Monday, March 22, 2010

Ms. Allison Brown
Division of Financial Practices
c/o Office of the Secretary
Federal Trade Commission
Sixth and Pennsylvania Avenues, N.W.
Washington, D.C. 20580
Via Electronic Submission and Hand Delivery

Re: Supplemental Submission and Exhibits in Voluntary Response to Questions from Staff of the Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, in Connection with Proposed "Debt Relief" Amendments To The Telemarketing Sales Rule [R411001]

Dear Ms. Brown:

Morgan Drexen, Inc. provides this supplemental submission and accompanying exhibits in response to questions by Commission staff concerning the confidential analytical presentations that accompanied the Company's voluntary submission in 2009 in the above-referenced Rule Making Proceeding. The Company's original exhibits that qualified for confidential treatment remain so characterized in compliance with 16 CFR Section 4.9(c). Additional responses that qualify for confidential treatment are submitted separately to protect trade secrets.

The Company updated non-proprietary information through December 31, 2009 (unless otherwise specified). It herewith submits **Exhibits E-1 through E-15**, all of which should be read *in pari matera* with Morgan Drexen, Inc.'s October 26, 2009 original composite submission [FTC identifier number 543670-00218.pdf], and the explanations in this supplemental submission. To facilitate understanding which of the confidential charts have been modified for re-submission as non-confidential support for the submitter's comments, the following conversion guide is provided:

Public Exhibit C-1 has been updated and is superseded by **Exhibit E-1**

CONFIDENTIAL EXHIBITS	**PUBLIC EXHIBIT NUMBER**
Exhibit A-17	**Exhibit E-2**
Exhibit A-1	**Exhibit E-3**
Exhibit A-15	**Exhibit E-4**
Exhibit A-14	**Exhibit E-5**
Exhibit A-7	**Exhibit E-6**
Exhibit A-9	**Exhibit E-7**
Exhibit A-11	**Exhibit E-8**
Exhibit A-12	**Exhibit E-9**

	***New* Exhibit E-10**
Exhibit A-8	**Exhibit E-11**
Exhibit A-13	**Exhibit E-12**
	***New* Exhibit E-13**
	***New* Exhibit E-14**
	***New* Exhibit E-15**

[Confidential Exhibit A-10 has not been revised.]

I. INTRODUCTION:

Morgan Drexen, Inc. interprets the long list of questions concerning analytical presentations in the confidential charts and graphs previously submitted as intended to clarify these seminal issues:

(1) **How do you define debt settlement program "success"?**

(2) **How do you measure "successful program participation" for consumer clients you service?**

(3) **How well are you performing relative to those measures of "success?"**

(4) **What is the rationale for your Company's fee structure especially as it relates to sound financial practices such as controlling cash flow positions throughout the extensive period of program participation by clients at different stages in the process?** [Commission staff question (3).]

(5) **What is the nature and what are the consequences** (*e.g.*, the reasons for termination, the net savings realized by clients at the time of drop-out, the inability of debt settlement companies to control the precipitating factors, and the financial condition of clients that enroll in the program) **of the "cancellation" process?**

(6) **How are "completion rates" defined?** [Commission staff question (2)(c)(i).]

(7) **How do you determine the net client benefits of fully or partially settling all unsecured debts for which your services were engaged?**

(8) **What percentage of clients settled what percentage of their outstanding debt within various time frames?**

(9) **What factors** (*e.g.*, the specific creditors involved, general financial market conditions, the size and age of the debt, the percent of debt reduction that can be negotiated and accepted, the amount of client savings, the ability and willingness of clients to save, etc.) **influence the achievement of settlements?**

These seminal issues provide a focus to answering questions posed by Commission staff.

II. ANSWERS TO SPECIFIC QUESTIONS BY FTC/BCP STAFF:

QUESTION: **(1)** Exhibit MD #A-1 has a column for active clients and a column for cumulative settlements.

(a) Is the number of active clients cumulative or is does it refer to the number of clients during the month as specified in the bar graph?

ANSWER: The number of clients in Exhibits A-1 and E-3 is cumulative.

(b) If the number of active clients is the number during the specified month, what is the cumulative number of clients (that is, the number that includes all enrolled clients including drop-outs)?

SHORT ANSWER: The number of active clients in confidential Exhibit A-1 is cumulative. The yellow portion of the chart in Exhibit A-12 indicates "drop-outs."

DISCUSSION: The NPRM announced that the proposed amendment to the Telephone Sales Rule ("TSR") "...prohibits requesting or receiving payment of any fee or consideration in advance of obtaining any of three purported services that the Commission determined to be "fundamentally bogus." [NPRN at 41990.]

Clearly, any debt settlement service that charges an advance fee for services that historic data reveals are unlikely to be utilized by a large proportion of clients because they "drop-out" without achieving settlements for reasons under the service provider's control (*e.g.*, deceptively advertised or undocumented claims; insufficient or non-recorded disclaimers; insufficiently trained personnel; insufficient personnel to handle clients; insufficiently supervised personnel; insufficient infrastructure to accommodate a growing base of clients; lack of quality control procedures and personnel to assure compliance obligations; outsourcing services to other entities without performance specifications, documentation of services, or verification of sufficiency of performance; etc.) would be operating in a "fundamentally bogus" manner. For this reason it is important to place the issue of "drop-outs" into appropriate context.

A large "drop-out" rate could be evidence of deceptive pre-sale practices, or lack of post-sale performance, or both. Lack of post-sale practices, if proved, would be unfair, especially if clients pre-pay for services they do not receive because of a flawed business model, service omissions, or commission of crimes.

However, as discussed in more detail below, clients may disengage from services for numerous reasons, including ones that are based on choices that may have little or nothing to do with their service provider. Discerning which is which is crucial. An erroneous assumption that "drop-out" rate predominantly is due to acts, practices, omissions, or structural flaws by debt service providers – *in the absence of a*

preponderance of evidence[1] *of pre-sale misconduct or post-sale lack of performance* – would lead to a "false positive."

A "false positive" would support a ban on advance fees, but at the risk of over-regulating the market and harming consumers. If a significant percentage of clients were to "drop-out" before utilizing services, "likelihood of injury" would be presumed by the Commission, the tacit reasoning being that client "drop-outs" are a proxy for over-selling or under-performing, although such reasoning might be erroneous – especially if the debt settlement services provider is not paid in advance for services the consumer chooses not to use.

Aside from tangible benefits depicted in the analytical presentations, there are numerous intangible benefits that clients receive, and that explains why it is not irrational for clients to disengage from legal services without completing all settlements *even though there is no "fault" or "omission" by a service provider*.

Frankly, not enough emphasis has been given to the incredible intangible benefits conferred by legitimate debt settlement services, which is what spawned the modality as a market-driven alternative to Chapter 13. The intangible benefits are received at intake, continue through the entire engagement, and last beyond the termination of services.

INTANGIBLE BENEFITS NEED TO BE ACKNOWLEDGED

Commissioner J. Thomas Rosch identified two intangible benefits in his remarks before the Annual Credit and Collection News Conference, Carlsbad, California (April 2009). *See*, http://www.ftc.gov/speeches/rosch/090402debtsettlement.pdf:

> 1. "[A] debt settlement firm can advocate on the consumer's behalf, especially in cases where consumers are reluctant, embarrassed, or even afraid, to contact their creditors directly."
>
> 2. "A debt settlement firm… may be able to provide individualized attention to consumers, taking a holistic approach to all of the consumer's unsecured debt owed to several creditors, rather than just the amount owed to a particular creditor."

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[1] *Charlton v. Federal Trade Commission*, 543 F.2d 903, 177 U.S.App.D.C. 418, 1976-1 Trade Cases 60766 (1976) ("[I]n American law a preponderance of the evidence is rock bottom at the factfinding level of civil litigation. [Citation omitted.] Nowhere in our jurisprudence have we discerned acceptance of a standard of proof tolerating "something less than the weight of the evidence [citation omitted])."

A dozen additional intangible benefits include:

3. Most importantly, avoiding having to declare bankruptcy. If a consumer's financial health materially improves as a consequence of a series of successful debt settlements, forestalling bankruptcy, it may facilitate fully paying off one or more cards, thereby ensuring continued personal creditworthiness [possibly with one or more long-standing credit card account(s)] and a more rapid improvement of the consumer's FICO score.

4. Having one entity provide debt settlement services provides simplicity and accountability, which reduces mental anguish than if the near-bankrupt debtor were to attempt to juggle multiple creditor entreaties, demands, and separate harassing telephone calls from multiple points of contact.

5. A debt settlement services provider that works under an attorney's responsibility, with the attorney reviewing the client's file; providing reduced cost, convenient telephonic legal advice; recommending defenses in the event of suit, and possible counter-claims; preparing documents for the client to file and explaining the court process so that the client can appear *pro se* (or filing documents for the client and making an appearance); reviewing each proposed settlement for (1) sufficiency, (2) extinguishment of the debt, and (3) enforceability against the correct credit holder, and approving each such proposed settlement that meets these three criterion, yields piece of mind and avoids having to "go up against a large Company."

6. A debt settlement services provider may be the one caller from who the near-bankrupt client will accept a telephone call (from a telephone that is ringing fairly constantly with creditors hounding the client for payment, or the one person the destitute, depressed, overwhelmed client may call in the event of suicidal thoughts or actions.[2]

[2] Morgan Drexen, Inc. personnel have taken calls from a suicidal client on several occasions, and have contacted "911" in the client's community to send someone to the client's residence to help avoid a suicide.

7. A debt settlement services provider can assist in developing a sustainable budget, provide a telephone contact and a "shoulder to cry on" when the belt tightening hurts; someone to whom the client can ventilate when some persistent creditors choose to maintain harassing telephone calls that stir-up fears, threaten suit, and describe all sorts of bad effects that will occur if they are not promptly paid.[3]

8. A debt settlement services provider can help the head of the household to maintain a sense of dignity and security knowing that he or she has done something to take control of a terrible financial situation.

[3] As partial support for the Commission's rebuttable presumption articulated in the NPRM at 51, fn. 166, reliance was placed on the Sentinel Database. In addition to the analysis set forth in Morgan Drexen, Inc.'s October 23, 2009 voluntary submission, at 48-49, it should be pointed out that, in the Commission's February 2010 report entitled, "Consumer Sentinel Network Data Book for January – December 2009"("Sentinel Data Book") complaints against debt settlement companies do not even appear as a separate category in the top 30 categorized areas of the data base [pgs. 6 and 75]; of the 1.3 'unverified" million consumer complaints received in 2009 [pg. 2] only *1.01% of all complaints* relate to "Debt Management and Credit Counseling," which is the closest category to debt settlement [Appendix B2 "Complaint Categories" chart, pg. 73]. In fact, the Commission's explanation of what that minor category covers does not even include "debt settlement" (or the NPRM's preferred term, "Debt Relief"). Clearly, consumer complaints against debt settlement services would be some insignificant fraction of less than 1% of *all* consumer complaints received by the FTC in 2009. Moreover, an analysis of *every* State reported in the Data Book reveals that debt settlement complaints must be so insignificant they are not even mentioned in *any* state [pgs 18 through 68], whereas **complaints against debt collectors constitutes the number one category of complaints in 47 states** [Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming [pgs. 18 to 68**], and it constitutes the second highest number of overall complaints in the entire Sentinel Data Book** [pg 6]. In fact, neither "debt settlement services nor "debt relief services" even are mentioned at all, whereas complaints against debt collectors ("Third Party and Creditor Debt Collection") comprise 9% of the Sentinel Data Base [pg. 3] and that percentage is much higher in a many states. Based on the FTC's own Sentinel Data Book there appears to be little if any public interest that would justify a Rule Making proceeding to amend the TSR to cover legitimate debt settlement service providers such as lawyers and the paralegals and paraprofessionals for whom the lawyer is "responsible" under applicable State "Rules of Professional Responsibility," much less lawful authority to do so.

9. A debt settlement services provider can help the head of a household (or a spouse) who suffers from physically painful, mentally debilitating, severe depression due to the significantly deteriorated financial situation by: getting the financial situation under control, setting in place a plan that removes stress, providing the ability to focus on rehabilitation and ultimately mental wellness.

10. A debt settlement services provider can empower a formerly near-bankrupt client whose financial circumstances are improving during the continuum from poverty to solvency without crushing debt, so that there is less and less worry about credit card debt and discretionary power to reinvest in home maintenance repairs, paint, upgrades to plumbing, landscape upkeep, etc. – all of which may have been left unattended due to the extreme financial circumstances.

11. A debt settlement services provider can enable the client to maintain the outward appearance of a home, which adds self-respect, portrays stability for neighbors, and may help sell a home if it is necessary to move because of inability to pay a mortgage (even a modified mortgage).

12. A debt settlement services provider can help a near-bankrupt client overcome otherwise collateral damage to the family, by retaining or attaining the ability for children to attend outside school functions that require money, such as field trips and social functions.

13. A debt settlement services provider can enable a client whose circumstances begin to improve, to provide added education (or tutoring) for his or her children; provide books for college (because even some scholarships don't pay for books or living expenses); or to contribute to a retirement plan.

14. A debt settlement services provider can enable a client to stick to a budget, build a fund of money to pay debt settlements, and achieve a better financial situation so that completion of all settlements might not be necessary, or even preferable in some circumstances.

The preceding list of "intangible benefits" reinforces and enhances the analytical presentation that accompanies and is discussed in this supplemental submission. The existence of numerous intangible benefits should be deemed further proof of performance and elements in ultimate "success" such that "drop-outs" may not signify a performance failure, but rather a true success – just the opposite of what the first question evidently seeks to imply.

Moreover, if there is an inverse relationship between intangible benefits and the amount of debt, a poor person with a credit card and seemingly crushing $2,500 in debt would receive little tangible benefit from the settlement and primarily would bear the disproportionate expense of engaging a debt settlement provider primarily (or solely) for the intangible benefits [especially piece of mind].

Simply because intangible benefits may not be readily quantifiable in neat data sets does not mean that the improved "quality of life," better family cohesion (due to less mental strife and less constant irritability), and an ability to disengage from debt settlement services because of improved capacity to pay or the ability to settle without the aid of the Company, can be ignored by the Commission as it assesses performance of well-functioning business models in the debt settlement line of commerce.

The proposed TSR amendment should provide for a *rebuttable presumption* that any debt settlement services provider that:

(**a**) Does not engage in deliberate deception;
(**b**) Provides legitimate, *comprehensive pre-sale disclaimers*;
(**c**) aligns its payment plan to provisions of services, competent work-product, and reasonable expectations of properly informed clients;
(**d**) Can substantiate sufficient infrastructure, procedures, and controls;
(**e**) *Actually performs for clients* in an analytically verifiable manner; *and*
(**f**) Achieves "success" (as defined below), provides both tangible and intangible benefits lawfully, and without need for further regulation by the Commission.

Taking into account both tangible and intangible benefits of debt settlement services providers with reliable, well functioning business models supports the fact that there would be little "likelihood of injury" to consumers and a high "likelihood of success." [NPRM at 72.]

If a client's circumstances materially improve as a consequence of a series of successful settlements, such that the client is able to forestall bankruptcy and has become better able to return to financial health, his or her withdrawal from the continuum of further legal representation does not equate to a loss of paid-for benefits [as could be the situation in a predominantly advance-fee-based service]. Consequently, the fact that clients may disengage from additional services (*i.e.*

"drop-out," to use the Commission's preferred nomenclature) cannot presumptively evidence poor performance.

Numerous law firm clients experience better outcomes as a consequence of the financial model reflected in the above-referenced and below discussed Exhibits to this supplemental submission. Consequently, ***law firm clients who disengage for reasons within their control or due to changed circumstances after they have engaged their attorney*** (which constitutes over 77% of all law firm clients who disengage from further services, as reflected in **Exhibit E-9**), **do not support the basic premise** for proposed amendment to the TSR, **that debt settlement services inherently are "unfair." Exhibits E-13** and **E-14** support the fairness and "success" of debt settlement services offered by lawyers utilizing administrative, paralegal, and paraprofessional support by Morgan Drexen, Inc.

It is illogical to infer – simply because some near bankrupt consumer debtors who sought legally supervised services subsequently might decide not to settle each and every debt for which they sought a lawyer's services; or other clients might have been harassed-out of a debt settlement program by a creditor[4] – that debt settlement services [which the Commission lumps-in under an umbrella definition of "debt relief services"], *presumptively* are "unfair."

Some consumers experience cyclical near-insolvency or episodic bouts of excess spending due to uninsured illness or accident, a loss of a second income, a family

[4] Morgan Drexen, Inc. has been notified by law firm clients on numerous occasions that one or more creditors have mischaracterized the Company as a "fraud." It also has responded to flagrantly predatory accusations by creditors to state regulators that the Company is engaged in improper conduct. It has been the subject of a persistently improper, false "F" rating by a Better Business Bureau that proselytizes for a consumer credit counseling affiliate that automatically receives an "A" rating. The analytical presentations that accompany this submission prove otherwise. Other debt service providers may underperform. Nevertheless, that does not justify regulators' and self-regulatory private entities painting a distorted picture of the entire debt settlement line of commerce using a broad brush that tarnishes truly performing companies such as Morgan Drexen, Inc. All that diffused, unsupported allegations do is create a cone of suspicion that an unscrupulous creditor can manipulate to convince near-bankrupt debtors to disengage from legitimate debt settlement services thus truly disenfranchising them from their informed decision to choose that option. Such defections should not be attributed to poor performance by the debt settlement provider with an analytically verifiable, well operating business model. Moreover, when regulators and self-regulatory private entities (such as the BBB) mischaracterize or defamatorily rate a well functioning debt settlement services provider, that conduct actually harms consumer welfare because credit collectors further publicize such slanderous information, which deleteriously affects other consumers' choices and options necessary to a well functioning marketplace. This cascading detrimental effect would be corrected if the FTC were to assert leadership through differentiating what characterizes proved "performance" and what does not, and by using its law enforcement authority to segment the abusive and unfair hucksters from the marketplace.

tragedy. They do not forget the inherent benefit of maintaining *some* creditworthiness. They may choose to retain one or more credit cards so that they can deal with life's future vicissitudes, while engaging debt settlement for the remainder of their credit cards.

In these regards, the threshold consideration for what might constitute "unfairness" inextricably would be intertwined with, and would be dependent on the definition of what constitutes "success" by the debt settlement service provider.

Additionally, any answer to Commission staff questions about "drop-out" rate would have little probative value unless what the debt settlement services provider defines as "success" is taken into account.

Morgan Drexen, Inc., for example, heavily invested in significant training; proprietary software; database creation, maintenance, and management; and is equipped with a highly automated, scalable business infrastructure. The hefty investments it has made enable it to perform well – long term – for law firms and their clients. The Company constantly and consistently appears to achieve results consistently at or below the settlement average of other service providers that publicly have responded to the Commission in conjunction with the TSR Rulemaking proceeding. The Company, the number of law firms that outsource paraprofessional, paralegal, and administrative services to the Company, and the number of those law firms' clients are growing because of sustained, proven performance as reflected in **Exhibits E-5, E-2, E-1**, and **E-6**.

What constitutes "success" was a factor of specific interest to the Commission. It was posed in question 1.b in the NPRM at 110:

> **How do the various types of entities measure their success in providing the represented services and what level of success are they able to achieve?** (Please provide data to support these representations.)

This question actually touches on two separate aspects of debt settlement services. The first is intake; the second is performance.

Client intake entails five steps:

(**a**) Marketing to near-bankrupt debtors (*e.g.*, creating copy [and visuals] for TV advertisements, recording radio and TV commercials, arranging placement of media, creating and updating Web sites for attorneys, designing logos and ligatures for attorneys;

(**b**) Qualifying near-bankrupt debtors for debt settlement rather than for another service (*e.g.,* bankruptcy), setting-up a realistic budget, and arranging for routine ACH payments to their attorney's trust account;

(**c**) Disclosing the limitations and conditions applicable to a lawyer's responsibility for unbundled services to be provided, obtaining a recorded acknowledgement of each disclaimer in a permanent .wav file;

(**d**) Arranging an actual contract to be executed between a prospective client and their attorney, with a reaffirmation of the recorded disclaimers; and

(**e**) Conducting quality control to assure marketing messages are accurate and non-deceptive; assuring that all disclaimers have been attested-to both verbally and in writing; assuring that all intake procedures have been adhered-to; and promptly reporting variances to management to immediately rectify any error or omission by contacting the prospective client and re-recording the acknowledgement of the disclaimer(s).

Of these five activities in progression to engaging a lawyer, disclosures are critical (early – and repeated – to assure that limitations or exclusions are clearly understood and acknowledged). This is so, because near-bankrupt debtors are bombarded with creditors' telephone threats, intimidation, or harassment as well as with media advertisements for consumer credit counselling, debt settlement services, bankruptcy services, etc. Morgan Drexen, Inc. takes pride in setting the highest standard with the breadth of disclosures it makes to potential law firm clients on behalf of the law firms it services. The disclosures (and a self-imposed waiting period) assure that each law firm client makes a well-informed choice and that he or she does not proceed with any reasonable basis to subsequently assert deception or unfairness in regard to the pre-performance conduct by Morgan Drexen, Inc.

As demonstrated by the demonstrative exhibits that accompany this voluntary supplemental submission as well as the actual disclosures set forth in the October 23, 2009 submission [FTC identifier number 543670-00218.pdf], the potential for cognitive dissonance is reduced or eliminated; and greater stability in the client base is adduced. Law firm clients will be entering into a multi-year relationship to avoid bankruptcy and alleviate the stress and anxiety of their financial precariousness.

Performance entails typically a multi-year process of:

(**a**) Data collection, verification, and quality control with respect to each debt;

(**b**) Data processing to transform paper documents into an electronic, multi-tasking, fully relational database with quality control;

(**c**) Generating and mailing or transmitting detailed monthly statements;

(**d**) Verifying monthly trust account deposits (as clients build their fund to pay-off unsecured debts);

(**e**) Routine telephone and mail contacts from or to clients;

(**f**) Arranging and facilitating focused client appointments with their legal counsel (by telephone contacts with annotated paralegal or

paraprofessional notes, assuring all paperwork needed for a lawyer/client consultation is available and is properly indexed);

(**g**) Maintaining routine contacts with legal counsel with docketed events (such as when court filings are due, hearings are calendared, etc.);

(h) Providing constantly updated information via secure Internet access for attorneys and their clients to an encrypted database;

(**i**) Contacting unsecured creditors;

(**j**) Conducting preliminary settlement negotiations;

(**k**) Obtaining attorney approvals of potential settlements (to assure the agreed amount, suitability [if structured], extinguishment of the debt with the proper credit holder, and ultimate enforceability);

(l) Monitoring the acts and actions of over 3,300 creditors [to reverse-engineer their settlement algorithms and performance parameters];

(**m**) Dealing with over-regulation and/or over-reaction of some state legislatures to debt settlement activities or by executive branch or judicial branch entities to the paradigm shift of the attorney model for debt settlement;

(**n**) Dealing with attempts by credit collectors to cause regulators to run-up costs for debt collection service providers predicated on asserting non-compliance with long-standing statutes that were written by banks and favour consumer credit collection or creditors, by contriving issues in an attempt to cause a regulator to investigate debt settlement providers that actually perform [thereby reducing their potential to achieve a higher recovery], or by resorting to high-pressure tactics in an attempt to cause a near-bankrupt consumer debtor from continuing to receive services from his or her chosen debt settlement provider;

(**o**) Monitoring misguided or inchoate state and federal legislative initiatives that would harm consumer welfare; *and especially*

(**p)** Constantly achieving good results for clients, etc.

The extensive "intake" and "performance" functions coalesce in Morgan Drexen, Inc.'s definition of "success" in the context of debt settlement services: achieving the **primary reason consumers seek debt settlement services, which is to *avoid* having to publicly declare they are insolvent and seek protection under federal bankruptcy law.**

Consequently – contrary to the apparent thrust of the Commission's attempt to define "success" as completion of all or 95% of services, and the incomplete formulation of the above question – the modality of "success" cannot solely be measured by the subset of near-bankrupt law firm clients who choose to settle *each and every unsecured debt* by means of debt settlement. That sort of definition fails to distinguish between: (a) provider acts or practices that may contribute to client dissatisfaction, (b) client satisfaction and renewed capacity to handle their financial situation because of the

existence of successful debt settlements over time, and (c) ignores the highly-valued intangible benefits that are created during the sustained duration of the debt-settlement relationship between a client and his or her service providers performing under attorney responsibility and supervision.

The concept of "completion" of needed services must include law firm clients who have experienced improvement in their circumstances, which has removed or lessened their hardship, pursuant to which they have the capability to settle a portion or the remainder of their unsecured debt either by resuming normal payments with remaining creditors (perhaps to retain one or more credit cards). *See* **Exhibits E-13 and E-14**.

Morgan Drexen, Inc.'s definition of "success" also includes law firm clients who had the bulk of their unsecured debt settled yet have chosen to handle the remaining settlements on their own. **The *continuum* – from solvency to bankruptcy, with credit counseling, debt consolidation, debt settlement, or other services between the end points – should be seen as a sliding scale on which the law firm clients select the points at which they (a) become an active recipient of debt settlement, choose to (b) disengage, or (c) complete all debt settlements through their service provider as changes in their personal circumstances warrant. If they choose the option of disengaging, which subsequently may better suit their goal, that fact neither is evidence of presumptively "abusive[5]" nor of unfair practices by their service provider*, *especially if there is no advance fee* (as defined in this submission).**

[5] In his Concurring Statement, Commissioner Orson Swindle requested public comments "addressing the legal, factual, and policy issues implicated by the use of unfairness principles under Section 5 of the FTC Act to determine whether telemarketing practices are abusive for purposes of the Telemarketing Act." http://www.ftc.gov/os/2002/01/swindletsrstatment.htm. Morgan Drexen, Inc. does not believe it is appropriate to conflate the principles of "unfairness" [enunciated in the policy statement sent to Senators Ford and Danforth (December 17, 1980), and Reprinted in International Harvester Co., 104 F.T.C. 949, 1070, 1073 (1984)], with the explanation of "abusive" practices in the Telemarketing Act. Statement of Basis and Purpose, *Prohibition of Deceptive and Abusive Telemarketing Practices; Final Rule*, 60 Fed. Reg. 43842 (Aug. 23, 1995). There is no indication that Congress intended the two types of conduct to be enforced conterminously or conjunctively, and the Commission has not previously conflated the two doctrines. Had the intent of Congress been to deem the two forms of conduct identical, it would have used the term "abusive" in the FTC Act. Without waiver of rights this submitter will respond to the Commission staff questions without arguing the point further.

Some clients choose to "go all the way" and settle each and every unsecured debt through the auspices of their service provider[6]. Others "go part way" as their financial circumstances improve and they believe they are prepared to resume handling the remainder of their debts without lawyer-assisted paraprofessional services by Morgan Drexen, Inc. Some – having tried, on their own – choose to return for additional debt settlement services, and may at some juncture decide to disengage, once again, before completion.

Moreover, even if a client were to choose bankruptcy as a final option, the Company's analysis of debt settlement costs confirms that in almost every instance the cost to pursue debt settlement – even if eventually bankruptcy were to become inevitable – tends to be no more costly, and is of greater benefit to society because all such law firm clients either: (a) completed their goal of avoiding bankruptcy by settling all of their debt or a significant portion, (b) resumed making normal payments, or – perhaps, for some – (c) having forestalled bankruptcy long enough to settle a significant number of debts and if bankruptcy were to become the unavoidable final option, entered into a much less complicated proceeding with fewer creditors subjected to their unsecured credit extension being extinguished with no recovery.

Conversely, "success" should not include law firm clients who "drop-out" very early in the process and obtain a complete refund, or who never funded *any* portion of their attorney's trust account. This small subset logically needs to be excluded from consideration in the definition of "success" because they either (a) received a full refund (and suffered no "injury" to their detriment) or (b) by their own acts or conduct never fully consummated a contract with a lawyer (*i.e.*, there was no offer, acceptance, and consideration – the elements of a contract) to help them avoid bankruptcy. In other words, the *Cliffdale* or *International Harvester* elements are unfulfilled. Their very early departure (what the Commission deems a "drop-out") – should not impact the definition "success" of the debt settlement service provider model [at least, in the context of the attorney model for unbundled legal services under which Morgan Drexen, Inc. operates].

Clients who commenced saving to build-up a fund to extinguish debts at discounted amounts but who subsequently experienced their own inability to fulfill that goal [without any commission or omission by their service provider), left with no alternative to bankruptcy were neither abused nor harmed by their service provider in a "Pay-As-You-Go" service model. **A funding model that is not dependent on a large advance fee, and in which services are paid for as they are received, cannot be deemed abusive, nor would there be support for regulating such a model under a**

[6] Many clients choose to submit small debts (for which there would be little or no economic benefit) handled through debt settlement services in conjunction with larger debts for which significant economic benefit may be achievable. They do so for a number of reasons, primarily to avoid having to deal piecemeal with the remaining creditors, or to avoid having to deal with persistent and highly annoyingly high-pressure telephone tactics of some credit collectors.

rebutted presumption that "abusive" or "unfair practices" appertained, if the service provider *actually* performs what it represented it would do for a client.[7]

As such, this last sub-set of clients logically should be excluded from the definition of "success" so long as they were given proper disclaimers, and informed their service provider at the time of commencement of services that they had sufficient financial capability from an existing income source to undertake ACH payments to build a fund of money to pay-off debts, and upon withdrawal were refunded accumulated reserves held in trust (less actual costs, and legitimate fees previously earned by their lawyer to the point of withdrawal). In a "Pay-As-You-Go" service model withdrawal by this sub-set of clients would not be reasonably attributable to under- or non-performing services by the debt settlement service provider, and as such should not be factored in or out of the definition of "success."

A significantly reliable indicator of "success" is the FICO score of clients who (a) complete the debt settlement process and are debt free, or (b) drop out after achieving settlement of at least half of their unsecured debts for which they contracted with their debt settlement service provider. **Exhibit E-2** confirms the *fact* that there should be improvement in the FICO score of such participants. Under current law, collecting such information is difficult. Morgan Drexen, Inc. strongly recommends to the Commission that it advise Congress to amend the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et sec.* (§ 604 in West's U.S. Code Annotated), to enable (if not require) debt settlement service providers to obtain intake and termination FICO scores – *at their expense*, and not charged to any consumer – for statistical purposes, with provision for such statistics to be available for review in aggregated form by the FTC and other appropriate regulatory authorities[8]. The uniform availability of FICO scores in connection with "debt relief" would substantiate benefits to "drop-outs." Further, it would help establish a rebuttable presumption that any debt settlement provider that does not collect, maintain, and

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[7] Any service provider, whose fundamentally flawed business model summarily precluded performance that was promised, or that conducted itself negligently, or that was permeated by fraud, would not and should not escape normative regulatory or law enforcement action.

[8] Currently, § 604(a)(3)(F) does not explicitly apply to debt settlement, and even then, not to post-services statistical analysis of "success" [although clients may consent to such use to assure confluence and consistency in reporting, either this sub-section should be amended or a new sub-section "(G)" should be created to generate a proxy to quantify "success" as externally reflected in an intake and a FICO score at discontinuation or conclusion of debt settlement services].

produce such information is not achieving "success[9]" unless it otherwise demonstrates competent and statistically reliable improvement in clients' credit scores, which would better focus scarce law enforcement resources.

QUESTION: (2) Exhibits MD #A-2 and A-7 refer to the "total balance of accounts" for clients who completed … programs.

(a) Is this the balance of consumer debt accounts at enrollment or is this the balance of the debt at the time of settlement?

ANSWER: The "total balance of accounts" is the balance at the time of settlement.

QUESTION:

(b) What is the average rate of accretion for the principal balance on an account between enrollment and settlement?

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[9] The definition of "success" is a factor that should be applied across business models given convergence in service offerings for near-bankrupt debtors. For example, many "non-profit" consumer credit counseling organizations are members of the American Association of Debt Management Organizations ("ADDMO"), which "is an industry education and advocacy organization the mission of which is to promote and ensure the continued operation and viability of credit counseling and debt management organizations." One member of the organization, Care One Credit Counseling, is part of a conglomerate of related companies that offer debt relief services. A client who initially may be offered credit counseling services may be transferred to an affiliate for debt settlement services if he or she misses several installment payments. For §501(c)(3) organizations that morph into offering or transferring a client to an affiliate that offers for-profit debt settlement services the exemption from coverage of the TSR would provide a shield that may confer an unfair advantage over entities that are not exempt from the Commission's enforcement powers. The Concurring Statement of Commissioner Orson Swindle endorses this point, "It would be more equitable if companies that compete with each other had to comply with the same regulatory requirements when they engage in telemarketing." http://www.ftc.gov/os/2002/01/swindletsrstatment.htm. The Commission should recognize that consumer credit counseling now directly competes with debt settlement services and should recommend to Congress that applicable law be modified to enable the Commission to pursue deception or unfairness by any non-profit organization that directly or indirectly competes with for profit entities. It should not be the character of the tax status that controls whether "deception" or "unfairness" is beyond the reach of law enforcement. The convergence of entities with different service offerings under related ownership may negate coverage under the TSR just as do text messaging and SMS communications, which are used to transmit debt settlement messages. **Inasmuch as many service providers in the consumer credit counseling industry are migrating to offer debt settlement services there is a necessity for consistency in regulatory oversight to avoid systemic gaps in both regulations and law enforcement. Morgan Drexen, Inc. believes that any regulation that is not conterminous for both not-for-profit entities (currently not subject to the Commission's powers under the FTC Act) and for-profit entities would ignore a large and growing segment of debt settlement service providers.**

ANSWER: The Commission presumes that accrued interest and penalties is evidence of unfairness to vulnerable consumers. [NPRM at 42002 ("…the debt relief service will likely adversely affect the customer's creditworthiness …and may increase the amount of money the customer owes to one or more creditors or debt collectors due to accrual of fees and interest"), and 42006 ("…consumers typically need to… stop paying their creditors and therefore suffer **lasting injury** to their creditworthiness), emphasis added.] This presumption is misplaced.

No "debt relief" provider can control or stop accretion; only a creditor has that capability either by forbearance or agreement.[10] Even consumers who choose Consumer Credit Counseling Services may experience accretion if their monthly installment is late or missed, and by the time a debt settlement services provider is engaged, increased penalties and interest already may have been imposed.

A typical debt settlement client suffers from severe financial hardship, is past due on his or her unsecured credit accounts *prior to first seeking assistance from a debt service provider*, and has a FICO score of or below 585 (which is not considered "creditworthy"). It is unrealistic to presume that debt settlements, credit counseling, or to any other non-bankruptcy alternative is the *cause* of accretion. The continuation of accretion is an informed choice of (or may be the only alternative for) a client who is attempting to avoid or forestall bankruptcy.

Exhibit E-2 confirms that by the time all debt settlement services are completed a FICO score uniformly improves, irrespective of "accretion." This rebuts the Commission's presumption of "lasting harm" attributable to debt settlement activities. Consequently, Morgan Drexen, Inc. does not track "accretion" because the pre-existence of that contractually imposed obligation is not an indicator of "unfairness" so long as adequate pre-sale disclaimers are provided to consumers.

"Accretion" is triggered by the application of avalanche contract provisions to near-bankrupt, distressed debtors; does not cause "lasting injury" if consumers choose to engage legitimate debt settlement services; and would be refuted in a uniformly verified manner by changes in federal law to provide for exit-from-debt-settlement FICO scores (or if debt settlement were to be included within the bankruptcy code). In any event, the Company will attempt to track

[10] Some creditors routinely agree to do so; others voluntarily agree to do so under certain terms and conditions, despite a prevailing practice of using accretion of interest and penalties as leverage to achieve priority among non-secured creditors, or to contractually realize enhanced recovery pursuant to a pre-authorized charge intended to cover the increased risk of default.

"exit" FICO scores to demonstrate "success" achieved by debt settlement services if it routinely can obtain an "exit" FICO score for each law firm client.[11]

QUESTION: (c) These exhibits, along with Exhibits MD # A-7 and A-8, refer to consumers who completed … programs.

(i) What percentage of consumers who enrolled … in programs completed them?

ANSWER: Completion of the program is defined as law firm clients who are able to settle their debt while avoiding bankruptcy. Program completion cannot be measured solely by those who choose to settle all of their unsecured debt by means of debt settlement (as discussed, above). Completion includes law firm clients who experienced improvement in their hardship because a portion of their unsecured debt was settled, yet chose to resumed routine (perhaps minimal) payments to the remaining creditors, or otherwise have chosen to handle the remaining settlements on their own. All of these law firm clients completed the

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[11] "Accretion" (*i.e.*, increased fees and interest due to delayed payments or cessation of payments) is a function of both private contractual rights and inchoate federal bankruptcy law. The leverage it creates for credit collectors to pressure near-bankrupt consumers to perform contributes to the high level of complaints against credit collectors (discussed above, in fn. 3 in this Supplemental Submission). Nonetheless, Exhibit E-2 rebuts the Commission's presumption that near-bankrupt consumers who choose debt settlement rather than bankruptcy "suffer lasting injury." Moreover, the public record provides no analytical support for the Commission's rebuttable presumption, at least for a well performing debt settlement services provider that can verify that it administers adequate pre-sale disclaimers.

Presumed "unfairness" (in cases of verifiable hardship and a true desire to avoid bankruptcy) augurs for recommendation by the FTC to Congress, for enactment of legislation to address a material gap in the bankruptcy laws or to modify the harsh conditions to qualify for Chapter 13 bankruptcy protection. This recommendation should be considered *in pari matera* with the companion recommendation for a modification of the Fair Credit Reporting Act constraints on use of credit reports (for reasons discussed elsewhere in this submission).

Moreover, the Commission should recognize that in a number of countries forms of debt settlement are recognized as a sub-set of (a) bankruptcy statutes (*e.g.*, in **Australia**: *see*, ¶ 185C(2) of the *Bankruptcy Act of 1966*, and Subsection 129(4B) that provides for a formal "Notice of Demand;" the **United Kingdom**: *see, Tribunals, Courts and Enforcement Act 2007*, Ch. 15, §. 107, Part 5 Debt Management And Relief, Chapter 3 Debt Relief Orders, Royal Assent [19 July 2007] *(Eng.)*; or in other countries (b) under a specific statute, as in **Canada**: *see, Consolidated Regulations of Alberta, Collection And Debt Repayment Practices Regulation Under The Fair Trading Act*, Requirements for Receipts, Reports and Records, *Alta. Reg.* 194/99, §. 23.3. These alternative statutory approaches help prevent *avoidable* "accretion" (a run-up of penalties and interest) as exists under U.S. federal law that does not recognize debt settlement as a statutorily sanctioned process.

program by avoiding bankruptcy and either settled all of their debt or a portion with the remaining debt resuming normal payments.

Consideration of clients who never funded any portion of the program must be excluded from the percentage calculation, because they did not intend to avoid bankruptcy nor were any funds paid to establish their trust account. In order to determine the accurate percentage of completion it would be necessary to treat as a sub-set, those clients who commenced building a fund to pay off creditors through debt settlement, yet their hardship situation deteriorated and they chose bankruptcy. While it might be interesting to compare such a sub-set with the total client base at any given period of time, the Company has no way of knowing whether a former law firm client disengaged and then declared bankruptcy because clients may choose not to disclose this ignominious resolution. This is so, because the Company does not receive notification that: (a) a former client succumbed to bankruptcy protection under the auspices of the attorney who was supervising their debt settlement services, *or* (b) a competing bankruptcy attorney (who does not utilize the Company's services) may advise a client to divert to the bankruptcy alternative, informing him or her not to divulge the alternative strategy [perhaps, to avoid tortuously interfering with the client's contract with an attorney who outsources paralegal and paraprofessional services to Morgan Drexen, Inc.]. In either such event, attributing financial changed circumstances or the externality of persuasion by an alternative service provider, to some presumed "unfairness" due to a controllable commission or omission by the Company would be unwarranted.

QUESTION:

(ii) Do you define the term completed as having settled one debt when the client had more than one debt? Please explain in detail how you define completed.

ANSWER: A "completed client" is a subset of a "successful client." A "successful client" is one who has avoided filing for bankruptcy. This status can be achieved upon settling a percentage of the accounts for which an attorney originally was engaged. For purposes of exhibits previously submitted (representative of a program still in its nascent stage), a "completed client" also includes anyone who has completed all settlements ahead of schedule and avoided bankruptcy

QUESTION:

(iii) What is the completion rate when you calculate it by including all consumers who enrolled in the… program….

ANSWER: This question presents a tautology comparable to asking, "What is the graduation rate of all college students who have not graduated?" The answer

to this type of question is unknowable because – in reference to debt settlement services that require three to five years to complete – there has been insufficient time for Morgan Drexen, Inc.'s all of the first month's intake of clients to build a fund needed to conclude their settlement negotiations.

Further, the initially estimated trajectory to completion is predicated on a client's maintaining steady accretion of funds via monthly ACH payments to their lawyer's trust account. The duration of services may become attenuated as a consequence of: (a) the ability to fulfill funding obligations with consistency and constancy so that minimum monthly payments, based on their agreed budget can enable predictable interim settlements; (b) conclusions of each lawyer, in consultation with her or his client, that while debt settlement was a viable option, changed circumstances augur for pursuing bankruptcy, which the lawyer may handle without recrimination or basis to assume that Morgan Drexen, Inc. had any bearing on the client's circumstances; (c) non-linear growth of the law firm client base (due to seasonal variability, increased competition, changes in marketing mix, misguided regulatory initiatives that undermine a client's confidence in debt settlement [even by a well performing service], etc.).

Because trend lines based on historical performance (good as it has been) may not serve as functionally predictable indicators until at least the first few tranches of clients chronologically "graduate:." (a) each client's individual financial situation at "matriculation" may deviate due to externalities during the course of their engagement; (b) the number of creditors and the historic settlement range for each of those creditors will affect the estimated duration of services; (c) the law firm client's ability to fund their attorney's trust account may vary over time; and (as mentioned above) (d) the number of clients was small but growing rapidly during the first year of the Company's operations.

In any event, Morgan Drexen, Inc.'s first month's tranche of clients (which was very small) have not yet reached three years of provider services. Some clients had shorter engagements and achieved completed settlements; others increased their monthly payments which accelerated completion. **Consequently, the overall completion rate – to date, 10.6% -- actually is astonishing.** *See* **Exhibit E-10** and **Exhibits E-6 and E-5**.

QUESTION: (A) To the extent that such figures are overinclusive because they would include consumers who enrolled so recently that they should not be expected to have completed the program, how long do you think it would take, on average, for someone to complete the program?

ANSWER: In addition to the response to the previous question, every law firm client initially is assigned an estimated timeline at intake, based on his or her monthly affordable payment, number of creditors, known settlement propensity of certain creditors, and total debt including secured debt [although the Company

does not handle modification of secured debt]. Most clients have estimated timelines of between three to five years.

The time to completion can be delayed if the client misses a monthly payment or must reduce the amount on a continuing basis because of a change in circumstances, or if sued by more creditors than another client (which necessitates diversion of funds to defray reduced fees to their lawyer for unbundled services). Completion time is, therefore, governed by each client's highly individual circumstances (including variances in externalities such as the number of law suits, the consistency of income to build the fund of money needed to settle debts, etc.). If all life situations were to have remained static the initial estimated time of engagement would be accurate.

It has become evident, however, that some clients may be able to take advantage of family assistance to fund their trust account to episodically achieve accelerated settlement of some (but not all) debts. Others lower their monthly payments if and as their hardship worsens, which prolongs estimated duration of services, although they may resume a higher level when and if they are able. Concomitantly, some creditors facing increased pressure to clear reserves may accept significantly less to settle from time-to-time; other creditors that publicly may claim *they* do not negotiate with debt settlement entities tend to engage or sell-off debt in tranches to successor credit holders that do so, although their successor's settlement algorithms may be opaque pending a history of settlements. Such externalities may favor clients or may not do so, all of which complicates statistical analysis, even though estimated times of engagement appear "on target."

QUESTION: (B) What would the figures look like if you included all consumers – including those who dropped out – who enrolled long enough in the past that they would have completed the program if they had not dropped out?

ANSWER: As stated previously, most law firm clients are assigned estimated time frames of three to five years to completion. The Company has not been in operation for even three years as of the date of this supplemental submission. Further, for reasons previously articulated, as well as the Company's definition of "success," the question cannot currently be answered in a statistically reliable manner. Nonetheless, the Company's analytical presentations in **Exhibits E-6**, **E-7**, **E-12**, **E-1**, **E-5**, and **E-4** tends to confirm that performance to date is exceptional despite the inchoate duration of the projected average time for services (which is less than the aggregate estimated time-line assigned at client intake).

QUESTION: For example, if you determine that it would take the average person 36 months to complete the program, what is the completion rate when

you calculate it by including everyone who enrolled at least 36 months ago and not just those who have completed the program?

ANSWER: Please see above responses.

QUESTION: **(3)** Exhibits MD A-3 and A-8 provide a breakdown of fees into four categories: Engagement Fees, Monthly Service Fees, Settlement Fees, and Other Fees. Each category is given a percentage to signify what percentage of overall fees charged to consumers that category represents.

(a) How do you define Engagement Fees, and when are they collected?

ANSWER: Neither Morgan Drexen, Inc. nor any attorneys for whom it provides services charge advance fees' (which is confirmed in Exhibit E-15). Although intake fees are based on the amount of debt included in the program and are due upon engaging the attorney the intake fee on engagement typically is collected on a monthly basis as payments are received; **it is not an advance fee**. The rate of collection depends on each client's circumstances and his or her ability to fund the attorney's trust account.

It should be understood that written initial contact with creditors is undertaken prior to typical total funding of the intake fee (*e.g.*, document collection, analysis, scanning, indexing, and processing are commenced; database entries and paralegal docketing and client contact notes are kept; creditors are advised that the client has engaged an attorney who utilizes Morgan Drexen, Inc. for outsourced paralegal and paraprofessional services; and the client commences amassing a fund to settle unsecured debts). If a new client were to be sued and he or she required a consultation with his or her attorney, an appointment would be arranged and that legal attorney-client discussion would be undertaken *even if the full intake fee had not yet been fully funded*.

Consequently the "engagement fee" truly is an integral part of the "Pay-As-You-Go" payment attorney model. It cannot be equated to an "advance fee" in the manner that other debt settlement providers may charge prior to commencing services. This critical distinction between the manner in which Morgan Drexen, Inc.'s business model operates [in conjunction with its extensive pre-sale disclaimers] and the way some debt settlement service providers function [which is to charge consumers an "advance fee" before commencing work] rebuts the presumption that law firm clients serviced by Morgan Drexen, Inc. are abused or treated unfairly.

Lawyers settle disputes over money. It is a service they have performed for centuries. To assure basic competency and honesty lawyers are subject to state

licensing regulations pursuant to which they can be suspended or expelled (with loss of their license) in the event they violate a Code of Professional Responsibility under which they are licensed, as a condition of continued licensure. Lawyers are required to take and report continued legal education that includes courses in ethics (which is not a requirement for debt settlement service providers that do not work for lawyers in the state where a consumer lives). If a debt settlement service provider not working under a lawyer's licensed responsibility advertises to consumers, those advertisements would be subject to Section 5 of the FTC Act as well as possible state statutes. However, a lawyer's advertisements in many states are subject to regulatory oversight that goes far beyond the deception or unfairness requirements set forth in Section 5.

Because the Company is an outsourced service provider to law firms it approaches the line of commerce that constitutes debt settlement with great protection for consumers.[12] Its employees operate under responsibility and supervision of lawyers licensed by states and regulated through the uniform ABA Code of Professional Responsibility applicable to lawyers, and enforced by the state judiciary. To better assist lawyers who provide debt settlement services the Company has developed a highly-automated, proprietary database platform that enables lawyers to cost-effectively represent near-bankrupt debtor-clients who wish to avoid the scar of bankruptcy by settling their unsecured debts at negotiated discounts with legitimate credit holders.

The Company handles intake assistance for law firms [to assure that prospective debt settlement clients meet pre-established criterion], verifies client financial hardship through FICO score (as partially reflected in **Exhibit E-2**), administers recorded disclaimers to assure prospective clients are properly informed about the limitations of the services to be provided (as reflected in pages 34 to 36 in the Submission dated October 23, 2009), and arranges for the delivery and client execution of the lawyer's engagement contract. It helps law firm clients create a meaningful budget [that will enable them to build a fund of money through automatic monthly payments to their attorney's trust account, modify discretionary spending habits yet be able to live with reduced discretionary spending]. It arranges for client's agreed payments via ACH to their lawyer's trust account and provides data processing services to convert all documents into a searchable, electronic database accessible by the clients' lawyers via the Internet.

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[12] In this regard, Commissioner Swindle's Concurring Statement, *supra*, inquired "whether the transfer of pre-acquired account information meets the standard for unfairness under Section 5 of the FTC Act." This submitter does not believe it does. It would be virtually impossible for a lawyer to outsource paralegal or paraprofessional work if the transfer of the FICO score acquired with a consumer's consent (prior to engaging the attorney) would be unavailable to the lawyer for whom the Company provides services. It is preposterous to ascribe "unfairness" to the transfer of such pre-acquired account information to the attorney.

The intake fee covers these services, which commence before the client pays the fee.

Thereafter, law firm clients pay monthly maintenance fees that cover long-term client contacts, which assist law firm clients with routine inquiries and transmittal of documents that do not require a lawyer's attention or judgment. The Company facilitates each client's relationship with his or her lawyer by generating detailed monthly statements and helps each client to understand his or her monthly statements. It has created and maintains an on-line portal to an encrypted, proprietary, multi-tasking, enterprise level computer platform for clients and their lawyers, utilizing proprietary software that assures preservation of attorney-client privileges and compliance with the attorney work-product doctrine. It arranges appointments with the clients' lawyer in the event of a court action or any other event that requires a lawyer's judgment. The attorney model under which the Company operates is facilitated by routine paralegal and paraprofessional entries.

Upon settlement of each debt clients pay a contingent fee to their lawyer, who pays Morgan Drexen, Inc. for having maintained routine contacts with over 3,300 creditors; having conducted preliminary negotiations for potential settlements; and having provided lawyers with proposed settlements for their review and approval *or disapproval* predicated on (a) discounted amount; (b) enforceability, and (c) debt extinguishment. The payment structure for clients as an inextricable part of unbundled attorney services for which they contract. It closely aligns the incentives of the clients with that of their lawyer(s).

What partially differentiates Morgan Drexen, Inc. from service providers that do not operate under a lawyer's licensed responsibility and supervision in the state in which each client is resident, is that the customers of such debt settlement service providers are at great risk. When consumers are advised how to respond to a collection suit; or sample filings are prepared for them by a non-lawyer; or the customer is advised what to say in court; or a final settlement is negotiated for the customer, rights, duties, liabilities, or powers are irrevocably altered, *and* the debt settlement services provider is *committing the unauthorized practice of law*. By definition such "naked" providers are engaged in a "fundamentally bogus" legal practice (no different than a nurse would be performing as an unlicensed physician if she were to diagnose a medical condition, prescribe a treatment plan, and write a prescription for a patient).[13]

[13] For this reason, the Commission should report to state regulators [whether a Judiciary office of lawyer regulation, a Bar, or other department responsible for licensing lawyers], all such debt settlement entities that do not operate under the responsibility of a lawyer in each and every jurisdiction in which they operate.

These differentiating factors – "Pay-As-You-Go" funding without an advance fee, and services provided under a lawyer's responsibility and oversight – categorize Morgan Drexen, Inc.'s operations in a way that is of interest to the Commission, as posed in question number 1.a in the NPRM at 109:

> **Do entities differ in how they currently collect their fees, e.g., what payments are required before the services are begun, what payments are required while services are being provided, and what payments are not collected until after the work is completed?** [Emphasis added.]

Submitter's confidential **Exhibit MD #A-10** and public **Exhibit E-15** demonstrate a "Pay-As-You-Go" approach that provides for three tranches in which fees are paid. To summarize, law firm clients pay:

1. An **intake/engagement fee** (typically over several months, which covers paraprofessional intake and data processing functions) as discussed above and as is set forth in **Exhibits E-11**, **E-13**, and **E-14**;

2. A **nominal monthly service fee** as discussed above and as set forth in **Exhibits E-11**, **E-13**, and **E-14**; *and*

3. A **success fee** of 25% of the savings obtained upon completion of each settlement, as set forth in **Exhibits E-11**, **E-13**, **E-14**, and **E-15**.

This proportional, *"Pay-As-You-Go" fee* approach differentiates the provision of (usually unbundled) legal services with just-in-time lawyer involvement from the typical *advance-fee* approach predominantly utilized by many providers of debt settlement services. Such alignment promotes achievement of significant benefits and better potential outcomes for the law firm clients, as confirmed by **Exhibits E-1**, **E-2**, **E-3**, **E-4**, **E-5**, **E-6**, **E-7**, **E-10**, **E-12**, **E-13**, **E-14**, and **E-15**.

The *"Pay-As-You-Go"* fee approach under a lawyer's responsibility and supervision promotes the Commission's twin consumer protection goals of avoiding deception and unfairness [even though the NPRM R411001 *only* asserted unfairness as the basis for the need for an amendment to the TSR].

Contrary to the Commission's rebuttable presumption that there is "Substantial Injury to Consumers" [NPRM at 72] Morgan Drexen's analytical presentations rebut that presumption and prove just the opposite.

The Company's tangible proof in its Exhibits demonstrates that it offers real benefits and much needed, market-driven services, regardless of whether others may charge for abusive, unfair, unperformed, or non-provided services.

QUESTION: (a) How do you define Engagement Fees, and when are they collected?

ANSWER: Please see **Exhibit E-15**, augmented by the immediately preceding discussion. Additionally, fees at intake are based on the amount of debt included in the program and are due upon engaging the attorney. The initial engagement fee typically is collected over several months as payments are received; it is not an advance fee. The rate of payment depends on each client's circumstances and his or her ability to fund his or her attorney's trust account. It should be understood, however, that services commence immediately, including verifying hardship, creating a budget, arranging for ACH payments, document collection, analysis, scanning, indexing, and processing; database entries and paralegal docketing and client contact notes; and written initial contacts with creditors are undertaken (advising the creditors that the client has engaged an attorney who utilizes Morgan Drexen, Inc. for outsourced paralegal and paraprofessional services, and that the client will be amassing a fund to settle debts). If a new client was to be sued and required a consultation with his or her attorney, an appointment would be arranged and that legal attorney-client conference would be undertaken *even if the full intake fee had not yet been fully funded.* Consequently the "engagement fee" truly is an integral part of the "Pay-As-You-Go" payment process and cannot legitimately be equated to an "advance fee" comparable to what other debt settlement providers may charge prior to commencing any services.

QUESTION: (b) How do you define Monthly Service Fees, and when are they collected?

ANSWER: Monthly Service Fees are averaged, based on the number of debts engaged. Prior to 2010 this fee was a minimum of $45 for up to six debts. This fee was charged and collected monthly during the term of the law firm client's engagement with his or her lawyer. Paraprofessional notes to the engaged lawyer reflect all services performed. It is not unusual for a client's needs to considerably exceed the monthly service fee, from time-to-time.

QUESTION: (c) How do you define Settlement Fees, and when are they collected?

ANSWER: Settlement fees are based on the amount of savings upon settlement of a debt. The current fee is 25% of the difference between the debt balance at the time of settlement and amount paid to settle the debt. This fee is due upon reaching an acceptable settlement and is collected over the months following that settlement. The collection depends upon the client's monthly payment. Law firm clients are *not* required to place the settlement fee in their attorney's trust account prior to settlement of debts, and settlement fees are at risk if a client cancels his or her engagement following settlement but prior to paying the fee, except for the

final settlement (for which all remaining fees are collected at the time of settlement).

QUESTION: (d) What types of fees are part of the Other Fees category, and for each type of fee, when is it collected?

ANSWER: Other Fees represent charges for manually written checks, NSF bank fees, money order handling fees, Federal Express deliveries, etc. These fees are charged when incurred and typically are collected in the following months. All fees are due when incurred. Clients' payments are applied against the total balance outstanding and not to particular types of fees. Most of these other fees reflect passed-through costs from third parties, not sources of revenue for the attorneys.

QUESTION: (e) These charts appear only to include data for consumers who completed the program. What is the allocation of fees if they included data for all consumers who enrolled in the program and not just those who completed the program?

ANSWER: Exhibit E-7 attempts to answer this question. It compares total fees collected from all clients (including cancellations) against total savings of all law firm clients who engaged services (including cancellations).

QUESTION: (4) Exhibits MD #A-4 and A-9 refer to "cumulative client costs versus savings" for the NCC and MD programs.

(a) These charts include a column labeled A/R. What does A/R mean and how did you calculate it?

ANSWER: A/R is a shortened way of stating "accounts receivable." It represents the amount of fees charged although not collected. If a law firm client were to disengage prior to collection of fees, collection activities are not pursued and the amount is written off. Consequently, the most relevant analytical comparison is between the fees actually collected and the verifiable financial savings to the law firm client as a consequence of the debt settlement services that were performed [although such an analytical comparison would not reflect any "intangible benefits" the client would have received, which – as described previously – are significant].

QUESTION: (b) In Exhibit A-9, are the "Total Consumer Fees Paid to Attorneys" and "A/R" columns cumulative or monthly?

ANSWER: The "Total Consumer Fees Paid to Attorneys" is cumulative; the total, uncollected "A/R" balance also is cumulative.

QUESTION: (c) In both exhibits, are the columns for "total balance," "total paid to creditor," and "total savings" only for the month specified or are they cumulative?

ANSWER: All represent that specified month. The cumulative total savings column adds the total savings for the given month to the previous month's cumulative balance.

QUESTION: (d) What do the percentages listed in the row labeled "Jul-Sep slope" represent?

ANSWER: This represents the average rate of change from July through September (the *then* most recent three months time as of the date of submission of Exhibit MD #A-9), which was used to project the future rate of change over the forecasted periods. [**Exhibit E-7** updates the information in Exhibit MD #A-9.]

QUESTION: (e) What were the actual results for items projected in Exhibit MD #A-9 for October and November 2009?

ANSWER: **Exhibit E-6** updates the analysis to reflect actual performance. Both fees and savings increased at a rate slightly slower than projected, which can be attributed to continued worsening in the national economy as well as seasonal holidays. Both factors limited the amount of money law firm clients funded as a matter of choice by transfers to their trust account. This decreased the projected amount of settlements which affected both client fees and client savings.

QUESTION: **(5)** Exhibits MD #A-5, A-6, A-11 and A-12 provide information on cancellations from the NCC and MD programs by reason.

(a) Please explain each of the cancellation reasons and how you define "considered to be controllable" and "uncontrollable."

ANSWER: These idiosyncratic terms are a proxy for assumed capability to affect to some degree whether a law firm client disengaged or chose not to do so. The Company believes that it is reasonable for a legitimate business to assume some responsibility for pretermitted services *possibly* related to insufficient performance or dissatisfaction with the pace of settlements (regardless of how reasonable the dissatisfaction). Rather than contest the veracity or reasonableness of characterizations such as "did not understand the program" or "customer service," it is a better practice to treat cognitive dissonance as possibly "controllable" because it is plausible that the manner in which debt settlement services were explained or performed may have influenced a client's decision to disengage. Conversely, "Death," "Acquired loan," "Settled Accounts on their own," or "Could not afford program" were classified as "uncontrollable" because no changes in the provided services would have avoided a disengagement and the

cancellation of services. In addition, Morgan Drexen, Inc. adopts as though restated in response to this question, its discussion in response to the first question, *supra*. Further, the classification of cancellations did not include an explanation to account for disengagements because of improved circumstances and the ability to resume payments without the assistance of a debt settlement services provider. The reason such a classification had not been included in Morgan Drexen, Inc.'s confidential analytical presentations was because the Company simply duplicated the reasons provided in the NCC data, to provide the Commission with two sets of comparable data [the NCC charts and the Company's own charts], both of which confirm that tangible benefits were being provided and that the debt settlement services were not "unfair" or "abusive" to consumers. Had more refined inquiries been made of the clients who cancelled without providing a reason, the Company believes that the unknown reasons (under "Other") would have diminished, and the "success" rate – due to performed debt settlement services – would have been even more apparent.

QUESTION: (b) How was the information about why consumers cancelled the program collected (e.g., by exit survey, reports from employees, or other means)?

ANSWER: All clients who elect to disengage are elevated to a second level paraprofessional who is trained in communicating with clients to determine (to the extent possible) what issues, facts, concerns, or improved circumstances underlie a decision to disengage their lawyer's services. The paraprofessional assigns a reason code to each cancellation of services based on the predominant reasons expressed by the client. The veracity or reasonableness of a client's determination never may be ascertained. However, for metric analysis, performance improvement initiatives, implementation of best management practices, to gain intelligence about externalities in the market that may affect the Company's ability to effectuate best outcomes, and for assessing whether "key indicators" and department metrics are serving their purposes, an attempted telephonic "retention" interview conducted, if possible. [The cancellation codes just recently were modified to provide an additional category to accommodate improved financial circumstances, so that the Company may better reflect that cancellations are not necessarily for pejorative reasons.]

QUESTION: (c) The charts for NCC indicate that 20,166 consumers dropped out. What was the total number of enrollees in the program? By enrollee, we mean a client who paid any money to the Company.

ANSWER: 46,277 consumers were enrolled in the NCC's debt settlement program as of the date of service of the Commission's Temporary Restraining Order, which terminated the business (because the Receiver furloughed the employees and then sold the assets of the company).

QUESTION: **(6)** Exhibit MD #A-13 states that Morgan Drexen settled between 257 and 992 accounts with each of the top ten creditors and that settlement percentages ranged from 25% to 45%.

(a) On these accounts, how much did consumers pay in fees to Morgan Drexen?

ANSWER: Each law firm client, by contract, paid his or her lawyer a 25% contingent fee on the total savings for each settlement.

QUESTION: (b) Is the settlement percentage calculated based on the amount of the debt owed at the time of enrollment or at the time of settlement?

ANSWER: The fee is calculated based on the amount of the debt at the time of settlement. The percentage settlement represents the average settlement percentage for that creditor. However, the range of actual settlements is much wider than the 25% to 45% reflected for the top ten creditors. The more experience a credit holder has developed dealing with Morgan Drexen, Inc. the greater the likelihood it will value the achievement of settlement obligations through funds accreted into the attorney's trust account, the velocity of settlements, the professionalism of the Company's employees, and the greater its certainty of fulfillment will be (because of the "knowledge management" and the many procedures and controls that improve consistency and constancy of operations). This phenomenon tends to lead to a higher level of "trust" by debt collectors in the value of attorney supervised settlements facilitated by Morgan Drexen, Inc. compared to the level of uncertainty inherent in less comprehensive business models that may not be as professionally focused to consistently assure payment in a timely manner. The Company explicitly has been informed by creditors *and* by debt collectors that they *prefer* to work with Morgan Drexen, Inc. in comparison to many other service providers.

QUESTION: (c) What is the average settlement percentage for all accounts as calculated using the amount of debt at the time of enrollment as the denominator?

ANSWER: As of October 31, 2009 the average rate of accretion in debt balances (including interest, penalties, etc.) between engagement and settlement was 31.9% with a median increase of 24.4%. Accordingly, if calculated on original debt, the average settlement percentage for these creditors would increase to a range of approximately 45% to 60%. This range may be higher for Morgan Drexen, Inc. because the law firms supported by the Company – *unlike many other service providers* – will agree (with appropriate disclaimers) to undertake debt settlement services for consumers whose total debt at engagement may be as low as $2,500, for which "intangible benefits" tend to be as *or more* important to the client than the absolute amount of savings. Consequently, the lower threshold of total debt at

engagement may skew the settlement savings in analytical presentations. Further, combined effects of many variables such as: (**a**) duration of each individual debt on the date of engagement, (**b**) the ability of a client to build his or her fund of money to commence settlements, (**c**) the mix of creditors, (**d**) the number of total accounts that need to be settled, (**e**) the financial circumstances of each creditor at the time it negotiates (including monthly incentives for creditor's employees), (**f**) the experience of each creditor in negotiating with Morgan Drexen, Inc., and (**g**) the macroeconomic impact on credit holders (including velocity of settlements in the overall economy) are combined determinants of what overall discount will be applicable to the average percentage of savings a client may achieve. These dynamics may vary widely, undermining meaningful comparisons between service providers based on the "average settlement percentage" indicator.

QUESTION: **(7)** *[Initial Question submitted under request for Confidential Treatment*]

(a) What is the program drop-out rate for consumers who joined in January 2008, calculated by dividing (1) the total number of consumers who paid any amount to enroll in January 2008 but left the program before completion, by (2) the total number of consumers who paid any amount to enroll in January 2008, where "completion" means that the consumer settled or otherwise paid at least 95% of the consumer's outstanding debt balance at the time of enrollment?

ANSWER: [*Answer submitted under request for Confidential Treatment*]

(b) What is the program drop-out rate for consumers who joined in January 2009, calculated by dividing (1) the total number of consumers who paid any amount to enroll in January 2009 but left the program before completion, by (2) the total number of consumers who paid any amount to enroll in January 2009, where "completion" means that the consumer settled or otherwise paid at least 95% of the consumer's outstanding debt balance at the time of enrollment?

QUESTION: **(8)** How many consumers have enrolled and then dropped out of the Morgan Drexen program from March 2007 to present?

ANSWER: [*Answer submitted under request for Confidential Treatment*]

QUESTION: **(9)** For all clients who have enrolled and dropped out of the Morgan Drexen program, please provide:

(a) total fees paid;

ANSWER: [*Answer submitted under request for Confidential Treatment*]

(b) total amount of debt settled (based on debt at time of enrollment); and

ANSWER: [*Partial answer submitted under request for Confidential Treatment*] In addition, Morgan Drexen, Inc. adopts as though restated in response to this question, its discussion in response to the first question, *supra*. Further, Morgan Drexen, Inc. does not know how many debts such a sub-set of former clients settled on their own because their circumstances improved as a consequence of Morgan Drexen's services.

(c) total amount of debt reduction as compared to amount of debt at enrollment for clients.

ANSWER: [*Partial answer submitted under request for Confidential Treatment*] In addition, Morgan Drexen, Inc. adopts as though restated in response to this question, its discussion in response to the first question, *supra*.

QUESTION: **(10)** How many consumers are active in the Morgan Drexen program currently? For all clients who are active in the Morgan Drexen program, please provide:

ANSWER: As indicated previously, and as depicted in the analytical presentations in **Exhibits E-7**, **E-1**, and **E-5**, the consumers are still in the program and initial fees are greater than savings, although this reverses as the consumers continue in the program. Attempting to analyze the data by looking at it for all active law firm clients without considering the duration of their engagement of services, does not take into account the opportunity for the clients to achieve a positive net savings. of their total amount of debt settled? For all clients who completed the Morgan Drexen program, please provide:

(a) total fees paid;
(b) total amount of debt settled (based on debt at time of enrollment); and
(c) total amount of debt reduction as compared to amount of debt at enrollment for clients.

COMPOSITE ANSWER: Please refer to **Confidential Exhibit MD #A-7** and to **Exhibit E-6**. In addition, Morgan Drexen, Inc. adopts as though restated in response to this question, its discussion in response to the first question, *supra*.

QUESTION: **(12)** Exhibits MD# A-3, A-8, and A-10 appear to show the percentage of costs incurred at engagement or intake, as monthly servicing costs, and as settlement fees.

ANSWER: Exhibits A-3 and **Confidential Exhibit MD #A-8** represent the breakdown of fees charged consumers and do not represent costs incurred. Please see the answers below relating to **Confidential Exhibit MD#A-10**, and **Exhibit E-15**.

QUESTION: (a) Please provide information on how the costs were assigned to the various categories in this exhibit.

ANSWER: Employees are assigned to specific departments that typically participate in only a segment of law firm client services (engagement, maintenance, or settlement). These costs were allocated directly. All general or non-specific costs, such as rent, executives and non-direct management, insurance, etc., were allocated based on the percentage of direct payroll to each segment.

QUESTION: (b) What is the breakdown of payroll costs for intake, client servicing, and settlement?

ANSWER: Payroll costs consist of base pay, overtime and bonuses. Employee responsibilities typically have them engaged in educating and engaging the consumer in the process, serving consumers once they have engaged an attorney, or working with the clients' lawyer to communicate, obtain approval, and to consummate a settlement. If an employee could not be directly assigned to one of the three categories, their payroll amounts were allocated based on the directly assigned payroll information.

QUESTION: (c) What does "occupancy" cost reflect, and how is it different from "office" cost?

QUESTION: (a) total fees paid;

ANSWER: [*Answer submitted under request for Confidential Treatment*]

QUESTION: (b) total amount of debt settled (based on debt at time of enrollment); and

ANSWER: [*Answer submitted under request for Confidential Treatment*]

QUESTION: (c) total amount of debt reduction as compared to amount of debt at enrollment for clients.

ANSWER: [*Answer submitted under request for Confidential Treatment*]

QUESTION: **(11)** How many consumers have completed the Morgan Drexen program – defined as the number of clients that have had at least 95%

ANSWER: Occupancy costs consist primarily of rent and rent related expenses. Office costs consist primarily of expenses associated with running the business, such as supplies, utilities, postage, telephone, computer equipment, etc.

QUESTION: (d) What does "cancellation reserve" mean?

ANSWER: Cancellation reserve is the reserve established for non-collectible amounts. This reserve is allocated to client servicing as this group is responsible for working with the law firm clients, collecting fees and communicating with the law firm client to keep him or her engaged in the process.

QUESTION: (e) What does "other G&A" mean?

ANSWER: Other G&A primarily consists of employee costs such as training, recruiting, dues and subscriptions, employee functions, travel, licenses and permits, etc.

QUESTION: (f) Of what do "professional fees" consist?

ANSWER: Professional fees consist of banking, legal, accounting and consulting costs.

QUESTION: **(13)** Exhibit MD#A-17 has a chart entitled "FICO Score - Enrollment vs. Completion - MD Program."

(a) Does the bottom axis reflect the number of consumers? That is, does the chart reflect results of 12 consumers?

ANSWER: Yes. Morgan Drexen, Inc. collects FICO information upon engagement, with consent of the prospective law firm client. However, in preparing information to assist the Commission to better understand the benefit of debt settlement process, the then most recent law firm clients who completed all settlements were requested to permit the Company to obtain for statistical purposes (with their express consent, and at no cost to them) their most recent FICO score. The ability to request an "exit" FICO score has been added to contracts for new law firm clients to enable tracking this information in the future. To capture such information globally for prior clients who completed services or for all existing law firm clients would require their universal consent, or a change in the Fair Credit Reporting Act (as was recommended, above).

QUESTION: (b) What was MD's methodology for selecting the consumers to include in the Chart? Are the consumers representative of a larger group of consumers?

ANSWER: The consumers selected were the most recent consumers to complete all services. Although the sample size is small and was not randomly selected, there is no reason to believe it is not representative of the scores of all those completing the debt settlement process.

QUESTION: (c) Will MD share redacted versions of the credit reports and score information it is relying on?

ANSWER: If legally permitted to do so, it absolutely will provide such information to the Commission. The Company is proud of the proven success of its outsourced administrative, paralegal, and paraprofessional services to law firms. It believes the improvement in FICO scores of the law firms' clients for whom it provided services is a good indicator of the tangible benefit of choosing debt settlement services over bankruptcy for most consumers who are eligible for such services. [While an improved FICO score would not reflect "intangible benefits" that were received, those should not be ignored by the Commission.]

QUESTION: (d) Does MD have any other FICO data that it is willing to share?

ANSWER: For reasons discussed above, the Company does not possess other FICO exit scores at this time. However, language has been added to new law firm client contracts that would permit the Company to obtain a FICO score upon completion of all services. Once again, the Company strongly recommends to the Commission that it recommend to Congress amending the Fair Credit Reporting Act to enable debt settlement service providers to obtain such information for statistical purposes.

SOME FINAL COMMENTS

Morgan Drexen, Inc. is pleased to have been able to assist the Commission in better understanding the "tangible" and "intangible" benefits available to consumers who choose to use an attorney to assist them with debt settlement services, deploying outsourced services to a provider with a proven track record of successful services over a sustained period of time. While debt settlement services are not the only services the Company offers to attorneys, it is an important facet of the Company's Internet-based services for law firms.

What this supplemental submission confirms is that Morgan Drexen, Inc. differentiates itself from most other settlement providers in four ways:

The **first differentiating factor** is Morgan Drexen, Inc.'s comprehensive service offerings for lawyers in which a novel approach to debt settlement paraprofessional and paralegal services has been perfected to provide *much* greater protection for consumers who by contract become a client of a law firm and obtain the protection of State regulated licensure of attorneys.

The **second differentiating factor** in the way that Morgan Drexen, Inc. performs services for lawyers is a "Pay-As-You-Go" payment structure for clients as an inextricable part of the unbundled attorney services model, which closely aligns the incentives of the clients with that of their attorneys and service providers, and is not dependent on any "advance fee."

The **third differentiating factor** is that Morgan Drexen, Inc. has heavily invested in significant training; database creation, maintenance, and management; and a highly automated, scalable business infrastructure. These investments enable it to consistently perform well – long term – for law firms and their clients. This material differentiation is depicted in previously submitted business model flow charts, **Confidential Exhibits MD #B-1** through **MD #B-14**. These Exhibits substantiate a thoughtful, well designed business model that services attorneys within the regulatory framework of the uniform model ABA Code of Professional Responsibility applicable to lawyers, enforced by state judiciary mechanisms. The Company constantly and consistently achieves results at or below the settlement average of the other service providers that publicly have responded to the Commission in conjunction with this TSR Rulemaking proceeding.

The **fourth differentiating factor** for near-bankrupt consumers is that they are treated fairly and with respect by both Morgan Drexen, Inc. and their lawyer. There is no abusive "advance fee," no absence of pre-sale disclaimers, no post-performance lapse of services, a myriad of protections for the clients appertain (*e.g.*, annual audits of the trust accounts, fidelity bonding, a fully automated, paperless process within an encrypted database, etc.). Near-bankrupt consumers are not misled into contracting for services, an issue of specific interest to the Commission and presented in question number A.2 in the NPRM at 110:

> **What evidence is there that consumers are or are not misled in the promotion and sale of different types of goods or services or by different providers?** Please provide as much detail as possible.

Morgan Drexen, Inc. collects very detailed statistical information in its database that confirms the following: between March 15, 2007 (the inception of the Company) and February 27, 2010:

> **1.** The Company received **116,965** calls from consumers who sought to speak with an agent of a law firm (the capacity in which its intake employees serve), and were rejected by the Company because the callers did not meet

threshold pre-established criteria for debt settlement services (*e.g.*, they only had secured debts, they lacked a source of income to build a fund of money to pay-off debts, they were looking for some other service such as financial assistance or credit repair services, etc.).

2. Intake paraprofessionals declined to engage **41,043** callers for a lawyer's services because the potential law firm client did not have a legitimate hardship to qualify for debt settlement services. This constituted approximately 14% of all callers.

3. A total of **54,514** callers determined after speaking with an intake paraprofessional that they were not interested in engaging a lawyer to represent them for debt settlement services. This constituted approximately 15% of all callers.

4. Although no specific record exists to verify the following, significant anecdotal information in the form of routine comments by intake paraprofessionals confirms that **most consumers who seek debt settlement services "shop" four or five potential service providers** before making a decision about which best suits their objective. In some instances, another service provider: (**a**) may have less rigorous standards for acceptance of a "customer;" (**b**) the consumer was informed that another service provider would guarantee a specific settlement amount or range (which Morgan Drexen, Inc. believes would constitute an unfair or deceptive practice, and cannot be guaranteed); or (**c**) the consumer – having been informed about all the disclaimers that Morgan Drexen, Inc. mandatorily will record with the prospective law firm client's approval – decides that the potential services either would be insufficient, too attenuated, or unlikely to meet the objectives the consumer wants to be assured he or she will achieve.

This data and these anecdotal sources tend to support the proposition that **financially distressed consumers with unsustainable credit card or other unsecured debts are exposed to many Internet sites, TV commercials, radio commercials, newspaper advertisements, test messages, commercial e-mails, and word-of-mouth recommendations or disappointments by family, friends, or acquaintances. They know that some service providers charge a significant advance fee and that others do not do so. They typically contact several potential service providers (which may include alternative service providers, such as consumer credit counselors) before deciding which bests suits their needs.** In fact, in some instances, a potential law firm client may be referred by a credit collector who has dealt with employees at Morgan Drexen, Inc. and knows that the law firm clients achieve good results from lawyers who utilize Morgan Drexen, Inc.'s outsourced services [as confirmed by **Exhibits E-3**, **E-5** and **E-12**].

As demonstrated in **Exhibit E-2**, a prospective law firm client with a median FICO score between 500 and 600 with a source of income tends to be a typical candidate for debt settlement services. Such consumers who do not know their FICO score before contacting the Company may choose to compare the services of other potential service providers before deciding that engaging a lawyer provides better protection than what some debt settlement companies' offer. If they take time before re-contacting Morgan Drexen, Inc. it is reasonable to conclude that they have called after having made a comparison with competitive debt settlement providers, consumer credit counseling, and attorney bankruptcy services. It is comments from such consumers that have provided the above-referenced anecdotal information. Finally, near bankrupt debtors who know their FICO score before they call the Company tend to confirm that they sought such information or were provided it by a debt service provider.

CONCLUSION

It is Morgan Drexen, Inc.'s belief that the FTC sets an example for state attorneys general whose resource limitations do not differentiate between sound business models and "fundamentally bogus" business models that harm consumers with abusive pre-sale practices and post-sale lack of performance. The Commission's regulatory oversight obligates it to so differentiate to avoid a "drain on vision, vitality and commercial moxie[14]" for the debt settlement service providers that demonstrate "proven program completion" with "productive efficiency" that enhances choice and options for consumers.

Constitutional protections and issues of comity should be protected with respect to the practice of law – settling disputes over money. Their state licensed responsibility and supervision should pre-empt regulatory impositions neither intended nor requested by Congress, and not supported by the Commission's Sentinel Data Base.

Finally, because this Rulemaking proceeding neither was announced nor premised on a "deception" theory, if a debt settlement service provider proves neither "unfairness" nor "abuse" in its disclaimers and performance, the rebuttable presumptions of unfairness and abuse are inapplicable and unproved. A carve-out, waiver, or safe harbor exemption for those service providers is warranted as a matter of law.

Respectfully submitted,
Morgan Drexen, Inc. *by*

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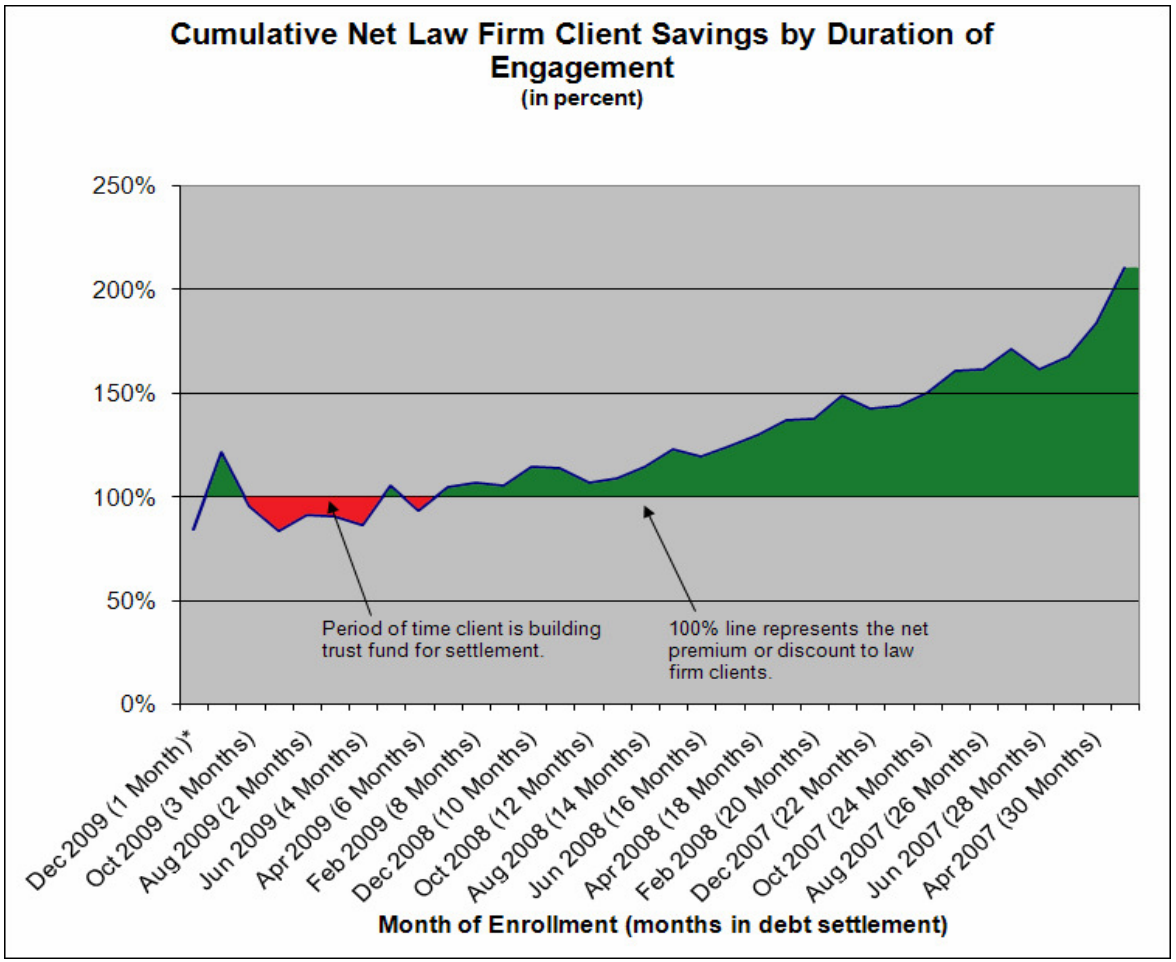
[14] "Bring Back the Robber Barons," by Daniel Henninger, *The Wall Street Journal*, Thursday, March 4, 2010.

Cumulative Net Law Firm Client Savings by Duration of Engagement

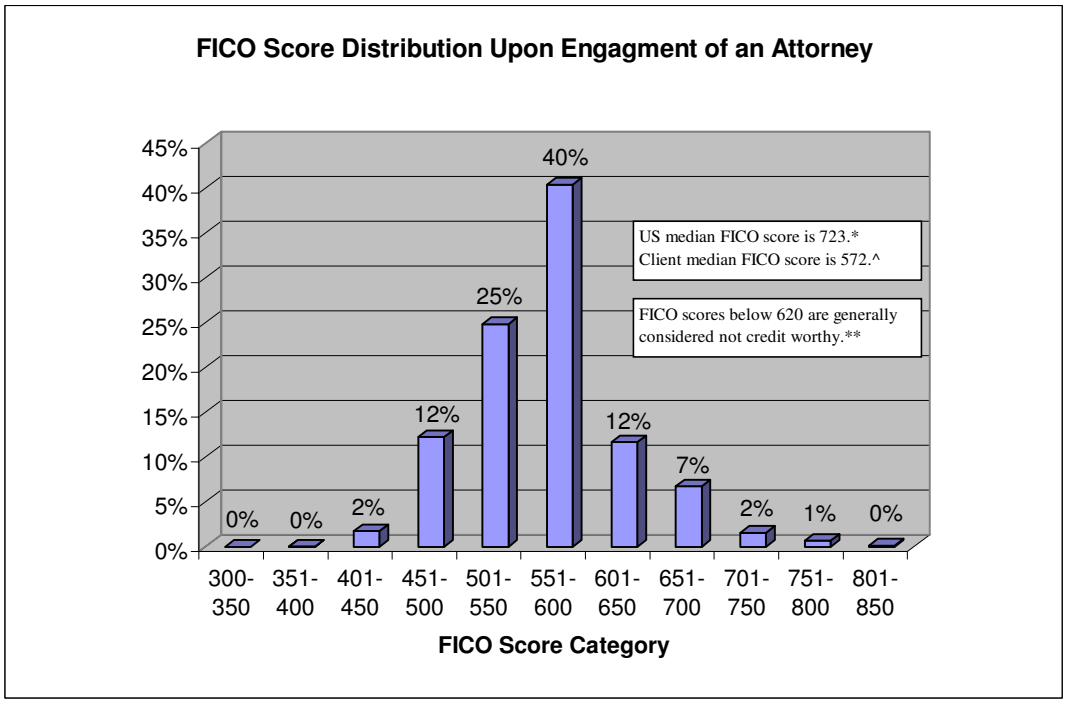
Month Enrolled	Savings Percentage
Dec 2009 (1 Month)*	84%
Nov 2009 (2 Months)	121%
Oct 2009 (3 Months)	95%
Sep 2009 (4 Months)	83%
Aug 2009 (5 Months)	91%
Jul 2009 (6 Months)	90%
Jun 2009 (7 Months)	86%
May 2009 (8 Months)	105%
Apr 2009 (9 Months)	93%
Mar 2009 (10 Months)	104%
Feb 2009 (11 Months)	106%
Jan 2009 (12 Months)	105%
Dec 2008 (13 Months)	114%
Nov 2008 (14 Months)	113%
Oct 2008 (16 Months)	106%
Sep 2008 (16 Months)	108%
Aug 2008 (17 Months)	114%
Jul 2008 (18 Months)	122%
Jun 2008 (19 Months)	119%
May 2008 (20 Months)	124%
Apr 2008 (21 Months)	129%
Mar 2008 (22 Months)	136%
Feb 2008 (23 Months)	137%
Jan 2008 (24 Months)	148%
Dec 2007 (25 Months)	142%
Nov 2007 (26 Months)	143%
Oct 2007 (27 Months)	150%
Sep 2007 (28 Months)	160%
Aug 2007 (29 Months)	161%
Jul 2007 (30 Months)	171%
Jun 2007 (31 Months)	161%
May 2007 (32 Months)	167%
Apr 2007 (33 Months)	183%
Mar 2007 (34 Months)	210%



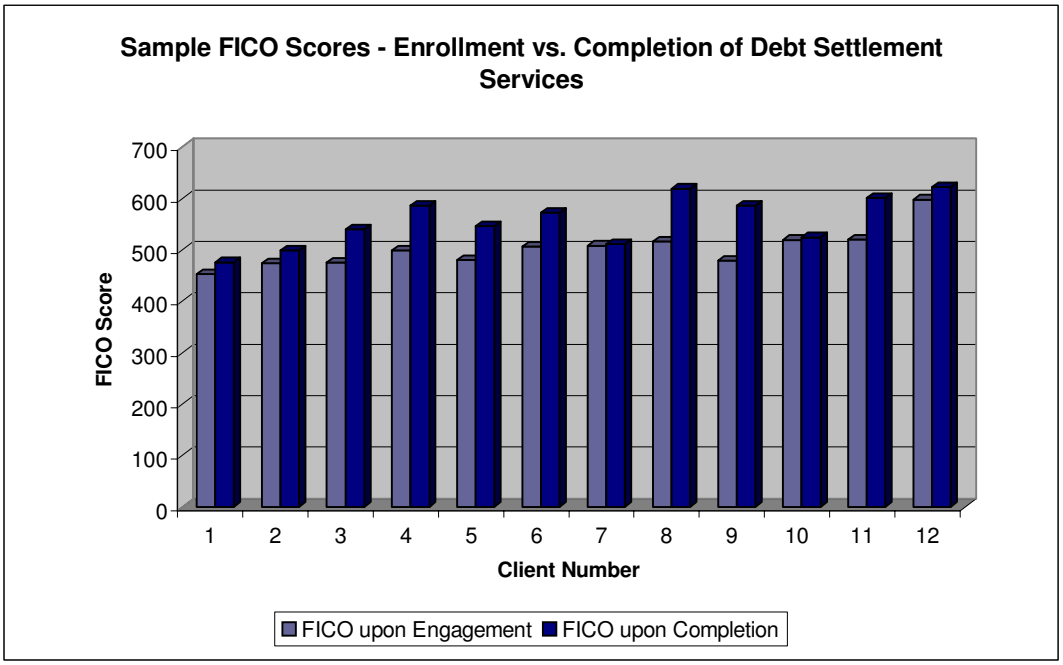
The above chart represents the total law firm client savings as a percentage of total fees of all law firm clients with at least one settlement. A cumulative net savings greater than 100% indicates the total combined client benefits are greater than the total combined fees paid by that group. The data is grouped based on the law firm client's initial engagement date (i.e. each data point on the x-axis represents the total combined cumulative net savings of all law firm clients with at least one settlement that started in the month identified). The number of months in parenthesis represents the number of months that group of law firm clients have been in the settlement negotiation process. The more time the client is engaged in the settlement negotiation process, the greater the likelihood of acheiving mulitple settlements, and the greater the cumulative net client benefit from the process. This trend is demonstrated by looking to the earliest starting data group (March 2007) and noting this group has the largest cumulative net savings after 34 months in the settlement process.

* Represents the group of all law firm clients with at least one settlement who were enrolled in March 2007. The law firm clients within this group have been engaged in the process for 34 months.

Analysis of Law Firm Client's FICO Scores



* Source: www.creditscoring.com, Fair Issac quote (12/28/06)
** Source: www.creditscoring.com, various quotes
^ MD Database of law firm clients. FICO score obtained prior to engagement.



The above chart compares a sample of law firm client's FICO scores upon program enrollment to the FICO score and at program completion. Morgan Drexen, inc. began collecting the FICO score upon program completion to respond to FTC requests. The above sample is of the 12 most recent law firm clients to settle all debts. In 100% of the clients examined, the FICO score increased between engagement and completion. We believe the FICO score will continue to improve over the six months following program completion as the information is reported to the reporting agencies.