



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Aspect Medical Systems, Inc.

IN RE INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : X	Master File No. 21 MC 92 (SAS)
IN RE ASPECT MEDICAL SYSTEMS, INC. INITIAL PUBLIC OFFERING SECURITIES LITIGATION	X : : : : : : : : X	01 Civ. 7090 (SAS)  CONSOLIDATED AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiffs, by their undersigned attorneys, individually and on behalf of the Class described below, upon information and belief, based upon, *inter alia*, the investigation of counsel, which includes a review of public announcements made by Defendants, interviews with individuals with knowledge of the acts and practices described herein, Securities and Exchange Commission ("SEC") filings made by AspectMedical Systems, Inc., (the "Issuer" or "Aspect"), press releases, and media reports, except as to Paragraph 11 applicable to the named Plaintiffs which is alleged upon personal knowledge, bring this Consolidated Amended Complaint (the "Complaint") against Morgan Stanley, and allege as follows:

**NATURE OF THE ACTION**

1. This is a securities class action alleging violations of the federal securities laws in connection with the initial public offering conducted on or about January 27, 2000 (the "IPO" or the "Offering") of 3,500,000 shares of Aspect Medical Systems, Inc. and the trading of Aspect

common stock in the aftermarket from the date of the IPO through December 6, 2000, inclusive (the "Class Period").

2. In connection with the IPO, Morgan Stanley participated in a scheme to improperly enrich itself through the manipulation of the aftermarket trading in Aspect common stock following the IPO.

3. In this regard, Morgan Stanley created artificial demand for Aspect stock by conditioning share allocations in the IPO upon the requirement that customers agree to purchase shares of Aspect in the aftermarket and, in some instances, to make those purchases at pre-arranged, escalating prices ("Tie-in Agreements").

4. As part of the scheme, Morgan Stanley required its customers to repay a material portion of profits obtained from selling IPO share allocations in the aftermarket through one or more of the following types of transactions: (a) paying inflated brokerage commissions; (b) entering into transactions in otherwise unrelated securities for the primary purpose of generating commissions; and/or (c) purchasing equity offerings underwritten by Morgan Stanley, including, but not limited to, secondary (or add-on) offerings that would not be purchased but for the unlawful scheme alleged herein. (Transactions "(a)" through "(c)" above will be, at varying times, collectively referred to hereinafter as "Undisclosed Compensation").

5. In connection with the IPO, Aspect filed with the SEC a registration statement ("Registration Statement") and a prospectus ("Prospectus"). The Registration Statement and Prospectus will, at varying times, be collectively referred to hereinafter as the "Registration Statement/Prospectus." The Registration Statement/Prospectus was declared effective by the SEC on or about January 27, 2000.

6. The Registration Statement/Prospectus was materially false and misleading in that it failed to disclose, among other things further described herein, that Morgan Stanley had required Tie-in Agreements in allocating shares in the IPO and would receive Undisclosed Compensation in connection with the IPO.

7. As part and parcel of the scheme alleged herein, Morgan Stanley also improperly utilized its analysts, who, unbeknownst to investors, were compromised by conflicts of interest, to artificially inflate or maintain the price of Aspect stock by issuing favorable recommendations in analyst reports.

### **JURISDICTION**

8. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

9. Plaintiffs bring this action pursuant to Section 10(b) of the Exchange Act as amended (15 U.S.C. § 78j(b)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Venue is proper in this District as Morgan Stanley has offices in this District, conduct business in this District and many of the wrongful acts engaged in by Morgan Stanley and alleged herein took place or originated in this District.

10. In connection with the acts alleged in the Complaint, Morgan Stanley, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## **PARTIES**

### **PLAINTIFFS**

11. Plaintiffs Leonard Peddy, Joseph Fisher, Linda Caldwell, Cindy Fabiano, Edward Belinski and Susan Gill (collectively "Plaintiffs") purchased or otherwise acquired shares of Aspect common stock traceable to the IPO, in the open market or otherwise during the Class Period, at prices that were artificially inflated by Morgan Stanley's misconduct and were damaged thereby.

### **THE UNDERWRITER DEFENDANT**

12. Plaintiffs hereby incorporate by reference the "Underwriter Defendant" section of the Master Allegations, as if set forth herein at length.

13. Morgan Stanley acted as Lead Manager of to the Offering and substantially participated in the unlawful conduct alleged herein:

14. Defendant Morgan Stanley will be, at varying times, referred to hereinafter as the "Underwriter Defendant."

### **ADDITIONAL PERSON - THE ISSUER**

15. At the time of the Offering, Aspect was a Delaware corporation with its principal executive offices located in Natick, Massachusetts. Aspect was described in the Registration Statement/Prospectus as follows: "We develop, manufacture and market an anesthesia-monitoring system that we call the BIS system. The BIS monitoring system enables anesthesia providers to assess and manage a patient's level of consciousness during surgery."

## CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired the common stock of the Issuer during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are Morgan Stanley, Morgan Stanley's legal counsel, any entity in which Morgan Stanley a controlling interest, and the legal representatives, heirs, successors or assigns of Morgan Stanley.

17. Members of the Class are so numerous that joinder of all members is impracticable.

(a) Millions of shares of common stock were sold in the IPO and the stock was actively traded during the Class Period; and

(b) While the exact number of Class members is unknown to the Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds, if not thousands, of Class members who purchased or otherwise acquired the Issuer's common stock during the Class Period.

18. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and the other members of the Class have sustained damages because of Morgan Stanley's unlawful activities alleged herein. Plaintiffs have retained counsel competent and experienced in class and securities litigation and intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs. Plaintiffs have no interests that are contrary to or in conflict with those of the Class which Plaintiffs seek to represent.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, since the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it economically impracticable for the members of the Class to seek redress individually for the wrongs they have suffered.

20. The names and addresses of the record purchasers of the Issuer's common stock are available from the Issuer, its agents, and the underwriter who sold and distributed the Issuer's common stock in the IPO. Notice can be provided to Class members via a combination of published notice and first class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Morgan Stanley's misconduct as alleged herein;

(b) Whether the Registration Statement/Prospectus omitted and/or misrepresented material facts;

(c) Whether Morgan Stanley participated in the course of conduct complained of herein;

(d) Whether, Morgan Stanley acted with scienter; and

(e) Whether the members of the Class have sustained damages as a result of Defendant's conduct, and the proper measure of such damages.

### **SUBSTANTIVE ALLEGATIONS**

22. Plaintiffs hereby incorporate by reference the "Introductory" section of the Master Allegations, as if set forth herein at length. Plaintiffs also adopt and incorporate herein by reference the allegations set forth in the Master Allegations that specifically relate to Morgan Stanley, as if set forth herein at length.

### **THE IPO**

23. Aspect's IPO of 3,500,000 shares was priced at \$15.00 on or about January 27, 2000. The sale and distribution of this firm commitment offering was effected by an underwriting syndicate consisting of, among others, Morgan Stanley. Additionally, Aspect granted the underwriting syndicate an option to purchase 525,000 additional shares at the initial offering price less underwriting discounts and commissions.

24. On the day of the IPO, the price of Aspect stock shot up dramatically, trading as high as \$33.38 per share, or more than 122% above the IPO price on substantial volume. This "impressive" debut however, was not the result of normal market forces; rather, it was the result of Morgan Stanley's unlawful practices more fully described herein.

25. During the Class Period, Aspect's common stock traded as a high as \$66.50 per share, or more than 343% above the IPO price.

**UNLAWFUL CONDUCT IN CONNECTION WITH THE IPO**

26. Consistent with its conduct in other IPOs as set forth in the Master Allegations, Morgan Stanley engaged in manipulative and/or other unlawful practices described more fully herein in connection with the Aspect IPO.

27. Customers of Morgan Stanley, as a condition to obtaining an allocation of stock in the IPO, were required or induced to enter into Tie-in Agreements and/or pay Undisclosed Compensation.

**THE REGISTRATION STATEMENT/PROSPECTUS  
WAS MATERIALLY FALSE AND MISLEADING**

28. In conducting the IPO, Morgan Stanley violated Regulation M promulgated pursuant to the Exchange Act. Rule 101(a) of Regulation M reads as follows:

*Unlawful Activity.* In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.

17 C.F.R § 242.101.

29. As explained by the SEC's Staff Legal Bulletin No. 10, dated August 25, 2000, tie-in agreements violate Regulation M:

**Tie-in agreements are a particularly egregious form of solicited transactions prohibited by Regulation M.** As far back as 1961, the Commission addressed reports that certain dealers participating in distributions of new issues had been making allotments to their customers only if such customers agreed to make some comparable purchase in the open market after the issue was initially sold. The Commission said that such agreements may violate the anti-manipulative provisions of the Exchange Act, particularly Rule 10b-6 (which was replaced by Rules 101 and 102 of Regulation M)

under the Exchange Act, and may violate other provisions of the federal laws.

**Solicitations and tie-in agreements for aftermarket purchases are manipulative because they undermine the integrity of the market as an independent pricing mechanism for the offered security.** Solicitations for aftermarket purchases give purchasers in the offering the impression that there is a scarcity of the offered securities. This can stimulate demand and support the pricing of the offering. Moreover, traders in the aftermarket will not know that the aftermarket demand, which may appear to validate the offering price, has been stimulated by the distribution participants. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational and subsequent financial loss. (Emphasis added)

30. In particular, the Registration Statement/Prospectus stated:

In order to facilitate the offering of our common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock. Specifically, the underwriters may over-allot in connection with the offering, creating a short position in our common stock for their own account. In addition, to cover over-allotments or to stabilize the price of our common stock, the underwriters may bid for, and purchase, shares of our common stock in the open market. Finally, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing our common stock in the offering, if the syndicate repurchases previously distributed shares of our common stock in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of our common stock above independent market levels. The underwriters are not required to engage in these activities and may end any of these activities at any time.

31. The statements contained in the previous paragraph were materially false and misleading because Morgan Stanley required customers to commit to Tie-in Agreements and created the false appearance of demand for the stock at prices in excess of the IPO price and in

violation of Regulation M. At no time did the Registration Statement/Prospectus disclose that Morgan Stanley would require its customers seeking to purchase IPO shares to engage in transactions causing the market price of Aspect common stock to rise, in transactions that cannot be characterized as stabilizing transactions, syndicate covering transactions or penalty bids.

32. Because the Undisclosed Compensation was, in reality, underwriter compensation, it was required to be disclosed in the Registration Statement/Prospectus. As Regulation S-K, Item 508 (e) provides:

Underwriter's Compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. **In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.** (Emphasis added).

33. The NASD specifically addresses what constitutes underwriting compensation in NASD Conduct Rule 2710(c)(2)(B) (formerly Article III, Section 44 of the Association's Rules of Fair Practice):

**For purposes of determining the amount of underwriting compensation, all items of value received or to be received from any source** by the underwriter and related persons which are deemed to be in connection with or related to the distribution of the public offering as determined pursuant to subparagraphs (3) and (4) below shall be included. (Emphasis added).

34. NASD Conduct Rule 2710(c)(2)(c) specifically requires:

If the underwriting compensation includes items of compensation in addition to the commission or discount disclosed on the cover page of the prospectus or similar document, a footnote to the offering proceeds table on the cover of the prospectus or similar document

shall include a cross-reference to the section on underwriting or distribution arrangements.

35. Contrary to applicable law, the Registration Statement/Prospectus did not set forth, by footnote or otherwise, the Undisclosed Compensation.

36. Instead, the Registration Statement/Prospectus misleadingly stated that the underwriting syndicate would receive as compensation an underwriting discount of \$1.05 per share, or a total of \$3,675,000, based on the spread between the per share proceeds to Aspect (\$13.95) and the Offering price to the public (\$15.00 per share). This disclosure was materially false and misleading as it misrepresented underwriting compensation by failing to include Undisclosed Compensation.

37. In addition, the Registration Statement/Prospectus stated:

The underwriters propose to offer part of the shares of our common stock at the initial public offering price on the cover page of this prospectus [\$15.00] and part to dealers at a price that represents a concession...

38. The Registration Statement/Prospectus was materially false and misleading in that in order to receive share allocations from Morgan Stanley in the Aspect IPO, customers were required to pay an amount in excess of the IPO price set forth on the cover page in the form of Undisclosed Compensation and/or Tie-in Agreements.

39. NASD Conduct Rule 2330(f) further prohibits an underwriter from sharing directly or indirectly in the profits in any account of a customer:

[N]o member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member.

40. Morgan Stanley's scheme was dependent upon customers obtaining substantial profits by selling share allocations from the IPO and paying a material portion of such profits to Morgan Stanley. In this regard, Morgan Stanley shared in its customers' profits in violation of NASD Conduct Rule 2330(f).

41. The failure to disclose Morgan Stanley's unlawful profit-sharing arrangement as described herein, rendered the Registration Statement/Prospectus materially false and misleading.

42. NASD Conduct Rule 2440 governs Fair Prices and Commissions and, in relevant part, provides that a member:

shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and market therefor.

43. Guideline IM-2440 of the NASD states, in relevant part:

It shall be deemed a violation of . . . Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable. . . . A mark-up of 5% or even less may be considered unfair or unreasonable under the 5% policy.

44. The Registration Statement/Prospectus was materially false and misleading due to its failure to disclose the material fact that Morgan Stanley were charging customers commissions that were unfair, unreasonable, and excessive as consideration for receiving allocations of shares in the IPO.

**THE END OF THE CLASS PERIOD**

45. On December 6, 2000, The Wall Street Journal published an article concerning an investigation of various improper initial public offering practices.

**MORGAN STANLEY'S UNLAWFUL CONDUCT ARTIFICIALLY  
INFLATED THE PRICE OF THE ISSUER'S STOCK**

46. Morgan Stanley's conduct alleged herein had the effect of inflating the price of the Issuer's common stock above the price that would have otherwise prevailed in a fair and open market throughout the Class Period.

**VIOLATIONS OF THE EXCHANGE ACT**

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

47. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- (a) Morgan Stanley made public misrepresentations or failed to disclose material facts during the Class Period regarding the Issuer as alleged herein;
- (b) The omissions and misrepresentations were material;
- (c) Following the IPO and continuing throughout the Class Period, the Issuer's stock was traded on a developed national stock exchange, namely the NASDAQ National Market, which is an open and efficient market;
- (d) The Issuer filed periodic reports with the SEC;
- (e) The Issuer was followed by numerous securities analysts;
- (f) The market rapidly assimilated information about the Issuer which was publicly available and communicated by the foregoing means and that information was promptly reflected in the price of the Issuer's common stock; and

(g) The misrepresentations and omissions and the manipulative conduct alleged herein would tend to induce a reasonable investor to misjudge the value of the Issuer's common stock.

**THE UNDERWRITER DEFENDANT ACTED WITH SCIENTER**

48. As alleged herein, Morgan Stanley acted with scienter in that it: (a) knowingly and recklessly engaged in acts and practices and a course of conduct which had the effect of artificially inflating the price of the Issuer's common stock in the aftermarket; (b) knowingly or recklessly disregarded that the Registration Statement/Prospectus as set forth herein was materially false and misleading; and/or (c) knowingly or recklessly misused its analysts in connection with analyst reports.

49. In addition, Morgan Stanley violated the federal securities laws as it sold the Issuer's shares in and/or after the IPO and/or recommended the Issuer's stock while in possession of material, non-public information, which it failed to disclose.

50. As evidenced by the public statements of CSFB published by The Wall Street Journal on or about June 29, 2001, the practices employed by Morgan Stanley in connection with public offerings complained of herein, were widespread throughout the financial underwriting community. In this regard, CSFB, which recently settled regulatory claims of misconduct concerning its initial public offering allocation practices, stated during the pendency of the government's investigation, "[w]e continue to believe our [initial public offering] allocation policies are consistent with those employed by others in the industry."

51. Morgan Stanley knew from its direct participation in the manipulation of the IPO, or recklessly disregarded as a result of its experience with other manipulated offerings as set forth

in the "Matrix" section of the Master Allegations, that the manipulations alleged herein were taking place with respect to the IPO and were not disclosed.

52. As required by NASD Conduct Rule 3010(c), Morgan Stanley had in place compliance procedures so as to better inform itself whether it was acting in the unlawful manner alleged herein.

53. Senior management at Morgan Stanley had regular access to and received timely written reports tracking the account activity of each of its customers. By comparing the ratio of brokerage firm commission income per account with the amount of dollars invested by such account that received allocations of shares in the IPO, senior management knew, or was reckless in not knowing, that such commissions were disproportionately high relative to that customer's total investment and imposed on management a duty of inquiry as is customary in the industry. Such inquiry would have revealed the illegal practices described herein. Any failure to conduct such inquiry was, at the very least, reckless and further demonstrates that Morgan Stanley knew or recklessly disregarded the misconduct alleged herein.

54. Morgan Stanley also had the motive and opportunity to engage in the wrongful conduct described herein for the following reasons, among others:

(a) Such conduct increased the likelihood that the Issuer would retain Morgan Stanley to undertake future investment banking services such as public offerings of equity or debt securities, financial consulting, and possible future acquisitions, thus permitting Morgan Stanley to receive additional fees in connection with those services. (See "Additional Investment Banking Business" section of the Master Allegations.)

(b) Such conduct increased the likelihood of attracting the business of new issuers for the underwriting of initial and secondary public offerings, as well as debt and convertible offerings, and related investment banking fees, while simultaneously sustaining and/or enhancing Morgan Stanley reputation as an investment bank. (See "Attracting New Investment Banking Clients" section of the Master Allegations).

(c) The Undisclosed Compensation of Morgan Stanley was directly proportional to the amount of the aftermarket price increase achieved by the manipulative scheme as its customers were required to pay a percentage of its profits. The larger the profits, the greater the payment. (See "Maximizing Undisclosed Compensation" section of the Master Allegations).

(d) Certain of Morgan Stanley's analysts were motivated to and did issue favorable recommendation for companies they covered because their the compensation was, at least in part, tied to amount of investment banking fees received by their respective firms in connection with financial services provided to such companies. (See "Analyst Compensation" section of the Master Allegations).

(e) Certain of Morgan Stanley's analysts were further motivated to and did issue favorable recommendations because they personally owned pre-IPO stock in companies they were recommending. (See "Personal Investments of Analysts" section of the Master Allegations).

**FIRST CLAIM**

**(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5  
THEREUNDER AGAINST MORGAN STANLEY BASED UPON  
DECEPTIVE AND MANIPULATIVE PRACTICES  
IN CONNECTION WITH THE IPO)**

55. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length.

56. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class against Morgan Stanley. This Claim is based upon the deceptive and manipulative practices of Morgan Stanley.

57. During the Class Period, Morgan Stanley carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiffs and other members of the Class by means of material misstatements and omissions, as alleged herein; (b) artificially inflate and maintain the market price and trading volume of the Issuer's common stock; and (c) induce Plaintiffs and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Morgan Stanley took the actions set forth herein.

58. Morgan Stanley employed devices, schemes, and artifices to defraud and/or engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiffs and other members of the Class in an effort to inflate and artificially maintain high market prices for the Issuer's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Morgan Stanley is sued as a primary participant in the unlawful conduct charged herein.

59. Morgan Stanley, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of

conduct to conceal its unlawful practices and course of business which operated as a fraud and deceit upon Plaintiffs and other members of the Class.

60. Morgan Stanley had actual knowledge of or recklessly disregarded the existence of the Tie-in Agreements, the requirement that customers pay Undisclosed Compensation and the manipulations alleged herein.

61. Morgan Stanley held itself out as an NASD member and was required to observe high standards of commercial honor and just and equitable principles of trade (NASD Conduct Rule 2110). Morgan Stanley owed to Plaintiffs and other members of the Class the duty to conduct the IPO and the trading of the Issuer's common stock in a fair, efficient and unmanipulated manner.

62. By virtue of the foregoing, Morgan Stanley violated Section 10(b) of the Exchange Act and Rule 10b-5.

63. As a result of the manipulative conduct set forth herein, Plaintiffs and other members of the Class purchased or otherwise acquired the Issuer's common stock during the Class Period at artificially inflated prices and were damaged thereby.

**SECOND CLAIM**

**(FOR VIOLATIONS OF SECTION 10(b) AND RULE 10b-5  
THEREUNDER AGAINST MORGAN STANLEY BASED  
UPON MATERIALLY FALSE AND MISLEADING  
STATEMENTS AND OMISSIONS OF MATERIAL FACTS )**

64. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth herein at length.

65. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, on behalf of Plaintiffs and other members of the Class against Morgan Stanley. This Claim is based upon materially false and misleading statements and omissions of material facts made by Morgan Stanley during the Class Period.

66. Morgan Stanley: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the Plaintiffs and other members of the Class they seek to represent in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

67. During the Class Period, Morgan Stanley carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Plaintiffs and members of the other Class, as alleged herein; (b) artificially inflate and maintain the market price of and demand for the Issuer's common stock; and (c) induce Plaintiffs and other members of the Class to purchase or otherwise acquire the Issuer's common stock at artificially inflated prices. In furtherance of this unlawful course of conduct, Morgan Stanley took the actions set forth herein.

68. Morgan Stanley, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal material information as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the Plaintiffs and other members of the Class.

69. Morgan Stanley, either directly or through its designated representatives, prepared and reviewed certain portions of the Registration Statement/Prospectus. In addition, Morgan Stanley had access to drafts of the Registration Statement/Prospectus prior to the filing of said document with the SEC and the dissemination to the public.

70. The material misrepresentations and/or omissions were made knowingly or recklessly and for the purpose and effect of, *inter alia*: (a) securing and concealing the Tie-in Agreements; (b) securing and concealing the Undisclosed Compensation; and/or (c) concealing that Morgan Stanley and its analysts who reported on the Issuer's stock had material conflicts of interest.

71. As a result of making affirmative statements in the Registration Statement/Prospectus, or otherwise, or participating in the making of such affirmative statements, Morgan Stanley had a duty to speak fully and truthfully regarding such representations and to promptly disseminate any other information necessary to make the statements made, in the light of the circumstances in which they were made, not misleading.

72. Morgan Stanley also had a duty to disclose the material, non-public information complained of herein or to abstain from selling the Issuer's common stock in the IPO, and/or trading or recommending the Issuer's stock, while in possession of such information.

73. By reason of the foregoing, Morgan Stanley violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

74. As a result of the dissemination of materially false and misleading information described above, Plaintiffs and other members of the Class purchased or otherwise acquired the

Issuer's common stock during the Class Period without knowledge of the fraud alleged herein at artificially inflated prices and were damaged thereby.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and on behalf of the Class, pray for judgment as follows:

- A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying Plaintiffs as class representatives of the Class and counsel as class counsel;
- B. Awarding damages to Plaintiffs and the Class;
- C. Awarding Plaintiffs and the Class, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- D. Awarding such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: April 19, 2002

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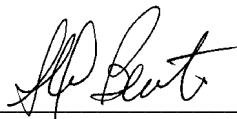
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**Plaintiffs' Executive Committee**