solution could be filing an amendment to the S1 with the updated Q2 trend information and after that speaking to analysts **to offer them updated guidance based upon that public filing** and I communicated that to [CFO] and he said let’s get on the phone and talk about it with counsel and his counsel and [a Capital Markets Banker] and [Treasurer] together to discuss that solution.

(emphasis added).

56. On May 8, 2012 at 8:10 p.m., Facebook management, Senior Investment Banker, Capital Markets Bankers, Facebook’s counsel, and Morgan Stanley’s counsel had a conference call.

57. Senior Investment Banker testified that he was with Treasurer when he was on the 8:10 p.m. call on May 8, 2012 and that the conversation went as follows:

I remember – I believe this was at the beginning but I don’t know exactly how it started but I remember informing the group that [a]

solution to their **appearance of not providing the updated Q2 business trends to both** – to all investors while being able to do permissible analyst guidance would be to file an amendment publicly with a free writing prospectus and conduct analyst diligence if analysts chose to, subsequent to and based upon the information in that amendment; and that was a potential solution to the concern that **[CFO] had expressed in the SUV about if he were to do the permissible analyst guidance that it would create an appearance that the underlying business information wasn't shared with all investors.**

(emphasis added).

58. Facebook, with input from Morgan Stanley, decided to file an updated S-1.

59. To prepare for the filing, while with Treasurer, Senior Investment Banker drafted language for the updated S-1 and provided that draft to Treasurer.

G. May 9, 2012

60. The Facebook roadshow continued in Baltimore on May 8, 2012, then advanced to Philadelphia on May 9, 2012.

61. On May 9, 2012, CFO emailed Facebook's Board of Directors that an amended S-1 would be filed, "[h]aving consulting [sic] with [Senior Investment Banker and a Senior Capital Markets Banker] at Morgan Stanley, we believe that it is appropriate to update the S-1. . ."

62. Specifically, CFO wrote to the Facebook Board of Directors:

(for Q2, **we are forecasting ~\$1.14B while analysts are forecasting \$1.18B** and some investors have told us they believe the analysts numbers are "sandbagged" and they are expecting higher).

...

We believe this additional disclosure will help us to continue to deliver accurate messages at the road show meetings (**without someone claiming we are providing any selective disclosure to big accounts only**). . .

(emphasis added).

63. Senior Investment Banker suggested that CFO speak to each of the analysts. Instead, Facebook decided that Treasurer would conduct prearranged individual 15-minute update calls immediately after the S-1 was publicly filed.

64. Treasurer remained in Philadelphia on May 9, 2012 to make her calls to syndicate research analysts from a hotel. Senior Investment Banker remained in Philadelphia with her.

65. To assist Treasurer in preparing for the calls with syndicate research analysts, Senior Investment Banker rehearsed with Treasurer where Senior Investment Banker played the part of the syndicate research analyst.

66. The Division asked Senior Investment Banker during his testimony, “[d]id [Treasurer] have a script for these 20 or so calls she was making to analysts?” Senior Investment Banker testified, “I don’t remember if she had a script or not.”

67. Facebook provided the script to the Division. Senior Investment Banker handwrote the following script for Treasurer to prepare for and to use in connection with calls to the syndicate research analysts with Facebook’s updated 2Q12 and 2012 revenue estimates:

I wanted to make sure you saw the disclosure we made in our amended filing. The upshot of this is that we believe we are going to come in the lower end of our \$1.1 to \$1.2 bn range for Q2 based upon the trends we described in the disclosure. A lot of investors have been focused on whether the trend of ad impressions per user declining (primarily as a result of mobile) was a one-time, or continuing, occurrence. As you can see from our disclosure, the trend is continuing. **You can decide what you want to do with your estimates, our long term conviction is unchanged, but in the near term we see these trends continuing, hence our being at the low end of the \$1,100 + \$1,200 range.**

(emphasis added).

68. The script drafted by Senior Investment Banker included quantitative information regarding Facebook's projections for 2Q12 that was not contained in the S-1.

69. On May 9, 2012, Facebook filed its sixth amended S-1 with the SEC at 5:03 p.m. (EST) ("May 9, 2012 S-1").

70. Within minutes of Facebook's filing, Treasurer first called Goldman Sachs' and JP Morgan's investment bankers, informing them of Facebook's May 9, 2012 S-1. Senior Investment Banker remained in the room for these two calls.

71. Treasurer began her calls to syndicate research analysts twelve minutes after the S-1 was filed. While Treasurer was making the syndicate research analyst calls, Senior Investment Banker testified that "I was far down the hall so I wouldn't hear anything; I took extra precaution to do that, and sat on the floor." Senior Investment Banker emailed CFO on May 9, 2012 at 9:31 p.m., "[Treasurer] was a champ in the hotel tonight."

72. Treasurer's first syndicate research analyst call was to Morgan Stanley's Research Analyst.

73. With calls scheduled every 15 minutes, Treasurer next called JP Morgan's analyst, then Goldman Sachs' analyst, then Citigroup's former analyst, and made an additional 7 calls by 8:30 p.m. After the calls, Treasurer and Senior Investment Banker reunited with the roadshow team in New York. Treasurer made additional calls on May 10, 2012 and May 15, 2012 to the remaining 8 syndicate research analysts.

74. Facebook's May 9, 2012 S-1 described trends for the second quarter and made no mention of the trends going beyond 2Q12.

75. Subsequent to their respective calls with Treasurer, all three lead underwriter analysts revised their Facebook 2Q12 estimates to **the lower end** of the \$1.1 to \$1.2 billion range.

76. Research Analyst revised his Facebook 2Q12 revenue estimates from \$1.175 billion to the lower end of the range to \$1.111 billion.

77. JP Morgan's research analyst revised his Facebook 2Q12 revenue estimates from \$1.182 billion to the lower end of the range to \$1.096 billion.

78. Goldman Sachs' research analyst revised her Facebook 2Q12 revenue estimates from \$1.207 billion to the lower end of the range to \$1.125 billion.

79. Subsequent to the May 9, 2012 S-1 and Treasurer's scripted calls, the lead underwriter research analysts adjusted their estimates down.

Underwriter	2Q12 Revenue Estimates	Revised 2Q12 Revenue Estimates
Morgan Stanley	\$1.175	\$1.111
JP Morgan	\$1.182	\$1.096
Goldman Sachs	\$1.207	\$1.125
Numbers in the billions		

80. The majority of syndicate research analysts, having also received calls from Treasurer, revised their estimates for Facebook's 2Q12 revenues.

81. In addition, Treasurer added to the script to inform syndicate research analysts of specific lower revenue estimates for 2012 on the May 9, 2012 calls.

82. Treasurer added, “[t]rends/headwinds over the next six to nine months as this run through the rest of the year, this could be **3 to 3 and a half percent off the 2012 \$5 billion target.**” (emphasis added).

83. The subsequent adjustments of the lead underwriter research analysts were consistent with the 3 to 3.5 percent that Treasurer scripted for the calls.

84. Research Analyst revised his 2012 revenue estimates down 3.01%.

85. JP Morgan’s research analyst revised his 2012 revenue estimates down 3.33%.

86. Goldman Sachs’ research analyst revised her calendar year 2012 revenue estimates down 3.05%.

87. Subsequent to the May 9, 2012 S-1 and Treasurer’s scripted calls, the lead underwriter research analysts adjusted their estimates down.

Underwriter	2012 Revenue Guidance provided to Analysts on April 16, 2012	Analysts Revised 2012 Revenue Estimates After Call from Treasurer on May 9, 2012	% Change
Morgan Stanley	\$5.000	\$4.854	-3.01%
JP Morgan	\$5.000	\$4.839	-3.33%
Goldman Sachs	\$5.000	\$4.852	-3.05%
Numbers in the billions			

88. The majority of syndicate research analysts, having also received calls from Treasurer, revised their estimates for Facebook’s 2012 revenues.

H. Post May 9, 2012 Amendment

89. On May 15, 2012, the price range for the IPO was increased.

90. On May 16, 2012, the number of shares in the offering was increased.

91. On May 17, 2012, Facebook's pricing committee determined to offer shares of Facebook at \$38, the high end of the increased filing range.

92. On May 18, 2012, Facebook went public with its shares trading on NASDAQ under the ticker symbol "FB."

VI. VIOLATIONS OF SECURITIES LAWS

A. COUNT I: VIOLATIONS OF § 204(a)(2)(F)

93. Section 204(a)(2)(F) 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:--

(F) is the subject of any of the following orders which are currently effective or which were issued within the last five years;

(iv) a cease and desist order entered after notice and opportunity for hearing by the secretary or the securities agency or administrator of any other state, Canadian province or territory, the Securities and Exchange Commission, or the commodity Futures Trading Commission[.]

94. The Division herein restates and incorporates the facts set forth in paragraphs 1-92 above.

95. The conduct of Respondent, as described above, constitutes a violation of the 2003 MSD Consent Order as modified and MASS. GEN. LAWS. ch. 110A, § 204(a)(2)(F).

B. COUNT II: VIOLATIONS OF § 204(a)(2)(G)

96. 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.

97. 950 MASS. CODE REGS. 12.204(1)(a) provides in pertinent part:

(1) Dishonest and unethical practices in the securities business.

(a) Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other appropriate action:

...
(emphasis in original).

98. The Division herein restates and incorporates the facts set forth in paragraphs 1-92 above.

99. The conduct of Respondent, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G) and 950 MASS. CODE REGS. 12.204(1)(a).

C. COUNT III: VIOLATIONS OF § 204(a)(2)(J)

100. Section 204(a)(2)(J) of the Act provides in pertinent part:

(a) 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 to reasonably to supervise agents, investment adviser representatives, or other employees to assure compliance with this chapter.

101. The Division herein restates and incorporates the facts set forth in paragraphs 1-92 above.

102. Respondent Morgan Stanley failed to supervise its agents or other employees to ensure compliance with the Act.

103. The conduct of Respondent Morgan Stanley, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VII. ORDER

Morgan Stanley consents to the entry of this Order,

IT IS HEREBY ORDERED:

Morgan Stanley, in full settlement of these matters, neither admits nor denies the Division's Statement of Facts set forth in Section V, and neither admits nor denies the Violations of Law set forth in Section VI herein, and makes the following representations and agrees to the undertakings herein as part of the Order:

- A. Respondent agrees to permanently cease and desist from violations of the Act and the Regulations;
- B. Respondent agrees to permanently cease and desist from violations of the 2003 MSD Consent Order;
- C. Respondent agrees to be censured by the Division;
- D. Respondent agrees within 90 days of the signed Consent Order to review maintenance, enforcement, and compliance oversight of its written supervisory

policies and procedures with respect to the prohibition of Investment Banking personnel's direct or indirect influence over the contents of a research report or the activities of Research personnel. To the extent written supervisory policies and procedures do not exist, Respondent must establish and implement such procedures. No later than 180 days after the date of entry of the Order, Respondent shall certify to the Division, in writing, that Respondent has fully complied in all material respects with the undertakings set forth above.

- E. Within 10 (ten) business days of the entry of a Consent Order, Respondent Morgan Stanley shall pay a civil penalty in the amount of \$5,000,000 (five million). Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108; or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the Respondent making the payment and the docket number of the proceedings;
- F. At the request of Respondent, the Division may extend, for good cause shown, any of the procedural dates set forth above;
- G. The Consent Order as entered into by The Commonwealth of Massachusetts will waive any disqualification contained in the laws of The Commonwealth of Massachusetts, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that Respondent Morgan Stanley or its affiliates may be subject to as a result of the findings contained in the Order. The Consent Order also is not intended to subject Respondent Morgan Stanley or its affiliates to any disqualifications contained in the federal securities laws, rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' or U.S. Territories' securities laws, including, without limitation, any disqualifications from relying upon the registration

exemptions or safe harbor provisions. In addition, the Consent Order is not intended to form the basis for any such disqualifications;

- H. Nothing herein is intended to or shall be construed to replace, supersede or override, with respect to Respondent, federal securities laws, rules and regulations of the rules of any self-regulatory organization;
- I. Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to the amount that Respondent shall pay to the Division pursuant to the Division's Consent Order;
- J. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Respondent shall pay to the Division pursuant to the Division's Consent Order; and
- K. Respondent agrees that, upon issuance of a Consent Order by the Division that contains the terms as set forth above, if it fails to comply with any of the terms set forth in the Division's Consent Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order, after a hearing, the Enforcement Section may re-institute the actions and investigations that it had brought against the Respondent.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 

Bryan J. Lantagne, Esq.
First Deputy-Secretary of State
Director-Massachusetts Securities
Division
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, Massachusetts 02108-1552

Dated: December 17th, 2012