From: Thomas.D'Elisa@morganstanley.com [Thomas.D'Elisa@morganstanley.com]
Sent: 8/1/2024 5:12:56 PM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
Subject:Request from Morgan Stanley

You don't often get email from thomas.d'elisa@morganstanley.com. Learn why this is important

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Hi Tim.

I hope you are well. You may have seen that I had left you a voicemail earlier today (via Senior Adviser, Christine Donahue). In short, Morgan Stanley will soon be requesting an advisory opinion from EBSA, which seeks to confirm that the deferred incentive compensation awards we issue as bonuses to FAs are not governed by ERISA. The letter will come from Greg Jacob at O'Melveny & Myers who, as you probably know, served as Solicitor of Labor from 2007-2009.

There are a few key components to the awards we would like to highlight ahead of your review:

- The deferred awards at issue are designed to incentivize and reward current employees for engaging in good conduct and for remaining with the company through a vesting period.
- The awards expressly state they are not intended to provide retirement income and are not governed by ERISA.
- The express purposes of the awards are to encourage FA retention and good conduct.
- The majority of the awards are paid to current employees. A minority is paid to former employees who qualify for payment under limited exceptions to cancellation (death, disability, retirement, government service, lay-offs).
- When the awards are paid out, they are taxed as ordinary bonus income, not retirement/pension income.

While Morgan Stanley thinks the law is clear, we are pursuing an advisory opinion to clarify the application of the law to this program in the wake of a lawsuit and multiple arbitrations that have been filed claiming the awards are ERISA plans.

We look forward to EBSA's careful review of our submission. Please let me know if you would like to discuss.

Kind regards,
Tom

Thomas J. D'Elisa, Managing Director
Morgan Stanley | Legal and Compliance
2000 Westchester Avenue, 1st Floor | Purchase, NY 10577
Phone: +1 914 225-9777
Thomas.D'Elisa@morganstanley.com

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Protection Act. By communicating with Morgan Stanley you acknowledge that you have read, understand and consent, (where applicable), to the Morgan Stanley Privacy Policies https://www.morganstanley.com/privacy-pledge and General Disclaimers found at http://www.morganstanley.com/disclaimers/terms. The entire content of this email message and any files attached to it may be sensitive, confidential, subject to legal privilege and/or otherwise protected from disclosure.

From: Song, Janet - EBSA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=429AF03F931240CA9018B894FA585EC9-SONG, JANET]
Sent: 8/8/2024 11:07:14 AM
To: gjacob@omm.com
Subject: Advisory Opinion request Case ID No. A01533
Attachments: Morgan Stanley AO Ack letter.pdf

Dear Mr. Jacob

This is to inform you that we have received your request dated August 1, 2024 for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to the deferred incentive compensation awards issued to Morgan Stanley Financial Advisors. This case has been assigned to me under case identification number A01533. Please refer to this number in any further communication with this office regarding your request. If you have any questions, you can contact me at (202) 693-8511.

Sincerely,

Janet K. Song

Senior Employee Benefits Law Specialist
Office of Regulations & Interpretations
Employee Benefits Security Administration, U.S. Department of Labor
200 Constitution Ave., NW, Room N-5655
Washington, DC 20210
202.693.8511

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

August 8, 2024
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington DC 20006-4061

Re: Case Identification Number: A01533

Dear Mr. Jacob

This is to inform you that we have received your request dated August 1, 2024 for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to the deferred incentive compensation awards issued to Morgan Stanley Financial Advisors. Specifically, that the deferred incentive compensation awards are not an "employee pension benefit plan" under ERISA section 3(2)(A) and the award qualify as a bonus program under 29 CFR 2510.3-2(c). This case has been assigned to me under the identification number shown above. Please refer to this number in any further communication with this office regarding your request. If you have any questions, you can contact me at (202) 693-8511.

Sincerely,

Janet Song

Janet K. Song
Senior Employee Benefits Law Specialist
Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations

From: Jacob, Greg [gjacob@omm.com]
Sent: 8/13/2024 4:05:40 PM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
Subject: EBSA Advisory Opinion Request (A01533)
Attachments: Morgan Stanley Letter to DOL Requesting Advisory Opinion (8-1-24) - CONFIDENTIAL.pdf

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Partner
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gjacob@omm.com
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Sent: 8/13/2024 4:22:21 PM
To: Jacob, Greg [gjacob@omm.com]
CC: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
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From: Jacob, Greg <gjacob@omm.com>
Sent: Tuesday, August 13, 2024 4:06 PM
To: Hauser, Timothy - EBSA <Hauser.Timothy@dol.gov>
Subject: EBSA Advisory Opinion Request (A01533)

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From: Cisco Unity Connection Messaging System <unityconnection@voicemail.dol.gov>
Sent: Monday, October 7, 2024 9:26 AM
To: Janet Song <song.janet_dol.gov@voicemail.dol.gov>
Subject: Message from OMELVENY MYERS (2023835110)



From: Cisco Unity Connection Messaging System <unityconnection@voicemail.dol.gov>
Sent: Tuesday, November 19, 2024 4:04 PM
To: Janet Song <song.janet_dol.gov@voicemail.dol.gov>
Subject: Message from OMELVENY MYERS (2023835110)

From: Jacob, Greg [gjacob@omm.com]
Sent: 11/20/2024 10:51:38 AM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
Subject: RE: EBSA Advisory Opinion Request (A01533)
Attachments: 2024.11.05 (000099.00) Memorandumopinion.pdf; Morgan Stanley Letter to DOL Requesting Advisory Opinion (8-1-24) - CONFIDENTIAL.pdf

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Cc: Hauser, Timothy - EBSA <Hauser.Timothy@dol.gov>
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Sent: 11/20/2024 5:55:36 PM
To: Jacob, Greg [gjacob@omm.com]
CC: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
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Sent: Wednesday, November 20, 2024 10:52 AM
To: Hauser, Timothy - EBSA <Hauser.Timothy@dol.gov>
Subject: RE: EBSA Advisory Opinion Request (A01533)

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From: Jacob, Greg [gjacob@omm.com]
Sent: 11/25/2024 3:47:20 PM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
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Sent: 11/25/2024 4:59:07 PM
To: Jacob, Greg [gjacob@omm.com]
CC: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
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Thanks, Greg.

December 5 seems great. I'll check with PBSD on the week of December 16, but doubt it's a problem if you have suggested dates that are particularly good for the Morgan Stanley folks.

Tim

From: Jacob, Greg <gjacob@omm.com>
Sent: Monday, November 25, 2024 3:47 PM
To: Hauser, Timothy - EBSA <Hauser.Timothy@dol.gov>
Subject: RE: EBSA Advisory Opinion Request (A01533)

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Sent: 11/26/2024 11:48:40 AM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]
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I've marked my calendar for December 5, and sent a note on the 19th for Wayne. I'll get back to you as soon as I hear from him. In the meantime, have a great Thanksgiving!

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Subject: EBSA Advisory Opinion Request (A01533)

Tim,

I hope all is well! You and I were both on panels for the ABA's Fiduciary Institute a couple of months ago, and I thoroughly enjoyed yours, but in the new world of online conferences it didn't afford the opportunity to say hello directly.

I attach here an Advisory Opinion request that I've submitted on behalf of Morgan Stanley (A01533, assigned to Janet Song). It's more time sensitive than most AO requests, and I was hoping to bend your ear for just five minutes. Would there be a convenient time tomorrow for me to give you a brief call?

Greg

Gregory F. Jacob
Partner
O'Melveny
gjacob@omm.com
O: +1-202-383-5110

O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
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From: Hauser, Timothy - EBSA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1F53123130C04DAD92222EACD1FDF045-HAUSER, TIM]
Sent: 12/18/2024 12:32:06 PM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]; Berry, Wayne - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=36e97e33c77345ddad348d535cd0cfff-Berry, Wayn]; Turner, Jeffrey - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f1450e69eb24e6a9cb105d821a7eaf3-Turner, Jef]; 'gjacob@omm.com' [gjacob@omm.com]
CC: Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]

Subject: Morgan Stanley Advisory Opinion Request
Location: Fishbowl - N5677

Start: 12/19/2024 1:00:00 PM
End: 12/19/2024 2:00:00 PM
Show Time As: Busy

Required Attendees: Hauser, Timothy - EBSA; Berry, Wayne - SOL; Turner, Jeffrey - EBSA; 'gjacob@omm.com'
Optional Attendees: Berger, Eric - EBSA

Morgan Stanley attendees:

Greg Jacob (O'Melveny)
Brian Boyle (O'Melveny)
Meaghan Vergow (O'Melveny)
Mark Greenfield (Morgan Stanley)
Tom D'Elisa (Morgan Stanley)

From: Hauser, Timothy - EBSA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1F53123130C04DAD92222EACD1FDF045-HAUSER, TIM]
Sent: 12/19/2024 10:06:17 AM
To: Hauser, Timothy - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1f53123130c04dad92222eacd1fdf045-Hauser, Tim]; Berry, Wayne - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=36e97e33c77345ddad348d535cd0cfff-Berry, Wayn]; Turner, Jeffrey - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f1450e69eb24e6a9cb105d821a7eaf3-Turner, Jef]; 'gjacob@omm.com' [gjacob@omm.com]
CC: Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]

Subject: Morgan Stanley Advisory Opinion Request
Location: Fishbowl - N5677

Start: 12/19/2024 1:00:00 PM
End: 12/19/2024 2:00:00 PM
Show Time As: Tentative

Required Attendees: Hauser, Timothy - EBSA; Berry, Wayne - SOL; Turner, Jeffrey - EBSA; 'gjacob@omm.com'
Optional Attendees: Berger, Eric - EBSA

Just FYI—looks like an in-person meeting only. Tim cannot make it. Just Wayne and me. Will fill you in
-----Original Appointment-----
From: Hauser, Timothy - EBSA <Hauser.Timothy@dol.gov>
Sent: Wednesday, December 18, 2024 12:32 PM
To: Hauser, Timothy - EBSA; Berry, Wayne - SOL; Turner, Jeffrey - EBSA; 'gjacob@omm.com'
Subject: Morgan Stanley Advisory Opinion Request
When: Thursday, December 19, 2024 1:00 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Fishbowl - N5677

Morgan Stanley attendees:

Greg Jacob (O'Melveny)
Brian Boyle (O'Melveny)
Meaghan Vergow (O'Melveny)
Mark Greenfield (Morgan Stanley)
Tom D'Elisa (Morgan Stanley)

From: Song, Janet - EBSA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=429AF03F931240CA9018B894FA585EC9-SONG, JANET]
Sent: 12/31/2024 2:21:24 PM
To: Jacob, Greg [gjacob@omm.com]
CC: Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]
Subject: Advisory Opinion request Case ID No. A01533

Mr. Jacob

Are you available for a Teams call with myself and my supervisor, Eric Berger, this Friday 1/3/25 after 11 am or Monday 1/6/25 between 11 am–1:30 pm, or after 3pm? If you can let me know your availability, I would appreciate it. Thank you.

Janet K. Song

Senior Employee Benefits Law Specialist
Office of Regulations & Interpretations
Employee Benefits Security Administration, U.S. Department of Labor
200 Constitution Ave., NW, Room N-5655
Washington, DC 20210
202.693.8511

From: Jacob, Greg [gjacob@omm.com]
Sent: 1/1/2025 7:33:00 PM
To: Song, Janet - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=429af03f931240ca9018b894fa585ec9-Song, Janet]
CC: Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]; VerGow, Meaghan [mvergow@omm.com]; Reed, Alexander [areed@omm.com]
Subject: RE: Advisory Opinion request Case ID No. A01533

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Janet,

We are available to meet by Teams with you and Eric at 11 am ET on January 6. Will you send an invite, or should we?

Greg

Gregory F. Jacob
gjacob@omm.com
O: +1-202-383-5110
O'Melveny

O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
Website | LinkedIn | Twitter

From: Song, Janet - EBSA <Song.Janet@dol.gov>
Sent: Tuesday, December 31, 2024 2:21 PM
To: Jacob, Greg <gjacob@omm.com>
Cc: Berger, Eric - EBSA <Berger.Eric@dol.gov>
Subject: Advisory Opinion request Case ID No. A01533

Mr. Jacob

Are you available for a Teams call with myself and my supervisor, Eric Berger, this Friday 1/3/25 after 11 am or Monday 1/6/25 between 11 am–1:30 pm, or after 3pm? If you can let me know your availability, I would appreciate it. Thank you.

Janet K. Song

Senior Employee Benefits Law Specialist
Office of Regulations & Interpretations
Employee Benefits Security Administration, U.S. Department of Labor
200 Constitution Ave., NW, Room N-5655
Washington, DC 20210
202.693.8511

From: Song, Janet - EBSA [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=429AF03F931240CA9018B894FA585EC9-SONG, JANET]
Sent: 1/2/2025 10:10:47 AM
To: Song, Janet - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=429af03f931240ca9018b894fa585ec9-Song, Janet]; gjacob@omm.com; mvergow@omm.com; areed@omm.com; Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]

Subject: Advisory Opinion request Case ID No. A01533
Location: Microsoft Teams Meeting

Start: 1/6/2025 11:00:00 AM
End: 1/6/2025 12:00:00 PM
Show Time As: Tentative

Recurrence: (none)

Required Attendees: gjacob@omm.com; mvergow@omm.com; areed@omm.com; Berger, Eric - EBSA

To discuss Advisory Opinion request Case ID No. A01533

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 285 138 528 264

Passcode: g8bW3om2

Dial in by phone

+1 202-735-3644,,304417682# United States, Washington

Find a local number

Phone conference ID: 304 417 682#

Join on a video conferencing device

Tenant key: teams@meet.dol.gov

Video ID: 119 016 017 1

More info

For organizers: Meeting options | Reset dial-in PIN

Privacy and security

From: Jacob, Greg [gjacob@omm.com]
Sent: 4/9/2025 7:20:12 AM
To: Turner, Jeffrey - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f1450e69eb24e6a9cb105d821a7eaf3-Turner, Jef]
CC: Berry, Wayne - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=36e97e33c77345ddad348d535cd0cfff-Berry, Wayn]; Song, Janet - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=429af03f931240ca9018b894fa585ec9-Song, Janet]; Berger, Eric - EBSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652f46f1f32b4363926e49c4ed696afa-Berger, Eri]; VerGow, Meaghan [mvergow@omm.com]; Boyle, Brian [bboyle@omm.com]
Subject: Morgan Stanley Advisory Opinion Request
Attachments:2025.04.05.Ltr.from.G.Jacob.to.Deputy.Director.Turner.pdf

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Jeff,

I hope all is very well. Somehow I think it is colder today than it was when we met in December!

Please find attached correspondence following up on our meeting on December 19, and follow-up call with Eric Berger and Janet Song on January 6.

Sincerely,
Greg

Gregory F. Jacob
Partner
O'Melveny
gjacob@omm.com
O: +1-202-383-5110

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1625 Eye Street, NW
Washington, DC 20006
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O'Melveny

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omm.com

April 8, 2025

Greg Jacob
D: +1 202 383 5110
gjacob@omm.com

CONFIDENTIAL

VIA EMAIL AND FIRST-CLASS MAIL

Deputy Director Jeffrey Turner
Employee Benefits Security Administration
U.S. Department of Labor
Office of Regulations and Interpretations
200 Constitution Avenue, NW, Suite N-5655
Washington, DC 20210

Re: ***Request for Advisory Opinion on Application of ERISA to Deferred Incentive Compensation Awards Issued to Morgan Stanley Financial Advisors***

Dear Deputy Director Turner:

On behalf of Morgan Stanley Smith Barney LLC ("Morgan Stanley"),[1] I am following up on our December 2024 meeting and my August 1, 2024 letter requesting an advisory opinion from the U.S. Department of Labor ("the Department") regarding whether ERISA applies to the deferred incentive compensation awards that Morgan Stanley issues to financial advisors. As set forth in my prior letter, the Department's guidance is necessary and appropriate given ongoing legal challenges that have created a cloud of uncertainty concerning ERISA's application to Morgan Stanley's awards and similar compensation offered by other financial services firms.

As we have explained in our discussions, these efforts to expand ERISA's scope through litigation are premised on an interpretation of ERISA's "pension plan" definition and the Department's "bonus plan" exemption that longstanding Department guidance and caselaw do not support. Nevertheless, the mere existence of these challenges, including the divergent opinions they have prompted, is threatening the ability of financial firms—and employers more broadly—to continue offering deferred incentive compensation to employees in its current form, even though the compensation is designed to meet the expectations of various financial regulators. *See* August 1, 2024 Letter at n.3. The recent decision by a district court in North Carolina holding that ERISA's pension rules do not apply to Merrill Lynch's deferred compensation awards for financial advisors—dubbed "materially identical" to Morgan Stanley's awards by one plaintiffs' firm[2]—reinforces the Department's longstanding guidance, but does

[1] Morgan Stanley's EIN is 26-4310844. I am authorized to submit this letter on Morgan Stanley's behalf.

[2] *Milligan v. Merrill Lynch*, Civil Act. No. 3:24-cv-00440, Dkt. No. 70 at 2–3 (W.D.N.C. Feb. 14, 2025).

not resolve the uncertainty employers nationwide face in developing their deferred incentive compensation programs. *See Milligan v. Bank of America Corp.*, 2025 WL 892972, at *5 (W.D.N.C. Mar. 11, 2025) (rejecting "paradoxical" argument that incidental payments to former employees under humanitarian exceptions to cancellation triggered pension rules, and also holding that awards qualify as "bonuses").

Because financial services firms across the industry offer very similar deferred incentives to their financial advisors, in part because of the influence of the principal regulators they share, an advisory opinion from the Department would not only assist Morgan Stanley in shaping its future deferred incentive awards but also provide helpful guidance to Morgan Stanley's peer firms. Morgan Stanley therefore respectfully reiterates its request that the Department issue an advisory opinion confirming that the deferred compensation award terms that Morgan Stanley would like to continue to offer do not implicate ERISA.

Please do not hesitate to contact me with any questions or requests for additional information. We are, of course, grateful for the Department's attention to this request.

Sincerely,



Greg Jacob

cc: Associate Solicitor of Labor Wayne Berry

From: Jacob, Greg [gjacob@omm.com]
Sent: 7/1/2025 11:02:18 AM
To: Snare, Jonathan - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d841037413b4e3e8684ed76a6c4ab71-2559c53f-60]
Subject: Morgan Stanley Opinion Letter (drafting already underway)
Attachments: Morgan Stanley Letter to DOL Requesting Advisory Opinion (8-1-24) - CONFIDENTIAL.pdf; 2025.04.05.Ltr.from.G.Jacob.to.Deputy.Director.Turner.pdf

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Jon,

Following up on our call, please find attached Morgan Stanley's pending opinion letter request (A01533).

EBSA's Office of Regulations and Interpretations agreed after we met with Jeff Turner and Wayne Berry back in December 2024 that this request was meritorious, and Eric Berger told me two weeks ago that getting this letter out is now the office's top interpretive priority. What we're hoping for is a little Front Office nudge to get this really important "tort reform" type letter over the finish line and out. The timing is getting increasingly important given the confusion sown by a very sloppy district court in *Shafer v. Morgan Stanley*, 2023 WL 8100717 (S.D.N.Y. Nov. 21, 2023), and the industry really needs DOL to speak clearly and promptly, as they are planning their go-forward compensation structures at the halfway point into 2025; *Shafer* would require the entire industry to redo everything in ways that would materially hurt the interests of employees, as well as good governance principles articulated by the industry's financial regulators.

Best,
Greg

Gregory F. Jacob
gjacob@omm.com
O: +1-202-383-5110
O'Melveny

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1625 Eye Street, NW
Washington, DC 20006
Website | LinkedIn | Twitter

From: Snare, Jonathan - SOL [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3D841037413B4E3E8684ED76A6C4AB71-2559C53F-60]
Sent: 7/1/2025 12:01:09 PM
To: Jacob, Greg [gjacob@omm.com]
Subject: RE: Morgan Stanley Opinion Letter (drafting already underway)

Greg:

Confirming receipt. Great to catch up with you this morning. I will follow up on this matter and we will get back to you.

Jonathan L. Snare, Deputy Solicitor
S-2002
(office direct) 202-693-5263
(work cell) 771-241-2914
Snare.jonathan@dol.gov

From: Jacob, Greg <gjacob@omm.com>
Sent: Tuesday, July 1, 2025 11:02 AM
To: Snare, Jonathan - SOL <Snare.Jonathan@dol.gov>
Subject: Morgan Stanley Opinion Letter (drafting already underway)

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Best,
Greg

Gregory F. Jacob
gjacob@omm.com
O: 202-383-5110

O'Melveny

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1625 Eye Street, NW
Washington, DC 20006
Website | LinkedIn | Twitter

From: Jacob, Greg [gjacob@omm.com]
Sent: 7/1/2025 12:40:43 PM
To: Snare, Jonathan - SOL [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3d841037413b4e3e8684ed76a6c4ab71-2559c53f-60]
Subject: RE: Morgan Stanley Opinion Letter (drafting already underway)

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Thanks, Jon. I appreciate it. And looking forward to a further post-confirmation catch up!

Gregory F. Jacob
gjacob@omm.com
O: +1-202-383-5110
O'Melveny

O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
Website | LinkedIn | Twitter

From: Snare, Jonathan - SOL <Snare.Jonathan@dol.gov>
Sent: Tuesday, July 1, 2025 12:01 PM
To: Jacob, Greg <gjacob@omm.com>
Subject: RE: Morgan Stanley Opinion Letter (drafting already underway)

Greg:

Confirming receipt. Great to catch up with you this morning. I will follow up on this matter and we will get back to you.

Jonathan L. Snare, Deputy Solicitor
S-2002
(office direct) 202-693-5263
(work cell) 771-241-2914
Snare.jonathan@dol.gov

From: Jacob, Greg <gjacob@omm.com>
Sent: Tuesday, July 1, 2025 11:02 AM
To: Snare, Jonathan - SOL <Snare.Jonathan@dol.gov>
Subject: Morgan Stanley Opinion Letter (drafting already underway)