NOTIFICATION

to the

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

by

MORGAN STANLEY

for prior approval to acquire by merger

E*TRADE FINANCIAL CORPORATION

Pursuant to Sections 4(j) and 4(k)
of the Bank Holding Company Act of 1956, as amended, and
Regulation Y promulgated thereunder,
and
Section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

March 25, 2020

Board of Governors of the Federal Reserve System

Notification by a Bank Holding Company to Acquire a Nonbank Company and/or Engage in Nonbanking Activities—FR Y-4

Morgan Stanley
Corporate Title of Notificant

1585 Broadway
Street Address

New York	NY	10036
City	State	Zip Code

Hereby provides the Board with a notice pursuant to:

☐ (1) Section 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended ("BHC Act"— 12 U.S.C. § 1843), under the "Expedited action for certain nonbanking proposals by well-run bank holding companies" as described in section 225.23 of Regulation Y; or

☒ (2) Section 4(c)(8) and 4(j) of the BHC Act, under the "Procedures for other nonbanking proposals" as described in section 225.24 of Regulation Y; for prior approval to engage directly or indirectly in certain nonbanking activities, de novo, through acquisition of the assets of a going concern, or through direct or indirect ownership, control, or power to vote at least ___________ (100%) of the voting shares of:

E*TRADE Financial Corporation
Corporate Title of Company to be Acquired and/or Description of Nonbanking Activity (refer to section 225.28 of Regulation Y, as applicable)

671 North Glebe Road
Street Address

Arlington	Virginia	22203
City	State	Zip Code

Does notificant request confidential treatment for any portion of this submission?

☒ Yes

- ☒ As required by the General Instructions, a letter justifying the request for confidential treatment is included.
- ☒ The information for which confidential treatment is being sought is separately bound and labeled "Confidential."

☐ No

Name, title, address, telephone number, and facsimile number of person(s) to whom inquiries concerning this notification may be directed:

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Certification

I certify that the information contained in this notification has been examined carefully by me and is true, correct, and complete, and is current as of the date of this submission to the best of my knowledge and belief. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 U.S.C. §§ 1001 and 1007.

I also certify, with respect to any information pertaining to an individual and submitted to the Board in (or in connection with) this notification, that the notificant has the authority, on behalf of the individual, to provide such information to the Board and to consent or to object to public release of such information. I certify that the notificant and the involved individual consent to public release of any such information, except to the extent set forth in a written request by the notificant or the individual, submitted in accordance with the Instructions to this form and the Board's Rules Regarding Availability of Information (12 C.F.R. Part 261), requesting confidential treatment for the information.

I acknowledge that approval of this notification is in the discretion of the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Actions or communications, whether oral, written, or electronic, by the Federal Reserve or its employees in connection with this filing, including approval if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, the United States or any other entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of the Federal Reserve to exercise its supervisory, regulatory, or examination powers under applicable laws and regulations. I further acknowledge that the foregoing may not be waived or modified by any employee or agency of the Federal Reserve or of the United States.

Signed this 25th (Day) day of March (Month) 2020 (Year)

Signature of Chief Executive Officer or Designee

Sebastiano Visentini
Print or Type Name

Managing Director
Title

Request for Confidential Treatment

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 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, nonpublic pro forma financial and regulatory capital information and 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 both customarily and actually treated as confidential by Morgan Stanley and E*TRADE and provided to the government under an assurance of confidentiality. Certain information in the Confidential Materials also includes confidential supervisory information. 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 confidential treatment request, please contact Luigi L. De Ghenghi at (212) 450-4296 or luigi.deghenghi@davispolk.com, or Ryan Johansen at (212) 450-3408 or ryan.johansen@davispolk.com.

Table of Contents

PUBLIC EXHIBITS

CONFIDENTIAL EXHIBITS

PRELIMINARY STATEMENT

I. INTRODUCTION

Morgan Stanley, New York, New York ("**Morgan Stanley**") hereby submits this notification (the "**Application**") to the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") for prior approval of a transaction (the "**Proposed Transaction**") in which Morgan Stanley would acquire E*TRADE Financial Corporation, Arlington, Virginia ("**E*TRADE**"). Morgan Stanley is a bank holding company ("**BHC**") that has successfully elected to become a financial holding company ("**FHC**") pursuant to Section 4(k) of the Bank Holding Company Act of 1956 (the "**BHC Act**"). Morgan Stanley owns two national banks, Morgan Stanley Bank, N.A. ("**MSBNA**") and Morgan Stanley Private Bank, National Association ("**MSPBNA**" and, together with MSBNA, the "**Morgan Stanley Banks**"), as well as certain other subsidiaries engaged in activities that are either closely related to banking within the meaning of Section 225.28 of Regulation Y or financial in nature and permissible under Section 4(k) of the BHC Act. E*TRADE is a savings and loan holding company ("**SLHC**") that owns two federal savings associations, E*TRADE Bank, Arlington, Virginia ("**ETB**") and E*TRADE Savings Bank, Arlington, Virginia ("**ETSB**" and, together with ETB, the "**E*TRADE Banks**"), as well as certain other subsidiaries engaged in activities that are either closely related to banking within the meaning of Section 225.28 of Regulation Y or that are financial in nature and permissible under Section 4(k) of the BHC Act.

As discussed more fully below, the Proposed Transaction will be effected pursuant to an Agreement and Plan of Merger, dated as of February 20, 2020, by and among Morgan Stanley, Moon-Eagle Merger Sub ("**Merger Sub**") and E*TRADE (the "**Merger Agreement**"), a copy of which is included as <u>Public Exhibit 1</u> to this Application. The Form 8-K report filed by Morgan Stanley with the SEC announcing the Proposed Transaction is also included as <u>Public Exhibit 2</u> to this Application.

Morgan Stanley respectfully requests the prior approval of the Federal Reserve of the Proposed Transaction pursuant to Sections 4(j) and 4(k)(6)(B)(ii) of the BHC Act and the procedures set forth in Section 225.24 of the Federal Reserve's Regulation Y, as well as Section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**").

Morgan Stanley acknowledges the extraordinary and difficult circumstances affecting the entire country, and is fully aware of the extraordinary efforts and dedication of resources by the Federal Reserve to stabilize the broader economy through a variety of measures announced recently to promote the continued availability of credit and liquidity to sectors of the economy affected by the COVID-19 pandemic. Morgan Stanley and E*TRADE are each committed to contributing to the continued provision of credit, liquidity, and financial products and services to their respective clients, the financial sector and the broader economy in this difficult and trying period, and the financial strength of both firms has enabled them to continue to proactively serve the needs of their respective clients throughout the market turbulence. Both Morgan Stanley and E*TRADE continue to operate with their respective staff working mostly on a remote basis, and neither firm has experienced any material disruptions to their services or operations. Both firms are also committed to working towards the success of the Proposed Transaction notwithstanding the challenges posed by the current situation. In connection with this Application, Morgan Stanley has consulted with Federal Reserve staff and is committed to working with Federal Reserve staff to do what it can to make the public notice and comment and review process as easy as is practicable for all interested parties concerned under the circumstances.

II. EXECUTIVE SUMMARY

Morgan Stanley strongly believes that the Proposed Transaction would create a combined firm that, by integrating the complementary products and services of Morgan Stanley and E*TRADE, expands the breadth and depth of its client offerings, allows it to serve the needs of a broader and emerging client base, and produces a financially stronger and more diversified firm.

Morgan Stanley has continuously evolved to help clients finance economic growth, job creation, retirement security, college savings, and other needs against the backdrop of a changing U.S. and global economic landscape. Since becoming a BHC in 2008, Morgan Stanley has diversified its businesses, including expanding the scale of its wealth management business, to strengthen resilience against changes in the wider market environment. By building complementary franchises in Institutional Securities, Wealth Management and Investment Management segments, Morgan Stanley has reoriented its activities over the last decade to derive a greater share of revenues from relatively stable businesses.

The Proposed Transaction represents the next step in this decade-long strategic rebalancing. Following the integration of E*TRADE, Morgan Stanley's Wealth and Investment Management businesses are expected to comprise approximately 57% of the firm's pre-tax profits, compared to only approximately 26% in 2010. The Proposed Transaction would therefore accelerate Morgan Stanley's shift in business mix toward less balance sheet-intensive and more durable sources of revenue.

The Proposed Transaction would create a combined organization that services the full spectrum of wealth management clients across all channels of client acquisition, for clients of all types, needs and sizes. As a result, the Proposed Transaction would enable Morgan Stanley to enhance its offerings to the communities it serves, both in terms of breadth and availability. The complementary nature of most of Morgan Stanley's and E*TRADE's products and services would permit both firms to fill gaps in their current product and service offerings. The resulting full suite of products and services would significantly enhance client experience and thereby satisfy the convenience and needs of the community more holistically than the two separate offerings of products and services currently provided by Morgan Stanley and E*TRADE.

E*TRADE's online brokerage and digital banking capabilities, including direct integration with brokerage accounts, as well as checking and high-yield savings accounts, would significantly accelerate Morgan Stanley's digital banking efforts. The combined firm would be able to broaden offerings for Morgan Stanley clients seeking self-directed brokerage and digital banking services and for E*TRADE clients seeking wealth management and workplace financial solutions, including those related to financial wellness and planning. In addition, E*TRADE's consumer-facing technology platforms would be complemented by Morgan Stanley's leading advisor-facing technology.

A key benefit of the Proposed Transaction for the communities served by Morgan Stanley and E*TRADE would be the extension of Morgan Stanley's outstanding Community Reinvestment Act ("**CRA**") program through the integration of E*TRADE's CRA activities. Morgan Stanley has been consistently recognized for its firm-wide commitment to the CRA, and the Morgan Stanley Banks have an unbroken, twenty-year track record of Outstanding CRA performance evaluations. The Morgan Stanley Banks continue to meet the needs of their communities, and the nation, through exceptionally responsive and impactful CRA programs that include an industry-leading volume of community development transactions combined with numerous high-impact, innovative and flexible programs. Morgan Stanley treats its history of Outstanding ratings as a floor not a ceiling. As a result, in the years since the Morgan Stanley Banks' most recent CRA performance evaluations, Morgan Stanley has continued to enhance its CRA activities based on a set of key themes, which include preserving and developing sustainable affordable housing, building healthy communities, creating jobs through effective economic development, providing capital to rural and underserved markets, and building capacity for nonprofit community development organizations.

For its part, E*TRADE meets the CRA needs of the communities it serves through a CRA program tailored to the activities of ETB and ETSB. Over the past decade, these activities have evolved, and E*TRADE's CRA program has adapted and developed to appropriately reflect the products and services offered by the E*TRADE Banks. Recent community investments and initiatives by the E*TRADE Banks include those designed to increase the supply of affordable housing, improve financial education, and provide greater access to healthcare, among several others.

After the Proposed Transaction Morgan Stanley looks forward to continuing its record of strong CRA performance and firm-wide dedication to CRA. The integration of the E*TRADE Banks into Morgan Stanley's CRA program will take place in line with Morgan Stanley's growth initiatives and will be designed to meet the evolving needs of the communities Morgan Stanley and E*TRADE serve. Morgan Stanley continues to evaluate the best approaches and alternatives for its future CRA programs, and will incorporate E*TRADE's strong track record and CRA commitments into any future initiatives.

The Proposed Transaction would further strengthen Morgan Stanley's financial and managerial resources and future prospects. As of December 31, 2019, Morgan Stanley, each of the Morgan Stanley Banks, E*TRADE, and each of the E*TRADE Banks are all well capitalized, with risk-based capital and leverage ratios well in excess of their respective capital requirements, including all applicable capital buffers, and the same would be true of the combined firm on a pro forma basis. The Proposed Transaction would have a positive impact on Morgan Stanley's consolidated risk-based capital ratios on a pro forma basis, with increases ranging from 30 to 50 basis points, while resulting in a mere 10 basis point decrease in its Tier 1 leverage ratio and its Supplementary Leverage Ratio ("**SLR**"). In addition, Morgan Stanley's funding profile would be strengthened through additional low-cost deposits and better deposit generation capabilities. Specifically, the Proposed Transaction is expected to add approximately $56 billion in low-cost deposits, which would provide significant funding benefits to Morgan Stanley and will enable it to reduce its reliance upon more expensive wholesale funding. .

Morgan Stanley has a highly accomplished, diverse board of directors and both Morgan Stanley and E*TRADE have highly accomplished, diverse senior executive management teams. Upon completing the Proposed Transaction, Morgan Stanley expects to strengthen its board of directors by adding one independent director from E*TRADE's current board of directors. E*TRADE's current Chief Executive Officer, Michael A. Pizzi, will be added to Morgan Stanley's senior executive management team to continue to run the E*TRADE business within the combined organization. Mr. Pizzi is expected to leverage his more than 15 years of experience at E*TRADE in leading these integration efforts, and upon completion of the Proposed Transaction would report to James Gorman, Morgan Stanley's Chief Executive Officer, and be a member of Morgan Stanley's operating committee.

Both Morgan Stanley and E*TRADE have and intend to devote ample managerial resources toward ensuring a successful integration. Morgan Stanley's ability to successfully integrate E*TRADE into its existing organization is demonstrated by its successful track record in previous integration projects. For example, Morgan Stanley and Citigroup combined their wealth management businesses in 2009 to form Morgan Stanley Smith Barney LLC ("**MSSB**") as a joint venture, which was later fully acquired and successfully integrated by Morgan Stanley after purchasing Citigroup's remaining shares. Morgan Stanley also successfully executed its Japanese securities joint venture and strategic alliance with Mitsubishi UFJ Financial Group ("**MUFG**") in 2010. More recently, Morgan Stanley in 2019 acquired and continues to successfully integrate Solium Capital Inc., a leading provider of workplace financial solutions. The experience Morgan Stanley gained with these projects will be used in integrating E*TRADE following completion of the Proposed Transaction. Integration planning is underway and will obviously have to take into account the current extraordinary circumstances caused by the COVID-19 pandemic.

Finally, Morgan Stanley does not believe that the Proposed Transaction would result in greater or more concentrated risks to the stability of the United States banking or financial system or to the U.S. economy. On the contrary: Morgan Stanley believes that the Proposed Transaction, by accelerating its shift toward a higher proportion of more stable and durable revenue streams and profitability from its Wealth Management and Investment Management business segments, strengthening its capital position and gaining access to more stable and low-cost deposits that can reduce its reliance on wholesale funding, will strengthen Morgan Stanley financially and enhance its overall resiliency – thus ultimately reducing the risk to U.S. financial stability and the U.S. economy.

Morgan Stanley is, as of December 31, 2019, the sixth largest BHC in the United States ranked by total consolidated assets and, on a pro forma basis, upon completion of the Proposed Transaction would still be the sixth largest BHC in the United States by total consolidated assets – behind J.P. Morgan Chase & Co., Bank of America Corporation, Citigroup, Inc., Wells Fargo & Company, and The Goldman Sachs Group, Inc. Deposits controlled by Morgan Stanley on a pro forma basis, at 1.73%, would remain well under the BHC Act's 10% nationwide deposit concentration limit, and Morgan Stanley's pro forma total consolidated liabilities, at 1.89%, would remain well below the 10% nationwide liabilities concentration limit. Morgan Stanley's global systemically important bank ("**GSIB**") scores, whether calculated under Method 1 or Method 2 under the Federal Reserve's capital rules, would not increase by any material amount and would not result in any change to Morgan Stanley's current 3% surcharge.

Nor would the Proposed Transaction result in a meaningful increase in any of the metrics used by the Federal Reserve to address the systemic "footprint" of a post-merger firm. In fact, compared to all banking organizations which file Form FR Y-15, Morgan Stanley's relative ranking by percentage share would not change for *any* of the 12 systemic indicators used in calculating Method 1 GSIB surcharge scores. The pro forma changes in Morgan Stanley's percentage share of these systemic indicators aggregated across all FR Y-15 reporting organizations would be minimal, ranging from zero to a maximum of approximately 35 basis points.

Morgan Stanley is, and following completion of the Proposed Transaction would remain, subject to the most stringent capital, capital buffer and liquidity requirements under the Federal Reserve's Basel III capital and liquidity rules, respectively, and the most stringent enhanced prudential standards under the Federal Reserve's enhanced prudential standards, including capital planning and stress testing requirements, Total Loss-Absorbing Capacity ("**TLAC**") requirements, risk management requirements, and liquidity stress testing and contingency liquidity funding requirements. Morgan Stanley would also remain subject to Dodd-Frank Act Title I resolution planning requirements. The Proposed Transaction would not require any change in Morgan Stanley's Single Point of Entry ("**SPOE**") resolution strategy under its resolution plan: the acquired E*TRADE business would become part of Morgan Stanley's Wealth Management core business line and would be resolved in accordance with the resolution strategy for that core business line, which contemplates its recapitalization, continuity and ultimate sale in the worst-case scenario of a resolution of Morgan Stanley. All of these requirements serve and would continue to serve as mitigants to any risk posed by Morgan Stanley's activities to the stability of the U.S. banking or financial system or the U.S. economy.

Based on the foregoing, and as explained in more detail below and in the public and confidential exhibits to this Application, Morgan Stanley respectfully submits that the Proposed Transaction satisfies all of the criteria that the Federal Reserve is required to consider under Section 4 of the BHC Act and applicable regulations, as well as under Section 163(b) of the Dodd-Frank Act. Consequently, the Application should be approved.

III. PARTIES TO THE PROPOSED TRANSACTION

A. Morgan Stanley and Its Subsidiaries

1. Morgan Stanley

Morgan Stanley is a BHC organized under the laws of the State of Delaware that has successfully elected to become an FHC. Its headquarters are in New York, New York, and it maintains principal offices in London, Tokyo, Hong Kong and other world financial centers. As of December 31, 2019, Morgan Stanley had total consolidated assets of $895 billion and total consolidated deposits of $190 billion.[1] Measured by total consolidated assets, Morgan Stanley was the sixth largest depository institution holding company in the United States as of December 31, 2019. Morgan Stanley is supervised on a consolidated basis by the Federal Reserve and is subject to the most stringent enhanced prudential standards and capital and liquidity

[1] This amount excludes transactions between the Morgan Stanley Banks.

requirements as a Category I BHC under the Federal Reserve's rule on enhanced prudential standards and the Federal Reserve's Basel III capital and liquidity rules, respectively.[2]

Morgan Stanley offers its products and services through three business segments: Institutional Securities, Wealth Management, and Investment Management. Institutional Securities provides financial advisory and capital-raising services, as well as assistance accessing capital markets and taking or hedging risk, to a diverse group of corporate and other institutional clients. Wealth Management provides investment solutions designed to accommodate the investment objectives, risk tolerance and liquidity needs of individual investors and small-to-medium-sized businesses and institutions. As of December 31, 2019, Morgan Stanley's Wealth Management segment had approximately 3 million client relationships and approximately $2.7 trillion of client assets. Finally, Investment Management provides a broad suite of investment management solutions to a diverse client base that includes governments, institutions, corporations, pension plans and individuals worldwide.

These products and services are provided through Morgan Stanley's nonbank and international subsidiaries, as well as its insured depository institution ("**IDI**") subsidiaries (discussed in more detail below). The key Morgan Stanley nonbank and international subsidiaries include:

- Morgan Stanley & Co. LLC ("**MS&Co.**"), the firm's primary institutional U.S. broker-dealer. Products and services offered by MS&Co. include, among others, securities underwriting and distribution; brokerage and investment advisory services; financial advisory services, and cash management services. MS&Co. is also a registered futures commission merchant and a provisionally registered swap dealer and in this capacity engages in certain commodity and OTC derivative transactions.
- MSSB, a U.S.-registered broker-dealer and investment adviser that provides financial services to clients in the retail and middle market with an emphasis on ultra-high net worth and affluent investors.
- Morgan Stanley Capital Services, LLC, a provisionally registered swap dealer and the firm's primary OTC derivatives dealer.
- Morgan Stanley Investment Management, Inc., a U.S.-registered investment advisor for certain mutual funds and other institutional products.
- Morgan Stanley & Co. International plc, the firm's largest non-U.S. entity and primary European broker-dealer whose principal activity is the provision of financial services to corporations, governments and financial institutions.
- Morgan Stanley MUFG Securities Co., Ltd., a Japanese broker-dealer, operating as part of a Japanese securities joint venture with MUFG.

[2] Federal Reserve, Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59032 (Nov. 1, 2019); Federal Reserve, FDIC and OCC, Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 Fed. Reg. 59230 (Nov. 1, 2019); 12 C.F.R. Part 252; 12 C.F.R. Part 217; 12 C.F.R. Part 249.

2. The Morgan Stanley Banks

Morgan Stanley provides banking products and services through two national bank subsidiaries supervised by the Office of the Comptroller of the Currency ("**OCC**").

The first of these national bank subsidiaries, MSBNA, maintains its headquarters and main office in Salt Lake City, Utah. MSBNA has no branches or ATMs. MSBNA's businesses focus on institutional lending and securities-based lending for clients of its affiliated broker-dealers. In particular, MSBNA is party to a deposit program through which free credit balances in accounts of MSSB customers are automatically swept to MSBNA and MSPBNA (the "**Bank Deposit Program**"). The Bank Deposit Program account structure includes both money market deposit accounts and demand deposit accounts. MSBNA also offers certificates of deposit that are principally used to fund lending activities and investments in securities.

MSBNA's lending activities include warehouse financing, commercial real estate lending, institutional equity margin lending, event lending to companies for specific purposes such as financing acquisitions, relationship lending to companies for normal operating activities, institutional client reverse repurchase financing, municipal lending, and non-purpose securities-based lending to individuals. MSBNA maintains an investment portfolio that consists primarily of U.S. government and agency securities and also includes mortgage-backed and asset-backed securities, corporate debt and other debt securities. As of December 31, 2019, MSBNA had total assets of $146.6 billion and total deposits of $125.3 billion.

Morgan Stanley's second national bank subsidiary, MSPBNA, maintains its headquarters and main office in Purchase, New York. MSPBNA has no branches or ATMs. Like MSBNA, MSPBNA is a party to the Bank Deposit Program, and accepts deposits of funds swept to it from the brokerage accounts of Morgan Stanley's Wealth Management clients. MSPBNA offers certain mortgage and other secured lending products, including retail securities-based lending products, primarily for customers of MSSB. MSPBNA also offers certain prime brokerage custody services.

In addition to its securities lending activities, MSPBNA's lending activities include jumbo residential mortgage lending and other secured lending to individuals. MSPBNA maintains an investment portfolio that consists primarily of U.S. government and agency securities. As of December 31, 2019, MSPBNA had total assets of $83 billion and total deposits of $74 billion.

B. E*TRADE and Its Subsidiaries

*1. E*TRADE*

E*TRADE is an SLHC organized under the laws of the State of Delaware with headquarters in Arlington, Virginia. E*TRADE meets the criteria to qualify as an FHC and complies with all of the requirements applicable to FHCs under Sections 4(*l*) and 4(m) of the BHC Act as if it were a BHC.[3] As of December 31, 2019, E*TRADE had total consolidated

[3] *See* 12 U.S.C. § 1467a(c)(2)(H); 12 C.F.R. Part 238, Subpart G.

assets of $61.4 billion and total consolidated deposits of $38.6 billion. Measured by total consolidated assets, E*TRADE was the 44th largest depository institution holding company in the United States as of December 31, 2019,[4] and was approximately 6.9% of the size of Morgan Stanley. E*TRADE is supervised on a consolidated basis by the Federal Reserve and is subject to the simplified standardized approach to calculating capital requirements under the Federal Reserve's Basel III capital rules.[5] Because E*TRADE had less than $100 billion in total consolidated assets as of December 31, 2019, it is not subject to any of the enhanced prudential standards (other than the requirement to have a risk committee of its board of directors) under the Federal Reserve's rule on enhanced prudential standards.[6]

E*TRADE provides brokerage and related products and services for traders, investors, stock plan administrators and participants, and registered investment advisors ("**RIAs**"). E*TRADE offers these products and services through two broad channels – a retail channel servicing individual brokerage and banking customers, and an institutional channel providing stock plan, student loan management and financial wellness solutions for public and private companies, as well as custody services to independent RIAs. As of December 31, 2019, E*TRADE had approximately 5.2 million retail client accounts, two million corporate services accounts and approximately $677.5 billion of total customer assets. Products and services are provided through digital platforms, over the phone, and in-person at 30 regional financial centers across the United States.

In addition to its two IDI subsidiaries, discussed in more detail below, E*TRADE provides these products and services through a limited number of nonbank subsidiaries, including:

- E*TRADE Securities LLC ("**E*TRADE Securities**"), an SEC-registered broker-dealer that clears and settles customer transactions.
- E*TRADE Futures LLC, a CFTC-registered, non-clearing futures commission merchant that provides retail commodity futures and options on futures transaction capabilities for E*TRADE customers.
- E*TRADE Capital Management LLC, an RIA that provides investment advisory services for E*TRADE customers.
- E*TRADE Financial Corporate Services, Inc., a provider of software and services for managing equity compensation plans and student loan and financial wellness benefits for E*TRADE's corporate clients.[7]

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[4] Source: National Information Center; FR Y-9C data.

[5] 12 C.F.R. Part 217.

[6] 12 C.F.R. Part 238, Subpart M.

[7] In December 2019, E*TRADE completed its acquisition of Gradifi, a student loan benefit and financial wellness provider. As a result of this, E*TRADE Financial Corporate Services, Inc. will be required to register with FinCEN and approximately 42 states and U.S. territories as a money services business or a money transmitter, as applicable. A lending license may also be required in certain states. E*TRADE Financial Corporate Services, Inc. has completed its registration with FinCEN, while other licenses and registrations are pending. Additional information regarding E*TRADE's acquisition of Gradifi is included as <u>Confidential Exhibit A</u> to this Application.

A complete list of E*TRADE's subsidiaries, the activities they conduct, and the authority upon which they rely to conduct those activities is included as Public Exhibit 3 to this Application. A pro forma organizational chart for E*TRADE is included as Public Exhibit 4 to this Application.

*2. The E*TRADE Banks*

E*TRADE provides banking products and services through two federal savings bank subsidiaries supervised by the OCC. E*TRADE's primary deposit taking activities include affiliate sweeps whereby E*TRADE Securities utilizes sweep deposit programs with ETB and ETSB as a means of providing its customers with FDIC insurance for cash balances maintained in their brokerage accounts. E*TRADE offers two primary types of sweep deposit account programs – the Extended Sweep Deposit Account Program ("**ESDA Program**") and the Retirement Sweep Deposit Account Program ("**RSDA Program**"). The ESDA Program utilizes third-party banks to provide customers with additional FDIC coverage of up to $1.25 million for individuals and $2.5 million for joint account holders. The RSDA Program is designed to provide customers with up to $500,000 of FDIC insurance.

E*TRADE's larger depository institution, ETB, is located in Arlington, Virginia and offers banking and cash management capabilities to its customers. ETB does not maintain physical branch locations and, following its exit from the mortgage lending business in July 2011, does not originate any mortgage or home equity loans.[8] ETB offers to its customers savings and checking accounts with various features, including in the case of checking accounts: debit cards with ATM fee refunds, online and mobile bill payments, and mobile check deposits. As of December 31, 2019, ETB had total consolidated assets of $44.8 billion and total consolidated deposits of $39.3 billion.

In 2019, ETB established a demand deposit marketplace sweep program for its Premium Savings Account ("**PSA**") product allowing E*TRADE to offer $1.25 million in FDIC deposit insurance to its bank customers as well as enabling E*TRADE to move these deposits off or on balance sheet similar to its brokerage sweep program. Together, the ESDA, RSDA, and PSA programs account for over 85% of E*TRADE's deposits.

ETB has two subsidiaries, ETSB and E*TRADE Community Development Corporation. ETSB is itself a federal savings bank, located in Arlington, Virginia, and provides custody solutions for unaffiliated RIAs. ETSB does not offer or accept retail deposit accounts other than sweep deposits and, like ETB, does not maintain physical branch locations. ETSB offers securities-based loans to its customers and customers of E*TRADE Securities. As of December 31, 2019, ETSB had total assets of $3.99 billion and total deposits of $2.25 billion.[9] E*TRADE Community Development Corporation, which is not a functionally regulated entity, invests in and holds certain CRA qualifying community development investments for both ETB and ETSB.

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[8] ETB maintains a legacy portfolio of mortgage, home equity and other consumer loans originated before 2011 that are in the process of being paid off.

[9] Because ETSB is a consolidated subsidiary of ETB, these amounts are included in ETB's total consolidated assets and total consolidated deposits, respectively.

As federal savings banks, ETB and ETSB are each required to comply with the qualified thrift lender ("**QTL**") test under the Home Owners' Loan Act of 1933,[10] which generally requires a federal savings bank to maintain at least 65% of its "portfolio assets" in certain "qualified thrift investments" (primarily residential mortgages and related investments, including certain mortgage-backed securities, credit card loans, student loans and small business loans) in at least nine months of the most recent 12-month period. ETB and ETSB are each in compliance with the QTL test.

The Federal Reserve requires that a savings association acquired by a BHC conform its direct and indirect activities to those permissible for a BHC under Section 4 of the BHC Act.[11] Based upon the diligence it has conducted to date, Morgan Stanley believes that the activities conducted by the E*TRADE Banks are permissible for a BHC under Section 4 of the BHC Act. In the event that further diligence determines that one or both of the E*TRADE Banks currently conduct activities impermissible for a BHC, those activities will be conformed to those permissible under Section 4 of the BHC Act and Regulation Y or will be divested.

IV. THE PROPOSED TRANSACTION

A. Transaction Structure

The Proposed Transaction is an all-stock, double merger:

First, Morgan Stanley would acquire E*TRADE through a newly formed subsidiary, Merger Sub, merging with and into E*TRADE with E*TRADE surviving as a wholly owned subsidiary of Morgan Stanley (the "**First Merger**").

Second, E*TRADE would merge into a new Delaware limited liability company that will be the surviving entity of this second merger and a wholly owned, direct or indirect subsidiary of Morgan Stanley.

The Proposed Transaction is valued at approximately $13 billion based on the closing trading price of Morgan Stanley common stock on the day prior to the announcement of the Proposed Transaction. To put the Proposed Transaction in perspective, the transaction value of the merger between SunTrust and BB&T, which was approved by the Federal Reserve on November 19, 2019, was approximately $28.2 billion based on the closing price of BB&T's common stock on the day prior to the announcement of that transaction, while the transaction value of Charles Schwab's pending acquisition of TD Ameritrade was valued at approximately $26 billion at the time of announcement.[12]

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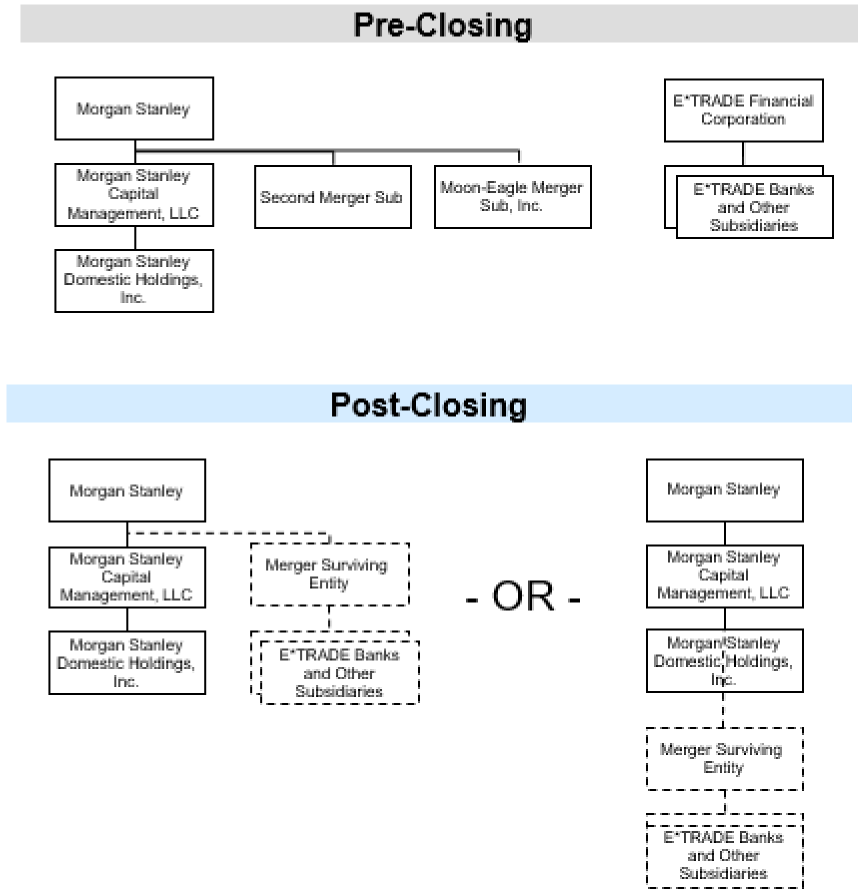
[10] 12 U.S.C. § 1467a(m).

[11] *See, e.g.,* The Toronto-Dominion Bank, FRB Order No. 2017-23 (Sep. 13, 2017).

[12] Application by BB&T Corp. to Acquire SunTust Banks, Inc. Pursuant to Sections 3(a)(3) and 3(a)(5) of the Bank Holding Company Act and Section 225.15 of Regulation Y at p. 82 (March 8, 2019) *available at* https://www.federalreserve.gov/foia/bbt-suntrust-application-materials.htm; Press Release, The Charles Schwab Corporation to Acquire TD Ameritrade, (Nov. 25, 2019), https://pressroom.aboutschwab.com/press-release/corporate-and-financial-news/charles-schwab-corporation-acquire-td-ameritrade.

The structure of the Proposed Transaction is depicted in the following charts:



Pursuant to the Merger Agreement between Morgan Stanley and E*TRADE, at the effective time of the First Merger (the "**Effective Time**"), each share of common stock, par value $0.01 per share, of E*TRADE ("**E*TRADE Common Stock**") issued and outstanding immediately before the Effective Time (other than treasury shares held by E*TRADE and certain shares held by Morgan Stanley, which will be cancelled without payment) will automatically be converted into the right to receive 1.0432 shares of common stock, par value $0.01 per share, of Morgan Stanley.

At the Effective Time, the following conversions will occur with respect to E*TRADE's Series A and Series B Preferred Stock, respectively:

- each share of Series A Preferred Stock, par value $0.01 per share of E*TRADE, outstanding immediately before the Effective Time (other than treasury shares held by E*TRADE and certain shares held by Morgan Stanley, which will be cancelled without payment) will automatically be converted into the right to receive one share of a newly created series of preferred stock of Morgan Stanley with such rights, preferences, privileges and voting powers, and limitations and restrictions, that, taken as a whole, are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of E*TRADE's Series A Preferred Stock, taken as a whole; and

- each share of Series B Preferred Stock, par value $0.01 per share of E*TRADE, outstanding immediately before the Effective Time (other than treasury shares held by E*TRADE and certain shares held by Morgan Stanley, which will be cancelled without payment) will automatically be converted into the right to receive one share of a separate, newly created series of preferred stock of Morgan Stanley with such rights, preferences, privileges and voting powers, and limitations and restrictions, that, taken as a whole, are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of E*TRADE's Series B Preferred Stock, taken as a whole.

A description of Morgan Stanley's due diligence process in relation to the Proposed Transaction is included as Confidential Exhibit B to this Application.

B. Summary of the Merger Agreement

Entry into the Merger Agreement was unanimously approved by resolutions of the board of directors of each of Morgan Stanley and E*TRADE, copies of which are included as Public Exhibit 5 and Confidential Exhibit C to this Application, respectively. The Merger Agreement must also be approved by the affirmative vote of the holders of a majority of the shares of E*TRADE Common Stock outstanding and entitled to vote on the Proposed Transaction. Certain material terms of the Merger Agreement are discussed below.

1. Representations, Warranties and Covenants

The Merger Agreement contains customary representations and warranties from both E*TRADE and Morgan Stanley with respect to each party and its businesses. The Merger Agreement also contains customary covenants, including covenants by E*TRADE to, subject to certain exceptions, conduct its business in the ordinary course during the interim period between the execution of the Merger Agreement and the closing of the Proposed Transaction.

2. Closing Conditions

The obligation of Morgan Stanley and E*TRADE to close the Proposed Transaction is subject to customary conditions, including, among others,

(i) the approval and adoption of the Merger Agreement by the holders of a majority of the outstanding shares of E*TRADE Common Stock that are entitled to vote on the Proposed Transaction;

(ii) the absence of any applicable law, regulation, injunction, judgment, order or decree prohibiting or making illegal the consummation of any of the transactions contemplated by the Merger Agreement (or in the case of Morgan Stanley's obligation to close, imposing a Burdensome Condition (as defined in the Merger Agreement));

(iii) the absence of pending litigation or similar legal action by any governmental authority (in any jurisdiction in which Morgan Stanley, E*TRADE or any of their respective subsidiaries conducts material operations) seeking to prohibit the Proposed Transaction (or in the case of Morgan Stanley's obligation to close, imposing a Burdensome Condition (as defined in the Merger Agreement));

(iv) the early termination or expiration of any applicable waiting period or periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("**HSR Act**") and receipt of specified governmental consents and approvals (in the case of Morgan Stanley's obligations to close, without the imposition of a burdensome condition);

(v) performance by Morgan Stanley and E*TRADE in all material respects of their respective obligations under the Merger Agreement; and

(vi) subject in most cases to exceptions that do not rise to the level of a "Parent Material Adverse Effect" or a "Company Material Adverse Effect" (each as defined in the Merger Agreement), as applicable, the accuracy of representations and warranties made by E*TRADE and Morgan Stanley, respectively.

The obligation of E*TRADE and Morgan Stanley to close the Merger is also subject to there not having occurred an event that has had or would reasonably be expected to have, individually or in the aggregate, a "Parent Material Adverse Effect" or "Company Material Adverse Effect," respectively.

3. Termination Rights

The Merger Agreement includes certain termination rights, including the right of either party to terminate the Merger Agreement if the Proposed Transaction has not closed on or before March 31, 2021, which date will be automatically extended to June 30, 2021 under certain circumstances if required regulatory approvals have not been obtained by March 31, 2021.

The Merger Agreement also provides that, upon termination of the Merger Agreement under specified circumstances, including termination by Morgan Stanley as a result of a change of recommendation by E*TRADE's board of directors that E*TRADE's stockholders approve and adopt the Merger Agreement, or termination by E*TRADE in order to enter into an alternative agreement with respect to a Company Superior Proposal, as defined in the Merger Agreement, Morgan Stanley will receive a termination fee from E*TRADE equal to $375 million in cash, on the terms and conditions further set forth in the Merger Agreement.

In addition, under specified circumstances, upon the termination of the Merger Agreement solely relating to the failure to obtain necessary clearances for the Proposed Transaction under the HSR Act or approval under any other applicable antitrust law, E*TRADE will receive a termination fee from Morgan Stanley equal to $525 million in cash, on the terms and conditions further set forth in the Merger Agreement.

4. Governance Matters

The Merger Agreement provides that Morgan Stanley will take all necessary action permitted by applicable law and the rules of any applicable stock exchange to cause one of E*TRADE's directors designated by E*TRADE prior to the completion of the First Merger and reasonably acceptable to Morgan Stanley to be appointed to the board of directors of Morgan Stanley as of the Effective Time.

V. STANDARDS FOR REVIEW

In considering a proposal by a BHC to acquire a nonbank company, the Federal Reserve is required under Section 4(j)(2)(A) of the BHC Act to consider whether the proposal "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices or risk to the stability of the United States banking or financial system."[13] As part of its consideration of these factors, the Federal Reserve reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system and the public benefits of the proposal.[14] When acting on notices to acquire a savings association, the Federal Reserve also reviews the records of performance of the relevant IDIs under the CRA.[15]

Pursuant to Section 163(b)(4) of the Dodd-Frank Act, in addition to the standards of review under Section 4(j)(2) of the BHC Act, the Federal Reserve is required to consider whether the Proposed Transaction "would result in greater or more concentrated risks to global or United States financial stability or the United States economy."[16]

Morgan Stanley respectfully submits that the Proposed Transaction is consistent with approval under all of the foregoing standards.

A. Effects on Competition

In evaluating the competitive effects of a proposed merger or acquisition, the Federal Reserve and the Antitrust Division of the Department of Justice ("**DOJ**"), pursuant to the Clayton Act, consider all the facts in the record. In particular, the Federal Reserve considers the number of competitors that would remain in each market, the relative share of total deposits in IDIs in the markets that the post-merger entity would control, the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index

[13] 12 U.S.C. § 1843(j)(2)(A).

[14] 12 C.F.R. § 225.26.

[15] *See, e.g.*, Banc One Corporation, Inc., 83 Fed. Res. Bull. 602 (1997).

[16] 12 U.S.C. § 5363(b)(4).

("**HHI**") under the Department of Justice Bank Merger Competitive Review Guidelines ("**DOJ Bank Merger Guidelines**")[17], and other characteristics of the markets.[18]

The DOJ Bank Merger Guidelines, as well as the Federal Reserve's analytical framework for evaluating bank mergers, as outlined in its Bank Merger FAQs,[19] use data pertaining to overlapping banking markets to identify potential areas of competitive concern and to determine, together with an analysis of market-specific competitive characteristics, whether a proposed transaction will substantially lessen competition in any given banking market. Specifically, the DOJ Bank Merger Guidelines require an initial screen to be conducted to the extent that the merging institutions have offices in the same Federal Reserve market, Rand McNally Metropolitan Area or county, as applicable, and to conduct an HHI calculation based on total deposits in those overlapping market areas, the merging institutions' market share of deposits, and the resulting pre- and post-merger HHI numbers.[20]

According to the Federal Reserve data, Morgan Stanley competes in the Metro New York City, Salt Lake City, Utah, and Wilmington, Delaware banking markets, while E*TRADE competes in the Denver-Boulder, Colorado, and Washington, DC banking markets.[21] There are no overlapping banking markets in the United States in which Morgan Stanley and E*TRADE compete as measured by banking offices and deposits. In the absence of any such overlapping markets, there would be no increase in any HHI calculation for any market in which Morgan Stanley or E*TRADE competes as a result of the Proposed Transaction. Morgan Stanley therefore respectfully submits that the Proposed Transaction would not raise any competitive concerns under the DOJ Bank Merger Guidelines or the Federal Reserve's standards for evaluating bank mergers.

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[17] Dep't of Justice, Bank Merger Competitive Review – Introduction and Overview (1995), available at https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that the DOJ Bank Merger Guidelines were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[18] *E.g.*, Associated Banc-Corp, FRB Order No. 2018-03 (2018) (BHC acquiring SLHC and federal savings association under Sections 4(c)(8) and 4(j) of the BHC Act).

[19] Federal Reserve System, *How do the Federal Reserve and the U.S. Department of Justice, Antitrust Division, analyze the competitive effects of mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act and the Home Owners Loan Act?* (last updated Oct. 9, 2014), https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm.

[20] *See* Bank Merger Competitive Review – Introduction and Overview at 4–7. *See also* Bank Merger FAQs #3 (stating that the initial step in evaluating competitive effects of an application is to begin with an "initial screen based on market shares and market concentration for the local banking markets in which the parties to a transaction have overlapping operations").

[21] In two of these banking markets, however, the Federal Reserve's data shows that no deposits are held by the relevant banking organization: no deposits are attributed to Morgan Stanley in the Wilmington, Delaware banking market, and no deposits are attributed to E*TRADE in the Denver-Boulder, Colorado banking market. *See* Federal Reserve Bank of St. Louis, Competitive Analysis and Structure Source Instrument for Depository Institutions, https://cassidi.stlouisfed.org/index. Neither MSBNA nor MSPBNA maintains a branch in the Wilmington banking market, and neither ETB nor ETSB maintains a branch in the Denver-Boulder banking market.

Although neither Morgan Stanley nor E*TRADE maintains physical retail bank branches, each banking organization does offer certain banking services online. Morgan Stanley and E*TRADE's IDIs may therefore compete in some local banking markets in which clients of their respective online banking products or services may be located.[22] Because E*TRADE's IDIs solicit deposits online across the United States, it is unlikely that either ETB or ETSB holds a high concentration of internet deposits in any particular local market, including the banking markets in which Morgan Stanley competes.[23] Moreover, the Federal Reserve in 2017 concluded that the market for internet-based deposit taking features a large number of competitors,[24] and the number of competitors in online deposit taking has only grown since that date.

Morgan Stanley and E*TRADE each currently engage in various nonbanking activities, including securities brokerage services, investment advisory services, mutual funds, fiduciary services, and wealth management services. The Federal Reserve has previously determined that the market for each of these nonbanking activities is unconcentrated and that the geographic market is regional or national in scope.[25] For example, the Federal Reserve has consistently determined that the geographic markets are either regional or national in scope for both the securities brokerage business[26] and investment advisory business.[27] As noted in the Federal Reserve's prior orders, numerous competitors would continue to engage in these nonbanking activities following the Proposed Transaction.[28]

[22] For example, an analysis conducted by E*TRADE using 2019 data collected in connection with its CRA program determined that direct deposits (i.e., *deposits other than sweep deposits*) in the following three Metropolitan Statistical Areas each made up approximately 5% of E*TRADE's overall direct deposits: San Jose-Sunnyvale-Santa Clara, CA; New York-Jersey City-White Plains, NY-NJ and San Francisco-Redwood City-South San Francisco, CA. As noted, this analysis does not account for sweep deposits, which make up approximately 67% of E*TRADE's total deposits.

[23] *See* The Toronto-Dominion Bank, FRB Order No. 2017-23 (Sep. 13, 2017).

[24] *Id.*

[25] The Charles Schwab Corporation, 86 Fed. Res. Bull. 494 (2000). *See also* BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019); People's United Financial, Inc., FRB Order No. 2017-08 (2017); Huntington Bancshares Inc., FRB Order No. 2016-13 (2016); BB&T Corporation, FRB Order No. 2015-35 (2015); Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012) (the "Capital One Order"); SunTrust Banks, Inc., 90 Fed. Res. Bull. 533 (2004); Wells Fargo & Company, 88 Fed. Res. Bull. 103 (2001); Fifth Third Bancorp, 87 Fed. Res. Bull. 330 (2001); and NationsBank Corporation, 84 Fed. Res. Bull. 858 (1998).

[26] Capital One Order. *See also* Bank of America Corporation/Countrywide, 94 Federal Reserve Bulletin C81 (2008); Allied Irish Banks, p.l.c., 94 Federal Reserve Bulletin C11 (2007); Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006); Marshall & Ilsley Corporation, 92 Federal Reserve Bulletin C121 (2006); Wells Fargo & Company, 88 Federal Reserve Bulletin 103 (2002); and NationsBank Corporation, 84 Federal Reserve Bulletin 858 (1998).

[27] Capital One Order. *See also* Marshall & Ilsley Corporation, 92 Federal Reserve Bulletin C121 (2006); SunTrust Banks, Inc., 90 Federal Reserve Bulletin 533 (2004); and Fifth Third Bancorp, 87 Federal Reserve Bulletin 330 (2001).

[28] *See* Capital One Order. *See also* The Toronto-Dominion Bank, FRB Order No. 2017-23 (Sep. 13, 2017) (noting that other providers would be available for the securities brokerage, investment advisory, and wealth management activities conducted by TD Bank and Scottrade following their merger); Canadian Imperial Bank of Commerce, FRB Order No. 2017-15 (June 7, 2017) (noting that numerous competitors would remain for each of the activities

The nonbanking products and services of Morgan Stanley and E*TRADE are largely complementary and would serve to fill gaps in each organization's current product and service offerings. Morgan Stanley's wealth management products and services are delivered through a full-service, financial advisor-driven model, while E*TRADE's products and services are delivered through a direct-to-consumer model and digital banking capabilities. In terms of the three wealth management channels – financial advisory, self-directed brokerage, and workplace services (i.e., corporate stock plan administration) – Morgan Stanley's offerings are more focused on the financial advisory and both public and private company workplace channels, while E*TRADE's offerings are more focused on the self-directed brokerage and public company workplace channels.[29] Similarly, in terms of wealth management client segments, Morgan Stanley's products and services are more focused on established, high-net worth individuals while E*TRADE's products and services are more focused on the pipeline of emerging wealth clients.[30] After consummation of the Proposed Transaction, the relevant markets for these nonbanking activities would remain unconcentrated with multiple large competitors, and Morgan Stanley would continue to compete with numerous competitors for each of these services.

For all of these reasons, the Proposed Transaction will not result in an undue concentration of resources or decreased or unfair competition, and is therefore consistent with approval under the Federal Reserve's standards of review.

B. Convenience and Needs of the Community and Public Benefits

The Proposed Transaction would create a combined organization that services the full spectrum of wealth management clients across all channels of client acquisition, for clients of all types, needs, and sizes. As a result, the Proposed Transaction would enable Morgan Stanley to enhance its offerings to the communities it serves, both in terms of breadth and availability. The complementary nature of most of Morgan Stanley's and E*TRADE's products and services would permit both organizations, as noted above, to fill gaps in their current product and service offerings. The resulting full suite of products and services would significantly enhance client experience and thereby satisfy the convenience and needs of the community more holistically than the two separate offerings of products and services currently provided by Morgan Stanley and E*TRADE.

In particular, the Proposed Transaction brings together E*TRADE's experience in the direct-to-consumer model and digital banking capabilities with Morgan Stanley's full-service, financial advisor-driven model. E*TRADE aims to enhance the financial independence of clients through a comprehensive digital offering and professional guidance. E*TRADE's digital distribution through web-based and mobile products makes these tools broadly accessible to its clients, including the next generation of emerging wealth clients. By

conducted by Canadian Imperial Bank of Commerce and PrivateBancorp following their merger, including wealth management).

[29] Morgan Stanley, The Next Step in Our Transformation (Feb. 20, 2020), available at https://www.sec.gov/Archives/edgar/data/895421/000095010320003007/dp121635_ex9902.htm [hereinafter the "**February 20 Investor Presentation**"] at 10.

[30] *Id*. at 11.

combining these capabilities in the Proposed Transaction, Morgan Stanley and E*TRADE will be able to broaden the base of clients they serve, enhance the range of products and services they offer, accelerate the provision of online brokerage and digital banking services, and help the merged institution to acquire and retain clients and the proceeds of company stock plans at a faster rate. The key benefits for the existing clients of E*TRADE and Morgan Stanley include:

- Existing **E*TRADE clients** would have increased access to the breadth of Morgan Stanley's advice and product platform. These clients will benefit from access to Morgan Stanley's capabilities including its full service advice offering, financial wellness and education platform, access to a wider range of investment products, deeper research, and introductions to financial advisors, as appropriate. As the needs of E*TRADE clients grow, they will be able to leverage Morgan Stanley's broader suite of wealth management products, enabling them to be well prepared and educated as their financial situation evolves. In addition, Morgan Stanley's financial wellness platform can benefit E*TRADE's clients, including its stock plan clients and private company management teams, through education on the importance of being prepared for changes in financial circumstances and potential future expenditures.

- In turn, existing **Morgan Stanley clients** would benefit from additional self-directed brokerage capabilities and offerings, complementing Morgan Stanley's existing offerings in the financial advisory and workplace channels. These self-brokerage capabilities and offerings include trades at zero commissions within those accounts, and Morgan Stanley expects to continue E*TRADE's current commission pricing practices (most notably, commission-free equities trading) through the digital self-directed channel. Morgan Stanley clients would also benefit from the digital banking products, including checking and savings accounts and high yield savings products, that E*TRADE currently provides. Morgan Stanley expects to utilize E*TRADE's digital banking platform to enable Morgan Stanley customers to open deposit accounts directly with one or more of its IDIs, a capability which is not presently available to customers of the Morgan Stanley Banks.

In sum, Morgan Stanley's and E*TRADE's product and service platforms are largely complementary. Based on current assessments, the overlap between the two platforms appears to be limited and Morgan Stanley expects to maintain the current suite of products and services offered to clients of both E*TRADE and Morgan Stanley. Morgan Stanley will also continue to invest in products and services, including through new technologies, to meet the evolving digital needs of the combined client base of Morgan Stanley and E*TRADE. Equally important, in integrating the products, services and technology platforms of Morgan Stanley and E*TRADE, Morgan Stanley does not expect that there would be any disruption to E*TRADE clients, Morgan Stanley clients, or any of their financial advisors.

Neither Morgan Stanley nor E*TRADE has any bank branches and, accordingly, there are no branch closures planned as a result of the Proposed Transaction.[31]

Morgan Stanley's ability to build value for clients relies on its talented employees around the world. Their diverse experiences and perspectives inform their work and greatly benefit the firm's business. Morgan Stanley embraces a values-based culture of inclusion where dedicated professionals can collaborate to produce breakthrough thinking. Its core values guide decision making aligned to the expectations of its clients, shareholders, regulators and directors and the public. These guiding values—Putting Clients First, Doing the Right Thing, Leading With Exceptional Ideas and Giving Back—are at the heart of Morgan Stanley's strong workplace culture and underpin its success. As part of Morgan Stanley, E*TRADE employees would benefit from Morgan Stanley's global network, diverse set of businesses, attractive employee benefits, training and educational programs and career mobility opportunities. Morgan Stanley offers talent development and leaderships programs, enabling employees to continue to build the necessary skill sets to advance their careers, and would offer similar opportunities to E*TRADE employees. E*TRADE employees will have significant opportunities to give back to the community through Morgan Stanley's charitable endeavors, including through the Morgan Stanley Foundation and Morgan Stanley International Foundation. In addition, Morgan Stanley fosters an inclusive working environment and views diversity as a key component of its culture. As James Gorman, Chairman and CEO, says, "At Morgan Stanley, diversity is an opportunity — for our clients, our people and our Firm. By valuing diverse perspectives, we can better serve our clients while we help our employees achieve their professional objectives. A corporate culture that is open and inclusive is fundamental to our role as a global leader constantly striving for excellence in all that we do." E*TRADE will be integrated into Morgan Stanley and the combined company will continue to be an employer of choice for professionals in the financial services industry.

As discussed in the sections that follow, as a further benefit to the convenience and needs of the community, the Proposed Transaction will also result in enhancements to Morgan Stanley and E*TRADE's CRA activities, as well as to the financial strength and resilience of Morgan Stanley and E*TRADE as a combined organization. Community outreach efforts regarding the Proposed Transaction are expected to commence in the coming weeks.

C. Community Reinvestment Act Compliance

Morgan Stanley, E*TRADE and their respective IDI subsidiaries are strongly committed to serving the needs of their communities, particularly the needs of low- and moderate-income ("**LMI**") individuals and LMI communities. This firm commitment is demonstrated by the strong CRA record of each organization.

[31] E*TRADE has two national offices and around 30 local broker-dealer retail locations across the United States. Morgan Stanley will review for potential operating efficiencies and redundancies to its own approximately 590 broker-dealer retail locations as part of the integration process.

1. Morgan Stanley's CRA Record

Morgan Stanley meets the needs of its communities through an exceptionally responsive and impactful CRA program that includes an industry-leading array of products and a high level of impactful community development transactions (the "**MS CRA Program**").

Morgan Stanley is not a traditional commercial bank and its CRA activities are not the same as those of traditional commercial banks. Instead, based on feedback from the communities it serves and approval from the OCC, Morgan Stanley has dedicated its CRA efforts to leveraging its specific investment banking intellect, financial acumen, and capital markets expertise to address the particular needs of its communities. The MS CRA Program seeks to harness the forces of public/private partnerships and the capital markets to provide innovative solutions to complex and pressing challenges facing its communities. It operates based on a set of key themes, which include: preserving and developing sustainable affordable housing with resident services and accessibility to mass transit where feasible, building healthy communities by facilitating access to affordable healthcare and fresh foods, creating jobs through effective economic development, providing capital to rural and underserved markets, and building capacity for nonprofit community development organizations.

Morgan Stanley's banking supervisors have consistently recognized its firm-wide commitment to the CRA. MSBNA has received five consecutive Outstanding CRA performance evaluations, dating back to an exam cycle begun in 1999.[32] Similarly, MSPBNA has received an Outstanding performance evaluation from the OCC each time the OCC has evaluated its CRA performance.

After consummation of the Proposed Transaction, Morgan Stanley looks forward to integrating the E*TRADE Banks into the MS CRA Program and its firm-wide record of CRA achievement. Morgan Stanley expects to continue to meet and exceed established standards for Outstanding CRA performance.

(a) Morgan Stanley's Most Recent CRA Performance Evaluations

(i) <u>MSBNA</u>

MSBNA received a CRA performance rating of Outstanding at its most recent evaluation by the OCC, as of December 31, 2016 (the "**2016 MSBNA Evaluation**").[33] The evaluation covered the period from July 1, 2013 through December 31, 2016 (the "**MSBNA Evaluation Period**"). MSBNA's designated assessment area consisted of Salt Lake County, which is part of the Salt Lake City, Utah Metropolitan Statistical Area.

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[32] The first two of these evaluations, for the periods from 1999 – 2003 and 2003 – 2006, were conducted by the FDIC, when Morgan Stanley Bank was a Utah state-chartered industrial loan corporation. The most recent three evaluations were conducted by the OCC, which became the primary federal banking supervisor for MSBNA upon its conversion to a national bank in 2008.

[33] A copy of the 2016 MSBNA Evaluation is available at https://www.occ.gov/static/cra/craeval/jul18/24908.pdf, and included as <u>Public Exhibit 6</u> to this Application.

MSBNA does not maintain branches aside from its headquarters in Salt Lake City, Utah. MSBNA primarily engages in commercial lending to large institutional borrowers and securities-based lending to institutions and individual borrowers. Consistent with these activities, MSBNA has been designated as a wholesale bank under the CRA since March 10, 2009.[34] Accordingly, the 2016 MSBNA Evaluation assessed MSBNA's performance under the community development test.[35]

The OCC reached the overall Outstanding rating based on the following factors and examples.

MSBNA and affiliates demonstrated "a high level of community development lending and qualified investment activity, particularly investments not routinely provided by private investors, . . . [and] an adequate level of community development services."

- MSBNA and its affiliates provided $40 million of qualified investments and $187 million of community development loans in or benefiting its assessment area.

- The OCC cited the following examples of MSBNA's community development lending within its assessment area:

    - MSBNA provided three revolving lines of credit amounting to $11 million to finance a community development entity's acquisition and rehabilitation of poorly conditioned residential properties. The community development entity would later sell the rehabilitated properties as affordable housing units.

    - MSBNA provided a $10 million non-revolving facility to a local community development entity to finance a loan program to promote economic development, affordable housing and community facilities in Utah. The facility financed projects such as a healthy food market, the expansion of small LMI and minority-owned businesses, and, for use of affordable housing, the acquisition of property in LMI census tracts.

    - MSBNA provided $2 million as a participation to a Utah community development financial institution ("**CDFI**") that delivers affordable housing and small business loans throughout the state.

    - MSBNA offered a $1.5 million loan to a nonprofit organization for rehabilitating an old factory building into affordable housing and workspaces for artists, nonprofit organizations, and small businesses. The transaction was a complex loan that required

[34] A wholesale bank is "a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and for which a designation as a wholesale bank is in effect." 12 C.F.R. § 25.12(x).

[35] 12 C.F.R. § 25.25. At MSBNA's request, the OCC also considered qualified investments, community development lending, and community development services provided by MSBNA's affiliates that were not claimed by any other institution. *See* 12 C.F.R. § 25.25(d).

coordination across several financing parties and satisfied timing needs of financing, such as historic tax credits, in order to facilitate the project's completion.

- The OCC cited the following examples of MSBNA's qualified investments within its assessment area:

    - For one of MSBNA's initiatives for transit-oriented affordable housing, MSBNA committed $10.4 million and funded $1.71 million to Low-Income Housing Tax Credit ("**LIHTC**") development to create 134 affordable housing units that are accessible to certain low-income households and are near public transportation, neighborhood conveniences, and services.

    - MSBNA and affiliates established and funded a fellowship program in partnership with the University of Utah. The fellowship seeks to develop community leaders and expand capacity for community nonprofit organizations.

    - MSBNA contributed $55,000 of grants to a nonprofit organization primarily focused on enabling sustainable eye care for LMI and underprivileged individuals.

    - MSBNA partnered with National Development Council and purchased $2.6 million in New Market Tax Credits ("**NMTCs**") to restore Salt Lake City's Capitol Theater, which remains a local landmark and draws in new businesses to the downtown area.

- The OCC cited the following examples of MSBNA's community development services within its assessment area:

    - Two employees contributed technical expertise to a subsidiary of an organization that focuses on stabilizing neighborhoods via affordable housing, neighborhood revitalization, and small business lending and investing. Morgan Stanley took the lead for this initiative, which involved regular meetings over the course of almost three years, as well as acting as senior lender for the fund.

    - During the MSBNA Evaluation Period, a vice-president contributed technical expertise to an organization that creates opportunities for LMI neighborhoods via affordable housing, economic development, youth workforce development, and resident leadership by serving on its board of directors and loan review committee.

    - A vice president was a member of the Refugee Housing Advisory Committee for the State of Utah, which works to address refugee housing and homelessness.

MSBNA and affiliates demonstrated "extensive use of innovative or complex community development loans and qualified investments."

- Innovative or complex community development transactions comprised 83%, or $1 billion, of MSBNA and its affiliates' total community development lending and 12.6%, or $378 million, of the MSBNA and its affiliates' total qualified investments, not including unfunded commitments.

- In order to identify opportunities for addressing community development needs, MSBNA and its affiliates collaborated with local and national nonprofit organizations.

- Morgan Stanley also leveraged its expertise to structure complex funds for organizations and small businesses by combining separate government programs, such as SBA loan programs, LIHTC, NMTCs, and private sector philanthropy. The funds include partnerships with CDFIs and other nonprofit organizations that are focused on providing flexible financing for activities such as affordable housing, economic development, and revitalization and stabilization of distressed and underserved communities.

    - Combining LIHTCs and NMTCs, Healthy Futures Fund was launched by Morgan Stanley in collaboration with Local Initiatives Support Corporation and Kresge Foundation to improve healthcare access for LMI families using a co-location model that linked health centers to affordable housing projects.

    - As mentioned above, Morgan Stanley established an Impact SBIC that focuses on LMI individuals and geographies, and education and clean technology sectors. This entity is one of just nine Impact SBICs nationwide and the only one that is sponsored by a bank.

MSBNA and affiliates demonstrated "excellent responsiveness to credit and community development needs in its assessment area."

- *Equitable Transit Oriented Development* – After three years of MSBNA-hosted meetings, MSBNA and community stakeholders formed in November 2015 the Equitable Transit Oriented Development Fund, in which MSBNA participated and took a leadership position. The fund finances LMI housing acquisition and development near public transportation by pooling resources from local banks and community partners.

- *Economic Growth* **–** The Greater Salt Lake Development Corporation, which is a $10 million fund developed by MSBNA, supports job growth and economic growth by offering alternative lending to revitalize blighted areas.

- *Homelessness Reduction* **–** MSBNA has led on efforts to reduce homelessness. In recognition of MSBNA's role in leadership, the State of Utah requested MSBNA's participation in the Refugee Advisory Housing Committee and Pioneer Park Coalition, which in turn offered input into Utah legislation for a $27 million bill to address homelessness.

The OCC also recognized MSBNA and its affiliates' $3 billion of qualified investments and $1.2 billion of community development loans <u>outside</u> of its assessment area.

- MSBNA and its affiliates established the National Equity Fund Preservation Fund in collaboration with the Local Initiatives Support Corporation. The fund prevents affordable housing projects from converting to market rate properties by acquiring such properties until long-term financing becomes arranged to extend the property's long-term affordability.

- MSBNA coordinated with community partners to create a complex and innovative fund to finance underserved small businesses in Cleveland. The fund adapts NMTCs to assist borrowers who require micro and very small loans.

- MSBNA established an Impact Small Business Investment Company ("**SBIC**") under the Impact Investment program of the Small Business Administration ("**SBA**"). This entity supports LMI individuals and geographies nationwide, as well as the education and clean technology sectors.

(ii) MSPBNA

MSPBNA received a CRA performance rating of Outstanding at its most recent evaluation by the OCC, as of December 31, 2017 (the "**2017 MSPBNA Evaluation**").[36] The evaluation covered the period from January 1, 2015 through December 31, 2017 (the "**MSPBNA Evaluation Period**"). MSPBNA's designated assessment area consisted of six counties within the New York-Jersey City-White Plains, NY-NJ Metropolitan Division of the New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area.[37]

MSPBNA maintains a limited product set, has no branches aside from its headquarters in Purchase, New York, and, as discussed above, its business model does not resemble a traditional retail bank. For this reason, MSPBNA's CRA performance was evaluated under a CRA Strategic Plan approved by the OCC,[38] which was effective from July 1, 2014 through June 30, 2019.

Consistent with Morgan Stanley's strategy of increasing the scale of its wealth management offering, MSPBNA's total assets increased significantly during the MSPBNA Evaluation Period. Increases in asset growth do not require increases in community development activities under an OCC-approved CRA Strategic Plan. As further evidence of Morgan Stanley's commitment to the CRA, however, MSPBNA's management raised internal performance goals to account for additional asset growth beyond MSPBNA's original CRA Strategic Plan goals.

The OCC reached its overall Outstanding rating based on the following factors and examples:

MSPBNA demonstrated an Outstanding lending performance with community development lending exceeding its OCC-approved strategic goals.

- During the MSPBNA Evaluation Period, MSPBNA contributed over $486 million of community development lending, far exceeding its CRA Strategic Plan goal of $153 million.

[36] A copy of the 2017 MSPBNA Evaluation is available at https://www.occ.gov/static/cra/craeval/may19/24981.pdf, and included as Public Exhibit 7 to this Application.

[37] The assessment area's six counties, all located within the state of New York, include the following counties: Bronx, Kings (Brooklyn), New York (Manhattan), Queens, Richmond (Staten Island) and Westchester.

[38] *See* 12 C.F.R. § 25.27.

- MSPBNA participated in a $17 million letter of credit for high-quality, affordable housing. The project was tasked with acquiring, rehabilitating, and preserving long-term a portfolio of affordable multifamily apartment properties consisting of six elevator buildings and 22 walk-up buildings in Harlem (New York City), totaling 359 occupied apartments.

- MSPBNA provided a $50 million loan to help rehabilitate and acquire a severely distressed New York City Housing Authority-owned public housing complex consisting of 1,393 units. The loan demonstrated complexity in its multilayered financing and innovation in being the first New York City Housing Authority rehabilitee in New York City that was financed via the Rental Assistance Demonstration program.

MSPBNA demonstrated an Outstanding investment performance with community development investments, including grants, exceeding its OCC-approved strategic goals.

- During the MSPBNA Evaluation Period, MSPBNA contributed over $1.18 billion of community development investments, including grants, exceeding its strategic goal of $613 million.

- MSPBNA invested $23 million in the NYC Distressed Multifamily Housing Fund in order to finance the purchase of occupied 130 multifamily housing units. Bridge financing from the fund enabled prompt acquisition of the units while coordination was underway for city-sponsored refinancing. This initiative rehabilitated and positioned the housing units for long-term affordability notwithstanding pricing pressures from nearby rezoning.

- MSPBNA invested $36 million to acquire a partnership interest in the new construction by a nonprofit sponsor for 175 units of low-income senior housing development with a senior and a community health center. Several of the units were set aside to be divided for homeless individuals referred from New York City agencies.

MSPBNA demonstrated an Outstanding service performance with community development services exceeding its OCC-approved strategic goals.

- During the MSPBNA Evaluation Period, MSPBNA contributed 11,113 community development service hours, exceeding its strategic goal of 3,416 service hours.

- The OCC took special note of MSPBNA's participation in Morgan Stanley's Strategy Challenge, a program that supports nonprofit organizations through *pro bono* strategic consulting over 8 to 10 weeks. Employees who volunteer in the program offer strategic advice on improving business models and growth strategies to enhance impact and sustainability.

(b) Morgan Stanley's CRA Activities Since the Most Recent Evaluations

In the years since the 2016 MSBNA Evaluation and the 2017 MSPBNA Evaluation, the MS CRA Program has continued to build upon its strong track record of Outstanding performance. The MS CRA Program continues to address the needs of the communities Morgan Stanley serves as MSBNA and MSPBNA strive to maintain their records of delivering high levels of community development transactions notable for their responsiveness, innovativeness, and flexibility. MSBNA and MSPBNA collaborate with locally focused and nationally active community partners to build stronger communities through community development lending, investments, grants and services. These partners include CDFIs, nonprofits, mission-oriented developers, philanthropies and government agencies.

Further, the MS CRA Program is part of Morgan Stanley's efforts to have Wall Street help Main Street and to increase the amount of long-term, sustainable capital available to CDFIs. As part of these efforts in 2017, Morgan Stanley successfully brought to market a first-of-its-kind $100 million 'AA' General Obligation bond for a CDFI. This groundbreaking sector IPO for the CDFI industry provides longer term capital than is typically available to CDFIs, and helps drive investment capital into distressed urban and rural communities across the country. The bonds were marketed to investors interested in sustainability and social impact, going beyond the CRA-driven investors that typically work with CDFIs. This created a market; as of this writing, eight CDFIs have now issued debt through the public market. Morgan Stanley has managed the offerings for four of the eight CDFIs, representing 43% of the sector's total par amount. These offerings support CDFIs in their day-to-day work of developing and maintaining affordable housing, supporting economic development, job creation, healthcare facilities, charter schools and childcare facilities. Morgan Stanley is particularly proud that the bond offerings structured by Morgan Stanley were offered without covenants that would have placed additional restrictions on the CDFIs. Additionally, Morgan Stanley has been at the forefront of sustainable bond issuances, introducing the CDFI bond market to both the United Nations' Sustainable Development Goals and Sustainalytics' Second Party Opinions. Morgan Stanley will continue to support the emerging market in CDFI bonds.

MSBNA has continued to grow in asset size since the 2016 MSBNA Evaluation. That growth has been accompanied by higher annualized ratios of community development lending and investing compared to the last exam cycle both nationally and in the broader statewide or regional area ("**BSRA**"). Specifically, from January 1, 2017 through December 31, 2019, MSBNA's average assets were $142 billion and generated $6.4 billion in community development loans and investments, which resulted in an annualized community development ratio[39] ("**Annual CD Ratio**") of 1.5%, well in excess of the average Annual CD Ratio of 0.88% for peer wholesale and limited purpose banks.[40]

MSBNA's community development lending and investing have exceeded its growth rate in assets, capital and deposits. Since the 2016 MSBNA Evaluation, assets grew by 19%, Tier 1 capital grew by 27%, and deposits grew by 7%. By comparison, community development lending and investing grew by 42% and, in the BSRA, by 58%. MSBNA's CRA program does not only focus on the volume of transactions, but remains focused on high-impact transactions that are flexible, innovative and highly responsive to some of the community's most pressing needs, which include capital commitments that are not routinely provided by private investors.

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[39] MSBNA calculates the annualized community development ratio by dividing community development lending and investments by asset size and then dividing the result by the three years covered by the exam cycle.

[40] MSBNA considers wholesale and limited purpose banks to be its peers if their most recent CRA examination was rated Outstanding and the banks had assets between $100 billion and $225 billion.

Similarly, MSPBNA's community development activities have also outpaced its growth in assets, capital and deposits since the 2017 MSPBNA Evaluation. MSPBNA remains committed to investing in its communities and intends to be a leader in innovative responses to difficult LMI credit and community development needs. Under its July 1, 2019 – December 31, 2023 CRA Strategic Plan, MSPBNA is committed to lending or investing at least $1.3 billion and providing at least 6,750 hours of community development services to achieve an Outstanding CRA rating. As demonstrated by past performance, MSPBNA approaches its strategic goals as a floor, not a ceiling. It seeks to respond to the needs of its communities, such as the rise in real estate values, obstacles to affordable housing and distressed multifamily properties.

Morgan Stanley continues to think strategically about where to focus its expertise and resources in the community. To that end, Morgan Stanley relies upon a community needs assessment process that draws upon a wide and deep network of community partnerships, both in and beyond the assessment areas of MSBNA and MSPBNA. These partnerships include many national organizations, as well as those with a strong presence and programs in the relevant BSRAs. Examples of these national organizations include the Local Initiative Support Corporation/National Equity Fund, Enterprise Community Partners, and the Low Income Investment Fund. This network of relationships provides vital input and perspective that enables MSBNA and MSPBNA to understand the most pressing community needs and to develop and implement programs that can generate effective community impact throughout their assessment areas and the BSRAs. Community partnerships that facilitate Morgan Stanley's community needs assessment include the following:

- **The Morgan Stanley Community Development Advisory Board** is composed of accomplished, distinguished, and widely respected community development leaders, and serves as a think tank for Morgan Stanley on community development programs. Both MSBNA and MSPBNA engage frequently with the individual board members to learn of and to initiate programs for addressing emerging community needs. The CRA officer of MSBNA and MSPBNA, together with other members of their respective CRA teams, set the meeting agenda and attend all meetings of the advisory board.

- **The Ford Foundation** collaborated with Morgan Stanley to host the New Impact Capital Convening to augment Morgan Stanley's needs assessment process. At this program, moderated by the nonprofit Affordable Housing Institute, Morgan Stanley and the Ford Foundation brought together leading affordable housing and community development practitioners. The meeting was designed to generate innovative capital ideas for the affordable housing sector. Learnings from this Convening were used to develop the CRA Strategic Plans for both of the Morgan Stanley Banks and are serving as a blueprint for the Morgan Stanley CRA Program.

- **Serving on nonprofit boards** not only generates CRA credit as a community development service, it also provides Morgan Stanley employees with a window into community needs. Morgan Stanley employees serve on nonprofit boards, credit committees, and finance committees of nonprofits, including those in MSBNA's and MSPBNA's assessment areas, whose mission is to address the needs of LMI people and neighborhoods. Many of the nonprofits served by Morgan Stanley employees become MSBNA's, MSPBNA's, and Morgan Stanley's strategic partners.

Since the 2016 MSBNA Evaluation and 2017 MSPBNA Evaluation, Morgan Stanley's community needs assessments have repeatedly identified the need for resident services. This development has prompted the key addition to MSBNA's and MSPBNA's CRA programs of working to provide services for the residents (or the surrounding communities) of projects that receive investments through Morgan Stanley proprietary private equity funds.

In addition to incorporating resident services into the MS CRA Program since the 2016 MSBNA Evaluation and 2017 MSPBNA Evaluation, Morgan Stanley continues to demonstrate its commitment to community development lending, investments, grants, and services.

Community Development Lending. Morgan Stanley has received recognition for its level of community development lending. Below are just a few examples of programs that have received funding through MSBNA's and MSPBNA's community development lending programs:

- MSBNA supported the construction of affordable housing within its assessment area with a $6.35 million loan participation in the $12.7 million construction loan with another bank to construct apartments in Salt Lake City, Utah. Morgan Stanley is also providing $13.1 MM in LIHTC equity for this project.

- MSBNA responded to the need for the development of new affordable housing in a rural community in its broader statewide and regional area with a $3.174 million participation in the $6.478 million construction loan with Rural Communities Assistance Corporation, a rural-focused CDFI with a presence in the western United States, on apartments located in Ely, NV.

- Morgan Stanley quickly responded to the freezing of the market for LIHTC investment during the 2017 discussion relating to corporate tax reform. Uncertainty surrounding the rewriting of the tax code brought many affordable housing projects to a standstill. Unique among national banks, Morgan Stanley recognized the need for a stabilizing force in the market and worked closely with leading nonprofit LIHTC syndicators to identify high impact, quality projects in high needs areas. The resulting investments prevented the catastrophic abandonment of multiple far-advanced projects, which were designed to ensure the development of thousands of units of low income and supportive housing across the country. The result was the Corporate Tax Reform Fund I ("**CTR**"), with National Equity Fund. In fact, CTR came to be unofficially known as the "Come to the Rescue" fund. Total CTR funds of $141 million supported 1,187 units in 18 projects around the country.

- Morgan Stanley responded to the evolving needs of a national, rural-focused CDFI with three loans totaling $15 million.

- As described above, Morgan Stanley launched an Impact SBIC. Since the 2016 MSBNA Evaluation Period, the Impact SBIC provided three loans totaling $7.75 million to a small business with operations in three states, including Colorado, which is in MSBNA's BSRA.

- MSBNA renewed its $38 million commitment to financing crucial community services and economic development through two loans to a high impact CDFI that provides comprehensive financial services to co-operatives and other member-owned organizations throughout the United States, in addition to organizations that engage in the development of educational facilities, healthcare facilities, and commercial real estate. This capital is used in LMI census tracts primarily to provide interim financing for construction loans and mini-permanent lending for housing, schools (charter schools and pre-school education); community facilities including retail, wholesale and distribution centers in the food industry; together with community healthcare facilities.

- MSPBNA has continued to originate and participate in construction and/or permanent lending for affordable housing, both income-restricted and naturally occurring affordable housing ("**NOAH**"). Where possible, Morgan Stanley has sought to convert NOAH to government-supported income-restricted housing that will guarantee the long-term affordability of this housing.

- To help address the need for affordable housing, MSPBNA has continued to provide letters of credit for construction financing. Because of the importance of the bond markets to financing the development and rehabilitation of affordable housing in New York City, letters of credit issued by highly rated financial institutions are vitally important to help stimulate demand and lower costs to issuers, thereby facilitating more housing volume. Letters of credit stimulate demand by lowering credit risk, which leads to better pricing for the issuer. Savings generated by better pricing allows government to invest in more affordable housing units.

Community Development Investments. Morgan Stanley is consistently recognized as a leader in community development investments, and has continued its extensive use of innovative or complex investments to support affordable housing and economic development. Below are examples of programs that have received funding through MSBNA's and MSPBNA's community development investment programs.

- Morgan Stanley responded to the need for quality affordable housing in MSBNA's assessment area with a $5.4 million investment to support the preservation and rehabilitation of a 95-unit senior citizens' property in Salt Lake City, Utah.

- As described above, Morgan Stanley launched an Impact SBIC. Since the 2016 MSBNA Evaluation Period, the Impact SBIC provided $27 million in debt and equity to small businesses around the country.

Community Development Grants. Below are just a few examples of programs that have received funding through MSBNA's and MSPBNA's community development grants programs.

- Morgan Stanley continues to support a program at an LIHTC apartment project in Salt Lake City, Utah which is home to many refugee families. To help the children of these families adjust to their new lives, Morgan Stanley brought the Baseball Hall of Fame to the complex. The Hall of Fame has designed a program that uses baseball to teach academic subjects, including geometry, history and geography. Morgan Stanley is the sole funder of an award winning afterschool program, which provides quality, affordable afterschool programming to eligible youth in the this apartment community. The program concludes with a memorable trip during which the children can bring their families to a Salt Lake City Bees game.

- MSBNA has provided almost $400,000 of grant funding to a Utah community development corporation which empowers residents to become and remain successful homeowners, creating vibrant, sustainable communities. Most of the funding went to support the community development corporation's Neighborhood Homeownership and Stabilization Program that assists LMI families to become and remain successful homeowners. Morgan Stanley also supports new initiatives of the community development corporation, such as a one-day event that provides services to those experiencing homelessness.

- A key component of Morgan Stanley's grant program is to provide funds for nonprofits to improve their own infrastructure, a critical need, but not a priority for many funders. For example, Morgan Stanley supported a nonprofit to help them explore and re-work their housing and services staffing structure, and therefore further this nonprofit's mission of building stable homes, strong futures, and vibrant communities.

- Morgan Stanley funds programs for nonprofits with critical needs for which they cannot easily raise other grant funds. As an example, many organizations are working with antiquated IT systems that do not permit them to serve clients efficiently or track their own results. Morgan Stanley offers grants to support this critical but often unmet need.

Community Development Services. As part of Morgan Stanley's efforts to build capacity in the community development field, Morgan Stanley works to create and support healthier communities, the next generation of community development leaders, and provide resident services through its grants and services programs. Below are examples of programs that have received service hours from MSBNA's and MSPBNA's services programs.

- As described above, one signature effort of Morgan Stanley's community development service program since 2010 has been Morgan Stanley's Strategy Challenge. The Strategy Challenge provides 10 weeks of *pro bono* consulting focused on answering key strategic questions at selected nonprofits. The consulting services are delivered through top-performing Morgan Stanley volunteers who represent a broad range of skills from numerous divisions across the firm. Since the 2016 MSBNA Evaluation Period, Morgan Stanley employees supported numerous organizations through the Strategy Challenge, totaling more than 10,000 hours.

- More recently, strong interest from employees and nonprofits has led Morgan Stanley to expand on the success of the Strategy Challenge program to broaden the opportunities for employees to bring their unique skills to similarly situated organizations. In 2018, the firm launched the Morgan Stanley Change Makers initiative, a partnership with the Taproot Foundation. A key element of the Changemakers initiative is a series of "Scopeathons," half-day, skills-based consulting events, which, much like the Strategy Challenge, pair teams of Morgan Stanley employees with local nonprofit organizations. Employees assist nonprofit organizations with challenges related to business strategy, financial management, operations/process improvement, data analysis, human resources, technology, and more.

*2. E*TRADE's CRA Record*

E*TRADE meets the CRA needs of the communities it serves through a CRA program tailored to the activities of ETB and ETSB. Over the past decade, these activities have evolved, and E*TRADE's CRA program has changed as well to appropriately reflect the products and services offered by the E*TRADE Banks, which as discussed in Part III.B above are not those of traditional banks. These changes have included several enhancements to E*TRADE's CRA program, described in further detail below. Morgan Stanley intends to, where appropriate, incorporate these enhancements and innovative activities into its own CRA program.

*(a) E*TRADE's Most Recent CRA Performance Evaluations*

(i) <u>ETB</u>

ETB received a CRA performance rating of Outstanding at its most recent evaluation by the OCC, as of October 21, 2019 (the "**2019 ETB Evaluation**").[41] This was the second straight Outstanding rating for ETB, as it had also received an Outstanding rating in its prior CRA performance evaluation as of December 31, 2014. The 2019 ETB Evaluation covered the period from January 1, 2015 through December 31, 2018 (the "**ETB Evaluation Period**").[42] ETB's designated assessment area consisted of the Silver Spring-Frederick-Rockville, MD (43524) and the Washington-Arlington-Alexandria, DC-VA-MD-WV (47894) metropolitan divisions, which reside in the Washington-Arlington-Alexandria, DC-VA-MD-WV multistate metropolitan statistical areas and which, for purposes of the 2019 ETB Evaluation, were combined and evaluated as a single area (MSA 47900).

ETB does not operate as a traditional bank and does not originate loans. ETB closed its only retail branch location in December 2016 and operates under a branchless business strategy. Deposits are accepted only through the mail or online. ETB offers a suite of brokerage, investing, and related banking products that are available only to E*TRADE brokerage customers. Retail banking products are offered online and include checking and savings accounts, online bill pay, and mobile banking. Consistent with these limited activities, ETB was evaluated for purposes of the 2019 ETB Evaluation as a limited purpose bank.

In the 2019 ETB Evaluation, the OCC reached the overall Outstanding rating based on its conclusion that:

- ETB had an **excellent level of qualified investments**, particularly those not provided by private investors, often in a leadership position.

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[41] A copy of the 2019 ETB Evaluation is available at https://cdn.etrade.net/1/20012412250.0/aempros/content/dam/etrade/about-us/en_US/documents/in-the-community/bank-performance-evaluation.pdf, and included as <u>Public Exhibit 8</u> to this Application.

[42] From January 1, 2012 to December 31, 2012, ETB was evaluated under a wholesale designation for CRA purposes. Beginning January 1, 2013 through the end of the evaluation period of December 31, 2014, ETB was evaluated under a limited purpose designation. On October 17, 2012, the OCC approved the change effective January 1, 2013, due to the ETB's very limited retail lending through its legacy loan portfolio.

- ETB exhibited **excellent responsiveness to community development need**s through hosting the annual community needs assessments, including creating a program to invest in the technological infrastructure of local community development organizations.

- ETB provided a relatively high level of community development services. **Community development services were effective and responsive in addressing community needs**.

Specific examples of ETB's CRA performance noted by the OCC included that:

- During the ETB Evaluation Period, ETB made 260 investments and grants totaling $505.8 million. Investments included 227 grants and donations totaling $16.2 million, 13 investments in mortgage-backed securities totaling $365.3 million, and 20 other investments in LIHTCs and SBICs totaling $124.3 million.

- ETB partnered with a nonprofit organization technology provider to help support the infrastructure and technology development of other nonprofit organization ETB grantees. ETB granted $800,000 to the program during the ETB Evaluation period and sponsored over 47 Washington, DC area nonprofit organizations to undergo technology rehabilitation and consulting to help support their infrastructures that are critical to ongoing operations. The grantees in the program provide critical community development services to LMI individuals in the assessment area, and this investment was considered both innovative and highly impactful to the assessment area.

- ETB invested in $183.2 million in 13 syndicated LIHTCs funds during the evaluation period. The investments supported 3,237 individual LIHTC units through allocated projects within ETB's assessment area. These LIHTC investments often involved complex investment structures and multiple stakeholders.

- ETB partnered with local nonprofit organizations to provide financial literacy classes targeted to youth in the Washington, DC, area. ETB employees provided over 2,314 hours of financial education to more than 2000 LMI elementary and middle school students during the ETB Evaluation Period.

- ETB employees held several leadership positions on the board of directors of local nonprofit organizations that support affordable housing, community services to LMI individuals and families, and economic development. During the ETB Evaluation Period, ETB employees provided 1,004 board service hours.

(ii) ETSB

ETSB received a CRA performance rating of Satisfactory at its most recent evaluation by the OCC, as of December 31, 2014 (the "**2014 ETSB Evaluation**").[43] The evaluation covered the period from January 1, 2013 through December 31, 2014 (the "**ETSB Evaluation**

[43] A copy of the 2014 ETSB Evaluation is available at https://www.occ.gov/static/cra/craeval/aug16/718000.pdf, and included as Public Exhibit 9 to this Application.

Period").[44] ETSB's assessment areas consisted of the Silver Spring-Frederick-Rockville, MD (43524) and Washington-Arlington-Alexandria, DC-VA-MD-WV (47894) metropolitan divisions of the Washington-Arlington-Alexandria, DC-VA-MD-WV metropolitan statistical areas (MSA 47900).[45]

ETSB does not offer or accept retail deposit accounts other than sweep deposits. ETSB's specialized market and product offerings are more consistent with online and broker-dealer related financial institutions, and ETSB's principal peers are financial institutions that offer similar products and services. Accordingly, the 2014 ETSB Evaluation assessed ETSB's performance under a wholesale bank designation.[46] ETSB has not undergone a CRA performance evaluation since the 2014 ETSB Evaluation, but it is currently designated as a limited purpose bank for purposes of future CRA performance evaluations.

In the 2014 ETSB Evaluation, the OCC reached the overall Satisfactory rating based on its conclusion that:

- ETSB demonstrated an overall adequate level of community development activities.

- ETSB's investments in mortgage-backed securities backed by 17 affordable single family homes benefited a number of assessment areas and, while neither innovative nor complex, displayed adequate responsiveness as it met the financing need for permanent single-family housing for LMI individuals.

- ETSB's level of community development services was high in Washington, DC, and in New York, while ETSB's remaining assessment areas reflected adequate, poor or very poor levels of community development services. In this context, the OCC noted that it had considered

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[44] The one-year examination period follows a previous examination covering the period between August 10, 2010 and December 31, 2012, for which ETSB received a Needs to Improve rating. For this previous examination period, ETSB was evaluated as a wholesale institution from August 10, 2010 through December 31, 2011 and as a large bank from January 1, 2012 through December 31, 2012.

[45] Between January 1, 2013 and September 30, 2013, ETSB had additional assessment areas in the states of Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New York, Oregon, Pennsylvania, and Texas. See *infra* n. 46.

[46] During the first nine months of 2013, ETSB operated 26 branches, all of which were co-located in E*TRADE financial centers. Although designated as branches, ETSB did not offer traditional retail banking services or products through those locations. The locations operated only nominally as ETSB branches; deposits were exclusively non-cash deposits of E*TRADE brokerage customers; and deposits were initially allocated entirely to ETB. On June 20, 2013, ETSB notified the OCC of its intent to close its branch offices located inside E*TRADE financial centers effective September 30, 2013. The E*TRADE financial centers would remain open but would no longer offer banking services. Consistent with these activities, ETSB was designated as a wholesale bank under the CRA as of January 1, 2013. 12 C.F.R. § 25.25. At ETSB's request, the OCC also considered qualified investments, community development lending, and community development services provided by ETSB's affiliates that were not claimed by any other institution. *See* 12 C.F.R. § 25.25(d).

Since March 2019, ETSB has been considered a limited purpose bank for purposes of the CRA. *See* OCC, Wholesale and Limited Purpose Banks under the Community Reinvestment Act (CRA) (as of Jan. 1, 2020), https://www.occ.treas.gov/topics/consumers-and-communities/cra/wholesale-and-limited-purpose-banks-under-cra.html.

the fact that many of these assessment areas had only one ETSB branch with few employees available to provide community development services.[47]

- ETSB demonstrated no use of innovative or complex community development activities.

- Given ETSB's qualified investments and community development services, ETSB overall demonstrated adequate responsiveness to community development needs in its assessment areas.

Although the 2014 ETSB Evaluation marked an improvement from ETSB's prior evaluation, E*TRADE recognized that its CRA program would benefit from several enhancements designed to make the overall CRA program, including the CRA activities conducted by ETSB, more innovative and more responsive to community needs. These enhancements are summarized in the following section.

*(b) E*TRADE's CRA Activities Since the Most Recent Evaluations*

Since the 2014 ETSB Evaluation, E*TRADE has held annual gatherings to inform the E*TRADE Community Investment Group's strategy for addressing the community development needs of the region. Generally, each gathering has attracted approximately 120 participants from 130 organizations which were represented at the meeting from throughout the two metropolitan divisions that comprise the assessment area. Given the particular challenges posed by housing costs, affordability, foreclosures, unemployment, education, and other issues in the assessment, the community organizations in attendance represented affordable housing, local government, housing counseling, financial literacy, economic development, and health and human services sectors. The focus of these meetings in recent years have included suburban poverty, and how this growing phenomenon affects regional community improvement efforts, public/private/ community partnerships, inequality, and the future of technology, banking and the community.

These annual gatherings also produced a set of community development needs, along with input on how the E*TRADE Banks can provide solutions designed to meet these needs. Identified areas of community development need included, among several others:

- Insufficient supply of affordable housing, including due to lack of capital to develop affordable housing.

- A need for housing counseling solutions, including holistic services for residents facing housing affordability challenges and more financial literacy training for counselors.

- Economic development, including living wages, sustainable jobs with affordable housing and proximity to transit, and workforce training and development for job training and creation.

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[47] As noted above, the 2014 ETSB Evaluation took place in the context of a strategic shift in ETSB's activities. In particular, part of the 2014 ETSB Evaluation took place during a time when 26 ETSB locations were designated as "branches" for purposes of the CRA, even though ETSB did not offer traditional retail banking services or products through those locations, deposits were exclusively non-cash deposits of E*TRADE brokerage customers, and deposits were initially allocated entirely to ETB.

- Financial education, including initiatives for low-income students.

- Investment in the capacity of non-profits through capital and volunteers.

- Availability of healthcare services.

In response to these identified needs, E*TRADE designed and implemented a community investment strategy intended to develop stronger communities so that LMI individuals and families could have an improved quality of life. This community investment strategy manifested itself in the following investments and initiatives:

- Affordable Housing. E*TRADE partnered with the highest producing nonprofit developers in the Washington, DC region, helping them to continue to strengthen their capacity to produce and preserve affordable housing through general operating support. In addition, E*TRADE employees provided community development support services as members of the board of directors of some of these organizations, helping the organizations with strategy and financial management.

- Housing Counseling. E*TRADE partnered with MANNA, Interfaith Housing, HomeFree-USA, First Home Alliance and H.O.P.E. Financial to provide pre- and post-purchase housing counseling services to prepare prospective buyers for the homeownership process and also help clients with decisions about renting including defaults, foreclosures, and credit issues.

- Economic Development. E*TRADE focused on helping residents to stabilize their financial situations through small business and micro enterprises. Included in this strategy was the support of CDFIs, nonprofit lenders that generally have a closer relationship with LMI nontraditional borrowers. In addition to providing general operating support, E*TRADE also made equity investments in City First Bank in Washington, DC and several SBICs.

- Financial Education. In addition to general operating support for nonprofits involved in financial literacy and education programs, E*TRADE volunteers taught financial education classes where young people took on roles as adults for a day and had to make several financial decisions.

- Non-Profit Capacity Building Through Innovation. In 2015, E*TRADE announced a new year-long pilot initiative that used technology to impact community change and to further advance the missions of ten nonprofits. In partnership with Tech Impact, a nonprofit technology provider, E*TRADE grantees chose from two core services as follows: (1) undergo a technology "rehabilitation" to upgrade their current infrastructure, replace old servers, migrate email to a cloud solution and ensure security measures are in place; or (2) engage with Tech Impact to proactively monitor and maintain their network for one year including the installation of enterprise level security software and new Microsoft licensing for servers and workstations, as well as provide helpdesk support and online backup of pertinent data. This program proved a success, and was expanded in later years.

- Access to Healthcare. E*TRADE partnered with two free clinics, one in Arlington, VA and one in Culpepper, VA, to address disparities in both access to care and health based on where people live, the source of their insurance coverage, and their race/ethnicity. In addition to providing general operating support to these clinics, E*TRADE also provided technology support.

These and other activities of E*TRADE in the latter part of the last decade demonstrate E*TRADE's commitment to the CRA and its desire to constantly improve its CRA offerings in order to better meet the needs of the communities it serves. This demonstrated track record of CRA commitment will fit well with, and will only be improved by, Morgan Stanley's CRA program, which has long been a standard setter in this field.

3. CRA Compliance Following the Proposed Transaction

Following completion of the Proposed Transaction, Morgan Stanley expects to maintain its responsive and impactful CRA program as recognized by the OCC and as detailed in its OCC-approved CRA Strategic Plans, in line with its growth initiatives and in response to the evolving needs of the communities Morgan Stanley and E*TRADE serve. Morgan Stanley continues to evaluate the best approaches and alternatives for enhancing its future CRA programs and will incorporate E*TRADE's strong track-record of CRA performance into such future initiatives.

D. Financial and Managerial Resources

In reviewing proposals under Section 4(j)(2) of the BHC Act, the Federal Reserve considers the financial and managerial resources and the future prospects of the institutions involved. The Federal Reserve's assessment of financial factors regards capital adequacy as especially important, but also considers asset quality, liquidity, and earnings performance, among other factors. In assessing managerial resources, the Federal Reserve evaluates the management, risk management systems, and operations of the organizations involved, as well as their compliance with applicable banking, consumer protection, and anti-money-laundering laws. The Federal Reserve also considers the ability of a banking organization to complete effectively the proposed integration of the operations of the institutions involved.

As discussed in greater detail below, as of December 31, 2019, Morgan Stanley is a well-capitalized BHC with regulatory capital ratios well in excess of its capital requirements, including all applicable capital buffers. As a Category I BHC, Morgan Stanley is subject to the most stringent capital and capital buffer requirements under the Federal Reserve's Basel III capital rules (Regulation Q), the full Liquidity Coverage Ratio ("**LCR**") under the Federal Reserve's LCR rule, and the most stringent enhanced prudential standards under the Federal Reserve's Regulation YY, including capital planning and stress testing requirements, TLAC requirements, risk management requirements, and liquidity stress testing and contingency liquidity funding requirements. As of December 31, 2019, E*TRADE is also a well-capitalized firm with regulatory capital ratios well in excess of its capital requirements, including all applicable capital buffers. On a pro forma basis, the combined organization resulting from the Proposed Transaction would have an even stronger and more resilient risk-based capital and financial position.

The Proposed Transaction would also strengthen Morgan Stanley's managerial resources. E*TRADE's CEO, Michael A. Pizzi, would join Morgan Stanley and continue to run the

E*TRADE business within the combined organization, reporting to Morgan Stanley CEO James Gorman and becoming a member of Morgan Stanley's Operating Committee and Management Committee. Mr. Pizzi would lead the combined organization's integration project. Because, as of December 31, 2019, measured by total consolidated assets E*TRADE was approximately 6.9% of the size of Morgan Stanley and its product and service offerings are largely complementary to those of Morgan Stanley, Morgan Stanley believes that the effort of integrating E*TRADE can be accomplished in the ordinary course, without causing any disruption to existing Morgan Stanley or E*TRADE clients, and without posing any material risk to Morgan Stanley. In addition, one of the independent directors on E*TRADE's board of directors would join the combined organization's board of directors.

To ensure the success of the Proposed Transaction, Morgan Stanley has devoted and will continue to devote ample financial and managerial resources to facilitate a low-risk integration of E*TRADE into Morgan Stanley's existing operations. Following consummation of the Proposed Transaction, Morgan Stanley will ensure that the combined organization retains and continues to build upon its strong enterprise risk management and compliance programs.

1. Financial Resources

As of December 31, 2019, Morgan Stanley, each of the Morgan Stanley Banks, E*TRADE and each of the E*TRADE Banks are all well-capitalized and, on a pro forma basis, the combined company and its bank subsidiaries would remain well capitalized upon consummation of the Proposed Transaction. The respective capital ratios of the institutions involved exceed "well capitalized" levels under applicable regulations, and, on a pro forma basis, would continue to exceed those levels.

As of December 31, 2019, the capital ratios of Morgan Stanley on a consolidated basis were:

- Common Equity Tier 1 ("**CET 1**") risk-based capital ratio: 16.4%
- Tier 1 risk-based capital ratio: 18.6%
- Total risk-based capital ratio: 21.0%
- Tier 1 leverage ratio: 8.3%
- SLR 6.4%

As of December 31, 2019, the capital ratios of MSBNA were:

- CET 1 risk-based capital ratio: 18.5%
- Tier 1 risk-based capital ratio: 18.5%
- Total risk-based capital ratio: 18.9%
- Tier 1 leverage ratio: 11.3%
- SLR: 8.7%

As of December 31, 2019, the capital ratios of MSPBNA were:

- CET 1 risk-based capital ratio: 24.8%
- Tier 1 risk-based capital ratio: 24.8%

- Total risk-based capital ratio: 25.0%
- Tier 1 leverage ratio: 9.9%
- SLR: 9.4%

As of December 31, 2019, the capital ratios of E*TRADE on a consolidated basis were:

- CET 1 risk-based capital ratio: 31.5%
- Tier 1 risk-based capital ratio: 37.9%
- Total risk-based capital ratio: 38.2%
- Tier 1 leverage ratio: 6.9%

As of December 31, 2019, the capital ratios of ETB were:[48]

- CET 1 risk-based capital ratio: 36.5%
- Tier 1 risk-based capital ratio: 36.5%
- Total risk-based capital ratio: 36.7%
- Tier 1 leverage ratio: 7.2%

As of December 31, 2019, the capital ratios of ETSB were:

- CET 1 risk-based capital ratio: 224.7%
- Tier 1 risk-based capital ratio: 224.7%
- Total risk-based capital ratio: 224.7%
- Tier 1 leverage ratio: 40.7%

As previously announced, on a pro forma basis Morgan Stanley expects that the Proposed Transaction would increase its consolidated CET 1 risk-based capital ratio by 30 basis points, from 16.4% to 16.7%.[49] On a pro forma basis, Morgan Stanley's consolidated capital ratios as of December 31, 2019 would be:

- CET 1 risk-based capital ratio: 16.7%
- Tier 1 risk-based capital ratio: 19.1%
- Total risk-based capital ratio: 21.3%
- Tier 1 leverage ratio: 8.2%
- SLR: 6.3%

The Proposed Transaction would thus have a positive impact on all of Morgan Stanley's consolidated risk-based capital ratios on a pro forma basis, with increases ranging from 30 to 50 basis points, while reducing its Tier 1 leverage ratio and SLR—both of which are risk-insensitive measures—by only 10 basis points each. The pro forma impact of the Proposed Transaction on

[48] Because ETSB is a consolidated subsidiary of ETB, ETB's capital ratios include the impact of consolidating ETSB.

[49] February 20 Investor Presentation at 17.

Morgan Stanley's consolidated regulatory capital amounts and regulatory capital ratios are included as Public Exhibit 10 and Confidential Exhibit D to this Application.

The Proposed Transaction will not in and of itself have any impact on the regulatory capital amounts and regulatory capital ratios of any of the Morgan Stanley Banks or the E*TRADE Banks. Only in a subsequent phase, when a decision is made on the extent, form and timing of consolidation among the Morgan Stanley Banks and E*TRADE Banks, would any such consolidation have an impact on the regulatory capital amounts and regulatory capital ratios of MSBNA, MSPBNA, ETB or ETSB, as applicable.

As noted above, Morgan Stanley is currently a Category I BHC that is subject to the most stringent capital requirements under the Federal Reserve's Basel III capital rules, including:

- the GSIB surcharge, which acts as an additional capital buffer on top of other applicable capital buffers, such as the Capital Conservation Buffer or, from October 1, 2020, the Stress Capital Buffer ("**SCB**"),
- the TLAC requirement, which includes a requirement for Morgan Stanley to maintain a minimum amount of eligible long-term debt that can absorb losses in the event of material financial distress,
- the Enhanced SLR, which represents an additional buffer on top of the SLR requirement,
- the recognition of Accumulated Other Comprehensive Income (AOCI) in Morgan Stanley's CET 1 capital,
- the calculation of regulatory capital, risk-weighted assets and regulatory capital ratios using the more stringent of the advanced approaches and the standardized approach,
- the Countercyclical Capital Buffer (CCyB), if deployed, and
- the SLR.

Morgan Stanley would be subject to these same requirements upon completion of the Proposed Transaction, except that they would include the acquired E*TRADE business on a consolidated basis. In addition, both currently and upon completion of the Proposed Transaction, Morgan Stanley is subject to the Federal Reserve's annual capital planning, supervisory stress testing and company-run stress testing requirements, including the requirement to submit its capital plan to the Federal Reserve as part of the latter's Comprehensive Capital Analysis and Review ("**CCAR**"). The CCAR 2020 submission will be the first to determine the amount of Morgan Stanley's SCB with effect from October 1, 2020.

The Proposed Transaction would in any event continue – and indeed accelerate – the shift in Morgan Stanley's business mix toward less balance sheet intensive and more durable sources of revenue. Morgan Stanley's combined Wealth Management and Investment Management segments accounted for 51% of the firm's pre-tax profits for the year ended December 31, 2019, compared to 26% of pre-tax profits for the year ended December 31, 2010, and on a pro forma basis the Proposed Transaction is expected to increase the proportion of the combined organization's pre-tax profits from Wealth Management and Investment Management to 57%.[50] The Proposed Transaction would also benefit Morgan Stanley by providing it with an additional $56 billion of low-cost deposits and better deposit generation capabilities from an expanded banking platform, enabling a reduction in Morgan Stanley's reliance upon more expensive short-term wholesale funding, and potential savings in funding costs of approximately $150 million within two years of closing the Proposed Transaction.[51]

Maintaining strong current and prospective capital levels and a robust capital adequacy assessment framework is integral to meeting Morgan Stanley's business objectives. To that end, Morgan Stanley has designed its internal capital adequacy assessment and planning process (the "**Capital Planning Process**") to allow the firm to conduct consistent, repeatable exercises that enable it to assess its capital adequacy on at least a quarterly basis, including reviewing changes to its material risk inventory, business activities, and the evolving macroeconomic and market environment. The Capital Planning Process reflects Morgan Stanley's business mix and strategic business plan, including planned acquisitions such as the Proposed Transaction.

Upon consummation of the Proposed Transaction, E*TRADE will be fully embedded into the Capital Planning Process, including the firm's annual participation in the Federal Reserve's CCAR exercise. Morgan Stanley plans to incorporate the acquisition of E*TRADE into its CCAR 2020 submission, which it plans to submit by April 5, 2020. Morgan Stanley received a non-objection from the Federal Reserve in CCAR 2019 and expects to continue to demonstrate strong performance under both company-run and supervisory stress testing given the projected financial position of the combined organization. Morgan Stanley expects that, on a pro forma basis, the Proposed Transaction would have a beneficial impact on Morgan Stanley's CCAR pre-provision net revenue (PPNR) projections, net income before taxes and resulting post-stress risk-based capital ratios because E*TRADE has limited credit risk and market exposures on its balance sheet and limited amounts of risk-weighted assets ("**RWAs**").[52]

As a Category I BHC, Morgan Stanley is currently – and, after completing the Proposed Transaction, would continue to be – subject to the most stringent liquidity requirements under the Federal Reserve's Liquidity Coverage Ratio ("**LCR**") rule, i.e., a 100% minimum LCR,[53] as well as the most stringent liquidity risk management and liquidity stress testing requirements under the Federal Reserve's Regulation YY, including requirements relating to cash flow projections, a contingency funding plan, liquidity risk limits, collateral monitoring policies and procedures, procedures for monitoring and controlling liquidity risk exposures and funding needs, procedures for monitoring intraday liquidity risk exposures, monthly liquidity stress tests,

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[50] February 20 Investor Presentation at 17.

[51] Press Release, Morgan Stanley to Acquire E*TRADE, Creating a Leader in all Major Wealth Management Channels, https://www.sec.gov/Archives/edgar/data/895421/000095010320003007/dp121635_ex9901.htm; February 20 Investor Presentation at 15.

[52] Transcript of Investor Call held by Morgan Stanley on February 20, 2020, available at: https://www.sec.gov/Archives/edgar/data/895421/000095010320003125/dp121753_425-macall.htm [hereinafter the "**February 20 Investor Call**") at 8.

[53] 12 C.F.R. Part 249.

a liquidity buffer to meet projected net stressed cash flow needs, over a 30-day planning horizon, and daily liquidity reporting to the Federal Reserve.[54]

Upon completion of the Proposed Transaction, Morgan Stanley would integrate E*TRADE into its existing liquidity risk management framework and, other than adjusting and recalibrating its liquidity risk limits, liquidity needs and sources of liquidity to take into account the integration of E*TRADE's business, does not expect to make any substantive changes to that framework. E*TRADE's cash flows will be included in Morgan Stanley's internal liquidity stress testing and in determining Morgan Stanley's LCR. All of E*TRADE's liquidity risk exposures will be monitored and reported against metrics, limits and key risk indicators set out in Morgan Stanley's liquidity risk management policy. These exposures will also be reviewed in the context of Morgan Stanley's contingency funding plan and the aspects of its recovery and resolution plan that relate to liquidity and funding risk.

As noted above, the Proposed Transaction is expected to improve Morgan Stanley's funding profile. The E*TRADE Banks represent a source of low-cost, stable deposits that would be incorporated into Morgan Stanley's overall bank funding sources upon some form of post-closing consolidation among the Morgan Stanley Banks and E*TRADE Banks. E*TRADE currently has only $1.4 billion of outstanding wholesale debt as of December 31, 2019. In addition, E*TRADE currently sweeps approximately $18 billion in deposits to unaffiliated IDIs; sweeping those deposits to an affiliated IDI within the post-closing Morgan Stanley group would allow Morgan Stanley to replace an equal amount of more expensive wholesale funding. Consolidating and optimizing Morgan Stanley's and E*TRADE's portfolio of high-quality liquid assets is also expected to save funding costs over time. Within approximately two years of closing the Proposed Transaction, Morgan Stanley expects to realize approximately $150 million in savings of funding costs.[55]

For all of these reasons, the Proposed Transaction is expected to strengthen Morgan Stanley's financial position.

2. Managerial Resources

Morgan Stanley has a highly accomplished, diverse board of directors and both Morgan Stanley and E*TRADE have highly accomplished, diverse senior executive management teams. Upon completing the Proposed Transaction, Morgan Stanley expects to strengthen its board of directors by adding one independent director from E*TRADE's current board of directors. In addition to adding E*TRADE's current CEO, Michael A. Pizzi, to Morgan Stanley's senior executive management team to continue to run the E*TRADE business within the combined organization, Morgan Stanley also expects that members of E*TRADE's current senior management team would also continue to hold positions within the combined organization, thus strengthening Morgan Stanley's overall managerial resources and facilitating a smooth integration process. Morgan Stanley has devoted, and expects to continue to devote, the managerial resources necessary to ensure the success of the Proposed Transaction.

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[54] *See generally* 12 C.F.R. §§ 252.34 and 252.35.

[55] February 20 Investor Presentation at 14; February 20 Investor Call at 3.

(a) Board of Directors and Senior Management Expertise

The current directors of Morgan Stanley are set forth below:

Name	**Principal Occupation**
James P. Gorman	Chairman and CEO, Morgan Stanley
Elizabeth Corley	Former global CEO, Allianz Global Investors (U.K.) Ltd.
Alistair Darling	Member of the House of Lords, Former Member of the House of Commons and Chancellor of the Exchequer
Thomas H. Glocer	Independent lead director; former CEO, Thomson Reuters Corporation
Robert H. Herz	President of Robert H. Herz LLC; former Chairman, Financial Accounting Standards Board
Nobuyuki Hirano	Chairman, MUFG
Stephen J. Luczo	Chairman of the Board, Seagate Technology plc
Jami Miscik	CEO and Vice Chair, Kissinger Associates, Inc.
Dennis M. Nally	Former Chairman, PricewaterhouseCoopers International Ltd.
Takeshi Ogasawara	Advisor, MUFG Bank, Ltd.
Hutham S. Olayan	Chair, The Olayan Group
Mary L. Schapiro	Vice Chair for Global Public Policy and Special Advisor to the Founder and Chairman of Bloomberg L.P.; former Chair, U.S. Securities and Exchange Commission
Perry M. Traquina	Former Chairman, CEO and Managing Partner, Wellington Management Company LLP
Rayford Wilkins, Jr.	Former CEO of Diversified Business, AT&T

The current members of the operating committee of Morgan Stanley are set forth below:

Name	**Position**
James P. Gorman	Chairman and CEO
Jeff Brodsky	Chief Human Resources Officer
Mark Eichorn	Co-Head of Investment Banking
Eric Grossman	Chief Legal Officer
Keishi Hotsuki	Chief Risk Officer
Susan Huang	Co-Head of Investment Banking
Sam Kellie-Smith	Head of Fixed Income
Thomas Nides	Vice Chairman
Shelley O’Connor	Chairman and CEO, MSPBNA and MSBNA
Franck Petitgas	Head of International
Ted Pick	Head of Institutional Securities Group
Jonathan Pruzan	Chief Financial Officer

Name	Position
Robert Rooney	Head of Technology, Operations and Firm Resilience
Andy Saperstein	Head of Wealth Management
Dan Simkowitz	Head of Investment Management
Clare Woodman	Head of Europe, the Middle East and North Africa

As noted above, the integration of E*TRADE with Morgan Stanley will be led by Michael A. Pizzi. He will be assisted by Sebastiano Visentini, Morgan Stanley's Head of Firm Strategy & Execution. Mr. Pizzi is E*TRADE's current CEO, a member of its board of directors and the President of ETB, the larger of E*TRADE's two IDI subsidiaries. Mr. Pizzi is expected to leverage his more than 15 years of experience at E*TRADE in leading these integration efforts, and upon consummation of the Proposed Transaction will report to James Gorman, Morgan Stanley's CEO. Mr. Pizzi will also join Morgan Stanley's operating and management committees.

(b) Track Record of Integration Successes

In addition to the expertise provided by E*TRADE's senior management, Morgan Stanley's integration of E*TRADE will be aided by lessons learned through its decade-long track record of successfully integrating acquisitions into the firm since Morgan Stanley became a BHC. For example, in 2009 Morgan Stanley acquired what was then Smith Barney, the wealth management arm of Citigroup, via three equity investments, beginning with a 2009 majority stake JV structure and resulting in Morgan Stanley owning 100% of MSSB by June 2013.[56] Over the course of its integration of MSSB, Morgan Stanley onboarded 20,000 financial advisors to a single platform; converted more than 44 million accounts, met all capital and governance requirements necessary for regulatory approval; took measures to reduce financial advisor attrition; managed joint order flow arrangements for all equity and fixed income transactions; and rationalized an overlapping office and branch footprint involving approximately 1,000 locations. The integration of MSSB into the Morgan Stanley's existing wealth management business was very successful. Bank deposits grew by 2.5 times over the next five years and wealth management pre-tax margins increased from approximately 12% in 2012 to approximately 23% five years later. In 2010 Morgan Stanley successfully executed its Japanese securities joint venture and strategic alliance with MUFG.

Morgan Stanley's more recent acquisitions have also been marked by a successful, smooth integration process. After the closing of Morgan Stanley's acquisition of Mesa West Capital in March 2018,[57] Morgan Stanley was able to integrate Mesa West's technology and operations in its systems and infrastructure within six months, with critical items (e.g., email servers) integrated immediately at closing. Morgan Stanley's recent acquisition of Solium Capital also evidences Morgan Stanley's efficient, thorough integration process.[58] The Solium

[56] At this time, MSSB's combined assets under management were approximately $1.8 trillion.

[57] Mesa West is a leading commercial real estate credit platform. It had over $5 billion in gross assets under management as of December 31, 2017.

[58] Solium was a provider of cloud-enabled services for global equity administration, financial reporting and compliance whose technology powered share plan administration and equity transactions for more than 3,000

acquisition was announced in February 2019 and closed on May 1, 2019. Between deal announcement and closing, Morgan Stanley signed 110 new corporate clients, and another 245 clients signed agreements for Morgan Stanley services in the period between closing and year-end 2019. Just over 1,000 Solium employees were onboarded to Morgan Stanley on January 1, 2020 and the integration of systems and infrastructure is proceeding according to plan.

In every Morgan Stanley integration effort, the firm adheres to industry best practices and incorporates experiences and findings from past deal integration processes. These practices, supported by experienced industry professionals, have assisted Morgan Stanley in guiding the integration of deals within its asset management and wealth management businesses over the last decade, and are expected to be applied to E*TRADE where appropriate.

Both Morgan Stanley and E*TRADE have and intend to devote ample managerial resources toward ensuring a successful integration. Integration planning is underway and will obviously have to take into account the current extraordinary circumstances caused by the COVID-19 pandemic.

(c) Enterprise-Wide Risk Management and Compliance

The Proposed Transaction will also benefit from Morgan Stanley's extensive managerial resources supporting its enterprise risk management, compliance risk management, fair lending and BSA/AML/OFAC compliance functions.[59]

(i) Enterprise Wide Risk Management

Morgan Stanley's enterprise risk management framework integrates the diverse roles of business units, support and control functions, and independent risk management and validation functions into a holistic enterprise risk management structure that facilitates the incorporation of risk assessment into decision-making processes across the firm. By building a risk management culture rooted in principles of integrity, comprehensiveness, independence, accountability and transparency, Morgan Stanley's enterprise risk management framework embodies Morgan Stanley's philosophy of pursuing risk-adjusted returns through prudent risk-taking. The enterprise risk management framework, which adopts a three lines of defense model, is supported by policies and procedures that identify, measure, monitor, advise, challenge and control the principal risks of Morgan Stanley's business activities, including market, credit, operational, model, compliance, cybersecurity, liquidity, strategic, reputational and conduct risk. Additional detail related to Morgan Stanley's enterprise risk management framework is included as Public Exhibit 11 to this Application.

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corporate clients with employee participants in more than 100 countries. It now operates as Shareworks by Morgan Stanley.

[59] Because E*TRADE will be fully integrated into Morgan Stanley's risk management infrastructure, that infrastructure is the focus of the discussion here. Information about E*TRADE's existing enterprise compliance policy and BSA/AML policy, each of which meet the supervisory expectations of the Federal Reserve, OCC, SEC and the Financial Industry Regulatory Authority applicable to large financial institutions, is included as Confidential Exhibit E to this Application.

Morgan Stanley's board of directors oversees the risk management framework and is responsible for helping to ensure that Morgan Stanley's risks are managed in a sound manner. Its Risk Committee (the "**Board Risk Committee**") assists the Morgan Stanley board in the board's oversight of the firm's enterprise risk management framework; oversees major risk exposures of the firm; oversees the firm's risk appetite statement, including risk limits and tolerances; reviews capital, liquidity and funding strategy and related guidelines and policies; reviews the contingency funding plan and capital planning process; oversees the firm's significant risk management and risk assessment guidelines and policies; oversees the performance of the Chief Risk Officer; reviews reports from the firm's Strategic Transactions Committee, CCAR Committee and recovery and resolution planning committee; reviews new product risk, emerging risks and regulatory matters; and reviews Internal Audit Department reports on the assessment of the risk management, liquidity and capital functions. The Board Risk Committee reports to the Morgan Stanley board on a regular basis and coordinates with other board committees with respect to oversight of risk management and risk assessment guidelines.

The Morgan Stanley board of directors has also authorized the Firm Risk Committee ("**FRC**"), a management committee appointed and chaired by the CEO, which includes the most senior officers of the firm, including the Chief Risk Officer, Chief Financial Officer and Chief Legal Officer, to help oversee the enterprise risk management framework. The FRC's responsibilities include: oversight of the firm's risk management principles, procedures and limits; the monitoring of capital levels and material market, credit, operational, model, liquidity, legal, compliance and reputational risk matters, and other risks, as appropriate; and the steps management has taken to monitor and manage such risks. The FRC also establishes and communicates risk tolerance, including aggregate firm limits and tolerances, as appropriate.

Morgan Stanley's Chief Risk Officer, Keishi Hotsuki, also plays a key role in Morgan Stanley's enterprise risk management framework. Mr. Hotsuki, who is independent of business units, reports to the Board Risk Committee and Mr. Gorman, the firm's CEO. As Chief Risk Officer, Mr. Hotsuki oversees compliance with the firm's risk limits; approves exceptions to the firm's risk limits; independently reviews material market, credit, liquidity, model and operational risks; and reviews results of risk management processes with the Board, the Board Risk Committee and the Board Audit Committee, as appropriate. The Chief Risk Officer also coordinates with the Chief Financial Officer regarding capital and liquidity management and works with the Compensation, Management Development and Succession Committee of the board of directors to help ensure that the structure and design of incentive compensation arrangements do not encourage unnecessary and excessive risk taking.

(ii) <u>Compliance and Fair Lending</u>

In addition to its enterprise risk management framework, Morgan Stanley has established an independent and effective firm-wide compliance risk management program the ("**Compliance Risk Management Program**") in accordance with established risk management principles and the three lines of defense model. The Compliance Risk Management Program represents Morgan Stanley's commitment to promoting a strong culture of compliance, and is used (in combination with other tools) to monitor and test compliance risk management across Morgan

Stanley. Additional detail related to Morgan Stanley's compliance risk management framework is included as Public Exhibit 12 to this Application.

Morgan Stanley also maintains a fair lending compliance program that addresses fair lending laws, rules, regulations and official guidance through the development, implementation, and supervision of controls. The functional elements of Morgan Stanley's fair lending program include policies, business and compliance procedures, training, risk assessments, complaint reviews, marketing and advertising reviews, sales practice and incentive compensation, and testing. The Morgan Stanley Banks, their boards of directors and their senior management are committed to setting a tone at the top that rewards fair lending compliance and that values the processes assuring fair lending compliance. Additional detail related to Morgan Stanley's fair lending compliance framework is included as Public Exhibit 13 to this Application.

(iii) Anti-Money Laundering and Sanctions Compliance

Morgan Stanley has adopted and implemented policies, procedures, and internal controls that are reasonably designed to comply with applicable AML, anti-corruption, economic sanctions, anti-tax evasion and government and political activities laws and regulations. These programs are collectively referred to as Morgan Stanley's Global Financial Crimes ("**GFC**") Program. The GFC Program establishes guiding principles and consistent global standards designed to protect Morgan Stanley and its personnel worldwide from being used to facilitate money laundering, terrorist financing or other illicit activities. It also includes numerous AML and sanctions controls, including, among others, a comprehensive know-your-customer program, sanctions screenings, investigations and reporting, and transaction monitoring.

Morgan Stanley has continued to evolve its GFC Program to address emerging financial crime risks, technology enhancements, data quality, and talent development. In particular, in recent years, Morgan Stanley has made enhancements to the following areas, among others:

- Governance and escalation frameworks, including those related to metrics reporting;
- Enterprise-wide customer risk assessments;
- GFC's Brexit-related strategy;
- Data aggregation capabilities;
- Assessments of financial crimes controls for certain physical precious metals transactions;
- GFC's control frameworks for marijuana-related business;
- Tax Associated Persons System to support Anti-Tax Evasion programs;
- Transaction monitoring related to potential market manipulation of certain securities.

Additional detail related to Morgan Stanley's GFC Program is included as Public Exhibit 14 to this Application.

By integrating E*TRADE into the risk management programs described here as well as other similar programs, Morgan Stanley will ensure that upon consummation of the Proposed

Transaction it will continue to have sound risk management, including governance and controls that are consistent with supervisory expectations.

E. Deposits and Liabilities Concentration Limit Analyses

1. Nationwide Deposits Concentration Limit

Section 4(i)(8) of the BHC Act prohibits the Federal Reserve from approving an application by a BHC to acquire an IDI, including a savings association, if the home state of the IDI is a state other than the home state of the BHC, and the applicant controls or would control more than 10% of the total amount of deposits of IDIs in the United States.[60] For purposes of the BHC Act, the home state of Morgan Stanley is Utah, and the home state of each of ETB and ETSB is Virginia.[61]

As of December 31, 2019, FDIC-insured banks and thrifts held $13.2 trillion in domestic deposits.[62] As of that same date, Morgan Stanley's IDIs accounted for approximately 1.44% of this total, while E*TRADE's IDIs accounted for approximately 0.29%. Upon consummation of the Proposed Transaction, the pro forma total deposits of the combined company would represent only 1.73% of nationwide deposits, far below the 10% cap.

Additional detail related to the nationwide deposits concentration limit is included as Public Exhibit 15 to this Application.

2. Nationwide Liabilities Concentration Limit

The BHC Act and the Federal Reserve's Regulation XX generally prohibit a financial company, including a BHC such as Morgan Stanley, from merging or consolidating with another company if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10% of the aggregate consolidated liabilities (the "**total liabilities**") of all financial companies at the end of the calendar year preceding the transaction.[63] The measure of total liabilities currently in effect for the period from July 1, 2019 through June 30, 2020[64] is $20.66 trillion.[65]

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[60] 12 U.S.C. § 1843(i)(8).

[61] A BHC's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a BHC, whichever is later. 12 U.S.C. § 1841(o)(4)(C). For a federal savings association, the home state is the state in which the home office of the savings association is located (12 U.S.C. § 1841(o)(4)(E)) and for a state savings association, the home state is the state by which the savings association is chartered (12 U.S.C. § 1841(o)(4)(D)).

[62] FDIC, Statistics on Depository Institutions, https://www7.fdic.gov/sdi/index.asp.

[63] 12 U.S.C. § 1852(b); 12 C.F.R. part 2151.

[64] Under Regulation XX, as of July 1 of a given calendar year, financial sector liabilities are equal to the average of the year-end financial sector liabilities figure for the preceding two calendar years. The measure of financial sector liabilities as of July 1 of a given calendar year remains in effect until June 30 of the following calendar year. 12 C.F.R. § 251.3(a)(2)(i).

[65] *See* Announcement of Financial Sector Liabilities, 84 Fed. Reg. 32169 (July 5, 2019).

Morgan Stanley and E*TRADE had consolidated liabilities of $347 billion and $10.6 billion, respectively, as of December 31, 2019, in each case calculated pursuant to the methodology specified in Regulation XX for U.S. companies subject to applicable risk-based capital rules.[66] Based on total liabilities of all financial companies of $20.66 trillion, Morgan Stanley estimates that on a pro forma basis it would after consummation of the Proposed Transaction have approximately 1.89% of such total liabilities. Accordingly, Morgan Stanley's total consolidated liabilities would remain well below the 10% total liabilities concentration limit.

Additional detail related to the nationwide liabilities concentration limit is included as Public Exhibit 15 to this Application.

F. Financial Stability Considerations

Pursuant to Section 4(j)(2)(A) of the BHC Act, the Federal Reserve must consider in connection with notices filed pursuant to Section 4(j) of the BHC Act the extent to which the proposed acquisition would result in greater or more concentrated risks to the stability of the United States banking or financial system.[67]

In addition, Section 163(b) of the Dodd-Frank Act requires prior Federal Reserve approval of an acquisition by a BHC with assets of $250 billion or more of shares of any company with assets of at least $10 billion that is engaged in activities described in Section 4(k) of the BHC Act. Morgan Stanley and E*TRADE exceed these respective thresholds, and E*TRADE engages in activities under Section 4(k) of the BHC Act. Accordingly, Section 163(b) requires the Federal Reserve to consider, in addition to those standards listed in Section 4(j)(2) of the BHC Act, "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy"[68] (together with the financial stability standard the Federal Reserve is required to consider under Section 4(j)(2), the "**financial stability standards**").

The Federal Reserve has not issued or proposed regulations defining how it would evaluate the financial stability standards in reviewing a Section 4 application. The Federal Reserve has, however, in many approval orders (including those under Section 4 and under Section 163(b) of the Dodd-Frank Act) delineated a set of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm.[69] These metrics include: (i) the size of the resulting banking organization; (ii) the availability of substitute providers for any critical products and services offered by the resulting firm; (iii) the interconnectedness of the resulting firm with the banking or financial system; (iv) the extent to which the resulting firm contributes to the complexity of

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[66] 12 C.F.R. § 251.3(c).

[67] 12 U.S.C. § 1843(j)(2)(A).

[68] 12 U.S.C. § 5363(b).

[69] *See* Capital One Order. *See*, *e.g.*, Royal Bank of Canada, FRB Order No. 2015-28 (Oct. 7, 2015); CIT Group, Inc., FRB Order No. 2015-20 (July 19, 2015); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); The Toronto-Dominion Bank, FRB Order No. 2017-23 (Sep. 13, 2017); BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019).

the financial system; and (v) the extent of the cross-border activities of the resulting firm. These metrics are identical to the categories of systemic indicators used to calculate a BHC's GSIB Method 1 score under subpart H of the Federal Reserve's Basel III capital rules relating to the GSIB risk-based capital surcharge and to the general categories of indicators included in the Federal Reserve's Form FR Y-15 (Banking Organization Systemic Risk Report).[70]

The Federal Reserve's analysis also considers the relative degree of difficulty of resolving the resulting firm if it were to experience financial distress. A banking organization that can be resolved in an orderly manner is less likely to inflict material damage to the U.S. financial system or economy.

As explained in greater detail below, Morgan Stanley does not believe that the Proposed Transaction would result in greater or more concentrated risks to the stability of the United States banking or financial system or to the U.S. economy. On the contrary: Morgan Stanley believes that the Proposed Transaction, by accelerating its shift toward a higher proportion of more stable and durable revenue streams and profitability from its Wealth Management and Investment Management business segments, strengthening its capital position and gaining access to more stable and low-cost deposits that can reduce its reliance on wholesale funding, will strengthen Morgan Stanley financially and enhance its overall resiliency – thus ultimately <u>reducing</u> the risk to U.S. financial stability and the U.S. economy.

Morgan Stanley is, as of December 31, 2019, the sixth largest BHC in the United States ranked by total consolidated assets and, upon completion of the Proposed Transaction, would still be the sixth largest BHC in the United States by total consolidated assets – behind JP Morgan Chase & Co., Bank of America Corporation, Citigroup, Inc., Wells Fargo & Company, and the Goldman Sachs Group, Inc. Morgan Stanley's pro forma GSIB surcharge scores, whether calculated under Method 1 or Method 2, would not increase by any material amount and would not result in any change in Morgan Stanley's current 3% GSIB surcharge. Nor would the Proposed Transaction require any change in Morgan Stanley's SPOE resolution strategy under its Dodd-Frank Act Title 1 resolution plan: the acquired E*TRADE business would become part of Morgan Stanley's Wealth Management core business line and would be resolved in accordance with the resolution strategy for that core business line, which contemplates its recapitalization, continuity and ultimate sale in the worst-case scenario of a resolution of Morgan Stanley.

1. Size

The size of the resulting organization is an important aspect in analyzing the financial stability standards.[71] When considering the size of a resulting organization for purposes of the financial stability standards, relevant metrics include the asset size of the institutions as well as

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[70] 12 C.F.R. § 214.404; Banking Organization Systemic Risk Report—FR Y-15, https://www.federalreserve.gov/reportforms/forms/FR_Y-1520191231_f.pdf.

[71] *See* <u>Capital One Order</u>. *See, e.g.*, <u>Royal Bank of Canada</u>, FRB Order No. 2015-28 (Oct. 7, 2015); <u>CIT Group, Inc.</u>, FRB Order No. 2015-20 (July 19, 2015); <u>BB&T Corporation</u>, FRB Order No. 2015-18 (July 7, 2015); <u>BB&T Corporation</u>, FRB Order No. 2019-16 (November 19, 2019).

other aspects of the BHC Act's requirements, including the 10% national deposit cap for certain interstate acquisitions[72] and the 10% national liabilities cap.[73]

Measured by total consolidated assets, the Proposed Transaction would increase Morgan Stanley's size on a pro forma basis from approximately $895.4 billion to approximately $964.8 billion, an increase of approximately 7.8%. Measured by total size, including off-balance sheet assets, the increase on a pro forma basis would be lower, i.e., 5.9%. Neither increase would result in any change in Morgan Stanley's ranking relative to the five larger BHCs mentioned above. As of December 31, 2019, Morgan Stanley's total exposures as reported on FR Y-15 represented approximately 5.6% of all total exposures reported by banking organizations on FR Y-15.[74] On a pro forma basis, the Proposed Transaction would represent only a 0.3% increase in Morgan Stanley's percentage of such total exposures to approximately 5.9%.[75] In either case, Morgan Stanley's ranking by total exposures – sixth out of 37 – would not change.

Aggregate FR Y-15 information as of December 31, 2019, including estimates of the combined company's pro forma share of those aggregates, is included a Public Exhibit 16 to this Application.

Moreover, measured against the overall pro forma impact on Morgan Stanley's Method 1 and Method 2 GSIB scores, the change in size would represent an increase of only 2 points in Morgan Stanley's total Method 1 GSIB score (or 0.7% compared to its current total Method 1 score) and an increase of only 3 points in its total Method 2 GSIB score (or 0.5% compared to its current total Method 2 score). Measured by RWAs calculated using the standardized approach, the pro forma impact of the Proposed Transaction would be an increase of only 2.7% in RWAs, offset by an increase in CET 1 capital of 4.6%, meaning that the Proposed Transaction would be net accretive to Morgan Stanley's CET 1 risk-based capital ratio even after taking into account deductions from CET 1 capital.

[72] 12 U.S.C. § 1843(i)(8).

[73] 12 U.S.C. § 1852.

[74] Effective June 30, 2020, FR Y-15 reporting requirements will apply to U.S. BHCs and SLHCs with $100 billion or more in consolidated assets, foreign banking organizations ("**FBOs**") with $100 billion or more in combined U.S. assets, and any U.S. BHC designated as a GSIB. Although FR Y-15 reporting requirements currently apply to U.S. BHCs, SLHCs and intermediate holding companies with total consolidated assets of $50 billion or more, the Federal Reserve in July 2018 issued a statement regarding the impact of the Economic Growth, Regulatory Relief and Consumer Protection Act providing that it would take no action to require FR Y-15 reporting by BHCs, SLHCs and FBOs with total consolidated assets greater than or equal to $50 billion but less than $100 billion. Accordingly, as of December 31, 2019, 37 BHCs, SLHCs and FBOs were subject to FR Y-15 reporting requirements. As of the date of this Application, one banking organization's FR Y-15 as of December 31, 2019 has not yet been made publicly available, and accordingly the percentage shares discussed in this Section V.F are necessarily conservative estimates that overstate Morgan Stanley and the combined organization's share of these activities.

[75] E*TRADE is not currently required to report on FR Y-15. To calculate the pro forma combined company figures throughout this section, Morgan Stanley relied upon an FR Y-15 prepared by E*TRADE using E*TRADE's reasonable estimates, which are included as Confidential Exhibit F.

Further information about the effect of the Proposed Transaction on Morgan Stanley's GSIB scores and capital ratios is included as Public Exhibit 10 and Public Exhibit 16, and Confidential Exhibit D and Confidential Exhibit F to this Application.

Limited only to banking assets, the size analysis also leads to the same conclusion. As of December 31, 2019, FDIC-insured banks and thrifts had total assets of $18.65 trillion, of which the Morgan Stanley Banks had $229 billion, or 1.23%,[76] a smaller percentage share than that of several regional banking organizations. Upon closing of the Proposed Transaction, the combined organization's share of total banking assets on a pro forma basis would increase to only 1.47%.

Finally, as discussed above, the Proposed Transaction does not come close to approaching either the national deposit cap or the national liabilities cap. Accordingly, based upon the factors informing the Federal Reserve's analysis of this factor, Morgan Stanley does not believe that the Proposed Transaction would pose a separate discernible risk to the financial stability of the U.S. banking or financial system or economy based on size metrics.

2. Substitutability

In considering substitutability, the Federal Reserve examines whether the companies involved in a proposed transaction engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress.[77]

Upon completion of the Proposed Transaction, Morgan Stanley would continue to offer, among other services, securities underwriting and distribution, securities brokerage and investment advisory services, wealth management and investment management, all of which are services for which the Federal Reserve has previously noted that there are numerous competitors.[78]

Measured by the three factors comprising the substitutability category in the Method 1 GSIB score calculation, i.e., payments, assets under custody and securities underwriting, the change in Morgan Stanley's substitutability score on a pro forma basis would represent an

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[76] FDIC, Statistics on Depository Institutions.

[77] *See* Capital One Order. *See, e.g.*, Royal Bank of Canada, FRB Order No. 2015-28 (Oct. 7, 2015); CIT Group, Inc., FRB Order No. 2015-20 (July 19, 2015); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019).

[78] *See, e.g.*, The Toronto-Dominion Bank, FRB Order No. 2017-23 (Sep. 13, 2017) (noting that TD Bank and Scottrade were both engaged in retail banking, investment advisory, wealth management and securities brokerage activities, but concluding that "substitute providers would be readily available for the critical financial services provided by the pro forma institution"). *See also* n. 25 *supra* (citing Federal Reserve orders finding that the markets for the nonbanking activities in which Morgan Stanley and E*TRADE each engage are unconcentrated and feature numerous competitors).

increase of only 2 points in its total Method 1 GSIB score (or 0.8% compared to its current total Method 1 score).[79]

An analysis of these three factors on an individual basis is consistent with the overall Method 1 GSIB score result. Measured by total payments activity as reported on FR Y-15 as of December 31, 2019, Morgan Stanley ranked twelfth among banking organizations that reported that reported on FR Y-15, ranking behind a number of U.S. and non-U.S. GSIBs, as well as a non-GSIB U.S. custodial banking organization. The Proposed Transaction would leave Morgan Stanley's percentage of payments activity among banking organizations that report on FR Y-15 effectively unchanged at approximately 1.1%, and would leave Morgan Stanley's ranking unchanged. The other substitutability factors yield the same results. Measured by assets under custody, Morgan Stanley ranks as the ninth largest banking organization, and would remain so after the Proposed Transaction, holding only approximately 2% of all assets under custody held by banking organizations that report on FR Y-15. Finally, because E*TRADE does not engage in securities underwriting as reported on FR Y-15, there would be no increase in Morgan Stanley's share of these activities, leaving its overall ranking (fourth) unchanged.[80]

Accordingly, Morgan Stanley does not believe that the Proposed Transaction would raise any financial stability risk concerns under the substitutability factor.

3. Interconnectedness

The Federal Reserve's interconnectedness metric considers whether financial distress experienced by a firm following a proposed acquisition would create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Federal Reserve considers measures of interconnectedness between the firm and the rest of the financial system during financial distress, such as potential direct losses to counterparties, asset price declines due to fire sales, and contagion effects.[81]

Measured by the three factors comprising the interconnectedness category in the Method 1 and Method 2 GSIB score calculations, i.e., intra-financial system assets, intra-financial system liabilities and securities outstanding, the change in Morgan Stanley's interconnectedness score on a pro forma basis would represent an increase of only 1 point in its total Method 1 GSIB score (or 0.4% compared to its current total Method 1 GSIB score) and an increase of only 1 point in its total Method 2 GSIB score (or 0.2% compared to its current total Method 2 GSIB score).[82]

Compared with all other banking organizations that report on FR Y-15 as of December 31, 2019, Morgan Stanley is and would remain after the Proposed Transaction the fourth-ranking banking organization in terms of intra-financial system assets and the ninth-ranking banking organization in terms of intra-financial system liabilities. The Proposed Transaction would

[79] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[80] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[81] *See* Capital One Order. *See, e.g.*, Royal Bank of Canada, FRB Order No. 2015-28 (Oct. 7, 2015); CIT Group, Inc., FRB Order No. 2015-20 (July 19, 2015); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019).

[82] Included as Public Exhibit 16 and Confidential Exhibit F to this application.

represent increases of 0.12% and 0.06% in Morgan Stanley's share of these metrics, respectively. The same is true with respect to securities outstanding. Morgan Stanley is as of December 31, 2019 the sixth-ranking banking organization by this metric, and would remain so after closing of the Proposed Transaction, with Morgan Stanley's overall share increasing from approximately 6.6% to only approximately 6.9%.[83]

Accordingly, Morgan Stanley does not believe that the Proposed Transaction would raise any financial stability risk concerns under the interconnectedness factor.

4. Complexity

The Federal Reserve's complexity metric considers the extent to which a combined firm would contribute to the overall complexity of the U.S. banking system. The Federal Reserve's analysis of this metric generally considers over-the-counter derivatives exposures, holdings of illiquid and hard-to-value assets (known as Level 3 assets), and volume of trading book and available for sale securities. In addition, the Federal Reserve considers whether the complexity of a combined organization's assets and liabilities would hinder the organization's timely and efficient resolution in the event the organization were to experience financial distress.[84]

Measured by the three factors comprising the complexity category in the Method 1 and Method 2 GSIB score calculations, i.e., notional amount on OTC derivatives, trading and AFS securities, and level 3 assets, the change in Morgan Stanley's complexity score on a pro forma basis would represent an increase of only 1 point in its total Method 1 GSIB score (or 0.3% compared to its current total Method 1 GSIB score) and an increase of only 1 point in its total Method 2 GSIB score (or 0.2% compared to its current total Method 2 GSIB score).[85]

Measured by total notional OTC derivatives, Morgan Stanley is as of December 31, 2019 fourth among banking organizations reporting of FR Y-15. Because E*TRADE's OTC derivatives portfolio is minimal – with a total notional amount of OTC derivatives representing only 0.005% of the total of all banking organizations that report on FR Y-15 – the Proposed Transaction would leave Morgan Stanley's percentage of OTC derivatives of all such banking organizations effectively unchanged at approximately 15.9% and would not change Morgan Stanley's position relative to other banking organizations. E*TRADE's trading and AFS securities are also minimal relative to those of larger banking organizations, representing only 0.2% of total trading and AFS securities reported by banking organizations that report on FR Y-15, meaning that there would be an increase in Morgan Stanley's percentage of total trading and AFS securities from approximately 9.5% to only approximately 9.7% and no change to Morgan Stanley's current ranking (fourth) among all such banking organizations with respect to this metric. Finally, because E*TRADE does not value any of its assets for accounting purposes using Level 3 measurement inputs, there would be no change to Morgan Stanley's Level 3 assets

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[83] Included as Public Exhibit 1 and Confidential Exhibit F to this Application.

[84] *See* Capital One Order. *See, e.g.*, Royal Bank of Canada, FRB Order No. 2015-28 (Oct. 7, 2015); CIT Group, Inc., FRB Order No. 2015-20 (July 19, 2015); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019).

[85] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

on a pro forma basis and no changes to its ranking (third) among all banking organizations that report on FR Y-15 with respect to this metric.[86]

Morgan Stanley believes that resolution planning is a key component of protecting the soundness of the global financial system. Accordingly, Morgan Stanley has prioritized resolution planning and made it an essential element of its risk management and strategic planning processes, and has integrated resolvability criteria into its business-as-usual conduct.

Morgan Stanley has developed a resolution plan in accordance with the requirements of Section 165(d) of Title I of the Dodd-Frank Act and its implementing regulations (the "**165(d) Rule**") adopted by the Federal Reserve and the FDIC (such plan, the "**Resolution Plan**").[87] The Resolution Plan describes how Morgan Stanley and its Core Business Lines, Critical Operations and Material Entities[88] could be resolved in a rapid and orderly manner that substantially mitigates the risk that Morgan Stanley's failure would have serious adverse effects on financial stability in the United States.

In its resolution planning, Morgan Stanley is guided by and committed to the key objectives of (i) operating in a manner and with a culture that contributes to the safety and soundness of the global financial system and (ii) enhancing its resilience and resolvability. Resolution planning involves widespread participation across the firm, including senior executive management.

The Resolution Plan articulates a preferred strategy for the resolution of Morgan Stanley and its Material Entities (the "**Resolution Strategy**") describing how the firm would be resolved under a range of scenarios. This Resolution Strategy is supported by extensive resolution planning efforts that have been refined and enhanced over a period of years. Moreover, Morgan Stanley has put in place a number of practices to help manage its resolvability over time and address risks that may emerge as a result of changes in business practices, financial profile or organizational structure.

Morgan Stanley believes that its Resolution Plan presents a feasible and credible strategy that demonstrates that the firm can be resolved without adverse effects on financial stability in the United States or on the broader global economy. Based upon the strength of its capital and liquidity positions and the resiliency and credibility of the Resolution Strategy under a wide range of scenarios, Morgan Stanley believes that none of the U.S. government, the FDIC's Deposit Insurance Fund nor any foreign governments or taxpayers would incur losses as a result of its failure. Morgan Stanley believes that it has the capabilities required to execute its

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[86] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[87] The 165(d) Rule requires the firm to demonstrate how Morgan Stanley could be resolved under the U.S. Bankruptcy Code, without extraordinary government support and in a manner that substantially mitigates the risk that the failure of the firm would have serious adverse effects on U.S. financial stability. The Resolution Plan is not binding on a court or resolution authority.

[88] Material Entity is defined in the 165(d) Rule as a subsidiary or foreign office of the firm that is significant to the firm's core businesses and critical activities.

Resolution Strategy, and continues to evaluate and refine its capabilities on an ongoing basis, including in response to acquisitions such as the Proposed Transaction.

Morgan Stanley believes that the acquisition of E*TRADE would be consistent with its Resolution Strategy, given the nature of E*TRADE's business and its complementary fit within Morgan Stanley's existing Wealth Management business. The Proposed Transaction is likely to increase the firm's funding sources and capital position, while diversifying its revenue streams and profitability towards more stable sources, thereby enhancing the firm's overall resiliency. Morgan Stanley expects to integrate E*TRADE as part of its Wealth Management ("**WM**") Core Business Line, which includes the firm's retail broker-dealer and the Morgan Stanley Banks, and in the event of resolution, the WM line would be sold. The firm is committed to maintaining the feasibility and credibility of the current WM sale strategy, and the integration of E*TRADE within WM would not have a material impact on the sale strategy. As a highly marketable business with steady cash flows, WM is likely to generate interest from a diverse buyer pool even in stressed market conditions with valuations reflecting assumptions appropriate for resolution. The details of the sales will depend, in many respects, on whether the business is sold to a financial or strategic buyer, but Morgan Stanley has attempted to maintain flexibility to accommodate both types of buyers, as described below. The elements of Morgan Stanley's Resolution Strategy with respect to WM include the following:

- Morgan Stanley would provide WM with sufficient capital and liquidity throughout the resolution process.

- WM would maintain business continuity through completion of the sale by using existing business-as-usual and resolution plan processes to identify key front- and back-office dependencies and developing a strategy to maintain service continuity and retain business value.

- WM is separable. Morgan Stanley has a strategy for dedicated personnel, vendor services, technology facilities and related contracts likely to be transferred to each buyer on the first day after the divestiture. Necessary shared services and resources may be provided to buyers by operationally and financially resilient MSEs pursuant to transitional services agreements (TSAs), which can be based on existing SLAs between Material Service Entities and their Material Operating Entity customers.

- Morgan Stanley drew on its institutional knowledge and governance processes from past involvement, as buyer, seller and advisor, in comparable transactions to produce a Marketing and Sale Playbook, separability strategy and business valuations, and to facilitate buyer due diligence, sale package materials, and carve-out financial statements and demonstrate its capabilities to populate a virtual data room in a timely manner.

The greater part of Morgan Stanley's activities are conducted through its Material Entities. The process to designate legal entities as a "Material Entity" (the "**Material Entity Designation Process**") is an important starting point for the firm's Resolution Plan, whereby those legal entities that are most significant to the firm's Core Business Lines are identified and corresponding resolution strategies for these entities are developed. A Material Entity is defined in the 165(d) Rule as "a subsidiary or foreign office of the covered company that is significant to the activities of a critical operation or core business line." Morgan Stanley designates its Material Entities, critical operations and core business lines using a defined and repeatable process, including quantitative indicators, qualitative considerations, review and challenge governance sessions and formal approval by appropriate governance bodies.

Morgan Stanley conducts its Material Entity Designation Process annually, and will do so post-closing of the Proposed Transaction, taking into account the legal entity structure associated with the Proposed Transaction. The Material Entity Designation Process will determine whether any E*TRADE entities should be designated as Material Entities. Morgan Stanley will integrate any newly designated Material Entities into its Resolution Strategy, and will ensure that such entities will have the necessary capabilities to execute the Resolution Strategy.

Morgan Stanley believes that it has the capabilities and operational readiness required to execute its Resolution Strategy and will swiftly incorporate the acquisition of E*TRADE in order to maintain a feasible and credible Resolution Plan.

Accordingly, Morgan Stanley does not believe that the Proposed Transaction would raise any financial stability risk concerns under the complexity factor.

5. Cross-Border Activity

The Federal Reserve's cross-border activity metric considers the extent of the cross-border activities of the combined firm and whether the cross-border presence of the combined firm would create difficulties in coordinating with foreign authorities over any resolution, which would increase the risk to the U.S. financial stability. Specifically, the Federal Reserve examines the combined firm's total cross-border claims and total cross-border liabilities compared to those of all banking organizations that file an FR Y-15.[89]

E*TRADE does not have any material operations outside of the United States. Its non-U.S. operating entities consist of only:

- ET Canada Holdings, Inc., a Canadian special purpose company that holds certain intellectual property, specifically E*TRADE's Canadian URL;
- E*TRADE Securities (Hong Kong Limited), a formerly registered broker-dealer now in the process of liquidation that had total assets of only $19 million as of December 31, 2019; and
- a Philippines branch office of E*TRADE Information Services LLC that is registered with the Philippines Securities & Exchange Commission. This branch office provides customer service and operations support to ETB and E*TRADE Securities, and had total assets of approximately $9 million as of December 31, 2019.

[89] *See* Capital One Order. *See*, *e.g.*, Royal Bank of Canada, FRB Order No. 2015-28 (Oct. 7, 2015); CIT Group, Inc., FRB Order No. 2015-20 (July 19, 2015); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); BB&T Corporation, FRB Order No. 2019-16 (November 19, 2019).

Because E*TRADE does not have any material operations outside the United States, the Proposed Transaction would not have any material impact on Morgan Stanley's cross-border activity on a pro forma basis. Measured by the two factors comprising the cross-jurisdictional activity category in the Method 1 and Method 2 GSIB score calculations, i.e., cross-jurisdictional claims and cross-jurisdictional liabilities, there would be no change in Morgan Stanley's cross-jurisdictional Method 1 or Method 2 GSIB score on a pro forma basis.[90]

Compared with all other banking organizations that report on FR Y-15, as of December 31, 2019 Morgan Stanley ranked fifth in terms of total cross-jurisdictional claims, with approximately 9.4% of such claims among all such banking organizations, and fourth in terms of cross-jurisdictional liabilities, with approximately 9.1% of such liabilities among all such banking organizations. On a pro forma basis, the Proposed Transaction would leave Morgan Stanley's ranking among all such banking organizations unchanged and its percentage effectively unchanged with respect to cross-jurisdictional claims. It would leave Morgan Stanley's ranking among all such banking organizations unchanged with respect to cross-jurisdictional liabilities, with its percentage increasing from approximately 9.1% to only approximately 9.2%.[91]

Consequently, Morgan Stanley does not believe that Proposed Transaction would result in any material increase in cross-border operations or activities or would create any difficulties in coordinating any resolution of the combined organization or otherwise increase the risk to U.S. financial stability or the U.S. economy.

6. *Financial Stability Metrics in Combination*

The Federal Reserve assesses the financial stability metrics discussed in this Application not only in isolation but also in combination to determine whether any of those factors may mitigate or exacerbate risks suggested by looking at any of the metrics individually. In addition, the Federal Reserve also considers whether a proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risk.[92]

As already noted above, Morgan Stanley believes that the Proposed Transaction, by accelerating its shift toward a higher proportion of more stable and durable revenue streams and profitability from its Wealth Management and Investment Management business segments, strengthening its capital position and gaining access to more stable and low-cost deposits that can reduce its reliance on wholesale funding, will strengthen Morgan Stanley financially and enhance its overall resiliency – thus ultimately reducing the risk to U.S. financial stability and the U.S. economy. Morgan Stanley is, as of December 31, 2019, the sixth largest BHC in the United States ranked by total consolidated assets and, upon completion of the Proposed Transaction, would still be the sixth largest BHC in the United States by total consolidated assets

[90] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[91] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[92] *See* 12 U.S.C. § 5365.

– behind JP Morgan Chase & Co., Bank of America Corporation, Citigroup, Inc., Wells Fargo & Company, and the Goldman Sachs Group, Inc. Morgan Stanley's total pro forma GSIB surcharge scores would increase only by immaterial amounts, from 221 to 226 (or an increase of approximately 2.3%) under Method 1 and from 580 to 588 (or an increase of approximately 1.4%) under Method 2, which is the binding method in determining Morgan Stanley's GSIB score.[93] Neither increase would result in any change in Morgan Stanley's current 3% GSIB surcharge.[94] Morgan Stanley is currently subject to the most stringent enhanced prudential standards and capital and liquidity requirements as a Category I BHC under the Federal Reserve's Regulation YY and the Federal Reserve's Basel III capital and liquidity rules, respectively, and upon completion of the Proposed Transaction would be subject to the same stringent requirements, except that they would now be applied to the E*TRADE business as well.

For all of the foregoing reasons, Morgan Stanley believes that the Proposed Transaction will not result in greater or more concentrated risks to the stability of the U.S. banking or financial system and, consequently, an evaluation of the financial stability standards is consistent with approval of the Proposed Transaction.

VI. PUBLIC NOTICE

The form of newspaper notice for this Application is included as Public Exhibit 17 to this Application. The newspaper notice will appear in each of: (1) the *New York Daily News*, a newspaper of general circulation in New York, New York, the city in which Morgan Stanley's headquarters are located, (2) the *Salt Lake Tribune*, a newspaper of general circulation in Salt Lake City, Utah,, the city in which MSBNA, Morgan Stanley's largest subsidiary bank is located, and (3) the *Washington Post*, a newspaper of general circulation in Arlington, Virginia, the city in which each of ETB and ETSB are located.

VII. CONCLUSION

Morgan Stanley respectfully submits that, for all the reasons discussed in this Application, the Proposed Transaction should be approved.

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[93] Included as Public Exhibit 16 and Confidential Exhibit F to this Application.

[94] 12 C.F.R. § 217.403(c).

APPENDIX A: INFORMATION REQUIRED BY SECTION 225.24 OF REGULATION Y

1. **A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity in each relevant market with relevant market indexes. (§ 225.24(a)(2)(i))**

   For a description of the proposal, please refer to Part IV of the Preliminary Statement. For a description of each proposed activity, please refer to Part III.B of the Preliminary Statement. For a description of competition-related considerations and the effect of the Proposed Transaction, please refer to Part V.A of the Preliminary Statement.

2. **The identity of any entity involved in the proposal, and, if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary. (§ 225.24(a)(2)(ii))**

   Part III of the Preliminary Statement provides a description of the parties involved in the Proposed Transaction.

3. **A statement of the public benefits that can reasonably be expected to result from the proposal. (§ 225.24(a)(2)(iii))**

   Part V.B of the Preliminary Statement discusses the public benefits that can reasonably be expected to result from the Proposed Transaction.

4. **If the bank holding company has consolidated assets of $150 million or more:**

   a. ***Parent company and consolidated pro forma balance sheets for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction. (§ 225.24(a)(2)(iv)(A))***

   Included as Public Exhibit 10 and Confidential Exhibit D to this Application.

   b. ***Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter. (§ 225.24(a)(2)(iv)(B))***

   Included as Public Exhibit 10 and Confidential Exhibit D to this Application.

   c. ***A description of the purchase price and the terms and sources of funding for the transaction. (§ 225.24(a)(2)(iv)(C))***

   For a description of the purchase price and the terms and sources of funding for the Proposed Transaction, please refer to Part IV.A of the Preliminary Statement.

5. **If the bank holding company has consolidated assets of less than $150 million:**

   a. ***A pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction. (§ 225.24(a)(2)(v)(A))***

   Not applicable.

   b. ***A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt-funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction. (§ 225.24(a)(2)(v)(B))***

   Not applicable.

6.

   a. ***For each insured depository institution (that is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis. (§ 225.24(a)(2)(vi)).***

   Not applicable. There will be no changes to the Tier 1 capital, total capital, total assets or risk-weighted assets of either of the Morgan Stanley Banks or either of the E*TRADE Banks as a result of the Proposed Transaction.

   b. ***For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a pro forma basis;***

   Not applicable.

7. **A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed activities. (§ 225.24(a)(2)(vii))**

   For a description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed activities, please refer to Part V.D.2 of the Preliminary Statement.

8. **A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired. (§ 225.24(a)(2)(viii))**

A copy of the Merger Agreement is included as Public Exhibit 1 to this Application. Balance sheet and income statements for the most recent quarter and year-end for E*TRADE are included as Public Exhibit 18 to this Application.

APPENDIX B: INFORMATION REQUESTED BY FORM FR Y-3[95]

I. PROPOSED TRANSACTION

1. Describe the transaction's purpose. Identify any changes to the business plan of the Bank/Bank Holding Company to be acquired or the Resultant Institution. Identify any new business lines.

The Proposed Transaction is a key component of Morgan Stanley's long-term strategy. The purpose and anticipated strategic benefits of the Proposed Transaction include, among others, continuing and accelerating the shift in Morgan Stanley's business mix toward less balance sheet-intensive and more durable sources of revenue, providing Morgan Stanley with the ability to leverage E*TRADE's dynamic technology and digital platforms, addressing product and service gaps for both Morgan Stanley and E*TRADE customers, stronger financial performance and improved capital generation capabilities, and significant potential cost and funding synergies.

The Proposed Transaction is expected to accelerate Morgan Stanley's ongoing investments in digital banking and wealth management products and capabilities. It is not expected to result in any substantive, material strategic business plan changes for either Morgan Stanley or the Morgan Stanley Banks.[96] Nor are any new business lines anticipated.

Please refer to the discussion in Part V.B the Preliminary Statement for additional responsive information, including further information about anticipated benefits to the communities Morgan Stanley serves.

2. Provide the following with respect to the Bank/Bank Holding Company to be acquired:

a. Total number of shares of each class of stock outstanding;

As of the date of the Merger Agreement, the authorized capital stock of E*TRADE consisted of (i) 400,000,000 shares of E*TRADE Common Stock and (ii) 1,000,000 shares of E*TRADE Preferred Stock.

As of February 18, 2020, there were outstanding (i) 221,168,310 shares of E*TRADE Common Stock; (ii) 403,000 shares of E*TRADE Preferred Stock, of which 400,000 shares were E*TRADE Series A Preferred Stock and 3,000 shares were E*TRADE Series B

[95] The instructions for Form FR Y-4 direct the applicant to modify its filing to "satisfy the same information and publication requirements that would apply if the savings association or other nonbank insured depository institution to be acquired were a bank." For this purpose, applicants are advised that they "may use Form FR Y-3 as a guide for information that should be included."

[96] The Proposed Transaction is expected, however, to trigger potential amendments relating to certain regulatory requirements. For example, Morgan Stanley's CCAR 2020 submission due on April 5, 2020 will include the expected impact of the Proposed Transaction on Morgan Stanley's capital plan and supervisory stress test. Morgan Stanley will also assess, as part of integrating E*TRADE into its Resolution Plan, as discussed in Part V.F.4 of the Preliminary Statement, whether it would be required to make any additional filing with the Federal Reserve and the FDIC in advance of its next Resolution Plan due in 2021.

Preferred Stock, (iii) no stock options to purchase shares of E*TRADE Common Stock, (iv) 1,951,139.92 shares of E*TRADE Common Stock subject to outstanding restricted stock unit awards, (v) 312,593.08 shares of E*TRADE Common Stock subject to outstanding performance stock unit awards, determined assuming target performance levels were achieved, (vi) 18,916 shares of E*TRADE Common Stock subject to outstanding E*TRADE director restricted stock awards, (vii) 99,201 shares of E*TRADE Common Stock subject to outstanding E*TRADE director deferred restricted stock unit awards and (viii) 6,477,720.8419 additional shares of E*TRADE Common Stock reserved for issuance pursuant to the grant of future awards under the E*TRADE's equity incentive plans.

b. Number of shares of each class now owned or under option by the applicant, by subsidiaries of the applicant, by principals of the applicant, by trustees for the benefit of the applicant, its subsidiaries, shareholders, and employees as a class, or by an escrow arrangement instituted by the applicant;

As of February 28, 2020, Morgan Stanley owned directly or indirectly or had under option 957,271 shares of E*TRADE. In total, therefore, Morgan Stanley owned or had under option 0.4328% of E*TRADE's total outstanding common stock as of February 28, 2020. These shares were all held in either managed brokerage accounts, trading accounts for client facilitation purposes, or in funds or separately managed accounts sponsored, managed or advised by Morgan Stanley.

In addition, as of February 28, 2020, certain principals of Morgan Stanley owned 3,000 shares of E*TRADE common stock and 13.4 shares of E*TRADE preferred stock, in each case including ownership through trusts of which certain principals are beneficiaries. This amount does not include common stock owned by MUFG, which is a principal of Morgan Stanley by virtue of its ownership of more than 10% of Morgan Stanley's voting shares, but does not control Morgan Stanley for purposes of the BHC Act. As of February 28, 2020, MUFG owned or controlled 383,189 shares of E*TRADE.

c. Number of shares of each class to be acquired by cash purchase; the amount to be paid, per share and in total; and the source of funds to be applied to the purchase;

Not applicable. No shares of E*TRADE stock will be acquired by Morgan Stanley by cash purchase.

d. Number of shares of each class to be acquired by exchange of stock, the exchange ratio, and the number and description of each class of the applicant's shares to be exchanged; and

Please refer to Part IV.A of the Preliminary Statement.

e. **A copy of the purchase, operating, shareholder, trust or other agreements associated with the proposed transaction. Also, provide the expiration dates of any contractual arrangement between the parties involved in this application and a brief description of any unusual contractual terms, especially those terms not disclosed elsewhere in the application. Note any other circumstances that might affect timing of the proposal.**

The Merger Agreement, a copy of which is included as Public Exhibit 1 to this Application, does not contain any unusual contractual terms. The principal terms of the Merger Agreement are summarized in Part IV.B of the Preliminary Statement. As noted therein, each party to the Merger Agreement will have the right to terminate the Merger Agreement if the Proposed Transaction has not been completed by March 31, 2021, subject to certain limitations and possible automatic extension in certain circumstances.

The timing of the Proposed Transaction will also depend upon the ability of E*TRADE and Morgan Stanley to satisfy the closing conditions set forth in the Merger Agreement, including the expiration or termination of applicable waiting periods under the HSR Act and receipt of other required regulatory approvals.

3. **If the proposed transaction is an acquisition of assets and assumption of liabilities, indicate the total price and the source of funds that the applicant intends to use for the proposed purchase, and discuss the effect of the transaction on the operations of the applicant.**

Not applicable. The proposed transaction is not an acquisition of assets and assumption of liabilities.

4. **If the proposed transaction involves the acquisition of an unaffiliated banking operation or otherwise represents a change in ownership of established banking operations, describe briefly the due diligence review conducted on the target operations by Applicant. Indicate the scope of and resources committed to the review, explain any significant adverse findings, and describe the corrective action(s) to be taken to address those weaknesses.**

Included as Confidential Exhibit B to this Application.

5. **Provide a list of all regulatory approvals and filings required for the proposed transaction and the status of each filing.**

By this Application, Morgan Stanley respectfully requests the Federal Reserve's prior approval for the Proposed Transaction pursuant to Sections 4(j) and 4(k) of the BHC Act, the Federal Reserve's regulations thereunder and Section 163(b) of the Dodd-Frank Act.

In addition, completion of the Proposed Transaction is conditioned on:

a) the early termination or expiration of any applicable waiting period or periods under the HSR Act;

b) the receipt of any necessary approvals under the Change in Bank Control Act;

c) the receipt of prior approval from the Financial Industry Regulatory Authority for the change of control of E*TRADE's broker-dealer subsidiary;

d) submission at least 90 days prior to the closing of the Proposed Transaction of certain notifications to the Depository Trust & Clearing Corporation ("**DTCC**"), or confirmation from DTCC in writing that the Proposed Transaction may be effected notwithstanding DTCC having less than 90 days' prior written notice;

e) submission at least 30 days prior to the closing of the Proposed Transaction of certain other notifications to self-regulatory organizations and certain state regulators; and

f) the receipt of any necessary consents, approvals or clearances in order to consummate the Proposed Transaction from any governmental authority in any jurisdiction in which Morgan Stanley or E*TRADE (together with their respective subsidiaries) conduct material operations.

Additional information as to the status of these matters is included as Confidential Exhibit G to this Application.

6. **Provide a copy of any findings, orders, approvals, denials or other documentation regarding the proposed transaction issued by any regulatory authority.**

A copy of any such document will be provided to the Federal Reserve upon receipt by the Applicant.

7. **For applications filed pursuant to section 3(a)(1) of the BHC Act, if the proposed transaction would result in an organization other than a shell one-bank holding company, submit a pro forma organization chart showing the applicant's percentage of ownership of all banks and companies, both domestic and foreign, in which it directly or indirectly will own or control more than five percent of the outstanding voting shares.**

Not applicable. This application is not filed pursuant to section 3(a)(1) of the BHC Act.

II. FINANCIAL AND MANAGERIAL INFORMATION

8.

a. For an applicant that is not or would not be subject to consolidated capital standards following consummation of the proposed transaction, provide a parent company balance sheet as of the end of the most recent fiscal quarter, showing separately each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes) reflecting the proposed transaction; and the resulting pro forma balance sheet;

Not applicable. Morgan Stanley is and will remain subject to consolidated capital standards.

b. **For an applicant that is or would be subject to consolidated capital standards following consummation of the proposed transaction, provide parent company and consolidated balance sheets as of the end of the most recent quarter, showing separately each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by detailed footnotes) reflecting the proposed transaction; and the resulting pro forma balance sheets; and the financial information provided should be prepared in accordance with GAAP, and be in sufficient detail to reflect any:**

- **Common equity and preferred stock;**
- **Other qualifying capital;**
- **Long- and short-term debt;**
- **Goodwill and all other types of intangible assets; and**
- **Material changes between the date of the balance sheet and the date of the application (explained by footnotes).**

Included as Public Exhibit 10 and Confidential Exhibit D to this Application. Morgan Stanley and E*TRADE's most recent financial statements are included as Public Exhibit 19 and Public Exhibit 18 to this Application, respectively.

c. **Provide a broad discussion on the valuation of the target entity and any anticipated goodwill and other intangible assets. Also discuss the application of fair value and any election to apply push-down accounting adjustments, as appropriate.**

Included as Confidential Exhibit D to this Application.

9. **For an applicant that is or would be subject to consolidated capital requirements under Regulation Q (12 CFR part 217) following consummation of the proposed transaction, provide a breakdown of the organization's existing and pro forma risk-weighted assets as of the end of the most recent quarter, showing each principal group of on and off-balance sheet assets and the relevant risk-weight. Also, identify the existing and pro forma components of common equity tier 1, additional tier 1 and tier 2 capital pursuant to the capital adequacy regulations as of the end of the most recent quarter, and provide calculations of applicant's existing and pro forma common equity tier 1 capital, tier 1 capital, total capital, and leverage ratios pursuant to the capital adequacy regulations. If applicable, also provide the applicant's existing and pro forma supplementary leverage ratio pursuant to the capital adequacy regulations.**

Included as Confidential Exhibit D to this application.

10. **Provide for the applicant and any other Bank(s)/Bank Holding Company(ies) that would result from the proposal:**

a. **A description of any plans (in connection with the proposed transaction, or otherwise) to issue, incur, or assume additional common equity, preferred stock, other qualifying capital, and/or debt. Specify the amount, purpose, name and**

location of the issuer and/or lender; provide a copy of any loan agreement, loan commitment letter from the lender, or other underlying agreement which provides the interest rate, maturity, collateral, and proposed amortization schedule; and discuss what resources would be used to service any debt or capital instruments arising from the proposed transaction; and

No capital stock issuances are contemplated, except as contemplated by the Merger Agreement relating to the newly created series of Morgan Stanley preferred stock that will be issued in connection with the Proposed Transaction. Morgan Stanley intends this newly issued preferred stock to qualify as Additional Tier 1 Capital.

Morgan Stanley may issue debt in the ordinary course before the Proposed Transaction is completed, but any such debt issuances will not be issued specifically in connection with the Proposed Transaction.

b. Cash flow projections under the following limited circumstances;

i. For an applicant that is or would be subject to consolidated capital standards following consummation of the proposed transaction and that would incur or assume any debt in the proposal such that parent company long term debt would exceed 30 percent of parent company equity capital, provide cash flow projections for the parent company for each of the next three years, along with supporting schedules for each material cash receipt and disbursement. If an applicant projects that dividends or other payments from subsidiary banks will be used to service parent company debt and/or other obligations, provide projections of subsidiary bank(s) assets, earnings, and dividends, as well as common equity tier 1, additional tier 1, total capital, and leverage ratios (including the supplementary leverage ratio, if applicable) pursuant to the capital adequacy regulations. If the combined assets of the subsidiary banks exceed the asset threshold of the Board's Small Bank Holding Company Policy Statement, subsidiary bank data may be shown on an aggregate basis;

Included as Confidential Exhibit H to this Application.

ii. For an applicant that is not or would not be subject to consolidated capital standards following consummation of the proposed transaction and that would incur or assume any debt or other obligations in the proposal such that parent company debt would exceed 30 percent of parent company equity capital, provide cash flow projections for the parent company for each of the next twelve years, along with supporting schedules for each material cash receipt and disbursement. These projections must clearly demonstrate the ability of the parent company to reduce the debt to equity ratio to 30 percent or less within twelve years of consummation and must take into account the schedule of principal reduction required by the parent company's creditor(s). Include projections of subsidiary bank(s) assets, earnings, dividends, and other payments to affiliates, as well as common equity tier 1

capital, tier 1 capital, total capital and leverage ratios. Explain the methods and assumptions utilized in the projections, and support all assumptions which deviate from historical performance.

Not applicable. Morgan Stanley is subject to consolidated capital standards, and would continue to be after consummation of the Proposed Transaction.

c. If the proposed transaction results in a change in ownership of the company (e.g., due to an exchange of stock), provide a current and pro forma shareholders' list;

Not applicable. The Proposed Transaction would not result in a change in ownership of Morgan Stanley.

d. If the subject transaction will be funded in whole, or in part, through the issuance of additional stock instruments, describe the current status of the stock raising efforts. Provide copies of the prospectus, private placement memorandum, and other documents associated with the capital raise. In addition, provide copies of any stock commitments, subscription agreements, or escrow account statements evidencing capital raised. Before submitting a final application, please contact the appropriate Federal Reserve Bank to discuss the timing considerations of the capital raising efforts with regard to submission of the application.

Please refer to the responses to Item 2.d and Item 10.a above. Morgan Stanley will supplement this application with a copy of the S-4 registration statement that Morgan Stanley submits to the Securities and Exchange Commission in connection with the exchange of Morgan Stanley common stock and preferred stock for E*TRADE Common Stock and E*TRADE Preferred Stock.

11. For applications filed pursuant to section 3(a)(1) of the BHC Act, provide for the applicant and the Bank a list of principals (including changes or additions to this list to reflect consummation of the transaction), providing information with respect to each as follows:

a. Name and address (City and State/Country). If the principal's country of citizenship is different from his or her country of residence, then state the country of citizenship;

b. Title or positions with Applicant and the Bank;

c. Number and percentage of each class of shares of Applicant and Bank owned, controlled, or held with power to vote by this individual;

d. Principal occupation if other than with Applicant or Bank;

e. Percentage of direct or indirect ownership, if such ownership represents 10 percent or more of any class of shares, or positions held in any other depository

institution or depository institution holding company. Give the name and location of such other depository institution or depository institution holding company. (Information that has been collected or updated within the past 12 months may be submitted, unless Applicant has reason to believe that such information is incorrect.);

f. **Interagency Biographical and Financial Reports (IBFRs) are required for certain individuals. Consult with the appropriate Reserve Bank for guidance on who should provide an IBFR. See SR 15-8 Name Check Process for Domestic and International Applications for more details; and**

g. **If the principal is a corporation or partnership, provide financial statements (balance sheets and income statements) for the two most recent fiscal years and the most recent quarter end. Discuss any negative trends in the financial statements.**

Not applicable. This application is not filed pursuant to section 3(a)(1) of the BHC Act.

12. **For applications filed pursuant to sections 3(a)(3) or 3(a)(5) of the BHC Act, list any changes in management or other principal relationships for the applicant and any other Bank(s)/Bank Holding Company(ies) that would result from the proposal. For any existing or proposed principal of the applicant or the Bank/Bank Holding Company that is also a principal of any other depository institution or depository institution holding company, provide the following information:**

a. **Name, address, and title or position with Applicant, Bank/Bank Holding Company, and any other depository institution or depository institution holding company (give the name and location of the other depository institution or depository institution holding company);**

b. **Number and percentage of each class of shares of the applicant and the Bank/Bank Holding Company owned, controlled, or held with power to vote by this individual;**

c. **Principal occupation if other than with the applicant or the Bank/Bank Holding Company; and**

d. **Percentage of direct or indirect ownership held in the other depository institution or depository institution holding company if such ownership represents 10 percent or more of any class of shares. (Information that has been collected or updated within the past 12 months may be submitted, unless the applicant has reason to believe that such information is incorrect.); and**

e. **For any new (to applicant) principal shareholders, directors, or senior executive officer, provide an IBFR including completion of all required financial information.**

Not applicable. This application is not filed pursuant to section 3(a)(3) or 3(a)(5) of the BHC Act.

13. If the consolidated assets of the resulting organization are less than the asset threshold of the Board's Small Bank Holding Company Policy Statement for each principal of the applicant who either would retain personal indebtedness or act as guarantor for any debt that was incurred in the acquisition of shares of the applicant or the Bank/Bank Holding Company, provide the following:

a. Name of borrower and title, position, or other designation that makes the borrower a principal of the applicant;

b. Amount of personal indebtedness to be retained;

c. A description of the terms of the borrowing, the name and location of the lender, and a copy of any related loan agreement or loan commitment letter from the lender;

d. Statement of net worth as of a date within three months of the applicant's final filing of the application. The statement of net worth should be in sufficient detail to indicate each principal group of assets and liabilities of the reporting principal, and the basis for the valuation of assets (provide supporting documentation, as appropriate). In addition to debts and liabilities, the reporting principal should state on a separate schedule, any endorsed, guaranteed, or otherwise indirect or contingent liability for the obligation of others; and

e. Statement of most current year's income. In addition to indicating each principal source of annual income, the reporting principal should list annual fixed obligations arising from amortization and other debt servicing. (If the most current year's statement is not representative of the future, the reporting principal should submit a pro forma income statement and discuss the significant changes and the basis for those changes.)

Not applicable.

14. Describe any litigation or investigation by local, state, or federal authorities involving the applicant or any of its subsidiaries or the target or any of its subsidiaries that is currently pending or was resolved within the last two years.

Included as <u>Public Exhibit 20</u> and <u>Confidential Exhibit I</u> to this Application.

III. <u>COMPETITION</u>

15. Discuss the effects of the proposed transaction on competition considering the structural criteria specified in the Board's Rules Regarding Delegation of Authority (section 265.11c(11)(v)). The applicant may be required to provide additional information if Federal Reserve staff determines that the proposal exceeds existing competitive guidelines. Also, if divestiture of all or any portion of any bank or

nonbanking company constitutes part of this proposal, discuss in detail the specifics and timing of such divestiture.

A discussion of these criteria is included in Part V.A of the Preliminary Statement.

16. **If the proposal involves the acquisition of nonbank operations under sections 4(c)(8) and 4(j) of the Bank Holding Company Act, a Form FR Y-4 should be submitted in connection with FR Y-3 filing. At a minimum, the information related to the nonbank operations should include the following:**

    a. **A description of the proposed activity(ies);**

    b. **The name and location of Applicant's and Bank's direct or indirect subsidiaries that engage in the proposed activity(ies);**

    c. **Identification of the geographic and product markets in which competition would be affected by the proposal;**

    d. **A description of the effect of the proposal on competition in the relevant markets; and**

    e. **A list of major competitors in each affected market.**

    In addition, Applicant should identify any other nonbank operations to be acquired, with brief descriptions of the activities provided.

    Information responsive to this Item is included in Part III and Part V.A of the Preliminary Statement. A pro forma organization chart of E*TRADE is included as <u>Public Exhibit 4</u> to this Application.

17. **In an application in which any principal of the applicant or the Bank/Bank Holding Company is also a principal of any other insured depository institution or depository institution holding company, give the name and location of each office of such other institution that is located within the relevant banking market of the Bank/Bank Holding Company, and give the approximate road miles by the most accessible and traveled route between those offices and each of the offices of Bank/Bank Holding Company.**

    Not applicable. No principal of Morgan Stanley or of E*TRADE is also a principal of another depository institution or depository institution holding company located within E*TRADE's relevant banking markets.

IV. <u>CONVENIENCE AND NEEDS</u>

18. **Describe how the proposal would assist in meeting the convenience and needs of the community(ies) to be served, including but not limited to the following:**

a. Summarize efforts undertaken or contemplated by the applicant to ascertain and address the needs of the community(ies) to be served, including community outreach activities, as a result of the proposal.

b. For the combining institutions, list any significant anticipated changes in services or products offered by the depository subsidiary(ies) of the applicant or target that would result from the consummation of the transaction.

c. To the extent that any products or services of the depository subsidiary(ies) of the applicant or target would be offered in replacement of any products or services to be discontinued, indicate what these are and how they would assist in meeting the convenience and needs of the communities affected by the transaction.

d. Discuss any enhancements in products or services expected to result from the transaction.

Part V.B of the Preliminary Statement discusses how the Proposed Transaction would assist in meeting the convenience and needs of the communities to be served.

19. Describe how the applicant and resultant institution, including its depository subsidiary(ies) would assist in meeting the existing and anticipated needs of its community(ies) under the applicable criteria of the Community Reinvestment Act (CRA) and its implementing regulations, including the needs of low- and moderate-income geographies and individuals. This discussion should include, but not necessarily be limited to, a description of the following:

a. The significant current and anticipated programs, products, and activities, including lending, investments, and services, as appropriate, of the depository subsidiary(ies) of the applicant and the resultant institution.

b. The anticipated CRA assessment areas of the depository subsidiary(ies) of the combined institution. If assessment areas of the depository subsidiary(ies) of the resultant institution would not include any portion of the current assessment area of that subsidiary, describe the excluded areas.

c. The plans for administering the CRA program for the depository subsidiary(ies) of the resultant institution following the transaction.

d. The plans for administering the CRA program for the depository subsidiary(ies) of the resultant institution following the transaction. For a subsidiary of the applicant or target that has received a CRA composite rating of "needs to improve" or "substantial noncompliance" institution-wide or, where applicable, in a state or multi-state Metropolitan Statistical Area (MSA), or has received an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the applicant is expanding as a result of the transaction, describe the specific actions, if any, that have been taken to address the deficiencies in the institution's CRA performance record since the rating.

Please refer to Part V.C of the Preliminary Statement and the exhibits referenced therein for a discussion of the CRA records of the depository institution subsidiaries of both Morgan Stanley and E*TRADE.

20. List all offices of the depository subsidiary(ies) of the applicant or target that (a) will be established or retained as branches, including the main office, of the target's depository subsidiary(ies), (b) are approved but unopened branch(es) of the target's depository subsidiary(ies), including the date the current federal and state agencies granted approval(s), and (c) are existing branches that will be closed or consolidated as a result of the proposal (to the extent the information is available) and indicate the effect on the branch customers served. For each branch, list the popular name, street address, city, county, state, and zip code specifying any that are in low- and moderate-income geographies.

Neither the Morgan Stanley Banks nor the E*TRADE Banks maintain branch offices. Accordingly, no branch offices will be established, retained or opened, and no branch offices will be closed or consolidated, as a result of the Proposed Transaction.

V. INTERSTATE BANKING

21. If the transaction involves the acquisition of a bank located in a State other than the home State of the applicant, please provide the following information, as applicable:

a. Identify any host state(s) involved with this transaction that require the target to be in operation for a minimum number of years and discuss compliance with this age requirement.

b. Discuss compliance with nationwide and statewide deposit concentration limits to the transaction.

c. Discuss compliance with state-imposed deposit caps.

d. Discuss compliance with community reinvestment laws.

e. Discuss any other restrictions that the host state(s) seek to apply (including state antitrust restrictions).

Please refer to Part V.E of the Preliminary Statement for an analysis of nationwide deposit concentration limits applicable to the Proposed Transaction. The remainder of this item is not applicable.

VI. FINANCIAL STABILITY

If either the acquirer or the target's total assets exceeds $10 billion as of the most recent quarter for which data is available, address the following questions:

22. If either the acquirer or the target conducts any cross-border activities, please describe the nature of these activities and the amounts of cross-border assets and liabilities as of the most recent quarter for which data is available.

The cross-border activities of Morgan Stanley and E*TRADE are described in Part III and Part V.F.5 of the Preliminary Statement. The amounts requested by this item are included as Public Exhibit 16 and Confidential Exhibit F to this Application.

23. For each financial service below, if the dollar volume related to the service provided either by the acquirer or the target exceeds $1 billion, please report the annual volume over the past 12 months (otherwise, do not report):

- **Short-term funding (e.g., in repos, fed funds)**
- **Underwriting services (e.g., equity, corporate bonds, commercial paper, ABS)**
- **Trading activities (e.g., equity, corporate bonds, derivatives)**
- **Payments, clearing, settlement, and custody services**
- **Prime brokerage**
- **Securities lending**
- **Corporate trust**
- **Correspondent banking**
- **Wealth management**
- **Insurance (including reinsurance)**

Information responsive to Item 23 is included as Public Exhibit 16 and Confidential Exhibit F to this Application. Please also refer to Part V.F of the Preliminary Statement for a discussion of why the Proposed Transaction would not result in greater or more concentrated risks to the stability of the U.S. banking or financial system or in greater or more concentrated risks to global or United States financial stability or the United States economy.