
From: Michael Mace <MACEM@pfm.com>
Sent: Tuesday, February 6, 2018 1:44 PM
To: Brooks, Jody L. - Chief Legal Officer
Subject: FW: Confidential Draft - MS NDA Comments

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Jody – here is the executed NDA from MS. I will send the JEA information package to MS.

Michael Mace
PFM
11605 N. Community House Rd., Suite 500
Charlotte, NC 28277
704-319-7923 Office
917-318-7869 Cell

From: Pedersen, William [mailto:William.Pedersen@morganstanley.com]
Sent: Tuesday, February 06, 2018 1:37 PM
To: Beicke, Scott <Scott.Beicke@morganstanley.com>; Michael Mace <MACEM@pfm.com>
Cc: Fraunfelder, Grant <Grant.Fraunfelder@morganstanley.com>; Marth, Stuart <Stuart.Marth@morganstanley.com>
Subject: RE: Confidential Draft - MS NDA Comments

Mike,

Our legal is signed off on the language change to paragraph 1. Please see the attached fully executed NDA.

Thanks,
Bill

William Pedersen
Morgan Stanley | Investment Banking Division
1585 Broadway, 32nd Floor | New York, NY 10036
Phone: +1 212 296-4451
Fax: +1 212 507-4927
William.Pedersen@morganstanley.com

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From: Beicke, Scott (IBD)
Sent: Tuesday, February 06, 2018 1:04 PM
To: Michael Mace
Cc: Fraunfelder, Grant (FID); Pedersen, William (IBD); Marth, Stuart (IBD)
Subject: RE: Confidential Draft - MS NDA Comments

Mike,

I'm on standby to sign... The team copied will check with our Internal Legal to confirm the language is acceptable.

Thanks for pushing this forward.

Best,

Scott Beicke, Managing Director

Morgan Stanley | Investment Banking Division
1585 Broadway, 32nd Floor | New York, NY 10036
Phone: +1 212 761-8666
Mobile: +1 914 482-3763
Scott.Beicke@morganstanley.com

From: Michael Mace [<mailto:MACEM@pfm.com>]
Sent: Tuesday, February 06, 2018 12:57 PM
To: Beicke, Scott (IBD); Fraunfelder, Grant (FID)
Subject: FW: Confidential Draft - MS NDA Comments

Scott – if acceptable, can you sign the NDA and e-mail it back to me? Thanks

Michael Mace
PFM
11605 N. Community House Rd., Suite 500
Charlotte, NC 28277
704-319-7923 Office
917-318-7869 Cell

From: Brooks, Jody L. - Chief Legal Officer [<mailto:broojl@jea.com>]
Sent: Tuesday, February 06, 2018 12:27 PM
To: Michael Mace <MACEM@pfm.com>
Subject: RE: Confidential Draft - MS NDA Comments

Mike:

Attached is an executed NDA for Morgan Stanley. The only change made to the suggested edits is the definition of Potential Engagement in the first paragraph. If acceptable to Morgan Stanley, please have them execute and send me the fully executed NDA at your earliest convenience.

Thank you.

--Jody



Jody L. Brooks
Chief Legal Officer
JEA
21 West Church Street (T-16)
Jacksonville, Florida 32202
904 665 6383
broojl@jea.com

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February 2, 2018

CONFIDENTIALITY AGREEMENT

Ladies and Gentlemen:

- (1) Morgan Stanley & Co. LLC (“Morgan Stanley” or “we” or “us”) and JEA (the “Company” or “JEA”), (together the “Parties”) are currently exploring a potential engagement of Morgan Stanley to provide financial advisory services to JEA in connection with a transaction (the “Potential Engagement”). In the course of choosing a strategic advisor for the Potential Engagement, the Company may provide Morgan Stanley with certain nonpublic, confidential and proprietary information concerning the Company, its affiliates and subsidiaries.

As used herein, “Confidential Information” means all nonpublic, confidential and proprietary data, reports, interpretations, forecasts and records containing information concerning the Company, its affiliates and subsidiaries which will be provided to us on or after the date hereof by or on behalf of the Company in connection with the Potential Engagement, together with analyses, compilations, studies or other documents, whether prepared by us, our affiliates or our and our affiliates’ respective directors, officers, employees, agents, representatives or advisors (including without limitation, legal counsel, accountants, auditors or consultants) (collectively, “Representatives”) which contain such information.

In consideration of the Company’s providing us with Confidential Information, by our signature hereto, we agree that all Confidential Information will be held and treated by us in confidence and will not, except as hereinafter provided or with the prior written consent of the Company, be disclosed by us in any manner whatsoever, in whole or in part, and will not be used by us other than in connection with the Potential Engagement, including but not limited to the conduct of our due diligence on the Company. Moreover, we further agree (i) to disclose Confidential Information only to our Representatives who need to know the Confidential Information for purposes of the Potential Engagement and who will be advised by us of this agreement and (ii) we will be satisfied that such Representatives will act in accordance herewith.

Notwithstanding the foregoing, the following will not constitute “Confidential Information” for purposes of this agreement:

- (A) Information which was already in our or our Representative’s possession prior to its receipt from the Company pursuant hereto;
- (B) Information which is obtained by us or our Representatives from a third person who, insofar as is known to us, is not prohibited from transmitting the information to us or such Representative by a contractual, legal or fiduciary obligation to the Company with respect to such information;
- (C) Information which is or becomes publicly available through no disclosure of Morgan Stanley in violation of this agreement; and

(D) Information which has been or is independently developed by us, our Representatives or on our behalf without violating this agreement.

- (2) If requested in writing and to the extent practicable and permitted by applicable law, rule and regulation or other applicable legal, judicial, governmental or regulatory agency, authority or process (including, without limitation, by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other process) (collectively, "Law"), we will promptly, at our election, destroy or return paper copies of the Confidential Information to the Company at the Company's sole expense, and destroy that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by us or our Representatives. Notwithstanding the foregoing, Confidential Information may be retained by us and our Representatives to the extent (i) required by applicable Law or internal compliance or document retention policies or (ii) electronically stored pursuant to automatic back-up storage or archival procedures or systems.

In the event that we or any of our Representatives is requested or required by Law to disclose any Confidential Information, it is agreed that we or such Representative may disclose such information, provided that we or such Representative gives reasonable prior notice to the Company, to the extent practicable and permissible under applicable Law of any such request or requirement so that the Company may seek, at its sole cost and expense, an appropriate protective order or waive our or such Representative's compliance with the provisions of this agreement. If we or any of our Representatives are, based on the advice of counsel, required to disclose Confidential Information, that portion of the Confidential Information which counsel advises is required to be disclosed may be disclosed without liability. In any event, we will not oppose commercially reasonable action taken by the Company to seek to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Notwithstanding the foregoing, no notification shall be required in respect of any disclosure made to any banking, financial, securities or similar supervisory or regulatory or governmental authority exercising its supervisory, examination or audit functions over us or any of our Representatives.

- (3) The terms of this agreement shall terminate one (1) year from the date of this agreement.
- (4) The Company acknowledges that Morgan Stanley and its affiliates (Morgan Stanley and each such affiliate, an "MS Entity") are engaged in securities trading, securities brokerage and financing activities, as well as providing investment banking and financial advisory services. Notwithstanding Morgan Stanley's execution of this agreement or its possession of Confidential Information, no MS Entity will be precluded from representing third parties or acting as a principal in transactions which may involve the Company, its affiliates or subsidiaries, or securities issued by any of them; provided that no MS Entity will use any Confidential Information contrary to the terms of this agreement.
- (5) If JEA is requested or required or becomes legally compelled (by deposition, interrogatories, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, JEA shall provide Morgan Stanley with prompt notice of such request(s) so that Morgan Stanley may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. The Parties further agree that if, in the absence of a protective

order or other remedy not obtained, or that Morgan Stanley waives compliance with the terms hereof, JEA agrees to provide only that limited portion of the information that it is advised by written opinion of counsel is legally required and to exercise its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

- (6) The Parties acknowledge that JEA is a body politic and corporate that is subject to Chapter 119, Florida Statutes, and related statutes known as the "Public Records Laws". If a request is made to view Confidential Information, JEA will notify Morgan Stanley of such request and the date that such records will be released to the requester unless Morgan Stanley obtains a court order enjoining such disclosure. If Morgan Stanley fails to obtain that court order enjoining disclosure, JEA will release the requested Confidential Information on the date specified. Such release shall be deemed to be made with Morgan Stanley's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copyright or other intellectual property.
- (7) In connection with any offering of securities by the Company, or any of its affiliates or subsidiaries in which an MS Entity is involved as an underwriter, initial purchaser, dealer, agent or other participant, nothing in this agreement shall prevent the MS Entity from using any Confidential Information to carry out its legal or contractual obligations in connection with such offering or in investigating or defending itself against claims made or threatened by purchasers, regulatory authorities or others in connection with such an offering or sale of securities, including without limitation establishing or asserting any "due diligence" defenses with respect thereto.

This agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made in and to be performed in that state, without giving effect to conflict of laws principles.

If the foregoing reflects our agreement, kindly sign and return the duplicate copy of this letter to us.

Very truly yours,

MORGAN STANLEY & CO. LLC

By: 

Name: SCOTT A. BEICKE

Title: MANAGING DIRECTOR

Acknowledged and agreed to
as of the date first set forth above:

JEA

By: 

Name: Melissa Dykes

Title: CFO