

applicant and there was no desire to market applicant further. No securityholder authorization was obtained in connection with applicant's liquidation because no securityholder vote was required by law.

4. Legal, accounting, deregistration, termination, and other expenses incurred in connection with applicant's liquidation were paid by the Adviser. The Adviser's \$100 interest in applicant was used to pay expenses relating to the winding up of applicant's affairs. In addition, on August 2, 1993, the Adviser paid in full applicant's unamortized organizational expenses of \$10,415.

5. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18475 Filed 7-26-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21222; 812-7895]

Applications, Hearings, Determinations, etc.: Morgan Stanley & Co., Inc. et al.

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Morgan Stanley & Co. Incorporated ("Morgan Stanley"), Technology Equity and Income Trust (the "Trust"), and any future closed-end investment company underwritten by Morgan Stanley (together with the Trust, the "Trusts") that invests in Listed Securities (as defined below), is structured in a manner identical in all material respects to the Trust, and is authorized to write call options on its portfolio of securities.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit Morgan Stanley, the principal underwriter for the Trusts, and other principal underwriters of the Trusts, to purchase call options on securities held by the Trusts.

FILING DATES: The application was filed on March 30, 1992, and amend on June

30, 1992, September 28, 1992, February 9, 1993, August 23, 1994, and March 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Technology Equity and Income Trust, c/o The Bank of New York, 101 Barclay Street, 21st Floor West, New York, New York 10286; Morgan Stanley & Co. Incorporated, 1251 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts will be registered, non-diversified, closed-end management investment companies. The Trusts will hold a portfolio of securities subject to call options and stripped U.S. Treasury securities ("Treasury Securities"). The portfolio securities must be registered under section 12 of the Securities Exchange Act of 1934, and listed on the New York Stock Exchange, the American Stock Exchange (other than Emerging Company Marketplace securities ("ECM Securities")), or traded on the NASDAQ-National Market System (provided the NASDAQ-NMS securities satisfy the listing requirements of the New York Stock Exchange or the American Stock Exchange (other than the listing requirements applicable to ECM Securities)) (Collectively, the "Listed Securities"). Interests in the Trusts will be called STEP Units. The Trusts' objectives will be to provide current quarterly cash distributions from the

proceeds of the Treasury Securities and regular cash dividends on the Listed Securities, and the potential for capital appreciation up to a disclosed maximum on the Listed Securities. The final composition of a Trust's portfolio will be determined at the close of trading on the way prior to the commencement of the offering of STEP Units (the "Determination Date"). The Trusts will acquire their portfolios in the manner described below.

2. Each Trust will invest in Listed Securities using the gross proceeds received from the sale of its STEP Units to the underwriters. The trustees of each Trust (the "Trustees"), with the advice of an investment adviser (the "Investment Adviser"), will select the specific Listed Securities for the respective Trust at least one business day prior to the Determination Date. At the opening of the market on the Determination Date, the Trustees will enter market buy orders to purchase the Listed Securities with unaffiliated brokers or dealers selected by the Trustees with the advice of the Trust's Investment Adviser.

3. Immediately after the purchase of the Listed Securities, the Trusts will sell a single call option on each issue of Listed Securities (each option is referred to as a "Contract"). Each Trust will invest the net proceeds from the sale of the Contracts in Treasury Securities which will mature on a quarterly basis over the life of the Trust. Unitholders will receive quarterly distributions which consist of the proceeds received from the Treasury Securities as they mature and regular cash dividends on the Listed Securities. The expenses of a Trust, including any underwriting commissions on the sale of STEP Units, will be deducted from the proceeds from the sale of its Contracts.

4. Each Contract will grant the Contract holder the right to purchase the Listed Securities underlying the Contract at a fixed price (the "Exercise Price") on a fixed date (the "Expiration Date"). The Exercise Price for each Contract will range between 30% and 50% in excess of the current market price of the Listed Securities on the Determination Date. The Expiration Date will be no more than 3½ years after issuance.

5. The Contracts also will provide that the Exercise Price for each Listed Security be reduced dollar-for-dollar by the per share amount of (a) any Extraordinary Cash Dividend¹ and (b)

¹ An "Extraordinary Cash Dividend" will be defined, with respect to any Listed Security, as a dividend which exceeds the immediately preceding non-Extraordinary Cash Dividend on the Listed

any non-cash dividend or non-cash distribution on a Listed Security that is taxable to security holders under federal income tax laws valued as of the record date for the dividend or distribution. If on or prior to the Expiration Date the Exercise Price for a Listed Security has been reduced to zero or below, the Contract holder shall be deemed to have exercised its purchase rights under the Contract on that date. The Trust will deliver to the Contract holder the Listed Security and any Extraordinary Cash Dividend or non-cash dividend that caused the Exercise Price to fall below zero.

6. If on or prior to the Expiration Date, (a) a merger or consolidation of a Listed Security's issuer is consummated and the issuer is not the surviving party, or (b) a successful tender or exchange offer is made for at least a majority interest in the issuer of a Listed Security, the Contract holder for that Listed Security will have the right for five business days, beginning on the date of consummation of the merger or consolidation or the date the Security is accepted for payment under the tender or exchange offer, to accelerate its purchase rights under the Contract. After this period, the rights of the Contract holder will expire.

7. The Contracts will be sold to major broker/dealers and/or financial institutions (which may include Morgan Stanley or other principal underwriters of the Trusts) through a bidding procedure described in detail Conditions 1 and 2 below. Because all the terms of the Contracts will be set (*i.e.*, Expiration Date, Exercise Price (as a percentage of the then-current price of the underlying Listed Security), termination provisions, adjustments for extraordinary events, etc.), bidding on a Contract will consist solely of the submission of a bid price expressed as a percentage of the then-current price of the underlying security. Each bidder will be permitted to bid for all of the Contracts on an aggregate basis and/or submit a separate bid on each. Subject to certain conditions described below, the Trustees will sell the Contracts in the manner best calculated to maximize the net proceeds to the Trust.

8. The administration and operation of the Trusts will be overseen by three Trustees, none of whom are interested persons as defined in section 2(a)(19) of the Act. A bank having the qualifications described in section 26(a) of the Act will perform the daily

administration of the Trusts (the "Administrator"). In addition, the Administrator will act as the Trusts' custodian, paying agent, registrar, and transfer agent. The Administrator will not be a principal underwriter or affiliated person of the Trusts, or an affiliated person of a principal underwriter or affiliated person.

9. The Investment Adviser for each Trust will be unaffiliated with Morgan Stanley and any other principal underwriter of the Trust, will be an established entity, registered as an investment adviser under the Investment Advisers Act of 1940 and will have significant assets under its management. The Investment Adviser will advise the Trustees in connection with the composition and acquisition of the initial portfolio of the Trusts, and thereafter, the Trustees may consult with the Investment Adviser concerning the disposal of the Listed Securities in the instances described below where the Trustees have the discretion to dispose of them.

10. The Trusts will terminate on or shortly after the Expiration Date. Each Trust's prospectus will specify that the Trust intends to hold each Listed Security and any distributions thereon until the Expiration Date. However, each Trust will be required to distribute cash or dispose of any securities it receives and distribute the proceeds to unitholders if (a) an issuer of a Listed Security pays a non-cash dividend or makes a non-cash distribution that is taxable to its security holders under federal income tax laws, (b) an issuer of a Listed Security is acquired, whether in a cash merger or a merger involving the distribution of securities, or is a party to a consolidation where it is not the surviving party, (c) there is a tender or exchange offer for at least a majority interest in an issuer of a Listed Security; however, if the offer is unsuccessful, the Trust will withdraw the Listed Securities it has previously tendered, and if only a portion of the Trust's shares are purchased, the Trust will be required to sell the balance of its shares in the market, or (d) an issuer of a Listed Security declares a cash dividend or makes a cash distribution. In addition, any time security holders may elect cash consideration, the Trust will be required to elect to receive cash and distribute it to unitholders. Each Trust will retain any securities or property obtained in a stock split, reverse stock split, or tax-free non-cash dividend or distribution declared or made by any issuer of a Listed Security. Any retained securities or property will, together with the related Listed Security, be subject to

purchase by the holder of the Contract related to that Listed Security.

11. The Trustees may dispose of a Listed Security and distribute the proceeds to unitholders if (a) the Listed Security's market price falls to less than 50% of its market price on the Determination Date, or (b) the issuer of the Listed Security becomes bankrupt, insolvent, or defaults on amounts due on its outstanding securities. In these instances, the Contract holders will have agreed to negotiate in good faith with the Trustees the early termination of the Contracts. Except under the above circumstances, the Contract holders will not have an opportunity to seek to negotiate an early termination of the Contracts.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) exempting them from section 17(a)(2) of the Act to permit Morgan Stanley and other principal underwriters of the Trusts to purchase the Contracts. Section 17(a)(2) of the Act, in part, prohibits an affiliated person of or a principal underwriter for a registered investment company, acting as principal, from purchasing any security or other property from the registered company (except securities of which the seller is the issuer). Since the sale of an option may be viewed as a sale of the underlying security, section 17(a)(2) prohibits the Trusts' principal underwriters from purchasing the Contracts. Section 17(b) of the Act provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The market for the Contracts is the over-the-counter options market. Morgan Stanley believes that it is one of only a small number of firms that are

Security by an amount equal to at least 10% of the closing sale price of the Listed Security on the business day preceding the ex-dividend date for the current dividend.

active and frequent participants within the U.S. over-the-counter market segment that would include the Contracts. Applicants believe that to preclude Morgan Stanley and other principal underwriters of a Trust from bidding for the Contracts may prevent a Trust from receiving the best price because it would exclude the bid of entities who might pay a price somewhat higher than the market price since they had the most to gain from the successful marketing of the Trust, and because there would be a perceived lack of competition if independent bidders are aware that major participants in the over-the-counter options market are excluded from bidding. Applicants assert that the competitive bidding process has a direct effect on the quarterly distributions to unitholders since the amount of Treasury Securities purchased will depend upon the amount of the proceeds received from the sale of the Contracts. Accordingly, applicants submit that providing the Trusts with access to all major dealers is in the best interests of the Trusts, its holders, and is consistent with the general purposes of the Act.

3. Applicants believe that Morgan Stanley's dual role as underwriter and bidder for the Contracts would not give it an advantage in structuring the Contracts or assessing their value. The participants in the over-the-counter options market are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates. These sophisticated institutions employ almost identical valuation models and technology to price options. Prospective bidders will have a copy of a Trust's prospectus and draft of the Contract at least two business days prior to the day the final bids are due. Although the Contracts will not be typical over-the-counter options, they are not of such a customized nature to make it unlikely for other broker/dealers or financial institutions to submit bids. The Contract's form will be similar to other types of call options used in privately negotiated transactions. Since all of the Contracts' terms have been set, other than price, the bidding procedure has been made as simple as possible. Accordingly, the notice period and information provided in the bidding process are sufficient to ensure competitive, bona fide bids.

4. Applicants assert that the bidding procedures to be followed by Morgan Stanley or any other principal underwriter in purchasing the Contracts, as set forth in Applicants'

Conditions below, will be consistent with the standards of sections 17(b) and 6(c). These procedures ensure that the Trusts receive the best price and execution on the sale of the Contracts and ensure against any overreaching on the part of any party concerned.

5. Lastly, each prospectus will fully disclose that the Contracts will be offered by competitive bid and that Morgan Stanley, and to the extent applicable, any other underwriter, will be among the bidders.

Applicants' Conditions

Applicants agree to the following as conditions to the requested order:

1. The Trustees will select prospective bidders on the basis of such factors as having the necessary capital to purchase Contracts, having the ability to appropriately price the Contracts and being a major participant in the over-the-counter options market. The Contracts will be offered by competitive bid to not less than four major broker-dealers and/or financial institutions who are in the business of making bids on over-the-counter options, at least three of whom are not affiliated persons or principal underwriters of a Trust or affiliated persons or a principal underwriter or affiliated person. At least two business days prior to the date and time that final bids are due, the Trustees will contact prospective bidders, indicate when bidding for the Contracts will commence and invite them to bid. The Trustees will supply prospective bidders with a draft invitation to bid summarizing the terms of the Contract, a copy of the Trust's prospectus and a draft of the Contract. On the business day before final binding bids are due, the Trustees will send a formal notice to prospective bidders. The notice will indicate where and at what time final binding bids are due. No bidder, including Morgan Stanley, will have access to any bids until after the Contracts are awarded. Subject to condition 2 below, the Trustees will sell the Contracts in the manner best calculated to maximize net proceeds to the Trust (e.g., on an aggregate or individual basis).

2. No sale of Contracts by a Trust will be made to Morgan Stanley or another principal underwriter unless (a) if Morgan Stanley or another principal underwriter submits separate bids on individual Contracts, the Trustees receive and document for each Contract bid for by Morgan Stanley or the other principal underwriter at least two bona fide bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated

persons of a principal underwriter or affiliated person, and (b) if Morgan Stanley or another principal underwriter submits bids for all of the Contracts on an aggregate basis, the Trustees receive and document for all Contracts in the aggregate at least two bona fide bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated persons of a principal underwriter or affiliated person, and the Trustees determine that either the bid price on an individual Contract or the aggregate bid price, as the case may be, offered by Morgan Stanley or any other underwriter will maximize net proceeds to the Trust. In the event of a tie, the bidders would be permitted to submit one last bid. If there were still a tie following submission of the last bid, the Contracts in question would not be sold to Morgan Stanley or any other principal underwriter.

3. The Administrator, under the supervision of the Trustees, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include the following: (a) The basis upon which the Trustees selected prospective bidders; (b) all bidders contacted; (c) all bidders to whom a bidding form was sent; (d) all bids received; (e) the bidder who was awarded the Contracts; (f) the winning bid prices; and (g) whether the bidders were principal underwriters of the Trust, affiliated persons of the Trust, or affiliated persons of a principal underwriter or affiliated person. All records will be maintained and preserved in the same manner as records required under Rule 31a-1(b)(1) of the Act.

4. Morgan Stanley's legal department, and the legal departments of any parties relying on this order, will prepare guidelines for personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's length relationships.

5. The underwriting allocations will be determined at least one business day prior to the day the Trustees invite financial institutions to bid and will not in any way be based on participation in the bidding process.

6. Morgan Stanley, or any party relying on this order, will not have any involvement with respect to the Trustees' selection of prospective bidders or the bids accepted by the Trustees and will not attempt to influence or control in any way the sale of the Contracts to principal

underwriters aside from placing its own bid for the Contracts.

7. The Trustees of each Trust, including a majority of noninterested Trustees, have or will have approved the Trust's participation in transactions conducted pursuant to the exemption and have or will have determined that such participation by the Trust is in the best interests of the Trust and its unitholders. The minutes of the meeting of the Board of Trustees at which this approval was or will be given reflect or will reflect in detail the reasons for the Trustee's determination.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18473 Filed 7-26-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21224; 811-7806]

MYA Tombstone Fund, Inc.; Notice of Application for Deregistration

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MYA Tombstone Fund, Inc. (formerly MuniYield Arizona Fund, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on June 1, 1995 and amended on July 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT:

Marc Duffy, Senior Attorney, (202) 942-0565, or C. David Messman, Branch Chief, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public References Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company organized as a Maryland corporation. On June 15, 1993, applicant registered under section 8(a) of the Act. On this same date, applicant filed a registration statement under section 8(b) of the Act and the Securities Act of 1933, whereby it registered 2,472,000 shares of its common stock. On July 23, 1993, applicant filed a pre-effective amendment to its registration statement registering an additional 58,000 shares of common stock. The registration statement was declared effective on July 23, 1993, and applicant commenced its initial public offering on that date.

2. On and after August 5, 1993, applicant filed a registration statement and pre-effective amendments thereto (the "AMPS Registration Statement") whereby it registered 347 shares of its auction market preferred stock ("AMPS") with a liquidation preference of \$50,000 per share and an aggregate liquidation preference of \$17,350,000.¹ The AMPS Registration Statement, as amended, was declared effective on August 25, 1993, and applicant commenced its initial public offering on that date.

3. On June 17, 1994, applicant's Board of Directors approved a plan of reorganization whereby MuniYield Arizona Fund II, Inc. ("Arizona II") would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of Arizona II common stock and shares of Arizona II Auction Market Preferred Stock, Series B ("Arizona II AMPS"). Applicant's Board of Directors determined that the reorganization could benefit applicant's shareholders by achieving lower expenses per share of common stock, greater efficiency and flexibility in

portfolio management, and a more liquid trading market.

4. In accordance with rule 17a-8 of the Act, applicant's Board of Directors determined that the sale of applicant's assets to Arizona II was in the best interest of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.²

5. On October 6, 1994, Arizona II filed a registration statement on Form N-14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on January 4, 1995. On or about January 24, 1995, proxy materials were distributed to each of applicant's shareholders of record as of December 14, 1994. At a special meeting held on March 10, 1995, shareholders of applicant approved the reorganization, in accordance with Maryland law.

6. As of the close of business on March 24, 1995, applicant had outstanding 2,519,982 shares of common stock and 694 shares of AMPS. On that date, the net asset value of applicant's common stock was \$12.72 per share and applicant's aggregate net asset value attributable to the common stock was \$32,044,460. Also on that date, the liquidation preference per share of AMPS was \$25,000, and the aggregate liquidation preference of the AMPS was \$17,350,000.

7. Pursuant to the reorganization, on March 27, 1995, applicant transferred securities and cash valued at \$49,394,460 to Arizona II and received in exchange 2,562,282 shares of Arizona II common stock and 694 shares of Arizona II AMPS. Each holder of applicant's common stock received the number of shares of Arizona II common stock received by applicant with a net asset value equal to the net asset value of applicant's common stock owned by such shareholder. Each holder of applicant's AMPS received the number of shares of Arizona II AMPS received by applicant with an aggregate liquidation preference equal to the aggregate liquidation preference of applicant's AMPS owned by such shareholder.

¹ The AMPS are shares of preferred stock sold principally at auction that entitle the holders thereof to receive dividends at a rate that may vary for successive dividend periods. On December 1, 1994, a 2-for-1 stock split of the AMPS was effected thereby increasing to 694 the number of shares of AMPS outstanding. Pursuant to the terms of the stock split, each of the 694 shares of AMPS has a liquidation preference of \$25,000. The aggregate liquidation preference of the AMPS was unchanged by the stock split.

² Applicant and Arizona II may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.