

May 30, 2003

BY FEDERAL EXPRESS

****For Settlement Purposes Only****

Mr. Vikram S. Pandit and Mr. Stephan F. Newhouse
Co-Heads, Institutional Securities
Morgan Stanley
1585 Broadway
New York, NY 10036

Re: Mr. Spencer C. Young, III – Claims

Dear Messrs. Pandit and Newhouse:

Our law firm has been retained by Mr. Spencer C. Young, III, a Morgan Stanley Executive Director in the Securitized Products Group until his separation at the conclusion of fiscal year 2002. Mr. Young has retained our firm to assist him in raising and resolving certain issues that arose in the course of his employment with Morgan Stanley and separation therefrom. The professional practice of our law firm is devoted exclusively to matters of executive employment, compensation and severance. For this reason, we are familiar with the issues that commonly arise in these circumstances, and in their resolution.

Before our firm was retained by Mr. Young, he sought to resolve these issues with Morgan Stanley without the involvement of legal counsel. On or about December 1, 2002, Mr. Young wrote to Craig Phillips, Global Head of Securitized Products, in a good faith effort to raise and resolve these matters. However, Morgan Stanley, through Craig Phillips, rejected Mr. Young's efforts to resolve this matter. This response – which failed in every measure to respond to Mr. Young's concerns, and failed in every measure of Morgan Stanley's corporate core values of integrity, respect, responsibility and fairness – was unfortunate, indeed. As a result, Morgan Stanley has left Mr. Young with no alternative but to pursue his claims through arbitration. Mr. Young's National Association of Securities Dealers ("NASD") Statement of Claim has now been drafted.

In each instance of initiating arbitration, it is the practice of our firm to transmit a copy of the draft NASD Statement of Claim to respondent to determine, in good faith, whether arbitration can be avoided by affording the putative respondent one final opportunity to submit an offer of settlement. In line with that practice, we herewith enclose a copy of Mr. Young's draft NASD Statement of Claim against Morgan Stanley. To allow the process an opportunity of success, we will afford Morgan Stanley a period of fourteen (14) days from your receipt of this letter to make such an offer. Unfortunately, Mr. Young remains unemployed and, upon information and belief, his continuing unemployment may be related to dissemination of false and defamatory information about him by parties undetermined at this time.

Mr. Vikram S. Pandit and Mr. Stephan F. Newhouse
May 30, 2003
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This letter, and the enclosed NASD Statement of Claim, are transmitted with three express precautions: first, they are sent as a confidential settlement communication, and as such cannot be utilized in court proceedings; second, bear in mind that the enclosed draft is a draft only, and we reserve our client's right to amend, modify or supplement it; finally, though we have every expectation of waiting the full fourteen (14) day period noted, should circumstances arise that require earlier filing, we reserve our client's right to do so.

At your earliest convenience, please advise whether Morgan Stanley wishes to submit a "last and best" offer of settlement and thereby address this matter in a dialogue, or whether Morgan Stanley would rather address these matters through arbitration. If you advise that Morgan Stanley does not wish to offer any settlement proposal, or if we do not hear from you, we will simply and promptly serve and file, and mail a courtesy copy to you, as is our customary practice.

We are available to engage in a dialogue, or alternatively, to engage in arbitration. Please advise which of these two options for resolution Morgan Stanley prefers to pursue.

Very truly yours,

Sklover & Associates, LLC

By: _____
Alan L. Sklover

ALS/hlf

Enclosure

May 30, 2003

BY FEDERAL EXPRESS

Mr. George Friedman
Director of Arbitration
National Association of Securities Dealers, Inc.
One Liberty Plaza, 27th Floor
165 Broadway
New York, N.Y. 10006

Re: Matter of Arbitration of
Mr. Spencer C. Young, III, Claimant

-- Against --

Morgan Stanley, Respondent

Dear Mr. Friedman:

Our law firm acts as legal counsel to Mr. Spencer C. Young, III ("Spencer" "Mr. Young" or "Claimant"), who resides in Manhasset, NY, with his wife and family. We write pursuant to the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc ("NASD") for the purpose of filing a Statement of Claim on behalf of Spencer against his former employer, Morgan Stanley ("Morgan Stanley " or "Respondent").

Spencer's Statement of Claim against Morgan Stanley arises out of his employment as a commercial real estate investment banker with that firm beginning March 1997 and ending November 2002, when Morgan Stanley terminated Spencer without cause. Spencer's claims arise out of Morgan Stanley's breach of its agreements with Spencer regarding (i) his 2002 bonus and (ii) his compensation for the successful creation and development of the Institutional Quality ("IQ"®) Brand of Commercial Mortgage Backed Securities ("CMBS"), including, but not limited to, promotion to Managing Director of the firm.

During 2001 and 2002, Spencer and his superiors entered into agreements that provided that, should Spencer satisfy certain conditions, he would receive a certain 2002 bonus and be compensated for the creation and development of the IQ® brand of CMBS. By the end of 2002, Spencer had fulfilled the conditions set by Morgan Stanley in order for him to receive a 2002 bonus at "the next level" (i.e., "outsized") and be compensated for the development of the IQ® brand of CMBS, including promotion to Managing Director. However, Morgan Stanley did not pay Spencer a 2002 bonus and did not promote him to Managing Director. Instead, Morgan Stanley terminated Spencer, without notice, without cause and without fair compensation for services rendered and value created through 2002, including the development of the "IQ"® brand of CMBS that now generates sustained, long term and substantial revenue for Morgan Stanley.

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4. *The Wall Street Journal* Article, dated July 19, 2000.

I. STATEMENT OF FACTS

A. Spencer's Employment Background

Spencer is a proven, successful investment banker in the field of Commercial Real Estate Finance and Securitization. He received a BS degree in Hotel Administration from Cornell University and a MBA in Finance from Cornell University. When Spencer joined Morgan Stanley in March 1997, he already had an excellent reputation as a Commercial Real Estate Investment Banker with experience in creating and growing securitization and trading business that deliver strong bottom line results. Spencer was skilled on both sides of the CMBS business (i.e., origination and securitization). Spencer had also developed a reputation among institutional clients as a trusted advisor, and exceptionally creative, in structuring deals and capturing new business.

Prior to joining Morgan Stanley, Spencer had been Vice President, Commercial Mortgage Finance Group, J.P. Morgan Securities, Inc. At J.P. Morgan, Spencer had been the principal architect and Chief Operating Officer of their commercial mortgage conduit, which funded \$1.2 billion in commercial mortgages over 18 months, ranking third in conduit CMBS volume, and generated approximately \$30 million revenue in less than three years.

While at Morgan Stanley, Spencer continued to enhance his reputation as an exceptional Commercial Real Estate Investment Banker with a record of creating and growing bottom line results for Morgan Stanley. In 1998, Spencer was promoted to Principal/Executive Director. During his five (5) year tenure at Morgan Stanley, Spencer co-headed the Morgan Stanley conduit for three years instituting substantial improvements that increased annual production five-fold to \$2.5 billion per year and then headed up new business development on the issuer side for two years with particular emphasis on working with insurance companies as primary issuers. Spencer was a significant contributor toward Morgan Stanley's successes in CMBS, which included a #1 ranking as global issuer of CMBS for three years, 85% market share with insurance company CMBS issues and # 1 in client CMBS transactions for the past two years.

As an Executive Director in the Securitized Products Group ("SPG") of Morgan Stanley, Spencer earned an annual base salary of one hundred and sixty thousand dollars (\$160,000) and an average annual bonus of six hundred thousand dollars (\$600,000) for each of the past five (5) years. More specifically, Spencer's compensation history at Morgan Stanley is as follows:

<u>Year</u>	<u>Base Salary</u>	<u>Bonus</u>	<u>Total Compensation</u>
1997	\$85,151 (starting 3/17/97)	\$634,099	\$719,250
1998	\$125,000	\$488,542	\$613,542
1999	\$140,000	\$706,417	\$846,417
2000	\$140,000	\$578,083	\$718,083
2001	\$160,000	\$595,417	\$755,417
2002	\$150,000 (through 11/20/02)	--- 0 ---	\$150,000

Spencer's performance for fiscal year 2002 was his strongest ever. Consistent with the meritocracy Morgan Stanley had long practiced, after five successful years, Spencer had earned (i) a 2002 bonus at "the next level," i.e., an "outsized" bonus, and (ii) compensation for the creation and development of the IQ[®] brand of CMBS, including promotion to Managing Director.

B. Morgan Stanley's Representations Regarding Spencer's 2002 Bonus.

Morgan Stanley specifically and repeatedly represented and promised Spencer that he would receive a 2002 bonus at "the next level" if he met a certain condition. In particular, at the beginning of fiscal year 2002, Morgan Stanley, through Warren Friend, who was Spencer's immediate supervisor and in charge of CMBS Finance, promised and represented to Spencer that he would receive an "outsized bonus" at the next level for fiscal year 2002 if he were able to land the AXA Financial agribusiness transaction. An "outsized bonus" at "the next level" was specifically understood to mean at least a 50% premium of his previous highest bonus and therefore, a 2002 "outsized bonus" for Spencer would be at least one million fifty-nine thousand dollars (\$1.059 million). The 2002 bonus that was promised to Spencer was not discretionary, but guaranteed, subject to Spencer satisfying the condition that he close the AXA Financial agribusiness transaction.

Morgan Stanley, through Gail McDonnell, Head of SPG Finance (and Mr. Friend's immediate supervisor), also directly and repeatedly represented and promised Spencer that if he were able to convert new SPG clients and thereby help build franchise value, his bonus would be increased to "the next level", which was understood to mean the same as an "outsized bonus".

At the onset of 2002, Morgan Stanley and Spencer had a binding agreement whereby Spencer would receive a 2002 "outsized bonus" at "the next level" if he were able to close the AXA Financial agribusiness transaction and continue to convert new SPG clients.

C. Spencer Satisfies Morgan Stanley's Conditions and Therefore, Has Earned and Is Owed A 2002 "Outsized" Bonus of At Least \$1.059 Million.

In 2002 Spencer did close the agribusiness transaction for AXA Financial and did convert major financial institutions into SPG Clients. First, Spencer closed the \$519 million AXA Financial transaction of 1,109 farm loans in 2002. This was the largest agribusiness financial transaction of its kind in history and resulted in one of the largest fees received by SPG Finance in 2002. AXA Financial is a global insurance and related financial services company with assets of \$496 billion. Due to the size and importance of this transaction, it was frequently featured as one of Morgan Stanley's key transaction success stories of 2002.

Second, Spencer also converted more new institutional clients than anyone else in SPG over the last 14 months of his employment, including, Aegon, Allmerica, AXA, MONY, Nationwide, State Farm and Union Central Life. Spencer was also instrumental in converting Lincoln National and Prudential into SPG clients, although not assigned direct client responsibility for these firms. They chose to work with Morgan Stanley because of their interest in participating in IQ® brand transactions

Spencer satisfied the condition that he close the AXA Financial agribusiness transaction and, in addition, he converted numerous major financial institutions into SPG Clients. As a result, Spencer has earned and Morgan Stanley is obligated to pay him a 2002 "outsized" bonus at "the next level" of at least \$1.059 million.

D. Morgan Stanley's Representations Regarding Spencer's Compensation for the Creation and Development of the IQ® Brand of CMBS, Including Promotion to Managing Director.

During 2000 and 2001, Spencer spoke to his superiors at Morgan Stanley about a new business idea with great potential: the creation of a wholly-owned high quality, multi-seller brand of CMBS open to all financial institutions with a particular focus on insurance companies. This was the concept of the Institutional Quality or "IQ®" brand of CMBS. As an idea, or concept, only, Spencer was free to take this idea to other potential employers, but his superiors at Morgan Stanley recognized its potential and asked him to work on it at Morgan Stanley.

In order to induce Spencer to remain at Morgan Stanley and to create and develop the new IQ® brand of CMBS for Morgan Stanley, Morgan Stanley promised and represented to Spencer that he would be compensated for its creation and development and promoted to Managing Director when the IQ® brand of CMBS generated a revenue of at least \$25 million. Specifically, Warren Friend and other Morgan Stanley Managing Directors directly promised and represented to Spencer that he would be compensated at and promoted to "the next level" when he created a revenue platform of at least \$25 million or otherwise created substantial incremental value for Morgan Stanley. As discussed and illustrated in this Statement of Claim, Spencer's development of the IQ® brand meets either of these criteria.

E. Spencer Creates The IQ® Brand, Which Generates \$25 + Million In Revenue and Therefore, He Was Entitled to Fair Compensation, Including A Promotion To Managing Director.

Relying on these express promises and representations regarding compensation for the creation and development of the IQ® brand, Spencer remained at Morgan Stanley and devoted himself to creating, developing and even trademarking the IQ® brand of CMBS. As a result of Spencer's efforts, the IQ® brand is now a magnet for new client conversions, a competitive advantage for Morgan Stanley's large loan originations and most importantly, generates SPG annual revenue in excess of \$25 million.

Spencer was the principal architect and driving force behind the IQ® brand's creation and success. His efforts in connection with the IQ® brand of CMBS included working with seven insurance companies, as first time CMBS insurers in three separate IQ® transactions totaling \$2.4 billion. These three IQ® transactions involved, among other efforts: (i) convincing large conservative institutions of the benefits of securitization and securing extensively negotiated mandates; (ii) careful selection and underwriting of portfolio loans; (iii) giving presentations to all three rating agencies to describe the attributes of this high-quality brand of CMBS; (iv) helping develop and participate in road show presentations to educate investors on this new CMBS brand; (v) closely advising issuer clients on how to address the plethora of loan-by-loan underwriting and credit inquiries from the rating agencies and subordinate bond investors; (vi) developing a detailed servicing standard with Nationwide, Lincoln National and six master services and (vii) providing overall extensive client support associated with each deal.

Through Spencer's extensive efforts, the IQ® brand is now positioned to generate \$30-\$40 million + in revenue a year including, underwriting fees and arbitrage gains. Based on the current level of interest in the IQ® brand, Morgan Stanley is positioned to complete at least 3 to 4 deals per year and generate \$10 million + per transaction. These statistics will likely grow in time as more and more clients are drawn to this brand. The inaugural IQ® deal for \$719 million closed in October 2001 and generated revenue of approximately \$3 million for underwriting fees for

Morgan Stanley. The IQ®2 deal for \$779 million closed in June 2002 and generated revenue of \$14 million for Morgan Stanley. The IQ®3 deal for \$910 million that Spencer formulated closed in December 2002 and was projected to generate revenue of over \$10 million for Morgan Stanley. The IQ®4 deal for approximately \$800 million that Spencer was also formulating priced in late May 2003 and closed in early June 2003 and will include additional new clients and generate revenue of over \$10 million for Morgan Stanley. As contemplated by Spencer, an IQ®5 transaction is being discussed with clients for the late summer/early fall, and IQ®6 would be completed before the end of the calendar year. IQ® deals would then follow an issuance frequency of at least a deal a quarter. Accordingly, the IQ® brand is now positioned to yield \$3 billion + in league table credit annually and it is common knowledge on Wall Street that a strong league table ranking leads to other business opportunities.

By the end of 2002, Spencer had established a high quality brand of CMBS that: (i) attracts new CMBS clients for Morgan Stanley and brings back former CMBS clients who were lost to competitors; (ii) derives additional revenue from existing Morgan Stanley CMBS clients; (iii) is a registered trademark asset of significant value for Morgan Stanley in the CMBS market; and (iv) serves as a platform to derive other business for Morgan Stanley.

As a result of Spencer's efforts in establishing the IQ® brand, the following major financial institutions have become first-time CMBS clients for Morgan Stanley: (i) Aegon (a global insurance group with assets of \$256 billion); (ii) Allmerica (a holding company for a group of insurance and financial services companies with assets of \$25 billion); (iii) Nationwide (a holding company for Nationwide Life and other companies, with assets of \$96 billion); (iv) Lincoln (a holding company with multiple insurance and investment management businesses having assets of \$93 billion); (v) MONY (the financial services firm that manages a portfolio of member companies, including MONY Life, with assets of \$20 billion); (vi) Prudential (a financial services institution with assets of \$293 billion) (vii) State Farm (the largest property casualty insurance company in the world, with assets of \$66 billion); and (viii) Union Central Life (one of the 10 largest mutual life insurance companies in the nation with assets of \$6 billion).

Spencer also attracted existing Morgan Stanley CMBS clients to the IQ® brand. These existing Morgan Stanley CMBS clients have now participated in some of the IQ® transactions, and expect to participate in future IQ® deals. These existing clients include: (i) John Hancock (a financial services company that provides insurance and investment products and services with total assets of \$98 billion); (ii) Principal Financial (a diversified financial services organization with assets of \$90 billion); and (iii) T.I.A.A. (a nonprofit entity and insurance company with assets of \$261 billion).

Earlier this year, trade publications reported that CIGNA (a holding company, including its major insurance subsidiary, Connecticut General Life Insurance Company, with assets of \$89 billion) and CIBC (a leading North American financial institution, with \$153 billion in assets), have both been attracted to the IQ® brand, and agreed to participate in the next IQ® transaction. This press serves as free advertising that attracts incremental business from financial institutions.

These new and existing clients collectively have over \$100 billion of seasoned commercial mortgages in portfolio, which is the ideal product for IQ® transactions, thereby establishing a fertile client base for future IQ® brand CMBS deals.

In addition, as Spencer originally intended, the IQ® product is designed to prosper even in a difficult business environment experiencing credit deterioration. This is because of the attractive transaction attributes, including: (i) low leverage loans; (ii) high quality of the

underlying collateral of well constructed properties with strong tenancy that are located in economically viable submarkets; and (iii) strong financial institution sponsorship with conservative underwriting credit cultures. These high-quality transactions are therefore positioned to experience better investment performance as compared with alternative CMBS investments. This should in turn become a significant competitive advantage for Morgan Stanley from a strategic standpoint, as there will be a proclivity for investors to pursue a "flight to quality" investment strategy. An attractive relative investment performance would result for the issued IQ® bonds, thereby attracting additional issuers and investors.

Furthermore, the IQ® brand serves as a particularly unique platform that provides Morgan Stanley with a competitive advantage in the origination of investment grade large loans that other investment banks have heretofore been unable to replicate. The timing for launching the IQ® brand was fortuitous for Morgan Stanley for a couple of reasons. First, the inaugural IQ® transaction was the deal that re-opened the CMBS markets in October 2001, after having been closed for over a month as a result of the terrorist attacks of September 11. Secondly, in the case of the IQ®2, it provided an effective exit strategy for the inclusion of pari passu promissory notes of large loan transactions at a time when the market for large loan CMBS securitizations was closed. "Pari passu" promissory notes ensure that financial risk and rewards are shared pro-rata among and between several pari passu promissory notes. The IQ® brand was well-suited for the inclusion of investment grade pari passu loans backed by the same real estate collateral. As a result, Morgan Stanley was able to originate investment grade large loans because it had a viable exit strategy, which its competitors did not possess.

In recognition of Spencer's highly successful launch of the IQ® brand, Morgan Stanley submitted the inaugural IQ® deal to the Institutional Investor magazine for consideration as Deal of the Year for all securitized products issued globally in 2001. The launching of the IQ® brand was headlined on Morgan Stanley's global Internet web site. The first IQ® deal was also presented to all Morgan Stanley investment bankers worldwide via videoconference where it was described as a premier transaction for the following reasons: (i) it reopened the CMBS new issue market; (ii) it was the highest quality multi-seller CMBS transaction in history, as measured by the lowest subordination levels ever given by the rating agencies (86% of the IQ® bonds were rated AAA); and (iii) five of the six participants were first-time CMBS issuers, the most ever in any multi-seller CMBS transaction.

Finally, to protect the IQ® brand of CMBS for Morgan Stanley, Spencer had registered the IQ® brand of CMBS as a service mark with the United States Patent and Trademark Office, an agency of the United States Department of Commerce.

As a result of Spencer's creation and development of the IQ® brand, the IQ® brand now has a conservatively derived and objectively determined intrinsic value of \$254.33 million. See Chart of Intrinsic Value of IQ® Brand & Fair Compensation For Its Creation, annexed hereto as Exhibit "1". Spencer's IQ® brand has obviously created a significant legacy of value at Morgan Stanley for which Spencer was promised compensation, including a promotion to and future as Managing Director.

By the end of 2002, given Spencer's successful creation and development of the IQ® brand, Spencer had earned the promised compensation related thereto and promotion to Managing Director. Absent the promised promotion to Managing Director and compensation for his pivotal role in having created the IQ® brand, Spencer is now entitled to fair compensation related to the intrinsic value he created in the IQ® brand of CMBS, in an amount between \$4.809 million and \$10.498 million, as more fully set forth in the Chart of Intrinsic Value of IQ®

Brand & Fair Compensation For Its Creation annexed hereto as Exhibit "1".

It is acknowledged that Spencer did not, by himself, accomplish all tasks relative to the creation, development and execution of the IQ® brand concept. That being said he was without question the concept originator and the "team quarterback" on every development and deal-directed IQ® effort of Morgan Stanley.

F. Instead of A 2002 Bonus and Compensation for the Creation of the IQ® Brand, Spencer Was Terminated.

By November 2002, the last month of fiscal year 2002, Spencer had completed his most successful year at Morgan Stanley and was already establishing business for a successful 2003. Spencer had achieved (and surpassed) the conditions of his agreement with Morgan Stanley regarding his 2002 bonus at "the next level" and compensation for his IQ® brand work, including promotion to Managing Director.

At the end of fiscal 2002/beginning of fiscal 2003, Spencer's contributions to Morgan Stanley increased. Spencer was placed in charge of a new initiative to market the full range of SPG products to middle market banks. This new initiative was scheduled to be rolled out in December 2002. Also at this time, Spencer was to play an active role in a \$1.0 – \$1.5 billion traditional market leverage CMBS transaction that was scheduled for February 2003. Spencer continued his leadership role with the IQ® brand, which was scheduled to launch the IQ®3 \$9 billion deal. Because Morgan Stanley's CMBS Finance Group had already exceeded budget for fiscal year 2002, Spencer was asked to manage client expectations so that the IQ®3 deal would price during the first week of the new 2003 fiscal year. Spencer was also already directing the IQ®4 transaction tentatively scheduled for March 2003.

At the end of 2002/beginning of 2003, Spencer had expected to receive an "outsized" 2002 bonus at "the next level" and be promoted to "the next level." Instead, on or about November 20, 2002, Spencer was notified that he would be terminated, without notice, without cause, without any 2002 bonus and without a promotion to Managing Director. Despite having worked the entire 2002 fiscal year and having satisfied the conditions of his 2002 bonus and promotion to "the next level", Spencer was not only terminated but he has also been denied any 2002 bonus.

Spencer's termination also illustrates Morgan Stanley's deliberate efforts to discredit Spencer from the resounding success of the IQ® brand, including choosing to terminate Spencer without explanation on the day before the IQ®3 transaction was being launched to public investors, the timing of which created the highest degree of professional embarrassment for Spencer.

Instead of his promised "outsized" 2002 bonus of at least \$1.059 million and fair compensation related to the value Spencer generated in the IQ® brand, Spencer was offered conditional severance of only \$328,975, subject to his signing a release waiving his rights to assert any claims against Morgan Stanley, including claims for his 2002 bonus. See Severance Agreement, annexed hereto as Exhibit "2". Instead of the promised bonus of \$1.059 million, 50% greater than his prior highest bonus, Morgan Stanley offered Spencer severance in an amount 40% less than last year's bonus.

Spencer objected to Morgan Stanley's treatment of him and by Memorandum to Craig Phillips, Global Head of Securitized Products, dated December 1, 2002, requested that Morgan Stanley reconsider its decision. See Memo from Mr. Spencer Young to Craig Phillips, Global

Head of Securitized Products, dated December 1, 2002, annexed hereto as Exhibit “3”. However, Morgan Stanley, through Craig Phillips, rejected Spencer’s efforts to resolve this matter, refused to negotiate and left Spencer with no choice but to pursue his compensation and bonus claims through arbitration.

Morgan Stanley has never offered a reason for its firing of Spencer without apparent “cause” or for its refusal to honor its multiple, express promises to him regarding (a) 2002 bonus compensation or (b) compensation for the creation and development of the IQ® brand, including promotion to Managing Director.

II. THE LEGAL CLAIMS AND ARGUMENTS

A. Breach of Express Contract

Morgan Stanley’s promise to pay Spencer a certain, non-discretionary 2002 bonus and promise to compensate and promote him for his development of the IQ® brand, if he met certain conditions, constituted a valid unilateral contract, which became binding on his performance of such conditions. See Morales v. Plaxall, Inc., 541 F. Supp 1387, 1391 (E.D.N.Y. 1882); Corto v. Fujisankei Communications International, Inc., 576 N.Y.S.2d 139 (First Dept. 1991) (citing Calamari & Perillo, Contracts, § 2-10, at 70 [3rd ed.] and Williston on Contracts, § at 427 [3rd ed.]); Tripodo v. Chase Manhattan Bank, 576 N.Y.S.2d 760 (Cty Ct. Westchester Co. 1991). The beginning of Spencer’s performance of the conditions “contemplates the manifestation of mutual assent and furnishes consideration.” Feifer v. Prudential Insurance Company of America, 306 F.2d 1202, 1211 (2nd Cir. 2002) (quoting Restatement (Second) of Contracts §45(1) cmt. D (1981)).

First, Morgan Stanley’s promise to pay Spencer a non discretionary “outsized” bonus of \$1.059 million for 2002 became a binding obligation when Spencer closed the AXA Financial agribusiness deal and converted more new financial institutions into SPG Clients than anyone else in SPG. As a result, Morgan Stanley’s failure to pay Spencer the \$1.059 million “outsized” bonus constituted a breach of contract.

Likewise, Morgan Stanley’s promise to Spencer that he would be compensated and promoted to Managing Director for his creation and development of the IQ® brand of CMBS, became a binding obligation when Spencer developed the IQ® Brand into a revenue platform of at least \$25 million annually. As a result, Morgan Stanley’s failure to compensate and promote Spencer for his development of the IQ® brand into a revenue generating platform in excess of 25 + million constituted a breach of contract.

B. Breach of Implied Contract

In addition to the existence of a binding express contract between Morgan Stanley and Spencer regarding the payment of a non-discretionary 2002 bonus and compensation for his development of the IQ® brand of CMBS, there also existed an implied-in-fact contract that obligated Morgan Stanley to pay Spencer both a 2002 “outsized” bonus and compensation for his development of the IQ® brand of CMBS. In order to retain Spencer’s services and deter him from taking his agribusiness and IQ® business elsewhere, senior Morgan Stanley employees, in particular, Mr. Warren Friend, represented to Spencer that he would receive certain bonus compensation. Spencer continued to work at Morgan Stanley based on the terms of the express and implied contracts, their mutual understandings and their prior course of dealing.

It is well known on Wall Street that you work for your bonus compensation and not just your salary. Indeed, promised bonuses often far exceed base salary, as it was promised to Spencer. It is simply inconsistent with the law for Morgan Stanley to keep Spencer employed the entire 2002 fiscal year and then deny him the promised bonus compensation. Morgan Stanley's actions in this regard are contrary to case law and industry practice which support his entitlement to both a 2002 bonus of \$1.059 million and compensation for his development of the IQ® brand of CMBS.

New York law recognizes implied as well as express contracts. "[A]n implied-in-fact contract...[is] based on the conduct of the parties, from which...[one] may fairly infer the existence and terms of a contract." Radio Today, Inc. v. Westwood One, Inc., 684 F. Supp. 68, 71 (S.D.N.Y. 1988); Schuler-Haas Electric Corp. v. Wager Construction Corp., 57 A.D.2d 707, 708, 395 N.Y.S. 272, 274 (4th Dep't 1977); Matter of Kummer, 93 A.D.2d 707, 708, 395 N.Y.S. 272, 274, 845, 874, (2d Dep't 1983); 22 N.Y. Jur.2d, Contracts Section 446; 50 N.Y. Jur.2d, Restitution and Implied Contracts, Sections 1-3.

In applying this concept to bonuses, the courts have recognized that the practice of paying bonus compensation is an implied part of the employment agreement. See, e.g., Giuntoli v. Garvin Guybutler Corporation, 726 F. Supp. 494, 507, 508 (S.D.N.Y. 1989) (course of dealing made bonuses a term of employment); Harden v. Warner Amex Cable Comm., 642 F. Supp. 1080, 1096 (S.D.N.Y. 1986) (bonus was "integral" part of employee compensation); Squadrito v. Credito Italiano, 193 Misc. 34, 83 N.Y.S.2d 334, 335 (City Ct. New York Co. 1948) (employee had right to bonus where employer had a longstanding custom of paying bonuses as part of his compensation); Wineburgh v. Seeman Bros., Inc., 21 N.Y.S.2d 180, 186-187 (Sup. Ct. N.Y. Co. 1940) (established practice of paying directors salary plus bonuses as additional compensation showed that bonuses were not improper payments for past services).

It is the expectation of the benefit, whether by explicit or implicit promise, and an employee's detrimental reliance upon such expectation or promise, that likens the payment of a bonus to other provided benefits such as health and pension benefits. See, e.g., Canet v. Gooch Ware Travelstead, 917 F. Supp 969, 984-985 (E.D.N.Y. 1996) (a bonus award is appropriate where an employee retains employment in reliance upon promised bonus compensation, which is an "integral part of the compensation package.").

Under New York law, one who accepts and benefits from the services of another who expects to be paid for those services must pay for these services. Morgan Stanley took full advantage of Spencer's services for the year 2002 (e.g., closing the AXA Financial agribusiness deal, converting many new financial institutions into SPG Clients and developing the IQ® brand of CMBS into a revenue platform in excess of \$25 + million a year) and, as such, Spencer earned and is entitled to receive bonus compensation.

Even well-regarded pro-business publications such as *The Wall Street Journal* have recognized that Wall Street executives, such as Spencer, are entitled to bonus compensation despite the loss of their employment. A July 19, 2000 article by Randall Smith entitled "Losing a Job on Wall Street These Days Often Doesn't Mean Losing a Bonus, Too," highlighted this very point in its review of several recent arbitration decisions in which the panels awarded significant bonuses to Wall Street executives who, unlike Spencer, were fired for cause just prior to receiving their annual bonuses. See The Wall Street Journal Article, dated July 19, 2000, annexed hereto as Exhibit "4". These panels recognized that an employer's attempt to avoid bonus payments by firing traders and analysts right before bonus payments are due and payable is wrong, illegal, and simply unacceptable. In the present case, Spencer was fired at the end of fiscal year 2002 and

just as the IQ® brand was developing into a revenue platform of at least \$25 million annually. Like the traders mentioned in the article (which references four instances of million dollar plus arbitration awards), Spencer deserves payment of his 2002 “outsized” bonus of \$1.059 million and fair compensation for his development of the substantial intrinsic value of the IQ® brand of CMBS.

C. Promissory Estoppel, Equitable Estoppel and Quantum Meruit

The related doctrines of both promissory and equitable estoppel also apply to this case. The elements of promissory estoppel are “(1) a promise, (2) reliance on the promise, (3) injury caused by the reliance, and (4) an injustice if the promise is not enforced.” Aramony v. United Way Replacement Benefit Plan, 191 F.3d 140, 151 (2nd Cir. 1999); see also Chemical Bank v City of Jamestown, 122 AD2d 530, 531 (4th Dept. 1986), citing Ripple's of Clearview, Inc. v Le Harve Assoc., 88 AD2d 120, 122 (2d Dept. 1982).

The elements of equitable estoppel are “(1) material representation, (2) reliance and (3) damage.” See Lee v. Burkhardt, 991 F.2d 1004, 1009 (2d Cir. 1993). Equitable estoppel may be imposed to prevent injustice suffered by a person who, in justifiable reliance upon the words or conduct of another, is induced to act or forebear. Multari v. Sorrell, 287 A.D.2d 764, 731 N.Y.S.2d 238 (3d Dept. 2001). The doctrine of equitable estoppel is applied where exceptional circumstances exist, such as here. Badgett v. N.Y.C. Health & Hospitals Corp., 227 A.D.2d 127, 641 N.Y.S.2d 299 (1ST Dept. 1996).

The doctrines of promissory estoppel and equitable estoppel apply to enforce Morgan Stanley’s promises to Spencer that he would receive an “outsized” 2002 bonus of \$1.059 million and that he would receive fair compensation for the development of the IQ® brand of CMBS. In reliance on these promises and material representations, Spencer remained at Morgan Stanley through 2002 and closed the AXA Financial agribusiness deal, converted many new financial institutions into SPG Clients and developed the IQ® Brand of CMBS into a revenue platform of at least \$25 million annually. Had Morgan Stanley not made these promises and material representations regarding both his 2002 bonus and compensation related to the success of the IQ® brand, Spencer would have left Morgan Stanley and brought the AXA Financial agribusiness deal and IQ® brand of CMBS business elsewhere. Instead, Spencer remained at Morgan Stanley in anticipation of receiving a 2002 bonus of \$1.059 million and receiving compensation related to the IQ® brand of CMBS, including a promotion to Managing Director. Promissory and equitable estoppel should be applied to enforce Morgan Stanley’s promises and representations.

Morgan Stanley is also liable to Spencer for a 2002 bonus of \$1.059 million and compensation for his development of the IQ® brand of CMBS under the doctrine of “quantum meruit.” Under this legal theory, one who accepts and benefits from the services of another who expects to be paid must pay the reasonable value of these services. Morgan Stanley took advantage of the \$519 million AXA Financial agribusiness deal, in 2002 and is currently reaping the substantial benefits of the IQ® brand of CMBS which now generates \$30 to \$40 + million in revenue annually and has a conservatively derived and objectively determined intrinsic value of \$254.33 million and, in turn, Spencer should receive his 2002 bonus due him and fair compensation related to the value he has created in the IQ® brand of CMBS.

D. The Promises Made To Spencer By Morgan Stanley Were Sufficiently Clear and Definite to Require Enforcement Under New York Law

Spencer’s contractual claim to bonus compensation will not fail due to a lack of “definiteness.” “Regardless of the validity of the general proposition that ‘agreements to agree’

are illusory and, therefore, unenforceable, this principle has no application in the context of interpreting employment contracts which include open additional compensation clauses. The New York cases reveal that (1) where parties enter into an agreement providing for certain immediate compensation to be paid and also provide for a subsequent upward adjustment of that compensation, to be determined at a later time, the contract is enforceable; and further (2) that if the parties fail to definitively reach an understanding as to what shall constitute the premium, the court will determine an appropriate bonus rather than deem the contract unenforceable.” Knapp v. McFarland, 344 F. Supp. 601, 611-612 (S.D.N.Y. 1971), citing, Pillois v. Billingsley, 179 F.2d 205 (2nd Cir. 1950); Heller v. Kalish, 141 App.Div. 205, 125 N.Y.S. 1057 (1st Dep’t 1910), and Plattenburg v. Briggs, 166 App.Div. 326, 151 N.Y.S. 925 (3rd Dep’t 1915). (Emphasis added.)

Bonus and related compensation payments are a benefit to which an employee is entitled and Courts will determine the appropriate bonus amount by reference to express representations, bonus history and what other similarly situated employees were paid. See Giuntoli, 726 F. Supp at 507 (citing, Harden, 642 F. Supp. at 1096). See also Knapp v. McFarland, 344 F. Supp. 601, 611-612 (S.D.N.Y. 1971)(even if no precise amount of bonus to be paid is set by the parties, the Court can determine an appropriate bonus rather than deem the contract unenforceable.”)

In Giuntoli v. Garvin Guybutler Corp., 726 F. Supp 494, 507 (S.D.N.Y. 1989), the Court found that a money market broker’s allegations of express promises by the employer, as well as the parties’ prior course of dealing “evidences an implied promise that semi-annual bonus payments constituted a term of [her] employment.” Id. at 507-508. The Court went on, “[t]hat the exact amount of the promised bonus was not specified is not fatal to plaintiff’s claim. Under New York law, if there exists a reasonable basis for calculating the bonus due an employee, a court may enforce the contract term. Bonus history may be used to determine an appropriate bonus amount.” Id. (citing, Harden v. Warner Amex Cable Communications, 642 F. Supp. 1080 (S.D.N.Y. 1986); Willoughby Camera Stores, Inc. v. Commissioner, 125 F.2d 607 (2d Cir. 1942). (Emphasis added.) See also, Harden, supra (where the Court actually determined the amount of the bonus claimed to be due based on language in written agreement which stated simply that the bonus amount will “increase in future years”).

With respect to Spencer’s 2002 “outsized bonus”, an “outsized bonus” was specifically understood to mean at least a 50% premium of previous highest bonus and therefore, a 2002 “outsized bonus” for Spencer would be one million fifty-nine thousand dollars (\$1.059 million).

With respect to the promise to pay Spencer compensation for the development of the IQ® brand of CMBS, there is nothing in the case law to preclude the Arbitration Panel from considering a fair compensation calculation based on the long-term annual revenue and substantial intrinsic value Spencer created in the IQ® brand for Morgan Stanley and now leaves behind. A reasonable basis for calculating fair compensation to Spencer for his development of the IQ® brand falls within a range of \$4.809 to \$10.498 million, as more fully set forth below.

E. Notwithstanding Spencer’s Termination, Morgan Stanley Is Still Obligated to Pay Him What Was Promised.

Assuming Morgan Stanley had the right to terminate Spencer’s employment, despite its promise of a promotion, Morgan Stanley had no right to violate its promise of additional and future compensation to him. While Spencer’s future employment may not have been guaranteed, both a 2002 bonus and compensation for his development of the IQ® brand of CMBS were promised, and the law enforces promises made in consideration of services

performed, and reasonable reliance on those promises, and the forbearance of other opportunities available. As is sometimes said, “Once you’ve enjoyed the tune, you must pay the piper.”

Just as every customer can walk out of a restaurant at any time, the food consumed must be paid for. Just as an employer may tell an employee to leave at the end of the day, the employer remains obligated for monies promised and due. Here, too, Morgan Stanley may well have been within its right to terminate Spencer’s employment, however, Morgan Stanley remained obligated to pay Spencer the compensation it promised in order to have retained his services, *i.e.*, closing the AXA Financial agribusiness deal, converting many new financial institutions into SPG Clients and developing the IQ® Brand of CMBS into a revenue platform in excess of \$25 + million a year. Morgan Stanley got from Spencer what it wanted--now it must pay the bill due.

III. RELIEF REQUESTED: DAMAGES

Spencer seeks the 2002 bonus he was promised, and earned by closing the largest agribusiness transaction in history and converting new institutional SPG clients. In addition, because Morgan Stanley induced Spencer to remain in its employ and develop the IQ® brand of CMBS, but reneged on its promise, in return, Spencer seeks the value of his services in creating the IQ® brand and business.

A. Spencer Is Entitled to a 2002 “Outsized” Bonus

Because Spencer satisfied the condition set by Morgan Stanley for a 2002 “outsized” bonus at “the next level”, Spencer is entitled to a 2002 bonus in an amount of \$1.059 million. This “outsized” bonus at “the next level” was understood to mean at least 150% of Spencer’s highest previous bonus, *i.e.*, \$706,417. Morgan Stanley has a history of paying Executive Directors bonuses in excess of \$1.0 million for creating far less value than was created by Spencer.

B. Spencer is Entitled to Fair Compensation Related to the Long Term Revenue and Value He Created and Now Leaves Behind in the IQ® Brand of CMBS

Because Spencer developed the IQ® brand of CMBS into a revenue generating platform in excess of \$25 + million, he is entitled to fair compensation related to the long-term annual revenue and substantial intrinsic value he created in the IQ® brand for Morgan Stanley and now leaves behind. Otherwise, Morgan Stanley would be unjustly enriched due to its failure to honor its retention-directed promises to Spencer. Morgan Stanley is now positioned to complete 3 to 4 IQ® deals per year and generate \$30 million to \$40 million in revenue annually.

Set forth below, and attached hereto as Exhibit “1” are charts that simply and clearly set forth the intrinsic value of the IQ® brand and a range of fair compensation that should be paid to Spencer for creating the IQ® brand. The IQ® brand now has a conservatively derived and objectively determined intrinsic value of \$254.33 million. Morgan Stanley has a compensation expense of 16.5% of market capitalization.

Given the IQ® brand’s intrinsic value of \$254.33 million and Morgan Stanley’s compensation expense of 16.5% of market capitalization, a fair compensation calculation for Spencer amounts to \$10.498 million (adjusted for the fact that the IQ® transactions pertain only to the sell side of the arbitrage gain realized, and to conservatively account for infrastructure

support). Further discounting this fair compensation calculation of \$10.498 million to reflect only Spencer's direct client contribution percentage to IQ® deals of 45.8% creates a fair compensation calculation amount of \$4.89 million. As a result, fair compensation to Spencer for the long-term value he created with the IQ® brand should be in a range of \$4.809 to \$10.498 million. The midpoint of this range is \$7.654 million.

The summary chart that follows supports this fair range of compensation calculations:

Line Item	\$mm	Comments
Intrinsic Value of IQ Brand	\$254.33	Based on 4/16/03 market values (see Exhibit 1)
Compensation Expense as a Percentage of Market Capitalization Value	16.5%	Based 5 year average as contained in the 2002 Morgan Stanley Annual Report
Sell side of the transaction	50%	Mr. Young's role pertained to the sell side, and both the buy and sell sides are required for realizing a portion of the revenue on IQ deals. (Note: in this context, "buy side" represents the origination of commercial mortgages, and "sell side" represents the securitization of commercial mortgages.)
Infrastructure support	50%	Takes into account the team participating on the execution of the IQ transactions
High End of Fair Value Compensation ("A")	\$10.498	The product of the above. Mr. Young regularly interacted with all IQ clients, and actively participated in the execution of each IQ deal, particularly the most important initial transaction. This established the brand and created the precedent of multi-seller transactions with portfolio lenders. In addition, IQ clients for whom Mr. Young did not have direct coverage accountability, were clients of his during his tenure at J.P. Morgan (e.g., John Hancock and Prudential)
Direct Client Contribution Percentage to IQ deals	45.8%	With regard to client coverage, Mr. Young focused on "development clients" (i.e., companies which his CMBS group had not done business with previously), because of his strong business development skills. The percentage shown here represents the loans contributed by clients of his direct responsibility.
Low End of Fair Value Compensation ("B")	\$4.809	The product of the "High End of Fair Value Compensation" and the "Direct Client Contribution Percentage to IQ deals"
Midpoint of Fair Value Compensation Range	\$7.654	This amount represents the midpoint of the compensation range determined above. [(A+B) / 2]

Note: there may be some lost precision in the numbers reflected above due to rounding.

See also Exhibit "1".

C. Spencer Is Entitled To An Additional 25% and Statutory Attorney Fees Under the New York State Labor Law

Under New York's Labor Law, Spencer should be awarded an additional 25% of the bonus and related compensation that was withheld from him. New York prohibits employers from withholding compensation due to an employee. In order to discourage employers from withholding compensation and to redress the inequality in bargaining power between employer and employee, New York provides for an award of attorneys' fees and an additional 25% of

compensation willfully withheld. See New York State Labor Law Section 190, 198 (1-a).

Employees at all levels, including executives like Spencer, are entitled to the protection of Section 198(1-a) of the New York Labor Law. See e.g., Daley v. The Related Companies, Inc., 179 A.D.2d 55, 581 N.Y.S.2d 758 (1st Dep't 1992) (executive who was vice president of one corporation and president of another corporation was an "employee" entitled to seek attorneys' fees and liquidated damages under Sec. 198(1-a)); Magness v. Human Resources, Inc., 161 A.D.2d 418, 555 N.Y.S.2d 347 (1st Dep't 1990); Klepner v. Codata, 139 Misc.2d 382, 527 N.Y.S.2D 158 (N.Y. Sup. Ct. 1988), aff'd, 150 A.D.2d 994, 542 N.Y.S.2d 1004 (1st Dep't 1989). The bonus compensation withheld from Spencer constituted "wages." See, e.g., Giuntoli v. Garvin Guybutler Corp., 726 F. Supp. 494, 509 (S.D.N.Y. 1989) (bonuses which had been earned and were due constituted "wages" for purposes of Sec. 198(1-a)).

In the New York Labor Law, "willful" withholding of compensation "means no more than intentional and deliberate" failure to pay. See Old Republic Life Insurance Co. v. Thacher, 12 N.Y.2d 702, 707 (1962) (defining the term "willful" in the insurance law); Telecommunications Designs, Inc. v. Roberts, 127 A.D.2d 976, 513 N.Y.S.2d 53 (4th Dep't 1987) (applying the definition set forth in Old Republic Life Insurance Co. in a Labor Law case).

D. Spencer is Entitled to Vesting in All EICP Shares

Because Spencer was terminated in violation of an express promise that he would be promoted to and have a future as Managing Director, and his shares would have thus vested over time, Spencer is entitled to immediate vesting in all Equity Incentive Compensation Plan ("EICP") awards for 1997 through 2001, with no restrictions, and to be made whole for original EICP awards for 1998, 1999, 2000, 2001 or an amount representing the value of the EICP awards as of the date of Spencer's termination.

E. Spencer is Entitled to Severance

Upon information and belief, Spencer is entitled to severance pursuant to Morgan Stanley's severance plan. Based on Spencer's understanding of the severance typically offered to Managing Directors, Spencer believes that the plan provides for severance to him in an amount of twenty 24 months of salary and continuation of all benefits. In light of the circumstances of Spencer's termination and the state of the economy, Spencer's job search is expected to be lengthy.

F. Spencer is Entitled to Be Designated Managing Director

Because Spencer satisfied the condition set by Morgan Stanley to be promoted to Managing Director, Spencer should be designated a Managing Director in his personnel file as of the date of his termination.

G. Spencer's Investments With Morgan Stanley

Upon information and belief, the MSREF IV investment plan documents provide that Spencer may continue to stay on as investor in MSREF IV (Domestic), MSREF IV (International) and MSREF IV (Europe funds) even after he is no longer employed by Morgan Stanley.

H. Attorneys' Fees, Pre-Award Interest, As Well As The Cost and Disbursements Associated With This Arbitration

Spencer also requests attorneys' fees, pre-award interest at the rate required by law, pursuant to the New York State Labor Law and New York CPLR 5001, and the costs and expenses of this proceeding.

IV. CONCLUSION

At all times during Spencer's tenure as a Morgan Stanley employee, he acted in good faith and in reliance upon his agreements with and representations by Morgan Stanley. Morgan Stanley had no right to violate its promises of compensation to him. Morgan Stanley got from Spencer what it wanted and demanded – now it must compensate Spencer for such services.

Spencer was always dedicated to and honorable with Morgan Stanley; he far exceeded all the expectations of him. He has, and should have, every expectation -- and legal right -- to insist that Morgan Stanley honor its legal commitments, i.e., a 2002 bonus and compensation for his development of the IQ[®] brand of CMBS, including promotion to Managing Director, which it has not to date.

Accordingly, Spencer seeks an award in an amount no less than \$1.059 million, constituting the promised 2002 bonus; \$7.654 million, constituting the mid range of fair compensation for Spencer's creation and development of the IQ[®] Brand of CMBS; two years severance; immediate vesting in all EICP awards for 1997 through 2001; continued participation as investor in the MSREF IV investment plan; statutory penalties; attorneys' fees; interest at the statutory rate of 9% per annum as calculated from the date of termination, and the costs and expenses of filing and maintaining this proceeding, as well as other relief the arbitrators deem fair, just and proper.

WHEREFORE, FOR THE ABOVE REASONS, CLAIMANT PRAYS THAT THE ABOVE RELIEF BE GRANTED IN ITS ENTIRETY.

Respectfully submitted,

CLAIMANT:

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