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Luigi L. De Ghenghi

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

212 450 4296 tel
luigi.deghenghi@davispolk.com

April 29, 2020

Re: Application of Morgan Stanley to Acquire by Merger E*TRADE Financial Corporation – Response to Additional Information Request

VIA E-APPS

Ivan J. Hurwitz
Senior Vice President, Bank Applications
Federal Reserve Bank of New York
33 Liberty Street, New York, NY 10045

Dear Mr. Hurwitz:

On March 25, 2020, Morgan Stanley, New York, New York, filed an application (the "**Application**"), pursuant to Sections 4(j) and 4(k) of the Bank Holding Company Act of 1956, as amended, and Regulation Y promulgated thereunder, as well as Section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, requesting approval of the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") for Morgan Stanley to acquire by merger E*TRADE Financial Corporation ("**E*TRADE**"), Arlington, Virginia, with Morgan Stanley as the surviving entity (the "**Proposed Transaction**").

This letter responds to the requests for additional information regarding the Application and the Proposed Transaction that Federal Reserve staff emailed to me on April 17, 2020 (the "**Additional Information Request**"). By this letter, Morgan Stanley provides responses to 11 of the requested items in the Additional Information Request, based on the information that is available at this time. As discussed with Federal Reserve staff, Morgan Stanley expects to provide responsive information to the remaining questions included in the Additional Information Request in one or more subsequent submissions in the next few weeks (the first such submission is expected to be made on or about May 15, 2020), because the information requested for some of those questions is dependent on Morgan Stanley and E*TRADE completing the filing of their respective first quarter reports on Form 10-Q with the Securities and Exchange Commission.

Appendix 1 and Confidential Appendix 2 to this letter reproduce the requested items and related text from the Additional Information Request using bold type and provide responses following their corresponding items. Also included with this letter are a Public Exhibits Volume and a Confidential Exhibits Volume.

Morgan Stanley respectfully requests confidential treatment under the federal Freedom of Information Act, 5 U.S.C. § 552 ("**FOIA**"), and the implementing regulations of the Federal Reserve, 12 C.F.R. Part 261, for the responses included in Confidential Appendix 2 and the information contained in the Confidential Exhibits Volume to this application, as well as any other information marked "confidential" (collectively, the "**Confidential Materials**"). The Confidential Materials include, for example, non-public information regarding the business strategies and plans of (i) Morgan Stanley and its subsidiary banks, Morgan Stanley Bank, N.A. and Morgan Stanley Private Bank, National Association (together the "**Morgan Stanley Banks**"), and (ii) E*TRADE and its subsidiary banks, E*TRADE Bank and E*TRADE Savings Bank (together the "**E*TRADE Banks**"), and other information regarding additional matters of a similar nature, which is commercial or financial information that is customarily and actually treated as confidential by Morgan Stanley or E*TRADE and that is being provided to the government under an assurance of confidentiality. Certain information in the Confidential Materials may also include confidential supervisory information, which is statutorily protected from disclosure. None of the information in the Confidential Materials is the type of information that would otherwise be made available to the public under any circumstances. All such information, if made public, could result in substantial and irreparable harm to Morgan Stanley, the Morgan Stanley Banks, E*TRADE, and the E*TRADE Banks. In addition, potential investors could be influenced or misled by such information, which is not reported in any documents filed or to be filed in accordance with the disclosure requirements of applicable securities laws, as a result of which Morgan Stanley or E*TRADE could be exposed to potential inadvertent violations of law or exposure to legal claims. Accordingly, confidential treatment is respectfully requested with respect to the Confidential Materials under FOIA, specifically 5 U.S.C. § 552(b)(4) and (b)(8), and the Federal Reserve's implementing regulations, specifically 12 CFR 261.14(a)(4) and (a)(8). The Confidential Materials may also be exempt from disclosure under other provisions of law.

We also request that, if the Federal Reserve should make a preliminary determination not to comply with the request for confidential treatment, Morgan Stanley be given notice thereof in ample time to permit it to make an appropriate submission as to why such information should be preserved in confidence. If the Confidential Materials, or any memoranda, notes or writings made by employees, agents or other persons under the control of the Federal Reserve or any Federal Reserve Bank that incorporate, include or relate to any of the matters referred to in the Confidential Materials, are the subject of a FOIA request or a request or demand for disclosure by any governmental agency, Congressional office or committee, or court or grand jury, we request, pursuant to the Federal Reserve's regulations, that you notify Morgan Stanley and the undersigned prior to making such disclosure.

We further ask that Morgan Stanley and the undersigned be furnished with a copy of all written materials pertaining to such request (including, but not limited to, the request itself and any determination with respect to such request) and that Morgan Stanley and the undersigned be given sufficient advance notice of any intended release so that Morgan Stanley may, if deemed necessary or appropriate, pursue any available remedies.

* * *

If you have any questions regarding this letter or the confidential treatment request, please feel free to contact me at (212) 450-4296 or luigi.deghenghi@davispolk.com, or my colleague Ryan Johansen at (212) 450-3408 or ryan.johansen@davispolk.com.

Yours sincerely,

Luigi L. De Ghenghi

Enclosures

cc: Alison M. Thro, Federal Reserve
Eric F. Grossman, Morgan Stanley
Sebastiano Visentini, Morgan Stanley
Andrew S. Baer, Morgan Stanley
Lori S. Sher, E*TRADE Financial Corporation
Neil Barr, Davis Polk & Wardwell LLP
Marc O. Williams, Davis Polk & Wardwell LLP
Brian Wolfe, Davis Polk & Wardwell LLP
Stephen F. Arcano, Skadden, Arps, Slate, Meagher & Flom LLP
Brian D. Christiansen, Skadden, Arps, Slate, Meagher & Flom LLP
David C. Hepp, Skadden, Arps, Slate, Meagher & Flom LLP
Dohyun Kim, Skadden, Arps, Slate, Meagher & Flom LLP

APPENDIX 1

Responses to Additional Information Requests Dated April 17, 2020

Defined terms used but not defined in these responses have the same meaning set forth in Morgan Stanley's Application.

1. Please indicate if the current economic downturn resulting from the global pandemic has altered Morgan Stanley's proposed merger with E*TRADE in terms of any aspect of the merger agreement. In particular, given that the pandemic has impacted the respective stock prices of Morgan Stanley and E*TRADE, and otherwise has had an effect on other operational aspects, indicate if any changes are being contemplated to the stock exchange ratio or consummation timing.

The current economic downturn resulting from the global pandemic has not altered any aspect of the Merger Agreement with E*TRADE and no such changes have been discussed or are contemplated. While some operational aspects, such as a substantial number of employees having to work from home, and the stock prices of both firms have certainly been impacted by the global pandemic, the fundamentals of each firm – balance sheet, capital and liquidity – have remained strong, enabling each of Morgan Stanley and E*TRADE to continue to serve their clients through the current economic downturn. No changes are currently contemplated to the stock exchange ratio or consummation timing. Morgan Stanley continues to believe in the strategic rationale for the all-stock merger with, and the value of, E*TRADE and remains committed to completing the transaction according to the terms of the Merger Agreement.

2. In reference to the Treatment of Existing Indebtedness, discussed in section 8.12 of the Merger Agreement, please clarify the debt amount currently outstanding in E*TRADE's credit agreement with JPMorgan Chase Bank, N.A. Describe how E*TRADE would repay this debt and clarify whether this repayment is reflected in the pro forma financial statements.

The credit agreement with JPMorgan Chase Bank, N.A. is a revolving facility that is currently undrawn, meaning that no amounts are currently outstanding. E*TRADE expects this facility to remain undrawn through the closing of the Proposed Transaction. As a result, there are no associated debt repayment amounts reflected in Morgan Stanley's pro forma financial statements included with the Application.

4. With regard to the structure of the proposed transaction on page 11 of the notification, please indicate whether a decision has been made about the post-closing legal entity structure for the integration of E*TRADE legal entities with Morgan Stanley. If yes, indicate whether Morgan Stanley would be using push down accounting, and reflect any impact on pro forma and projected financial statements.

Morgan Stanley continues to perform the necessary analysis on the potential post-closing legal entity structure for the integration of E*TRADE's legal entities within Morgan Stanley, but has not yet made any final decisions as of the date of this response. Morgan Stanley expects that final determinations on the legal entity structure and the related considerations for potential pushdown accounting choices will not be completed until closer to the closing of the Proposed Transaction, which is anticipated by the fourth quarter of 2020. Once those determinations have been made, Morgan Stanley will supplement its response to this information request or otherwise inform the Federal Reserve.

8. Please provide the current status of other regulatory applications, particularly whether the OCC has made a decision to require a CIBCA notice with regard to Morgan Stanley's indirect acquisition of E*TRADE's bank subsidiaries.

Please see below for updates on the current status of the other regulatory applications discussed in the Application. Please refer to Confidential Exhibit A to this letter for further updates on the status of regulatory applications and filings.

- As noted in the Application, on March 11, 2020, Morgan Stanley filed with the Federal Trade Commission and the Department of Justice, Antitrust Division, a Notification and Report Form for Certain Mergers and Acquisitions (the "**HSR Notifications**"). On April 10, 2020, at 11:59 p.m. Eastern Time, the waiting period for the HSR Notifications expired.

- On March 26, 2020, E*TRADE Securities LLC, E*TRADE's wholly-owned registered broker-dealer subsidiary, filed an application seeking prior approval from the Financial Industry Regulatory Authority ("**FINRA**") for its change of ownership or control. On April 2, 2020, FINRA notified E*TRADE that it deemed the application "substantially complete" as of the day of filing, meaning that the review period in which FINRA will review and process the application (generally up to 180 days) began on March 26, 2020. On April 15, 2020, FINRA submitted to E*TRADE Securities LLC a request for additional information relating to the Application. Morgan Stanley and E*TRADE are preparing a response to FINRA's April 15, 2020 request.

- In Appendix B to the Application, Morgan Stanley committed to supplementing the Application with the registration statement on Form S-4 filed by the parties in

connection with the Proposed Transaction after its filing with the Securities and Exchange Commission. The registration statement on Form S-4 was filed on April 17, 2020 and is included as Public Exhibit 1 to this letter.[1]

9. Provide a pro forma shareholder list that identifies any shareholder or group of shareholders that would own or control, directly or indirectly, 5 percent or more of any class of voting securities, or 10 percent or more of the total equity, of Morgan Stanley after consummation of the proposed transaction. In calculating the voting ownership, include any warrants, options, and other convertible instruments, and show all levels of voting ownership on both fully diluted and individually diluted bases. For purposes of calculating voting ownership on an individually diluted basis, any warrants, options, and other convertible instruments should be treated as having been exercised by individual holders (or commonly controlled entity groups or family groups), and by no other holders of the warrants, options, or convertible instruments. Aggregate the interests of any related shareholders, including, for example, shareholders that are acting in concert (pursuant to definitions and presumptions in 12 CFR 225.41) and shareholders that are commonly controlled or advised. Indicate whether any identified shareholder is a bank or bank holding company.

The following table reflects (on a fully diluted basis) the pro forma ownership of Morgan Stanley's voting securities after completion of the Proposed Transaction:

		Pro Forma	
Top Shareholders	**CSO Held (MM)**	**Ownership (%)**	**BHC or Affiliate?**
Mitsubishi UFJ Financial Group Inc.	377	20.9%	Yes
State Street Corporation	131	7.2%	Yes
Vanguard	125	6.9%	No
BlackRock Inc.	122	6.8%	Yes[2]
T. Rowe Price Group	76	4.2%	No

Of the shareholders noted in the table above, Mitsubishi UFJ Financial Group, Inc. and State Street Corporation are bank holding companies and BlackRock is an affiliate of a bank holding company.

[1] A copy of the S-4 is also available at: https://www.sec.gov/Archives/edgar/data/895421/000120677420001188/etrade3750091-s4.htm.

[2] According to its annual report on Form 10-K filed on March 2, 2020, PNC Financial Services Group, Inc. ("**PNC**") is presumed to control BlackRock Inc. ("**BlackRock**") for purposes of the BHC Act, which would cause BlackRock to be considered a PNC subsidiary for purposes of the BHC Act.

Each of the entities listed in the table above as controlling 5% or more of Morgan Stanley's voting securities after closing of the Proposed Transaction, including those entities that are bank holding companies or that are affiliates of bank holding companies, was the beneficial owner of more than 5% of Morgan Stanley's common stock as of December 31, 2019.[3] Accordingly, the Proposed Transaction is not expected to result in any additional entities becoming the owner of (or otherwise having the power to control) 5% or more of Morgan Stanley's voting securities.

10. Pursuant to sections 2.03(i) and (ii) of the Agreement and Plan of Merger dated February 20, 2020, by and among Morgan Stanley, Moon-Eagle Merger Sub, Inc., and E*TRADE, included as Public Exhibit 1 ("Merger Agreement"), at the Effective Time, each share of E*TRADE Series A and Series B Preferred Stock outstanding immediately prior to the Effective Time will be converted into the right to receive one share of one of two newly created series of preferred stock of Morgan Stanley, each series having such rights, preferences, privileges, and voting powers, and limitations and restrictions, that, taken as a whole, would not be materially less favorable to the holders of shares of Series A and Series B Preferred Stock than the rights, preferences, privileges, and voting powers of those shares, respectively and taken as a whole.

a. For each of the proposed newly created series of preferred stock, discuss whether the shares in the series would be "voting securities" for purposes of the Board's Regulation Y. In your discussion, describe the voting rights that would accrue to these shares. As a supplement to your discussion, provide copies of Annexes I and II, each as referred to in sections 2.03(i) and (ii) of the Merger Agreement.

Pursuant to the Merger Agreement, Morgan Stanley would issue two newly created series of preferred stock, Morgan Stanley Series M Preferred Stock and Morgan Stanley Series N Preferred Stock (together, the "**New Morgan Stanley Preferred Stock**").[4] Attached hereto as Public Exhibit 2 are Annexes I and II to the Merger Agreement, which describe the terms of the New Morgan Stanley Preferred Stock as agreed at the time of signing of the Merger Agreement.

For the reasons discussed below, neither series of the New Morgan Stanley Preferred Stock would be "voting securities" under the Federal Reserve's Regulation Y.[5]

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[3] See Morgan Stanley's proxy statement filed with the Securities and Exchange Commission, *available at* www.sec.gov/Archives/edgar/data/895421/000119312520098079/d815633ddef14a.htm#toc815633_54.

[4] Because the voting rights of the Morgan Stanley Series M Preferred Stock and the Morgan Stanley Series N Preferred Stock will be substantively identical, we discuss those rights collectively.

[5] 12 C.F.R. § 225.2(q).

Voting Rights of the New Morgan Stanley Preferred Stock

Holders of the New Morgan Stanley Preferred Stock will not have any voting rights except as set forth below and as determined by the Morgan Stanley Board of Directors or an authorized committee thereof or as otherwise from time to time required by law.

Voting Rights to Prevent Adverse Effects on Rights and Preferences. So long as any shares of New Morgan Stanley Preferred Stock remain outstanding, Morgan Stanley will not, without the consent of the holders of at least two-thirds of the shares of New Morgan Stanley Preferred Stock outstanding at the time, voting together as a single class with holders of any and all other series of Morgan Stanley preferred stock having similar voting rights that are exercisable:

- amend or alter any provision of the Morgan Stanley certificate of incorporation or the certificates of designation of preferences and rights with respect to the New Morgan Stanley Preferred Stock to authorize or create, or increase the authorized amount of, any class or series of stock ranking senior to the New Morgan Stanley Preferred Stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up;

- amend, alter or repeal any provision of the Morgan Stanley certificate of incorporation or the certificates of designation of preferences and rights with respect to the New Morgan Stanley Preferred Stock if such amendment, alteration or repeal would materially and adversely affect the special rights, preferences, privileges and voting powers of the applicable series of New Morgan Stanley Preferred Stock taken as a whole, whether by merger, consolidation or otherwise[6]; or

- consummate any binding share exchange or reclassification involving the New Morgan Stanley Preferred Stock, or merger or consolidation of Morgan Stanley with another entity, unless in each case (x) the shares of New Morgan Stanley Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remain outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights,

[6] Any increase in the authorized amount of Morgan Stanley common stock or Morgan Stanley preferred stock or the creation and issuance of other series of Morgan Stanley common stock or Morgan Stanley preferred stock ranking on a parity basis with or junior to the New Morgan Stanley Preferred Stock as to dividends and the distribution of assets upon liquidation, dissolution or winding up will not be deemed to materially and adversely affect the special rights, preferences, privileges and voting powers of New Morgan Stanley Preferred Stock.

preferences, privileges and voting powers of New Morgan Stanley Preferred Stock immediately prior to such consummation, taken as a whole.

Voting Rights upon Nonpayment Events. Whenever dividends on any series of New Morgan Stanley Preferred Stock or existing Morgan Stanley preferred stock have not been declared and paid for the equivalent of three semi-annual or six quarterly full dividend periods, whether or not consecutive, the authorized number of directors of Morgan Stanley will be automatically increased by two and the holders of shares of New Morgan Stanley Preferred Stock, voting together as a class with holders of any and all other series of Morgan Stanley preferred stock having similar voting rights that are exercisable, will be entitled to elect two directors to fill such newly created directorships at Morgan Stanley's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting.

These voting rights will continue for each series of New Morgan Stanley Preferred Stock until dividends on such shares have been fully paid (or declared and a sum sufficient for the payment of such dividends shall have been set aside for such payment) for at least the equivalent of two consecutive semi-annual dividend periods or four consecutive quarterly dividend periods following the nonpayment. The term of office of all directors elected by the holders of Morgan Stanley preferred stock will terminate immediately upon the termination of the right of holders of Morgan Stanley preferred stock to vote for directors.

Analysis under Regulation Y

The limited voting rights to which holders of the New Morgan Stanley Preferred Stock would be entitled under the circumstances described above would not, in the ordinary course of business, result in either series of the New Morgan Stanley Preferred Stock being considered "voting securities" under Regulation Y.

Preferred shares such as those intended to be issued as New Morgan Stanley Preferred Stock are not voting securities within the meaning of Regulation Y if:[7]

i. any voting rights associated with the shares are limited solely to the type customarily provided by statute on matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of

[7] 12 C.F.R. § 225.2(q)(2). In January 2020, the Federal Reserve finalized a rule to revise its regulations related to determinations of whether a company has the ability to exercise a controlling influence over another company for purposes of the BHC Act or HOLA (the "**revised control rule**"). See 85 Fed. Reg. 12,398 (Mar 2, 2020). The revised control rule, which will become effective September 30, 2020, includes certain revisions to 1 CFR § 225.2(q)(2). *See* 85 Fed. Reg. at 12,413, 12,421. None of those revisions alter the substance of the requirements noted above or alter the analysis of whether the New Morgan Stanley Preferred Stock would be voting securities under Regulation Y.

additional amounts or classes of senior securities, the modification of the terms of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

ii. the shares represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

iii. the shares do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

The New Morgan Stanley Preferred Stock would satisfy each of these criteria.

First, the voting rights associated with the New Morgan Stanley Preferred Stock are limited solely to voting rights on matters that would significantly and adversely affect the rights or preferences of the New Morgan Stanley Preferred Stock.[8] Because the New Morgan Stanley Preferred Stock will entitle its holders to voting rights only when the rights or preferences of the New Morgan Stanley Preferred Stock would be adversely affected, the New Morgan Stanley Preferred Stock would not give rise to voting rights such as those that the Federal Reserve has suggested may cause a series of preferred stock to be viewed as voting securities.[9]

Second, the New Morgan Stanley Preferred Stock will not provide its holders with control over Morgan Stanley, either under the Federal Reserve's existing control rule or the revised control rule that will become effective September 30, 2020. Among other factors, the terms and conditions of the New Morgan Stanley Preferred Stock do not contain any rights over the management or operations of Morgan Stanley that would be treated as limiting contractual rights under the Federal Reserve's revised control rule.[10]

Finally, the voting rights to which holders of the New Morgan Stanley Preferred Stock would be entitled upon certain nonpayment events would not, in the ordinary course, cause the New Morgan Stanley Preferred Stock to be voting securities under Regulation Y. When evaluating preferred stock with rights upon nonpayment events very similar to those of the New Morgan Stanley Preferred Stock, "the [Federal Reserve]

[8] *See* 12 C.F.R. § 225.2(q)(2)(i); Federal Reserve, Bank Holding Companies and Change in Bank Control; Revision of Regulation Y, 49 Fed. Reg. 794, 800 (Jan. 5, 1984) ("For example, preferred stock would not be viewed as a voting security if it may vote on a merger that would adversely affect its rights or preference or that involves the issuance of additional amounts or classes of senior securities, or the alteration of charter or by-laws that would adversely affect the preferred stock.").

[9] *See id*. ("On the other hand, preferred stock that may vote on any merger regardless of whether its preferred status would be affected, could be viewed as a voting security.").

[10] *See* 12 C.F.R. § 225.31(e)(5) of the Federal Reserve's revised control rule (definition of limiting contractual right).

traditionally has permitted preferred stock to have such rights and retain its status as nonvoting securities."[11]

To the extent that such a right to vote arises, Morgan Stanley acknowledges that the New Morgan Stanley Preferred Stock would be treated as voting securities, but "only at the time the right to vote arises"[12] and only for "any period that the voting rights are triggered."[13]

For these reasons, in the absence of a nonpayment event of the kind described above, neither series of the New Morgan Stanley Preferred Stock would constitute voting securities under Regulation Y.

b. For each of the proposed newly created series of preferred stock, discuss in detail whether the shares in the series would qualify for inclusion as a component of Morgan Stanley's regulatory capital under 12 CFR 217.20.

Morgan Stanley intends that both series of the New Morgan Stanley Preferred Stock would qualify for inclusion as a component of Morgan Stanley's regulatory capital under the Federal Reserve's Regulation Q.[14] In particular, Morgan Stanley intends that each series of the New Morgan Stanley Preferred Stock would qualify as additional tier 1 capital.[15]

The terms and conditions of the New Morgan Stanley Preferred Stock described in Annexes I and II to the Merger Agreement are consistent with the eligibility criteria for treatment as additional tier 1 capital. Under Regulation Q, certain criteria for inclusion of a capital instrument as regulatory capital are based on the facts and circumstances at a particular point in time, relate to the manner in which the offering is conducted, or

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[11] Scott G. Alvarez, General Counsel, Federal Reserve, Letter to Timothy J. Mayopolous (Aug. 22, 2007) at n.6 ("Although the holders of the Preferred Stock would be entitled to designate two directors to CFC's board of directors if CFC has not paid dividends on the Preferred Stock for six quarters (and until CFC has paid dividends for two consecutive quarters), the Board traditionally has permitted preferred stock to have such rights and retain its status as nonvoting securities."). *See also* 12 C.F.R. § 225.9(a)(6) of the Federal Reserve's revised control rule (specifically providing that a preferred security that would be a voting security but for a right to vote on directors that activates only after six or more quarters of unpaid dividends is not considered to be a voting security until the security holder is entitled to exercise the voting right).

[12] 49 Fed. Reg. at 800.

[13] Scott G. Alvarez, General Counsel, Federal Reserve, Letter to Joseph J. Samarias (Dec. 7, 2012); 12 C.F.R. § 225.9(a)(6) of the Federal Reserve's revised control rule.

[14] 12 C.F.R. § 217.

[15] 12 C.F.R. § 217.20(c).

require disclosures that must be included in certain offering documents. Morgan Stanley intends that each such condition would be satisfied, if and when applicable.

The following table evaluates the terms of the New Morgan Stanley Preferred Stock, as reflected in Annexes I and II of the Merger Agreement, against the additional tier 1 capital criteria in Regulation Q.

12 C.F.R § 217.___	**Additional Tier 1 Capital Criterion**	**Analysis**
_.20(c)(1)(i)	The instrument is issued and paid-in.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but that Morgan Stanley intends to satisfy at the time of offering.
_.20(c)(1)(ii)	The instrument is subordinated to depositors, general creditors, and subordinated debt holders of the Board-regulated institution in a receivership, insolvency, liquidation, or similar proceeding.	Annexes I and II are consistent with this condition. See *Liquidation Rights* section.
_.20(c)(1)(iii)	The instrument is not secured, not covered by a guarantee of the Board-regulated institution or of an affiliate of the Board-regulated institution, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument.	Annexes I and II are consistent with this condition. Annexes I and II do not indicate that there are any guarantees or other seniority-enhancing arrangements, and Morgan Stanley does not intend to include in the New Morgan Stanley Preferred Stock any such arrangements.
_.20(c)(1)(iv)	The instrument has no maturity date.	Annexes I and II are consistent with this condition. See *Maturity* section.
_.20(c)(1)(iv)	The instrument does not contain a dividend step-up or any other term or feature that creates an incentive to redeem.	Annexes I and II are consistent with this

12 C.F.R § 217.___	Additional Tier 1 Capital Criterion	Analysis
		condition. See *Dividends* section.[16]
_.20(c)(1)(v)	If callable by its terms, the instrument may be called by the Board-regulated institution only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).	Annexes I and II are consistent with this condition. See *Redemption* section.
_.20(c)(1)(v)(A)	The Board-regulated institution must receive prior approval from the Board to exercise a call option on the instrument.	Annexes I and II are consistent with this condition, which Morgan Stanley intends to satisfy if and when applicable. See *Redemption* section.
_.20(c)(1)(v)(B)	The Board-regulated institution does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but there are no provisions in Annexes I and II that would in and of themselves create such an expectation, and Morgan Stanley does not otherwise intend to create such an expectation.

[16] Annexes I and II contemplate a fixed-to-floating dividend reset feature. After an initial fixed-rate period, the dividend rate changes to a floating rate indexed to a benchmark floating rate (3-month LIBOR, defined to be consistent with the definition of such term in the Company Series A Preferred Stock) plus a fixed spread. The U.S. banking agencies have stated that such a reset feature would generally not create an "incentive to redeem" if there is no concurrent increase in the credit spread. *See* U.S. Basel III Final Rule, 78 Fed. Reg. 62018, 62047 (Oct. 11, 2013).

12 C.F.R § 217.___	Additional Tier 1 Capital Criterion	Analysis
_.20(c)(1)(v)(C)	Prior to exercising the call option, or immediately thereafter, the Board-regulated institution must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria [for Common Equity Tier 1 treatment] or [Additional Tier 1 Treatment]; or demonstrate to the satisfaction of the Board that following redemption, the Board-regulated institution will continue to hold capital commensurate with its risk.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but that Morgan Stanley intends to satisfy if and when applicable. See *Redemption* section.
_.20(c)(1)(vi)	Redemption or repurchase of the instrument requires prior approval from the Board.	Annexes I and II are consistent with this condition, which Morgan Stanley intends to satisfy if and when applicable. See *Redemption* section.
_.20(c)(1)(vii)	The Board-regulated institution has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the Board-regulated institution except in relation to any distributions to holders of common stock or instruments that are *pari passu* with the instrument.	Annexes I and II are consistent with this condition. See *Dividends* section (stating that dividends will not be cumulative and will be payable only when and if authorized by the Morgan Stanley Board of Directors or a duly authorized committee thereof).
_.20(c)(1)(viii)	Any distributions on the instrument are paid out of the Board-regulated institution's net income, retained earnings, or surplus related to other additional tier 1 capital instruments.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but that Morgan Stanley intends to satisfy when applicable.
_.20(c)(1)(ix)	The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the Board-regulated institution's credit quality, but	Annexes I and II are consistent with this condition, and Morgan Stanley does not intend

12 C.F.R § 217.___	Additional Tier 1 Capital Criterion	Analysis
	may have a dividend rate that is adjusted periodically independent of the Board-regulated institution's credit quality, in relation to general market interest rates or similar adjustments.	to include in the New Morgan Stanley Preferred Stock any impermissible credit-sensitive features.
_.20(c)(1)(x)	The paid-in amount is classified as equity under GAAP.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but that Morgan Stanley intends to satisfy.
_.20(c)(1)(xi)	The Board-regulated institution, or an entity that the Board-regulated institution controls, did not purchase or directly or indirectly fund the purchase of the instrument.	Factual condition that cannot be assessed on the basis of Annexes I and II alone, but neither Morgan Stanley nor an entity that Morgan Stanley controls will purchase or directly or indirectly fund the purchase of the New Morgan Stanley Preferred Stock.
_.20(c)(1)(xii)	The instrument does not have any features that would limit or discourage additional issuance of capital by the Board-regulated institution, such as provisions that require the Board-regulated institution to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.	Annexes I and II are consistent with this condition, and Morgan Stanley does not intend to include in the New Morgan Stanley Preferred Stock any such features.
_.20(c)(1)(xiii)	If the instrument is not issued directly by the Board-regulated institution or by a subsidiary of the Board-regulated institution that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Board-regulated institution, and proceeds must be immediately available without limitation to the Board-regulated institution or to the Board-regulated institution's top-tier holding company in a form which meets or exceeds all	N/A – Criterion does not apply. The New Morgan Stanley Preferred Stock would be issued directly by Morgan Stanley.

12 C.F.R § 217.___	Additional Tier 1 Capital Criterion	Analysis
	of the other criteria for additional tier 1 capital instruments.	
_.20(c)(1)(xiv)	For an advanced approaches Board-regulated institution, the governing agreement, offering circular, or prospectus of an instrument issued after the date upon which the Board-regulated institution becomes subject to this part as set forth in §217.1(f) must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Board-regulated institution enters into a receivership, insolvency, liquidation, or similar proceeding.	Annexes I and II are consistent with this condition, which Morgan Stanley intends to satisfy by including such disclosure in the appropriate documents. See *Liquidation* section.

11. Provide a copy of the Parent Disclosure Schedule and the Company Disclosure Schedule referenced in the Merger Agreement.

Redacted copies of the Parent Disclosure Schedule and the Company Disclosure Schedule are included as Public Exhibit 3 and Public Exhibit 4, respectively. Unredacted copies of the Parent Disclosure Schedule and the Company Disclosure Schedule are included as Confidential Exhibit B and Confidential Exhibit C, respectively.

12. Clarify the BHC Act authority under which each of E*TRADE's non-depository institution subsidiaries would engage in activities upon consummation of the proposal. Indicate whether any activities of these entities would be impermissible for a financial holding company.

Based on the diligence Morgan Stanley has conducted to date, each of the activities currently conducted by E*TRADE's non-depository institution subsidiaries would be permissible for a financial holding company. The table below reproduces the list of E*TRADE subsidiaries and descriptions of their activities included with the Application, and adds a row indicating the BHC Act authority upon which Morgan Stanley would rely to engage in such activities after completion of the Proposed Transaction. In each case, the identification of the BHC Act authority or authorities upon which Morgan Stanley would rely is based on the diligence it has conducted to date, and based upon further integration planning work there may be additional sources of authority upon which Morgan Stanley could rely that are not cited here.

Entity	Summary of Activities Currently Conducted by Entity	BHC Act or Other Authority
ETB Holdings, Inc.	• Holding company of E*TRADE Bank; E*TRADE Community Development Corporation; and E*TRADE Savings Bank	• See below authorities for each subsidiary of ETB Holdings, Inc.
E*TRADE Bank	• Federal savings bank; provides deposit accounts and holds loan portfolio	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(4)(ii) ("Owning, controlling, or operating a savings association, if the savings association engages only in deposit-taking activities, lending, and other activities that are permissible for bank holding companies under this subpart C.").
E*TRADE Community Development Corporation	• Community development company that invests in and holds certain CRA qualifying community development investments	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(12) (community development financing and investment activities).
E*TRADE Savings Bank	• Federal savings bank that is a subsidiary of E*TRADE Bank; provides deposit accounts, lending, holds mortgages, and for unaffiliated registered investment advisers it provides custody solutions	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(4)(ii) ("Owning, controlling, or operating a savings association, if the savings association engages only in deposit-taking activities, lending, and other activities that are permissible for bank holding companies under this subpart C."); 12 C.F.R. § 225.28(b)(7) (activities incidental to certain securities brokerage services, including custodial services).
E*TRADE Financial Corporate Services, Inc.	• Stock plan administration services • Student loan benefit and financial wellness provider	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(9)(ii) ("Providing…administrative services to [employee benefit and compensation] plans."); 12 C.F.R. § 225.28(b)(1) and (2) (servicing loans; activities related to extending credit).

Entity	Summary of Activities Currently Conducted by Entity	BHC Act or Other Authority
		• 12 U.S.C. § 1843(k)(4)(A); 12 C.F.R. § 225.86(a)(2)(v).
ETCM Holdings, LLC	• Holding company of E*TRADE Capital Management, LLC; E*TRADE Securities LLC; E*TRADE Next, LLC; and E*TRADE Futures LLC	• See below authorities for each subsidiary of ETCM Holdings, LLC
E*TRADE Capital Management, LLC	• Registered investment adviser, offering several discretionary advisory account solutions, including Blend Portfolios and Dedicated Portfolios	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(6) ("Acting as investment or financial advisor to any person.").
E*TRADE Securities LLC	• Registered broker-dealer that conducts substantially all E*TRADE's retail brokerage business • ETS currently has approval to conduct 12 types of businesses: o Broker or dealer retailing corporate equity securities over-the-counter o Broker or dealer selling corporate debt securities o Underwrite or selling group participant (corporate securities other than mutual funds) o Mutual fund retailer o US government securities dealer o US government securities broker o Municipal securities dealer o Municipal securities broker o Solicitor of time deposits in a financial institution o Put and call broker or dealer or option writer	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(7) ("Providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services . . . if the securities brokerage services are restricted to buying and selling securities solely as agent for the customers and do not include securities underwriting or dealing" as well as providing other transactional services to customers as agent). • 12 U.S.C. § 1843(k)(4)(E)

Entity	Summary of Activities Currently Conducted by Entity	BHC Act or Other Authority
	○ Non-exchange member arranging for transactions in listed securities by exchange member ○ Trading securities for own account	
E*TRADE Next, LLC	• No current business activities	• This legal entity is not currently engaging in activities; future activities, if any, are yet to be decided and will be permissible for a financial holding company.
E*TRADE Futures LLC	• Registered non-clearing futures commission merchant that provides retail commodity futures and options on futures transaction capabilities for its customers on a self-directed basis	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(7) (acting as a futures commission merchant and providing to customers as agent other transactional services).
ET Canada Holdings Inc.	• There are no external business operations conducted by this entity • Canadian special purpose holding company that holds certain intellectual property, specifically E*TRADE's Canadian URL	• 12 U.S.C. § 1843(c)(1)(C); 12 C.F.R. § 225.22(b).
E*TRADE Information Services, LLC	• Holder of registered branch office in the Philippines	• 12 U.S.C. § 1843(c)(1)(C); 12 C.F.R. § 225.22(b).
Philippines Branch of E*TRADE Information Services, LLC	• Philippine Branch Office registered with the Philippines Securities & Exchange Commission. Branch provides call center and other back office operations support functions to E*TRADE's U.S. entities. This is a services entity only. It does not engage in cross-border, customer facing business in its own name and is not a broker-dealer entity	• 12 U.S.C. § 1843(c)(1)(C); 12 C.F.R. § 225.22(b).

Entity	Summary of Activities Currently Conducted by Entity	BHC Act or Other Authority
TIR (Holdings) Limited (Cayman)	• There are no external business operations conducted by this entity • Holding company for ETRADE Securities (Hong Kong) Limited. Entity is slated to be liquidated following the completion of the liquidation of ETRADE Securities (Hong Kong) Limited	• N/A
ETRADE Securities (Hong Kong) Limited	• There are no external business operations conducted by this entity • Entity is currently in voluntary liquidation process	• N/A
ETFC Asset Funding Corporation	• Holds RV and Marine trusts; created as a separate bankruptcy remote and special purpose entity	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(1) ("Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others."). • 12 U.S.C. § 1843(k)(4)(A)&(D)
RV and Marine Trusts[17]	• The Trusts issued notes in order to purchase receivables from ETFC Asset Funding Corporation. The notes are payable solely from the assets of the Trusts and do not represent obligations of, or interests held by, any other entity and are not guaranteed by any other entities. The receivables owned by the Trusts are pools of fixed rate installment loans or fixed rate installment sales contracts	• 12 U.S.C. § 1843(c)(8). *See* 12 C.F.R. § 225.28(b)(1) ("Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others."). • 12 U.S.C. § 1843(k)(4)(A)&(D)

[17] Trusts include: (a) Distribution Financial Services RV/Marine Trust 2001-1 and (b) ETRADE RV AND Marine Trust 2004-1.

Entity	Summary of Activities Currently Conducted by Entity	BHC Act or Other Authority
	used to finance the purchase of recreational vehicles and marine assets	

13. Provide the commitment in the Attachment.

Please see Public Exhibit 5.