



June 15, 2022

Ms. Judy Keenan
Director, New York District Office
U.S. Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004

Re: Investigation Request/Morgan Stanley

Dear Director Keenan:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write pursuant to 29 C.F.R. § 1601.6(a), as an “organization ... request[ing] the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” related to Morgan Stanley’s racially discriminatory Freshman Enhancement Program.¹

I. Background.

Since at least 2016, Morgan Stanley has offered a discriminatory “Diversity Internship” called the “Freshman Enhancement Program.”² The program is expressly limited to students of only certain racial backgrounds or students who identify as “LGBTQ+,” and is described as follows:

Program Overview

Our Freshman Enhancement Program is designed to help diverse rising sophomores in college gain a better understanding of the various businesses and career paths Morgan Stanley provides. Selected candidates will participate in a hybrid program consisting of virtual learning and an in-person component. Candidates will be expected to join weekly sessions for 1-3 hours over the course of 4 weeks. The program will include valuable training, as well as opportunities to network with each other and learn from Morgan Stanley professionals across our divisions.

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² Morgan Stanley, 2016 Morgan Stanley Freshman Enhancement Program (last accessed June 14, 2022), <https://bit.ly/3xweSNG>.

Participants will have the opportunity to interview for the 2023 Sophomore Summer Analyst Programs for the specific track they are in.

Skills and Qualifications

- You are a Black, Hispanic, Native American, and/or LGBTQ+ freshman undergraduate student (class of 2025).³

It appears that the chosen students are paid for their participation in this program.⁴

II. The Violations are Longstanding and Continuing.

As the Project on Fair Representation stated in a letter earlier this year, the Freshman Enhancement Program is “blatantly illegal and immoral.”⁵ Facially, the Freshman Enhancement Program violates 42 U.S.C. § 2000e-2(d), which renders unlawful an employment practice of an employer to discriminate based on race, color, sex, or national origin “in admission to, or employment in, any program established to provide apprenticeship or other training.” And to the extent that this program also implicates decisions to hire employees at Morgan Stanley, the express purpose and effect of Morgan Stanley’s Freshman Enhancement Program is to limit, segregate, or classify applicants for employment in a manner that deprives or tends to deprive certain individuals of employment opportunities because of race, color, sex, or national origin in violation of 42 U.S.C. § 2000e-2(a)(2).⁶

Furthermore, Morgan Stanley’s violations are longstanding, and there is strong reason to believe they are continuing and will reoccur. For example, the University of Michigan’s “University Career Center” advertised Morgan Stanley “internship opportunities [solely] for Black, Hispanic, Native American, and LGBT students,” with an application date of January 22, 2017.⁷ Harvard University advertised the Freshman Enhancement Program, listing admission requirements including “You are a Black, Hispanic, Native American, and/or LGBTQ+ freshman undergraduate student (class

³ Morgan Stanley, 2022 Freshman Enhancement Program (New York) (last accessed June 14, 2022), <https://bit.ly/3x6LImD>.

⁴ Harvard University, Office of Career Services, “Application Deadline: Morgan Stanley 2020 Freshman Enhancement Program” (last accessed June 14, 2022), <https://bit.ly/3mxQFQS> (“Selected candidates will participate in a 1-week paid program at our offices in New York City.”).

⁵ Letter from C. Boyden Gray to Eric Grossman, Chief Legal Officer, Morgan Stanley, and Ramona E. Romero, General Counsel, Princeton University (Feb 15, 2022), <https://bit.ly/3xg0pnC>.

⁶ See also *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020) (holding that discrimination based on sexual orientation or behavior constitutes unlawful sex discrimination).

⁷ Univ. of Michigan, University Career Center, “Morgan Stanley’s Freshman Enhancement Program” (last accessed June 14, 2022), <https://bit.ly/3MbVhGw>.

of 2024)” with an application date of March 12, 2021.⁸ More recently, the University of Michigan posted that it was hosting an “informational session” on the Morgan Stanley Freshman Enhancement Program in January 2022.⁹ And, in or about February 1, 2022, Princeton freshmen reportedly received an email through the university inviting Freshman Enhancement Program applicants.¹⁰

III. The Commission Should Investigate Morgan Stanley.

The Freshman Enhancement Program, and others of its ilk, are patently illegal.¹¹ They are also deeply harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹² More broadly, the discrimination highlighted in this case necessarily foments contention and resentment. Indeed, it is “odious and destructive.”¹³ To make this concrete, imagine two sisters, both adopted by the same parents. One is African American, and one is Asian. Despite being raised by the same family, and attending the same schools, Morgan Stanley permits only one to apply for the special consideration and treatment afforded by the Freshman Enhancement Program, while the other is denied equal opportunity due to something completely beyond her control—the race she was born into without choice.

The evidence strongly suggests that Morgan Stanley’s Freshman Enhancement Program violates Title VII. It truly “is a sordid business, this divvying us up” by race or sex.¹⁴ Accordingly, there is compelling reason for the Commission to open an investigation in this case.

Sincerely,

/s/ Gene P. Hamilton
Vice-President and General Counsel
America First Legal Foundation

⁸ Application Deadline: Morgan Stanley Freshman Enhancement Program, Harvard University Career Services (last accessed June 14, 2022), <https://bit.ly/3ztm9iC>.

⁹ Freshman Enhancement Program Information Session, University of Michigan (last Accessed June 14, 2022), <https://bit.ly/3xzbGRm>.

¹⁰ Paul Mirengoff, *A Princeton-Morgan Stanley Joint Venture in Discrimination*, POWERLINE (Feb. 13, 2022), <https://bit.ly/3MAyCnm>.

¹¹ *Bob Jones Univ. v. United States*, 461 U.S. 574, 593 (1983) (“racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals”).

¹² *Brown v. Bd. of Education*, 347 U.S. 483, 494 (1954).

¹³ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁴ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Cc: The Honorable Charlotte A. Burrows, Commission Chair
The Honorable Jocelyn Samuels, Commission Vice Chair
The Honorable Janet Dhillon, Commissioner
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner