

FEDERAL RESERVE SYSTEM

Morgan Stanley
New York, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and
Certain Nonbanking Subsidiaries

Morgan Stanley, New York, New York, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y² to acquire E*TRADE Financial Corporation (“E*TRADE”), a savings and loan holding company, and thereby indirectly acquire E*TRADE’s federal savings association subsidiaries, E*TRADE Bank (“ETB”) and E*TRADE Savings Bank (“ETSB”), all of Arlington, Virginia.

In addition, Morgan Stanley has requested the Board’s approval under section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) to acquire E*TRADE,³ which is engaged in activities described in section 4(k) of the BHC Act.⁴

Morgan Stanley, with consolidated assets of approximately \$975.4 billion, is the 6th largest insured depository organization in the United States. Morgan Stanley controls approximately \$236.8 billion in consolidated deposits, which represent less than 1.5 percent of the total amount of deposits of insured depository institutions in the United

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1843(c)(8) and (j); 12 CFR 225.24.

³ 12 U.S.C. § 5363(b)(3).

⁴ 12 U.S.C. § 1843(k).

States.⁵ Morgan Stanley controls Morgan Stanley Bank, N.A. (“MS Bank”), Salt Lake City, Utah, which has a single office, located in Utah, and Morgan Stanley Private Bank, N.A. (“MSPB”), Purchase, New York, which has a single deposit-taking office, located in New York. MS Bank has total assets of \$167.1 billion, and MSPB has total assets of \$102.5 billion.

E*TRADE, with consolidated assets of approximately \$70.4 billion, is the 45th largest insured depository organization in the United States. E*TRADE controls approximately \$43.7 billion in consolidated deposits, which represent less than 0.3 percent of the total amount of deposits of insured depository institutions in the United States. E*TRADE controls ETB and ETSB, each of which operates a single deposit-taking office, located in Virginia. ETB has total assets of \$50.9 billion, and ETSB has total assets of \$4.8 billion.

On consummation of the proposal, Morgan Stanley would remain the 6th largest insured depository organization in the United States, with consolidated assets of approximately \$1,045.8 billion, which represent less than 4.0 percent of the total assets of insured depository organizations in the United States. Morgan Stanley would control consolidated deposits of approximately \$280.5 billion, which represent 1.7 percent of the total amount of deposits of insured depository institutions in the United States. In Virginia, Morgan Stanley would become the 2nd largest insured depository organization, controlling deposits of approximately \$42.7 billion, which represent approximately 12.7 percent of the total deposits of insured depository institutions in that state.⁶

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 Federal Register 18240 (April 1, 2020)).⁷ The

⁵ National asset data, market share, and ranking data are as of June 30, 2020, unless otherwise noted.

⁶ State deposit data are as of June 30, 2019.

⁷ 12 CFR 262.3(b).

Board extended the initial period for public comment until June 4, 2020, 34 additional days, in order to provide additional opportunity for interested persons to submit comments in light of challenges for households and businesses caused by the coronavirus disease 2019 (“COVID-19”) emergency (85 Federal Register 26689 (May 5, 2020)). In total, the Board received approximately 72 comments from individuals and organizations. Commenters included community groups, nonprofit organizations, and other interested organizations and individuals.

The vast majority of commenters supported the proposal.⁸ Many of these commenters contended that the proposal would benefit communities and community organizations served by Morgan Stanley and E*TRADE through increased resources and services provided by the combined organization. Commenters generally commended Morgan Stanley and E*TRADE for their involvement in their communities and described positive experiences related to small business, community development, charitable contribution, and investment programs of both organizations. In addition, commenters praised both organizations for their corporate cultures, which commenters contended encourage officers and employees to volunteer their time and resources to provide services to community organizations.

Three commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions, or otherwise expressed concerns about the proposal.⁹ These commenters expressed concern about the competitive effects of the proposal in the markets for wealth management and equity-plan administration services. Commenters also criticized Morgan Stanley’s compliance and corporate responsibility record. Commenters expressed concern that the proposal would result in fewer services and less focus on rural and economically disadvantaged communities because of the parties’ online-only business models. In addition, commenters asserted that the

⁸ The Board received approximately 69 comments in support of the proposal.

⁹ The Board received two of these comments after the close of the extended public comment period.

combined institution would pose a risk to U.S. financial stability, with the resulting institution being “too big to fail.” Commenters also suggested that the Board should suspend consideration of the proposal in light of the ongoing COVID-19 emergency.¹⁰

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.¹¹ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.¹² Morgan Stanley has committed that all of the activities of E*TRADE and its subsidiaries would be conformed to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of ETB and ETSB “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 interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”¹³ As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects of the companies involved, the effect of the proposal on competition in

¹⁰ The Board is subject to statutory timelines in considering the proposal and does not have the unilateral ability to suspend these timelines. As noted below, in considering financial, managerial, and other supervisory considerations, the Board considered Morgan Stanley’s plans to withstand the potential impact of near-term economic conditions.

¹¹ 12 CFR 225.28(b)(4)(ii).

¹² *Id.* Morgan Stanley would maintain ETB and ETSB as separate operating entities following consummation of the proposed transaction.

¹³ 12 U.S.C. § 1843(j)(2)(A).

the relevant markets, the risk to the stability of the U.S. banking or financial system, and the public benefits of the proposal.¹⁴ The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act of 1977 (“CRA”).¹⁵

Section 163(b) of the Dodd-Frank Act requires a bank holding company with total consolidated assets of \$250 billion or more, a global systemically important bank holding company, or a nonbank financial company designated by the Financial Stability Oversight Council for supervision by the Board, to provide notice to the Board before acquiring any company with total consolidated assets of \$10 billion or more that engages in activities described in section 4(k) of the BHC Act.¹⁶ Morgan Stanley exceeds the applicable asset threshold and is a global systemically important bank holding company. E*TRADE exceeds the applicable asset threshold and engages in activities described in section 4(k) of the BHC Act. Accordingly, the proposed acquisition of E*TRADE requires notice to the Board under section 163(b) of the Dodd-Frank Act. In reviewing a notice under section 163(b) of the Dodd-Frank Act, the Board is required to consider the standards listed in section 4(j)(2) of the BHC Act,¹⁷ described above. In addition, section 163(b) requires the Board to consider “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.”¹⁸

¹⁴ See 12 CFR 225.26; see, e.g., Texas Independent Bancshares, Inc., FRB Order No. 2019-10 (June 27, 2019); M&T Bank Corporation, FRB Order 2015-27 (September 30, 2015); Southside Bancshares, Inc., FRB Order 2014-21 (December 10, 2014); Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012); Bank of America Corporation/Countrywide, 94 Federal Reserve Bulletin C81 (2008).

¹⁵ 12 U.S.C. § 2901 *et seq.*

¹⁶ 12 U.S.C. §§ 5363(b)(1) and 5365 note.

¹⁷ 12 U.S.C. § 5363(b)(4).

¹⁸ Id.

Interstate and Deposit Cap Analyses

Section 4(i)(8) of the BHC Act provides that, in general, the Board may not approve an application under section 4(c)(8) or any other provision of the BHC Act by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.¹⁹ 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.²⁰ Consummation of the proposal would result in Morgan Stanley controlling approximately 1.7 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 4(i)(8) of the BHC Act.

Competitive Considerations

As part of the Board's consideration of the factors under section 4(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of the record, including public comments received on the proposal.²¹

¹⁹ 12 U.S.C. § 1843(i)(8).

²⁰ A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C). A federal savings association's home state is the state in which the home office of the savings association is located. 12 U.S.C. § 1841(o)(4)(E).

²¹ A commenter asserted that the wealth management industry is currently concentrated among a small group of large organizations and expressed concern that the proposal would increase the market share of Morgan Stanley's wealth management business. This commenter also asserted that Morgan Stanley's fossil-fuel-related investments and activities have implications for financial risk and anticompetitive practices.

Another commenter expressed general concern about the competitive effects of the proposal, particularly with respect to the equity-plan administration market.

Acquisition of Savings Associations

Morgan Stanley, through its U.S. bank subsidiaries, does not operate retail branch locations in the United States. MS Bank and MSPB are each party to a deposit sweep program, under which balances held in brokerage accounts of Morgan Stanley's wealth management clients sweep into deposit accounts at MS Bank and MSPB.

Similarly, E*TRADE, through its subsidiary federal savings associations, does not operate retail branch locations in the United States. ETB and ETSB are each party to a deposit sweep program under which balances held in the brokerage accounts of E*TRADE's broker-dealer subsidiary, E*TRADE Securities LLC, sweep into deposit accounts at ETB and ETSB. In addition, ETB and ETSB also are party to a deposit sweep program under which certain deposits held by ETB and ETSB sweep into deposit accounts at third-party banks.

Morgan Stanley and E*TRADE each offer certain banking products and services online. As a result, Morgan Stanley and E*TRADE may compete in some local markets through their internet platforms. However, both organizations receive deposits from across the country, making it unlikely that either organization holds a high concentration of deposits in any local market. Based on the size of the organizations, the large number of internet-based competitors, and the widely dispersed geographic origins of Morgan Stanley's and E*TRADE's internet deposits, the proposed transaction would not result in a material increase in concentration in any single market, including the markets in which Morgan Stanley and E*TRADE operate. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the

A third commenter contended that the proposal would harm competition in financial services by increasing concentration and permitting anti-competitive bundling through vertical integration.

In response, Morgan Stanley asserted that it does not compete with E*TRADE's digital brokerage and wealth management businesses to any material degree. In addition, Morgan Stanley asserted that consummation of the proposed transaction would be competitively neutral or procompetitive, because it would bring complementary businesses together and would result in a stronger and more effective competitor.

Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”).²²

Other Nonbanking Activities

The Board also has considered the competitive effects of Morgan Stanley’s proposed acquisition of E*TRADE’s other nonbanking subsidiaries and activities in light of all the facts of record. Morgan Stanley and E*TRADE both engage in various nonbanking activities, including securities brokerage, equity-plan administration, investment advisory, wealth management, and fiduciary activities. The Board previously has determined that these activities are permissible for financial holding companies.²³ The record indicates that the markets for these activities are regional or national in scope, with numerous competitors.

Conclusion Regarding Competitive Effects

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significant adverse effect on competition in any relevant banking market. In

²² In applying the DOJ Bank Merger Guidelines issued in 1995 (see <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. See <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised the Horizontal Merger Guidelines in 2010 (see <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, 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.

²³ 12 CFR 225.86.

addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board determines that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4(j)(2) of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal.²⁵ The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the

²⁴ See 12 U.S.C. § 1843(j)(2)(A); 12 CFR 225.26.

²⁵ A commenter expressed concern that Morgan Stanley is “too big to manage” and asserted that Morgan Stanley has been the subject of 41 different actions by federal, state, and private parties since 2008. The Board considered this comment as part of its review of Morgan Stanley’s managerial resources and, for the reasons discussed below, considers managerial resources and performance to be satisfactory from a supervisory perspective.

proposal in light of their financial and managerial resources and the proposed business plan.

Morgan Stanley, E*TRADE, and their subsidiary depository institutions are each well capitalized, and the combined organization would remain so on consummation of the proposed transaction. The proposed transaction involves a two-step merger process with stock-only consideration.²⁶ The capital, asset quality, earnings, and liquidity of Morgan Stanley and E*TRADE are consistent with approval, and Morgan Stanley appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval. In reaching these conclusions, the Board also has considered Morgan Stanley's plans to withstand the potential impact of near-term economic conditions.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Morgan Stanley, E*TRADE, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Morgan Stanley; the Board's supervisory experiences with Morgan Stanley and E*TRADE and those of other relevant bank supervisory agencies with the organizations; the

²⁶ Morgan Stanley would use two wholly owned merger subsidiaries to effect the transaction. Morgan Stanley's first merger subsidiary would merge with and into E*TRADE, with E*TRADE as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of E*TRADE common stock that is outstanding would be converted into the right to receive shares of Morgan Stanley common stock based on an exchange ratio. Each share of E*TRADE series A and B preferred stock would be converted into the right to receive substantially similar newly issued Morgan Stanley preferred stock. Immediately after the First-Step Merger, E*TRADE would merge with and into Morgan Stanley's second merger subsidiary, with the second merger subsidiary as the surviving entity. Morgan Stanley has the financial resources to effect the transaction.

organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

Morgan Stanley, E*TRADE, and their subsidiary depository institutions are each considered to be well managed. The combined organization's proposed directors and senior executive officers have knowledge of and experience in the banking and financial sectors, and Morgan Stanley's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Morgan Stanley's plans for implementing the proposal. Morgan Stanley has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-consummation integration process for this proposal. Morgan Stanley would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered satisfactory from a supervisory perspective. In addition, Morgan Stanley's management has the experience and resources to operate the combined organization in a safe and sound manner, and Morgan Stanley plans to integrate the existing management and personnel of E*TRADE in a manner that augments Morgan Stanley's management.²⁷

Based on all of the facts of record, including Morgan Stanley's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Morgan Stanley and E*TRADE in combatting money-laundering activities, are consistent with approval.

²⁷ Following consummation of the proposed transaction, an independent director from E*TRADE's board of directors would join Morgan Stanley's board of directors. In addition, E*TRADE's current chief executive officer would join Morgan Stanley's senior executive management team and would continue to manage the E*TRADE business within the combined organization. Morgan Stanley expects that other members of E*TRADE's current senior management team would continue to hold positions within the combined organization.

Convenience and Needs Considerations

As part of weighing the possible adverse effects of a transaction against its public benefits, as required by section 4(j)(2) of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA

²⁸ 12 U.S.C. § 1843(j)(2).

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

performance of MS Bank, MSPB, ETB, and ETSB; the fair lending and compliance records of each bank; the supervisory views of the Office of the Comptroller of the Currency (“OCC”) and the Consumer Financial Protection Bureau (“CFPB”); confidential supervisory information, information provided by Morgan Stanley; and the public comments received on the proposal.

Public Comments on the Proposal

In general, the commenters supporting the proposal asserted that Morgan Stanley and E*TRADE provide valuable services to their communities. Commenters contended that the proposal would expand opportunities for community groups, LMI persons, and small businesses. These commenters also praised Morgan Stanley and E*TRADE and their management for each organization’s community outreach efforts and support for community programs and initiatives.

Several commenters opposing the proposal expressed concern that the combined entity would provide fewer services, diminishing consumer choice. One commenter alleged that Morgan Stanley’s and E*TRADE’s online business models were not meeting the needs of rural and economically disadvantaged areas because many of these communities lack internet access.³¹

Several commenters requested that the Board condition its approval on a variety of commitments by Morgan Stanley regarding affordable housing for and lending

³¹ Although Morgan Stanley’s and E*TRADE’s depository institutions offer products and services on a nationwide basis, under the federal financial supervisors’ CRA regulations, CRA requirements for depository institutions are focused on their records of meeting the needs of their respective assessment areas (“AAs”). See 12 CFR 25.41; 12 CFR 195.41. The Board has considered the CRA records of MS Bank, MSPB, ETB, and ETSB in helping to meet the needs of their respective AAs, as well as their CRA records outside of their AAs, to the extent reflected in each institution’s most recent CRA evaluation. The record does not indicate that there are any CRA concerns with respect to customers’ access to online or other services provided by these institutions.

to LMI communities and individuals, community development programs, and minority depository institutions.³²

Businesses of the Involved Institutions and Response to the Comments

Morgan Stanley provides a range of financial services through three business segments: institutional securities, wealth management, and investment management. Morgan Stanley offers banking products and services online, on a nationwide basis, through MS Bank and MSPB, including deposit products, warehouse financing, commercial real estate lending, mortgage lending, and prime brokerage custody services.

E*TRADE provides brokerage products and services to retail and institutional customers. E*TRADE offers products and services through digital platforms, phone services, and 30 regional financial centers across the United States. E*TRADE provides banking products and services through ETB and ETSB, including deposit products, securities-based loans, and custody services.

Morgan Stanley asserts that it remains committed to continuing its record of “outstanding” CRA ratings. Specifically, Morgan Stanley represents that the combined firm expects to at least maintain E*TRADE’s level of CRA grant support for organizations in E*TRADE’s current CRA AAs for at least five years following consummation of the proposed transaction.

³² The Board has consistently found that neither the CRA nor the federal financial supervisory agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., First Illinois Bancorp, Inc., FRB Order No. 2020-03 at 11 n.25 (August 26, 2020); First Busey Corporation, FRB Order No. 2019-01 at 11 n.30 (January 10, 2019); Sterling Bancorp, FRB Order No. 2017-21 at 10 n.24 (August 30, 2017); Huntington Bancshares, Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002). In its evaluation of a proposal, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA AAs.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of the relevant federal supervisors, which in this case is the OCC.³³ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of helping to meet the credit needs of its communities.

The CRA permits a bank or savings association to apply to its primary federal financial supervisor to be designated as a wholesale or limited-purpose bank or savings association.³⁵ The CRA performance of such a wholesale or limited-purpose depository institution is assessed by evaluating the institution's community development activities.³⁶ This evaluation involves an assessment of (1) the number and amounts of community development loans (including originations and purchases of loans) and other

³³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48,506, 48,548 (July 25, 2016).

³⁴ 12 U.S.C. § 2906.

³⁵ See e.g., 12 CFR 25.25; 12 CFR 195.25. A wholesale bank or wholesale savings association is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. A limited-purpose bank or limited-purpose savings association is one that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a "limited purpose bank" is in effect. See e.g., 12 CFR 25.12(n) and (x); 12 CFR 195.12(n) and (x).

³⁶ See e.g., 12 CFR 25.25(c); 12 CFR 195.25(c).

community development loan data provided by the institution (such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (2) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (3) the institution's responsiveness to credit and community development needs.³⁷ The OCC evaluated MS Bank and ETSB as wholesale depository institutions, ETB as a limited-purpose savings association, and MSPB under a strategic plan.³⁸

CRA Performance of MS Bank

MS Bank was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of February 18, 2020 (“MS Bank Evaluation”).³⁹ Examiners found that MS Bank exhibited excellent responsiveness to the credit and community development needs of its AA, specifically by providing affordable housing, economic development, community revitalization and stabilization, and community services for LMI persons. Examiners noted that the majority of the bank's community development lending supported affordable housing, while the remainder supported economic development and community services. Examiners concluded that MS Bank demonstrated extensive use of innovative or complex qualified investments, community development loans, and community development services.

³⁷ Id.

³⁸ Under the federal financial supervisory agencies' CRA regulations, the appropriate federal financial supervisor will assess an institution's record of meeting the credit needs of its AAs under a strategic plan if, among other things, the institution invites public comment on the plan and the plan is approved by the relevant supervisor. The OCC approved MSPB's strategic plan on May 22, 2014, pursuant to 12 CFR 25.27.

³⁹ The MS Bank Evaluation was conducted using Wholesale or Limited Purpose Bank CRA Examination Procedures. Examiners reviewed MS Bank's community development activities both inside and outside of the bank's sole AA from January 1, 2017, through December 31, 2019. The bank's sole AA is Salt Lake County, Utah.

Examiners found that MS Bank made qualified investments within its AA, as well as statewide. Examiners found that MS Bank’s grants supported affordable housing organizations, home ownership, and counseling to LMI individuals, among other initiatives. Examiners found that MS Bank’s community development services were responsive to needs in the bank’s AA. Examiners noted that the bank’s employees were involved in leadership roles at community organizations and that employees used their expertise to provide financial services, such as credit counseling and financial literacy seminars.

CRA Performance of MSPB

MSPB was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of December 31, 2018 (“MSPB Evaluation”). The MSPB Evaluation was conducted pursuant to an OCC-approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and services needs of the bank’s AA. The MSPB Evaluation included a review of the bank’s performance toward meeting the strategic plan goals in the bank’s AA.⁴⁰ Examiners found that MSPB exceeded its strategic plan goals for community development lending, investments, and services. Examiners found that the bank’s lending and investments supported affordable housing and that the bank’s community development services focused on revitalizing and stabilizing LMI communities. Examiners noted that services provided by MSPB employees included membership on community development boards related to housing for LMI individuals and geographies, as well as economic development.

⁴⁰ MSPB’s AA consists of certain counties within the New York-Jersey City-White Plains, New York–New Jersey, Metropolitan Division: Bronx County; Kings County; New York County; Queens County; Richmond County; and Westchester County, all of New York.

CRA Performance of ETB

ETB was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of October 21, 2019 (“ETB Evaluation”).⁴¹ Examiners found that ETB had an excellent level of qualified investments, particularly those not provided by private investors. For example, examiners noted that ETB partnered with a nonprofit technology provider to support the infrastructure and technology development of nonprofit organizations that receive grants from ETB. Examiners concluded that ETB’s investment in this program was both innovative and highly impactful to the bank’s AA.

Examiners found that the majority of ETB’s qualified investments during the evaluation period focused on affordable housing, which examiners noted as an identified need in the bank’s AA. Examiners found that ETB’s grants and donations were made to organizations that, among other things, provided affordable housing, promoted economic development, and revitalized and stabilized LMI census tracts. Examiners found that ETB provided a relatively high level of community development services and that the bank’s community development services were responsive to community needs. Examiners noted that ETB employees held leadership positions on the board of nonprofit organizations that supported economic-development and affordable-housing, among other, initiatives.

CRA Performance of ETSB

ETSB was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of December 31, 2014 (“ETSB Evaluation”).⁴² Examiners found that ETSB had an overall adequate level of community

⁴¹ The ETB Evaluation was conducted using Wholesale or Limited Purpose Bank CRA Examination Procedures. Examiners reviewed ETB’s community development activities from January 1, 2015, through December 31, 2018. The bank’s sole AA is the Washington-Arlington-Alexandria, D.C.-Virginia-Maryland-West Virginia, multistate metropolitan statistical area (“District of Columbia MMSA”).

⁴² The ETSB Evaluation was conducted using Wholesale or Limited Purpose Bank CRA Examination Procedures. Examiners reviewed ETSB’s community development

development activities. Examiners found that ETSB made qualified investments that supported affordable housing, small business capital, and nonprofit organizations that addressed community development needs, among other initiatives. Examiners found that the bank's community development services supported financial literacy, housing counseling services, and social services to LMI individuals, among other initiatives. Examiners noted that ETSB did not make any residential mortgage, small business, small farm, commercial, or community development loans during the evaluation period.

*E*TRADE's CRA Activities Since the ETSB Evaluation*

Morgan Stanley represents that, since the ETSB Evaluation, E*TRADE has held annual meetings with a diverse array of community groups to discuss community development needs within the ETB and ETSB AAs. Morgan Stanley represents that, in response to identified needs, E*TRADE developed and implemented a community investment strategy to support, among other initiatives, affordable housing, housing counseling, economic development, and financial education.

Additional Supervisory Views

In its review of the proposal, the Board has consulted with the OCC regarding the records of MS Bank, MSPB, ETB, and ETSB in complying with fair lending and other consumer protection laws. The Board also has considered the results of the OCC's most recent consumer compliance examinations of each of these depository

activities within the bank's AAs from January 1, 2013, through December 31, 2014. As of October 1, 2013, ETSB had a single AA, consisting of two Metropolitan Divisions ("MDs") within the District of Columbia MMSA. Examiners evaluated the MDs within the District of Columbia MMSA from January 1, 2013, through December 31, 2014.

During the first nine months of the CRA evaluation period, ETSB had AAs in Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New York, Oregon, Pennsylvania, and Texas, in addition to the two MDs in the District of Columbia MMSA. ETSB's 26 branches in these AAs were co-located in E*TRADE Financial Service Centers. Although designated as branches, ETSB did not offer traditional retail banking services or products at the branch locations. ETSB closed all of these branches by September 30, 2013.

institutions, which included reviews of the depository institutions' compliance management programs and compliance with consumer protection laws and regulations. The Board also has considered MS Bank's and MSPB's supervisory records with the CFPB.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Morgan Stanley has the experience and resources to ensure that MS Bank, MSPB, ETB, and ETSB each would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. Morgan Stanley represents that the products and services offered by E*TRADE are largely complementary to those offered by Morgan Stanley. Morgan Stanley represents that, after consummation of the proposed transaction, it expects to maintain the current products and services offered to customers of Morgan Stanley and E*TRADE.

Morgan Stanley represents that existing Morgan Stanley customers would gain access to additional self-directed brokerage capabilities, including trades at zero commission within accounts, as well as digital banking products, such as E*TRADE's checking and savings accounts and high-yield savings products. In addition, Morgan Stanley represents that it plans to use E*TRADE's digital banking platform to enable Morgan Stanley's customers to open deposit accounts. With respect to CRA initiatives, Morgan Stanley represents that it expects to maintain its existing CRA program and incorporate E*TRADE's record of CRA performance into future initiatives.

Morgan Stanley represents that existing E*TRADE customers would benefit from Morgan Stanley's advice and product platform, including a wider range of investment products, a financial wellness and education platform, and introductions to Morgan Stanley's financial advisors, where appropriate.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Morgan Stanley, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Act added “risk to the stability of the United States banking or financial system” to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act.⁴³ In addition, the Dodd-Frank Act requires the Board to consider “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” in reviewing a notice submitted pursuant to section 163(b) of the Dodd-Frank Act.⁴⁴

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety 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. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

⁴³ Dodd-Frank Act § 604(e)(1), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), amending 12 U.S.C. § 1843(j)(2)(A).

⁴⁴ 12 U.S.C. 5363(b)(4).

resulting firm.⁴⁵ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.⁴⁶

In this case, the Board has considered information relevant to the proposal's risks to the stability of the U.S. banking or financial system or the U.S. economy and risks to global or U.S. financial stability. With respect to the size factor, the proposal would increase Morgan Stanley's total assets by \$70 billion, to \$1.05 trillion. On substitutability, alternative providers would be readily available for the critical financial services provided by the pro forma institution. Both the acquirer and the target are engaged in retail banking, securities brokerage, equity-plan administration, investment advisory, wealth management, and fiduciary activities. Morgan Stanley's market shares in these business lines would not change significantly upon consummation of the proposed transaction. In addition, the acquisition would not heighten Morgan Stanley's interconnectedness with other firms or markets in ways that would significantly raise risks to the financial system or economy or to financial stability in the event of financial distress. Moreover, the acquisition would not have meaningful effects on the cross-border activities of the acquirer; would not lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution; nor would the acquisition cause a significantly increased risk to the banking or financial system, economy, or financial stability, in the event of financial distress.

Overall, the proposal would only marginally increase the systemic footprint of Morgan Stanley. In reaching this conclusion, in addition to the information discussed

⁴⁵ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴⁶ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-02 (February 14, 2012).

above, the Board also considered the change to the Global Systemically Important Bank (“GSIB”) score of Morgan Stanley, one of the eight U.S. GSIBs, as a result of the proposal. The GSIB score is the Board’s principal regulatory algorithm for measuring a firm’s systemic footprint, and it includes the effects of all five of the quantitative factors mentioned above (size, substitutability, interconnectedness, complexity, and cross-border activity).⁴⁷ As a result of the proposed transaction, Morgan Stanley’s GSIB method 1 score would increase by only 2 percent, from 259 to 264 basis points.

Furthermore, while the acquisition would marginally increase Morgan Stanley’s systemic footprint, certain financial-stability-enhancing features of the acquisition would operate as mitigating factors. The Board’s regulatory and supervisory frameworks are tailored to apply the strictest standards to U.S. GSIBs and to increase in stringency with an individual GSIB’s systemic footprint. For example, among other requirements, Morgan Stanley is subject to the GSIB risk-based capital surcharge, annual supervisory stress testing and the stress capital buffer requirement, the liquidity coverage ratio, and total loss-absorbing capacity and resolution planning requirements. E*TRADE, as a savings and loan holding company with less than \$100 billion in assets, is currently not subject to the Board’s enhanced prudential standards. Following the acquisition, all of E*TRADE’s activities would be subject to the strictest standards.⁴⁸ The acquisition of E*TRADE also would provide Morgan Stanley with an additional stream of stable revenues for its wealth- and investment-management business and would diversify its funding structure.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system or the United States economy or to global or U.S. financial stability. Based on these and all other facts of record, the Board determines that

⁴⁷ See 80 Fed. Reg. 49082 (August 14, 2015).

⁴⁸ For example, E*TRADE is currently subject to a common equity tier 1 (“CET1”) capital requirement of 7.0 percent. Following the transaction, the exact same assets held by Morgan Stanley would be subject to a CET1 capital requirement of 13.2 percent.

considerations relating to financial stability, including stability considerations under section 163(b)(4) of the Dodd-Frank Act, are consistent with approval.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a notice under section 4 of the BHC Act or under section 163(b) of the Dodd-Frank Act, the Board is required to “consider whether performance of the activity by a bank holding company or a subsidiary of such company 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.”⁴⁹ As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Morgan Stanley and E*TRADE. In addition, the acquisition would ensure continuity and strength of service to these customers.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is not likely to result in significant 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 U.S. banking or financial system. On the basis of the entire record, including conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weighs in favor of approval of the proposal. Accordingly, the Board determines

⁴⁹ 12 U.S.C. § 1843(j)(2)(A).

that the balance of the public benefits of the proposal under the standard in section 4(j)(2)(A) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Dodd-Frank Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Morgan Stanley with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors,⁵⁰ effective September 30, 2020.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

⁵⁰ Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governor Bowman. Voting against this action: Governor Brainard.