

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

OMB APPROVAL  
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Expires: October 31, 2017  
Estimated average burden  
hours per response 1

FORM TCR  
TIP, COMPLAINT OR REFERRAL

A. INFORMATION ABOUT YOU

COMPLAINANT 1:

Name: Dana de Windt

4. Occupation retired financial advisor

Preferred  
method of  
communication

e-mail

COMPLAINANT 2:

1. Last Name

First

M.I.

2. Street Address

Apartment/  
Unit #

City

State/  
Province

ZIP/  
Postal Code

Country

3. Telephone

Alt. Phone

E-mail Address

4. Occupation

Preferred  
method of  
communication

B. ATTORNEY'S INFORMATION (If Applicable - See Instructions)

1. Attorney's Name

Glenn J. Webber, Esq.

2. Firm Name

Law Office of Glenn J. Webber, P.A.

3. Street Address

101 East Ocean Boulevard, Suite 203

City

Stuart

State/  
Province

FL

ZIP/  
Postal Code

34994

Country

U.S.A.

4. Telephone

(772) 287-5600

(772) 781-7561

Fax

E-mail Address

glenn@webberfl.com

**C. TELL US ABOUT THE INDIVIDUAL OR ENTITY YOU HAVE A COMPLAINT AGAINST**

INDIVIDUAL/ENTITY 1:

If an individual, specify profession:

1. Type: ☐ Individual ☒ Entity

If an entity, specify type:

Brokerage Firm

2. Name  
Morgan Stanley

3. Street Address  
1585 Broadway

Apartment/  
Unit #

City  
New York

State/  
Province  
NY

ZIP/  
Postal Code  
10036

Country  
U.S.A.

4. Phone  
(888) 454-3965

indivfeedback@ms.com  
E-mail Address

Internet Address

INDIVIDUAL/ENTITY 2:

If an individual, specify profession:

1. Type: ☐ Individual ☐ Entity

If an entity, specify type:

2. Name

3. Street Address

Apartment/  
Unit #

City

State/  
Province

ZIP/  
Postal Code

Country

4. Phone

E-mail Address

Internet Address

**D. TELL US ABOUT YOUR COMPLAINT**

1. Occurrence Date (mm/dd/yyyy): / /

2. Nature of complaint:

3a. Has the complainant or counsel had any prior communication(s) with the SEC concerning this matter?

YES ☒ NO ☐

Donna Norman, Michael S. Fuchs, Natasha Vij Greiner

3b. If the answer to 3a is "Yes," name of SEC staff member with whom the complainant or counsel communicated

4a. Has the complainant or counsel provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you?

YES ☒ NO ☐

4b. If the answer to 4a is "Yes," please provide details. Use additional sheets if necessary.

NASD/FINRA, NASAA, SDNY, FFETF

(attached monograph explains all steps taken thus far - Exhibit "A")

4c. Name and contact information for point of contact at agency or organization, if known

1. Andrew A. Farret, Regional Chief Counsel FINRA, New Orleans - (504) 412-2404

2. Rex Staples, General Counsel, NASAA (left position) (202) 737-0900

3. SDNY submitted complaint October 2013

4. FFETF submitted complaint 2014

5. FBI. Holly Trask, submitted December 2013 - (202) 323-3215

5a. Does this complaint relate to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor?

YES ☒ NO ☐

5b. If the answer to question 5a is "Yes," has the complainant reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations?

YES ☒ NO ☐

5c. If the answer to question 5b is "Yes," please provide details. Use additional sheets if necessary.

All levels of supervision / authority were contacted from 2003 - 2008. I left Morgan Stanley in 2008. Wall Street Journal article of May 24, 2008 (attached).

5d. Date on which the complainant took the action(s) described in question 5b (mm/dd/yyyy):

January / 2003 - present

6a. Has the complainant taken any other action regarding your complaint?

YES ☒ NO ☐

6b. If the answer to question 6a is "Yes," please provide details. Use additional sheets if necessary.

Mediation with Morgan Stanley in 2005 with client. Appeared at arbitration for investor in December 2012. Complaints to SEC, FINRA, State of Florida and NASAA.

7a. Does your complaint relate to a residential mortgage-backed security?

YES ☐ NO ☒

7b. Type of security or investment, if relevant

Security was a surplus note, misrepresented as a bond instrument.  
8 years of Blue Sky Law violations.

7c. Name of issuer or security, if relevant

Lumbermens Mutual Casualty Company

7d. Security/Ticker Symbol or CUSIP no.

8. State in detail all facts pertinent to the alleged violation. Explain why the complainant believes the acts described constitute a violation of the federal securities laws. Use additional sheets if necessary.

Morgan Stanley offered surplus notes issued by Lumbermens Mutual Casualty Company. the notes were not registered, and there was no active market for the notes before the offering. In fact, the notes were not bond instruments at all. Morgan Stanley entered into a Consent Agreement in September 2008, admitting to Blue Sky Law violations, but not admitting to selling unlicensed misrepresented securities. Not until June of 2009 did Morgan Stanley admit to sale of unregistered securities. (see attachments)

9. Describe all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in complainant's possession. Use additional sheets, if necessary.

Florida OFR Final Order September 8, 2008 (B); Florida 2008 - 2009 OFR Report (C); Wall Street Journal May 24, 2008 (D); Case Closing Memo February 15, 2012 (E); Florida Rescission Offering (F); Letter to Tony Taggart at Morgan Stanley (G); Letter to Susan Merrill at FINRA (H); Letter to Michael Banyas at Florida OFR (I).

10. Describe how and from whom the complainant obtained the information that supports this claim. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

I was employed by Morgan Stanley and began marketing the notes to clients as directed by Morgan Stanley. Brokers were not told security was a surplus note. I obtained information through my employment. Subsequent information has been obtained through monitoring trade publications, public records requests, and the internet.

11. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

I have been involved in this matter since I inherited clients of a discharged Morgan Stanley employee. I have complained to various regulatory authorities, participated in mediation and arbitration, and been the subject of Wall Street Journal article.

12. Provide any additional information you think may be relevant.

Morgan Stanley misrepresented the surplus note to brokers and clients as a bond. It created the market for the product, and when the market collapsed, recommended that its customers continue to hold on to the investment. It subsequently agreed to a fine, without admitting to the sale of unregistered securities or that the product was misrepresented. It then made a less than diligent effort to publish the rescission offer to all customers. Only after the state fine did Morgan Stanley admit to sale of unregistered securities.

(Please see continuation of this answer on the following 4 pages.)

#### E. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?

YES ☐ NO ☒

2. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

YES ☐ NO ☒

3. Did you acquire the information being provided to us through the performance of an engagement required under the federal securities laws by an independent public accountant?

YES ☐ NO ☒

4. Are you providing this information pursuant to a cooperation agreement with the SEC or another agency or organization?

YES ☐ NO ☒

5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?

YES ☐ NO ☒

6. Did you acquire the information being provided to us from any person described in questions 1 through 5?

YES ☐ NO ☒

7. Have you or anyone representing you received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?

YES ☐ NO ☒

8. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?

YES ☐ NO ☒

9. If you answered "yes" to any of the questions 1 through 8, use this space to provide additional details relating to your responses. Use additional sheets if necessary.

**"Continuation of Answer to Question #12"**

THE BOTTOM LINE AS TO WHAT THIS SUBMISSION IS FOCUSED ON IS THIS. I HAVE BEEN THE SOLE WHISTLEBLOWER SINCE THE MATTER TOOK SHAPE BACK IN 2003. I USED EVERY SKILL I HAD TO INFORM AND ENCOURAGE EVERY LEVEL OF MORGAN STANLEY MANAGEMENT TO ADDRESS THE ISSUES WHICH WERE WELL CLOAKED BY THEM AND ADDITIONALLY BY FINRA, THE STATE OF FLORIDA AND APPARENTLY BY THE FULL COMPLIMENT OF THE NASAA MEMBERS.

I OFFERED NEW INFORMATION TO THE SEC AND MICHAEL FUCHS CONTAINED IN THE OFR JUNE 30, 2009 FLORIDA FILING, WHICH I WAS FINALLY ABLE TO UNCOVER ABOUT MAY 6, 2011 WELL AFTER THE DODD/FRANK ACT HAD BEEN ENACTED BACK IN 2010.

THE VIOLATIONS AND FRAUDULENT SALES OF THE SURPLUS NOTES ARE CLEAR AS ANY COMPLIANCE VIOLATIONS I HAVE HAD TO DEAL WITH DURING MY MANAGER YEARS AT EF HUTTON AND INDUSTRY ARBITRATOR YEARS WITH FINRA. SO, HOW BIG IS THIS PROBLEM AND WHAT AM I REQUESTING?

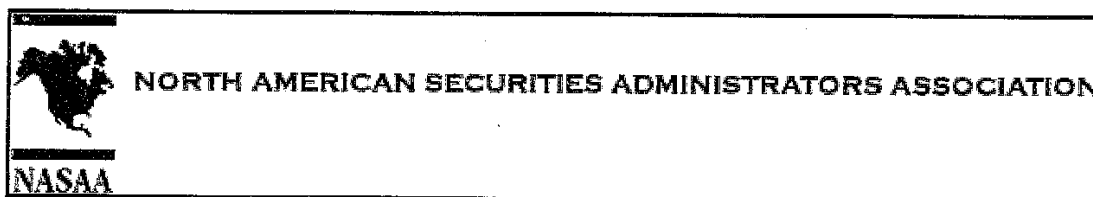
WE CAN SPEAK AT LENGTH BUT BETWEEN THE SURPLUS NOTES AND, THE AT LEAST 8 YEARS OF BLUE SKY VIOLATION SALES ON OTHER SECURITIES, INCLUDING THE INTEREST PENALTIES ASSOCIATED WITH THE VIOLATIONS, THE NUMBER I BELIEVE SHOULD BE WELL LARGER THAN \$750,000,000. I HAVE USED THE 5000+ TRANSACTION LIST PROVIDED TO ME FROM THE OFR IN FLORIDA TO EXTRAPOLATE THE NUMBER OF TRANSACTIONS VIOLATING THE BLUE SKY LAWS IN THE UNITED STATES DURING THIS PERIOD TO BE IN EXCESS OF 30,000.

THEREFORE, THE INVESTOR RECOVERY WILL BE SUBSTANTIAL. I EXPECT THAT YOU COULD USE A FACE TO FACE DISCUSSION WITH ME AND MY ATTORNEY GLENN WEBER, AND I LOOK FORWARD TO DISCUSSING IN DETAIL THE FULL MEASURE OF MISDEEDS BY THOSE WHO HAVE REFRAINED FROM THE COMPLIANCE OF RESCISSIONS WHICH SHOULD HAVE BEEN OFFERED TO INVESTORS A LONG TIME AGO.

I DID THE INVESTIGATING AND AM HANDING IT OVER TO THE AGENCY TO COMPLETE THIS LONG AND DIFFICULT PROCESS OF REVEALING ALL OF THE VIOLATIONS AND MANDATING RECOVERY. THIS HAS BEEN A LONG AND PAINFUL JOURNEY AND WHAT PRIMARILY HAS KEPT ME GOING IS THE CLARITY OF MY FORMER COLLEAGUES REPUTATIONS BEING SMEARED BY THEIR OWN FIRM AND THEY NOT EVEN KNOWING WHAT HAPPENED TO THEM.

THE EVIDENCE IS CLEAR AND THE PATH TO RECOVERY VISABLE. THE SEC IS IN BUSINESS TO PROTECT INVESTORS FROM ISSUES JUST LIKE THIS. see exhibit 1 (represented by all three regulatory agencies).

PLEASE FEEL FREE TO ASK ME TO INTERACT AND ASSIST AS SOON AS YOU CAN.



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## **SEC, NASAA and FINRA Announce New Steps to Help Protect Senior Investors**

Washington, D.C., February 8, 2008 – The Securities and Exchange Commission (SEC), the North American Securities Administrators Association (NASAA), and the Financial Industry Regulatory Authority (FINRA) today announced a new initiative as part of securities regulators' efforts to protect senior investors. The goal of the initiative is to identify effective practices used by financial services firms in dealing with senior investors, and to provide information about these practices publicly.

As regulators have increasingly focused on protecting older investors, many investment advisers and broker-dealer firms are evaluating their current practices in serving seniors. SEC staff, NASAA, and FINRA will solicit input from all interested parties in order to identify strong supervisory, compliance and other practices used by financial services firms serving seniors in the following areas: marketing and advertising to seniors; account opening; product and account review; ongoing review of the relationship and appropriateness of products; discerning and meeting the changing needs of customers as they age; surveillance and compliance reviews; and training for firm employees. The findings will be published so all firms can improve their service to older investors.

SEC Chairman Christopher Cox said, "It's important to maximize the cutting-edge practices being developed by financial services firms to ensure that America's senior investors are being protected and well-served by brokers, investment advisers, and others in the securities industry."

NASAA President Karen Tyler said, "Strong regulation and heightened investor awareness, combined



with effective industry compliance and supervisory systems, are necessary elements in the fight against senior investment fraud. Through this initiative we intend to spotlight successful industry practices from which others may benefit.”

FINRA Chief Executive Officer Mary Schapiro said, “Our senior population is growing at an unprecedented rate, making it critical that the securities industry and its regulators focus on the needs of these investors. This initiative will reinforce and expand recent efforts by FINRA, the SEC and NASAA to make certain the entire industry serves the needs of senior customers.”

It is not expected that there will be a “one-size-fits all” approach to effective practices in these areas, and there may be many different practices that are effective. The goal of the initiative is not to impose new regulatory requirements, but to help firms better meet their current obligations to, as well as more generally to serve, their senior customers.

This effort is one part of the multifaceted coordinated national initiative to protect seniors from investment fraud and sales of unsuitable securities that was announced by SEC Chairman Christopher Cox and NASAA, and FINRA (formerly the NASD and NYSE) in May 2006. The initiative has several components, including targeted examinations, enforcement of the securities laws in cases of fraud against seniors, and active investor education and outreach.

Since the start of this initiative, securities regulators have brought numerous enforcement actions against those who would prey on senior investors, initiated and completed a series of examinations of securities firms that offered “free lunch” sales seminars targeting seniors (report available at <http://www.sec.gov/spotlight/seniors/freelunchreport.pdf>), and sponsored numerous programs and events across the country to educate older investors on how to invest wisely and avoid costly mistakes.

#### FOR MORE INFORMATION:

SEC: John Nester, (202) 551-4120

NASAA: Bob Webster, (202) 737-0900

FINRA: Sarah Bohn, (202) 728-8988

#### 2008 Headlines, Newsroom, Senior News & Alerts

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|                           | Investor Alerts & Tips |                        |                       | Ombudsman           |                      |

#### F. WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Print name

Dana de Windt

Signature

Dana de Windt

Date

1/21/15

#### G. COUNSEL CERTIFICATION (If Applicable—See Instructions)

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the whistleblower, in my records. I further certify that I have obtained the whistleblower's non-waivable consent to provide the Commission with his or her original signed Form TCR upon request in the event that the Commission requests it due to concerns that the whistleblower may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and that I consent to be legally obligated to do so within 7 calendar days of receiving such a request from the Commission.

Signature

[Signature]

Date

1/21/15

# Exhibit “G”

*Glenn J. Webber, P.A.*

101 SE Ocean Blvd., Suite 203, Stuart, FL 34994  
Tel 772-287-5600 Fax 772-781-7561  
www.webberlawfirm.com

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November 14, 2014

Tony Taggart  
Executive Director & Counsel  
Morgan Stanley  
1585 Broadway  
New York, NY 10036

Dear Mr. Taggart:

I have been retained to represent Dana De Windt. I have reviewed the Morgan Stanley Website and Code of Ethics.

Every employee of Morgan Stanley is responsible for preserving and protecting Morgan Stanley's reputation for integrity and excellence. Morgan Stanley employees are expected to do more than follow the applicable rules.

Beginning in January of 2001, Morgan Stanley offered Surplus Notes issued by Lumbermens Mutual Casualty Company. The prospectus indicates that the notes were offered to qualified institutional buyers and to a limited number of institutional accredited investors. The notes were not registered in the U.S. Securities Act of 1933. There was no active market for the notes before the offering.

In August of 2007, FINRA fined Morgan Stanley \$1,500,000.00 and ordered restitution payments of \$4,600,000.00 to customers whom paid markups as high as 18% for Surplus Notes issued by Kemper Lumbermens. The applicable rules were not followed. The fine failed to address the fact that the notes were marketed as bonds, and that the notes were not registered.

The rescission letter references "operational errors" as the cause for selling unlicensed securities. The acceptance form describes the product as a Mutual Note, not a Surplus Note.

Morgan Stanley made restitution payments to 414 investors. How many customers purchased the notes? What efforts were made to advise customers of the rescission offer? How did those efforts compare with the communication efforts utilized in selling the notes?

The notes were marketed as bonds. In fact, as Surplus Notes, they were subordinated to all policyholder liabilities, and interest and principal payments could be made only with the prior approval of regulators after a determination that the company's

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Tony Taggart  
November 14, 2014  
page 2

financial condition was sufficient to make the payment.

- Was this communicated to prospective purchasers?
- What was done to preserve and protect Morgan Stanley's reputation for integrity and excellence with this offering?
- Is the information contained within the prospectus accurate?
- Did Morgan Stanley make any untrue statements of material fact in marketing the notes?
- Do the notes meet the definition of bonds?
- If not, why wasn't this communicated to prospective investors?
- How many investors purchased the notes?
- How many of the investors received actual notice of the rescission offer?
- How much was raised in the offering of the notes?
- How much was refunded?
- Why didn't Morgan Stanley simply refund the funds into the investor accounts?
- How many non-institutional buyers purchased the notes?
- Were the notes registered with any state?

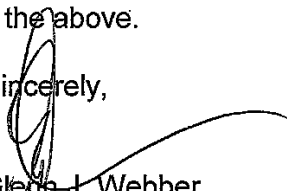
Morgan Stanley's Code Of Ethics and Business Conduct establish its commitment to integrity and high ethical standards in all that it does. It includes acting in the best interest of its clients by dealing fairly and honestly. The company pledges not to take advantage of anyone through manipulation, concealment, misrepresentation of material facts, or other unfair dealing or practices. The code recognizes the company's legal responsibility to provide accurate and complete information to the investing public.

Tony Taggert  
November 14, 2014  
page 3

In marketing the unregistered notes as bonds, Morgan Stanley missed the mark in acting with integrity and high ethical standards by not dealing with clients fairly and honestly, and in misrepresenting material facts.

Please contact me to discuss all of the above.

Sincerely,



Glenn J. Webber  
For the Firm

GJW/ts

# Exhibit “H”

*Glenn J. Webber, P.A.*

101 East Ocean Blvd., Suite 203, Stuart, FL 34994

Tel 772-287-5600 Fax 772-781-7561

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January 21, 2015

Susan Merrill  
Executive Vice President/ Chief of Enforcement  
FINRA  
1735 K Street  
Washington, DC 20006

Dear Ms. Merrill:

According to its website, "FINRA works every day to insure that every investor receives the basic protection they deserve." Its mission is to protect the investor from fraud and bad practices. Security product advertising is to be truthful and not misleading. Investors are to receive complete product disclosure, before they purchase.

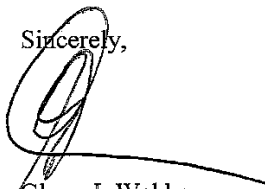
In 2001, Morgan Stanley began to market Kemper Lumbermen Surplus notes. The surplus notes were marketed as bonds, even though it was "unsecured and subordinated to all present and future indebtedness" and was not part of the legal liabilities of Lumbermens. In October of 2007, FINRA fined Morgan Stanley DW \$1,500,000.00 and ordered restitution of \$4,600,000.00+ for rule violations in the sale of corporate bonds to retail customers at excessive prices. Excessive mark ups were reported at 2,800+ transactions.

Morgan Stanley mailed rescission notices to Florida investors. The notice afforded only a 30 day opportunity for rescission. The notices were sent by regular mail. To our knowledge, no follow-up investigation was completed, and no further efforts were utilized to notify investors.

I have been advised that NASAA and Morgan Stanley subsequently reached an agreement for an additional settlement of \$8,500,000.00 involving the same securities.

As a result, investors initially received misleading information characterizing the notes as bonds. Complete pre-purchase product disclosure was not provided. When a rescission remedy was finally offered, Morgan Stanley was not policed. The notice efforts were incomplete, at best. As a result, the majority of the purchasers were not notified of the deceptive practices or of their opportunity to seek a rescission.

Sincerely,



Glenn J. Webber  
For the Firm

GJW/hg



## Exhibit “I”

*Glenn J. Webster, P.C.F.*

101 East Ocean Blvd., Suite 203, Stuart, FL 34994

Tel 772-287-5600

Fax 772-781-7561

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November 14, 2014

Mr. Michael Banyas  
Ms. Pamela Epping  
State of Florida  
Office Of Financial Regulation  
200 East Gaines Street  
Tallahassee, FL 32399

Re: Dana De Windt

Dear Mr. Banyas and Ms. Epping:

I am submitting this letter as it relates to the sale of Kemper Lumbermen Surplus Notes by Morgan Stanley.

The Office Of Financial Regulation was created to protect citizens of Florida, and to promote a safe and sound financial marketplace. Florida's Investor Protection Act was enacted to enhance the state's rights to pursue, enforce and regulate securities fraud.

The Court Of Appeals in California has recognized that Congress intended to allow states to police the conduct of the selling of securities in their states, even if the offering itself was not subject to state review or approval. See *Capital Research v. Brown*, 147 Cal. App 4th 58, 53 Cal. Rptr 3d 770 ( Cal. App. 2007).

Beginning in January of 2001, Morgan Stanley began representing to brokers and clients that Kemper Lumbermen Surplus Notes were, in fact, bonds. Morgan Stanley was the only firm involved in the pricing and marketing of the "notes" through 2003. In reality, the "notes" were unsecured and subordinated to all present and future indebtedness, and not part of the legal liabilities of Lumbermen's. The notes were rated "junk" by all four rating agencies.

The prospectus for the notes indicate that they were offered to qualified institutional buyers, and to a limited number of institutional accredited investors. The notes were not registered under the U.S. Securities Act of 1933. There was no market for the notes before the offering. They were not listed on any trading system or in any exchange.

Brokerage statements and trade confirmations for the Kemper Lumbermen Surplus Notes do not include a proper description of the security. Additional securities sold for over eight years in violation of Blue Sky Laws.

Michael Banyas  
Pamela Epping  
November 14, 2014  
page 2

Florida Statute 517.301 makes it unlawful for a person to employ any device to defraud, to obtain money by means of an untrue statement of a material fact, to engage in any transaction which operates as fraud or deceit upon a person.

Florida Statute 517.191 authorizes the state to apply to the court for an Order directing a defendant to make restitution of those sums obtained in violation of Chapter 517.

On October 1, 2008 Morgan Stanley made a rescission offer. In their communication, Morgan Stanley reported that the sales of the unlicensed securities was due to "operational errors." The acceptance form described the product as a mutual note, not a surplus note.

Morgan Stanley made restitution of \$8,460,966.52 to 414 investors of the Surplus Notes. However, the rescission offers were made by regular mail only.

In light of Chapter 517 several questions come to mind:

- How many investors purchased the notes?
- How many Florida investors purchased the notes?
- What efforts were made to ensure that all purchasers received notice of the rescission offer?
- What efforts were made to ensure that all Florida purchasers received notice of the rescission offer?
- How did the communication methods utilized in the rescission offer compare with the communication methods utilized with sales efforts?
- Was the prospectus obtained?
- Is the information contained in the prospectus accurate?
- Did Morgan Stanley make any untrue statements of material fact in marketing the notes?

Michael Banyas  
Pamela Epping  
November 14, 2014  
page 3

- Why wasn't Morgan Stanley simply required to refund the payments to the investor accounts?
- Were the notes registered with the State of Florida?
- How many Florida investors received actual notice of the rescission offer?
- How many Florida investors are aware that Morgan Stanley marked unregistered notes as bonds?

I have enclosed excerpts from the prospectus for the Surplus Notes. Please call me to discuss all of the above.

Sincerely,



Glenn J. Webber  
For the Firm

GJW/ts  
Enclosures

STYLED13.BST:89 BOC0000215 Print V5.18A 100 MERGE GRAPHIC  
 Seq: 1 Free lead 740Mpolpts, Next lead 00, Vprint J1:1  
 LUMBERMENS BOWNE OF CHICAGO (312) 767-9790

JB: Z38422 PN: 001.00.00.00 SN: 1X <SQ>  
 14-MAR-2003 20:09 NEXT PCN: 002.00.00.00 — Page/graphics valid (01/16/2003 13:51) — Color: N

CONFIDENTIAL

Kemper

**Lumbermens Mutual Casualty Company**  
**\$200,000,000 8.30% Surplus Notes due December 1, 2037**  
**\$100,000,000 8.45% Surplus Notes due December 1, 2097**

Interest on the 8.30% Surplus Notes due December 1, 2037 (the "40-Year Notes") of Lumbermens Mutual Casualty Company ("Lumbermens") and the 8.45% Surplus Notes due December 1, 2097 (the "100-Year Notes," and together with the 40-Year Notes, the "Notes") is scheduled to be paid on June 1 and December 1 of each year, commencing June 1, 1998. The maturity of the 40-Year Notes may not be shortened and the 40-Year Notes may not be redeemed at the option of Lumbermens or any holder of the 40-Year Notes. Upon the occurrence and during the continuation of a Tax Event (as defined in "Description of the Notes—Conditional Right to Shorten Maturity: Redemption"), Lumbermens has the right, if certain conditions are met, to shorten the maturity of the 100-Year Notes. In addition, upon the occurrence and during the continuation of a Tax Event, Lumbermens has the right, if certain conditions are met, to redeem the 100-Year Notes in whole (but not in part) within 90 days following the occurrence of such Tax Event, subject to the prior written approval of the Director (as defined below). Any such redemption shall be at a price equal to the Make-Plus Amount (as defined in "Description of the Notes—Conditional Right to Shorten Maturity: Redemption") plus accrued and unpaid interest thereon to the redemption date. The Notes are not entitled to a sinking fund. See "Description of the Notes—Conditional Right to Shorten Maturity: Redemption."

The 40-Year Notes and the 100-Year Notes are unsecured and subordinated to all present and future indebtedness, Policy Claims and Prior Claims (each as defined in "Description of the Notes—Subordination") of Lumbermens and rank *pari passu* with each other, with the 8.15% Surplus Notes due July 1, 2026 of Lumbermens (the "1998 Surplus Notes"), with any other future surplus notes of Lumbermens and with any other similarly subordinated obligations. The Director (the "Director") of the Department of Insurance of the State of Illinois (the "Department") has approved the issuance of the Notes and has determined that, for the statutory accounting purposes, the Notes are not part of the legal liabilities of Lumbermens. Such approval by the Director is hereinafter referred to as the "Approval." Each payment of interest on and repayment of principal of the Notes, as well as any payments in connection with the redemption of the 100-Year Notes upon a Tax Event, may be made only with the prior approval of the Director, which approval will only be granted if, in the judgment of the Director, the financial condition of Lumbermens warrants the making of such payments and the amount of such payment. In addition, pursuant to the Approval, any payment of interest on or repayment of principal of the Notes will reduce the Surplus of Lumbermens. See "Investment Considerations—Restrictions on Payment" and "Description of the Notes—Restrictions on Payment."

The Notes are being offered to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and to a limited number of institutional accredited investors within the meaning of Rule 501 under the Securities Act. Notes sold to qualified institutional buyers will be represented by global Notes in definitive, fully registered form, without interest coupons, deposited with a custodian for and registered in the name of a nominee of The Depository Trust Company ("DTC") in New York, New York. Notes sold to institutional accredited investors will be issued in certificated, fully registered form without interest coupons. Notes offered hereby will be issued in minimum denominations of \$1,000 and integral multiples thereof (subject to a minimum initial purchase requirement of \$100,000 for Notes sold other than in reliance on Rule 144A). See "Description of the Notes."

Certain insurance and other terms, unless otherwise defined herein, shall have the meanings ascribed to them in the "Glossary."

See "Investment Considerations" for a discussion of certain factors that should be considered in connection with an investment in the Notes offered hereby.

Offering Price:  
 40-Year Notes: 99.7115% plus accrued interest, if any, from November 21, 1997.  
 100-Year Notes: 99.7125% plus accrued interest, if any, from November 21, 1997.

THE NOTES HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT AND ARE BEING OFFERED AND SOLD IN THE UNITED STATES ONLY TO QUALIFIED INSTITUTIONAL BUYERS IN RELIANCE ON RULE 144A AND TO INSTITUTIONAL INVESTORS THAT ARE ACCREDITED INVESTORS WITHIN THE MEANING OF RULE 501 UNDER THE SECURITIES ACT. PROSPECTIVE PURCHASERS THAT ARE QUALIFIED INSTITUTIONAL BUYERS ARE HEREBY NOTIFIED THAT THE SELLER OF THE NOTES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A. THE NOTES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED UNDER "NOTICE TO INVESTORS."

The Notes are offered severally by the Initial Purchasers named below, subject to receipt and acceptance by them and subject to their right to reject any order in whole or in part. It is expected that the Notes will be ready for delivery in certificated form, or in book-entry form through the facilities of DTC, in New York, New York on or about November 21, 1997, against payment therefore in immediately available funds.

**Goldman, Sachs & Co.**

**Lehman Brothers**

The date of this Offering Circular is November 18, 1997

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LUMBERMENS

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**NOTICE TO INVESTORS**

*Because of the following restrictions, purchasers of the Notes are advised to consult legal counsel prior to making any reoffer, resale, pledge or other transfer of the Notes.*

Each purchaser of the Notes offered hereby will be deemed to have represented and agreed as follows (terms used herein that are defined in Rule 144A ("Rule 144A"), Regulation D ("Regulation D") or Regulation S ("Regulation S") under the Securities Act are used herein as therein defined):

(1) The purchaser either (a) (i) is a qualified institutional buyer, (ii) is aware that the sale of the Notes to it is being made in reliance on Rule 144A and (iii) is acquiring such Notes for its own account or for the account of a qualified institutional buyer or (b) (i) is an institutional investor that is an accredited investor, (ii) is acquiring the Notes being sold to it for its own account and (iii) is not acquiring such Notes with a view to resale or distribution thereof other than in accordance with the restrictions set forth below.

(2) The purchaser understands that the Notes have not been registered under the Securities Act and may not be offered, resold, pledged or otherwise transferred by such purchaser except (a) (i) to a person who such purchaser reasonably believes is a qualified institutional buyer acquiring for its own account or for the account of a qualified institutional buyer in a transaction meeting the requirements of Rule 144A, (ii) in an offshore transaction complying with Rule 903 or Rule 904 of Regulation S or (iii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available) and (b) in accordance with all applicable securities laws of the states of the United States and other jurisdictions. Securities owned by an initial investor that is not a qualified institutional buyer may not be held in book-entry form and may not be transferred without certification that the transfer complies with the foregoing restrictions, as provided in the Fiscal Agency Agreement between the issuer and Harris Trust and Savings Bank, as Fiscal Agent.

(3) The Notes will bear a legend to the following effect, unless Lumbermens determines otherwise in compliance with applicable law:

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) BY THE INITIAL INVESTOR, (1) TO A PERSON WHO THE TRANSFEROR REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT ACQUIRING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT OR (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) AND (B) BY SUBSEQUENT INVESTORS AS SET FORTH IN (A) ABOVE OR TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) AND, IN EACH CASE (A) AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS. SECURITIES OWNED BY AN INITIAL INVESTOR THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER MAY NOT BE HELD IN BOOK-ENTRY FORM AND MAY NOT BE TRANSFERRED WITHOUT CERTIFICATION THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, AS PROVIDED IN THE FISCAL AGENCY AGREEMENT BETWEEN THE ISSUER AND HARRIS TRUST AND SAVINGS BANK, AS FISCAL AGENT."

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LUMBERMENS

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**Ratings**

Lumbermens' claims-paying ability is rated A+ (Good) by Standard & Poor's Corporation ("S&P") and its financial strength is rated A2 (Good) by Moody's Investors Service ("Moody's") and A (Excellent) by A.M. Best Company, Inc. ("A.M. Best"). On April 30, 1996, S&P downgraded the Kemper National Insurance Companies, including Lumbermens, to A+ from AA- and placed the rating on "CreditWatch" with negative implications. On June 7, 1996, Moody's downgraded the Kemper National Insurance Companies, including Lumbermens, to A2 from A1 and announced the rating outlook is stable. See "Investment Considerations—Ratings" and "Business—Ratings."

On June 6, 1996, S&P announced it has assigned an A- rating to the Notes. S&P also announced that, pending the completion of the offering of the Notes, this rating will remain on "CreditWatch" and, when this rating is removed from "CreditWatch", the outlook will be stable.

**Surplus Notes**

The Notes will constitute subordinated debt obligations of Lumbermens and are of the type generally referred to in the insurance industry as "surplus notes." In Illinois, there is no statute that specifically authorizes the issuance of the Notes offered hereby or addresses their accounting treatment or repayment terms, although the Illinois insurance laws do provide for the issuance by mutual and stock companies of instruments similar to the Notes. Thus, the Notes are being issued pursuant to the general borrowing power available to mutual insurance companies under Illinois law and in accordance with the Approval. Proceeds of the issuance of the Notes in the amount of \$400 million, less costs of issuance of the Notes, will be recorded by Lumbermens as additional admitted assets and Surplus. As a result of contemporaneous environmental and asbestos reserve additions at Lumbermens, Kemper Re and AMICO totaling approximately \$550 million and other reserve-related actions, the cumulative effect of the offering and such actions will be a net reduction in Surplus of approximately \$225 million from March 31, 1996 levels. See "Capitalization of Lumbermens" and "Use of Proceeds."

The Notes will be issued pursuant to a Fiscal Agency Agreement, to be dated as of June 24, 1996 (the "Fiscal Agency Agreement"), between Lumbermens and Harris Trust and Savings Bank, as Fiscal Agent (the "Fiscal Agent"). Each payment of interest on and repayment of principal of the Notes is subject to the prior approval of the Director, which approval will only be granted if, in the judgment of the Director, the financial condition of Lumbermens warrants the making of such payment and Lumbermens' "Surplus as regards policyholders" (line 25 of the "Liabilities, Surplus and Other Funds" page of Lumbermens' annual statements and quarterly statements filed with the Department, referred to herein as "Surplus") reflects sufficient funds to cover the amount of such payment, and there can be no assurance any such payments will be made. At March 31, 1996, Lumbermens' Surplus was \$1,740.4 million. The funds available to make payments on the Notes on any given date will be determined by the Director and may be limited because, among other things, Lumbermens is subject to various requirements under Illinois insurance laws affecting the availability of surplus, including minimum surplus requirements and risk-based capital standards specifying minimum capital levels. See "Investment Considerations—Restrictions on Payment."

For statutory accounting purposes, Lumbermens will not accrue any liability for payment of interest or repayment of principal before obtaining the Director's approval for payment. The Director will have broad discretion in determining whether to allow payments to be made on the Notes. There are no guidelines or interpretations as to the extent of the Director's discretion in determining whether the financial condition of Lumbermens warrants the making of such payments. See "Investment Considerations—Restrictions on Payment" and "Description of the Notes—Restrictions on Payment."

writing losses in each of the years in the five-year period ended December 31, 1996, Lumbermens has reported operating profits. Accordingly, any significant decline in investment income or the recognition of capital losses could potentially have an adverse effect on Lumbermens' results of operations.

#### Accounting Treatment of Surplus Notes for Insurance Company Investors

The NAIC accounting procedures for surplus notes and any further proposals as to the RBC and AVR treatment of surplus notes (if adopted), or other similar regulatory developments, may reduce the attractiveness of the Notes as an investment for insurance companies, and, accordingly, may have an adverse effect on the liquidity and pricing of the Notes in any secondary market for the Notes. Insurance company investors are advised to consult their own advisors regarding the accounting treatment of an investment in the Notes.

#### Lack of Public Market and Restrictions on Transfer of the Notes

Before this offering, there has been no market for either series of Notes. The Notes are not and will not be registered under the Securities Act and are subject to certain restrictions on transfer. See "Notice to Investors." There can be no assurance that an active market for either series of Notes will develop. Moreover, even if a market for a series of Notes does develop, such Notes could trade at a substantial discount from their face amount. If a market for one or both series of Notes does not develop, purchasers may be unable to resell such Notes for an extended period of time, if at all.

Directly  
indirectly



Additional competition, including alternative forms of risk protection, may emerge from other financial institutions, such as banks and savings and loan associations. Proposed federal legislation may also permit bank holding companies to be affiliated with insurance companies, which could increase competition for insurance business.

#### Ratings

Claims-paying ability and financial strength ratings have become an increasingly important factor in establishing the competitive position of insurance companies. This is especially true for companies, such as Lumbermens and the other Pool Companies, each of which deals with large national accounts, as well as Kemper Re. Each of the rating agencies reviews its ratings periodically, and there can be no assurance current ratings will be maintained in the future. Claims-paying ability and financial strength ratings are based upon factors relevant to policyholders and are not directed toward protection of investors. A significant downgrade in such ratings could have a material adverse effect on the results of operations of Lumbermens, the other Pool Companies and Kemper Re. Lumbermens' claims-paying ability is rated A+ (Good) by S&P and its financial strength is rated A2 (Good) by Moody's and A (Excellent) by A.M. Best.

On September 3, 1997, S&P revised Lumbermens' rating outlook to negative from stable reflecting S&P's belief Lumbermens will be challenged to meet its operating performance targets given the increased competition in its major lines of business. At the same time S&P revised Kemper Re's rating outlook to positive from stable. See "Business—Ratings" and "Business—Kemper Re."

#### Fluctuation of Insurance Industry Results

As a writer of commercial and personal property-casualty insurance, Lumbermens' operations are affected, among other things, by (i) the number of claims reported ("frequency"), which is influenced in part by economic conditions, social trends and political climates; (ii) the cost of settling claims ("severity"), which is influenced in part by inflation (particularly in medical, automobile and building repair costs) and by court decisions expanding the extent and amount of compensation for injury and damages; (iii) the degree to which existing policyholders renew

significant  
downgrade

*Zurück zur  
Schrift*

Form and Denomination .....

The Notes are being offered to qualified institutional buyers in reliance on Rule 144A under the Securities Act, and to a limited number of institutional accredited investors within the meaning of Rule 501 under the Securities Act. Notes sold to qualified institutional buyers will be represented by global Notes in definitive, fully registered form without interest coupons, initially deposited with DTC or a custodian for DTC and registered in the name of DTC or a nominee of DTC in New York, New York. Beneficial interests in such global Notes will trade in DTC's Same Day Funds Settlement System, and secondary market trading activity for the Notes will therefore settle in immediately available funds. Such interests will be shown only on, and transfers thereof will be effected only through, records maintained by DTC and its participants and such interests generally may not be exchanged for certificated Notes except in certain limited circumstances. Notes sold to institutional accredited investors will be issued in certificated, fully registered form without interest coupons. Notes will be issued in minimum denominations of \$1,000 and integral multiples thereof (subject to an initial purchase requirement of \$100,000 for Notes sold other than in reliance on Rule 144A). See "Description of the Notes." The Notes have not been registered under the Securities Act and are subject to restrictions on transfer. See "Notice to Investors."

The Notes will not be listed on any trading system or on any exchange.

## Listing .....

## Summary Statutory Financial Information

The following summary financial information for each of the years in the five-year period ended