



**Comptroller of the Currency
Administrator of National Banks**

Large Bank Licensing, MS 7-13
250 E Street, S.W.
Washington, D.C. 20219

June 28, 2010

**CRA Decision #147
July 2010**

Mr. Paul D. Patton
Executive Director
Morgan Stanley – Legal and Compliance
1221 Avenue of the Americas, 34th Floor
New York, New York 10020

Re: Applications by Morgan Stanley Trust, Jersey City, New Jersey, to convert to a national bank charter, relocate its main office to Purchase, New York, and assume certain deposit liabilities from Morgan Stanley Bank, N.A.
Application Control Numbers: 2010-ML-01-0001, -02-0003, and-07-0014

Dear Mr. Patton:

The Office of the Comptroller of the Currency (“OCC”) hereby grants conditional approval to the conversion, main office relocation, and deposit assumption applications described below, for the reasons and subject to the requirements set forth herein. This conditional approval is granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by applicant’s representatives during the application process. This approval is also subject to the conditions set forth herein.

I. INTRODUCTION

On March 25, 2010, Morgan Stanley Trust, Jersey City, New Jersey (“MST”), a federal savings bank, filed an application to convert to a national bank charter to be titled Morgan Stanley Private Bank, National Association (“MSPBNA”). On the same day, MST filed applications to relocate its main office from Jersey City, New Jersey to Purchase, New York after it converts to a national bank, and to assume deposits currently held in Morgan Stanley Bank, N.A. (“MSBNA”), Salt Lake City, Utah. Deposits of MST and MSBNA are insured by the Federal Deposit Insurance Corporation (“FDIC”), and both are subsidiaries of Morgan Stanley, New York, New York (“Morgan Stanley”).¹ MST has no branch offices. Following consummation

¹ Morgan Stanley is a bank holding company for purposes of the Bank Holding Company Act and a financial holding company under the Gramm-Leach-Bliley Act.

of the proposed transactions, MSPBNA will retain Morgan Stanley Credit Corporation (“MSCC”) as an operating subsidiary of the converted bank.²

II. LEGAL AUTHORITY

Conversion of MST

MST may convert to a national bank charter. Regulations of both the OCC and the Office of Thrift Supervision (“OTS”) permit the direct conversion of a federal savings bank into a national bank.³ In deciding a conversion application, OCC regulations provide that the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies.⁴ The regulations further provide that an application may be denied if a significant supervisory, Community Reinvestment Act (“CRA”),⁵ or compliance concern exists with the applicant; approval is inconsistent with applicable law, regulation, or policy; or the applicant fails to provide necessary information that the OCC has requested.⁶ Finally, the regulations provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.⁷

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application.⁸

² Notice of the proposed transactions was published in Westchester County, New York, including the town of Purchase; Jersey City, New Jersey; and Salt Lake City, Utah. The OCC received a copy of a public comment letter sent to the Board of Governors of the Federal Reserve System regarding Morgan Stanley’s related Bank Holding Company Act application, and following the close of the comment period, the OCC received a letter related to this transaction from a community organization. These comments are discussed below.

³ 12 C.F.R. § 5.24; 12 C.F.R. § 552.2-7. The OCC has approved many conversions of federal savings banks to national bank charters. *See, e.g.*, Decision of the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-113, February 24, 1997).

Section 5.24(d)(2)(ii)(E) of the OCC’s regulations provides that the conversion of a federal savings bank must not be in contravention of federal law. Sections 552.2-7 and 563.22(b)(1)(ii) of the OTS regulations require either the filing of a notice or application to the OTS. MST filed a conversion application with the OTS on June 2, 2010, and the OTS approved the application on June 21, 2010. Morgan Stanley also filed an application with the Federal Reserve Board on March 17, 2010, under Section 3(a)(3) of the Bank Holding Company Act.

⁴ 12 C.F.R. § 5.24(d)(1).

⁵ The CRA also requires that the OCC consider a conversion applicant’s record of compliance with CRA in deciding the application. 12 U.S.C. §§ 2903(a)(2) and 2902(3)(A); 12 C.F.R. § 25.29(a)(4). Consideration of MST’s record of compliance with CRA is discussed below.

⁶ 12 C.F.R. §§ 5.24(d) and 5.13(b).

⁷ 12 C.F.R. § 5.24(d)(1).

⁸ 12 C.F.R. § 5.24(d). The conversion raises no issues regarding branching since MSPBNA will have no branches following the conversion. Rather, following the conversion, MSPBNA plans to establish loan and deposit

Relocation of main office following consummation of the conversion

Upon consummation of the conversion of MST to a national bank charter, MST seeks authority for MSPBNA to relocate its main office from Jersey City, New Jersey, to Purchase, New York. The Jersey City main office will not be retained as a branch.

Title 12 U.S.C. § 30(b) permits a national bank, upon receipt of a certificate of approval from the OCC, to change the location of its main office to any location within 30 miles of the limits of the city, town, or village of the bank's current main office.⁹ MST has represented that the site of the main office following the relocation is within the permissible distance. Finally, MST has represented that the proposed relocation has been approved by at least two-thirds of the shareholders.

Accordingly, MSPBNA, following the conversion, is legally authorized to relocate its main office from Jersey City, New Jersey, to Purchase, New York. In considering the relocation, the OCC has also considered MST's record of compliance with CRA, discussed below.

Acquisition of deposit liabilities

In connection with the conversion, MST has submitted a separate application seeking permission for MSPBNA, following the conversion, to acquire certain deposit liabilities of MSBNA consisting of foreign currency denominated savings deposits and time deposits. This transaction will result in the transfer of this deposit program from MSBNA to MSPBNA.¹⁰

National banks have long been authorized to assume liabilities of other depository institutions as an activity incidental to the business of banking under 12 U.S.C. § 24(Seventh).¹¹ Consequently,

production offices ("LP/DPOs") at various Morgan Stanley Smith Barney, LLC ("MSSB") brokerage offices around the country. MST has represented that activities at the LP/DPOs will be in conformity with space sharing regulations, 12 C.F.R. § 7.3001; the Interagency Statement on Retail Sales of Nondeposit Investment Products, which was issued by the OCC, OTS, FDIC and the Federal Reserve Board on February 15, 1994; and other applicable laws and regulations, including restrictions on activities that may be conducted at non-branch locations including LP/DPOs. 12 C.F.R. §§ 7.1003, 7.4004, and 7.4005. Employees at such MSSB offices that house LP/DPOs will either be MSPBNA employees or MSSB employees. MST has represented that MSPBNA customers will not be able to make in-person deposits or receive in-person withdrawals from their deposit accounts held at MSPBNA at the LP/DPO or MSSB locations. MST also has represented that proceeds of loans made by MSPBNA or any subsidiary of MSPBNA will not be disbursed at such sites.

The application also does not raise issues regarding retention of nonconforming assets or activities. Retention of MST subsidiaries is discussed below.

⁹ See also 12 C.F.R. § 5.40(d)(2). Relocations of main offices of national banks are permitted to cross state lines. 12 U.S.C. § 36(c)(2).

¹⁰ FDIC regulations provide for insurance of foreign currency denominated deposits. 12 C.F.R. § 330.3(c).

¹¹ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-524 (Ohio Com Pl. 1961); See also 12 U.S.C. § 1828(c)(2) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

this transaction is legally permissible. In considering this transaction the OCC has also considered the factors set forth in the Bank Merger Act (“BMA”), and the CRA, both discussed below.

Bank Merger Act

The OCC reviewed the proposed assumption of deposit liabilities under the criteria of the BMA¹² and applicable OCC regulations and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the BMA requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed transaction in combating money laundering activities, including in overseas branches.”¹³ We considered these factors and found them consistent with approval under the statutory provisions.

Community Reinvestment Act

The OCC takes into account an applicant’s record of CRA performance in considering an application for an insured depository institution to convert to a national bank charter, for a national bank to relocate its main office, or for a national bank to assume liability to pay deposits of another insured depository institution under the BMA.¹⁴

Until recently, the OTS classified MST as a special purpose savings association exempt from CRA.¹⁵ Thus, a CRA Performance Evaluation (“PE”) has not been issued with respect to MST. However, as part of the OCC’s pre-conversion examination of MST, the OCC reviewed MSPBNA’s CRA plan.

The plan proposes community development lending and investments to meet the needs of MSPBNA’s community, including low- and moderate-income (“LMI”) neighborhoods. This includes residential mortgage loans to LMI borrowers and loans in LMI census tracts within MSPBNA’s New York Assessment Area.¹⁶ MST also proposes that MSPBNA will conduct outreach to local community groups, foundations, nonprofits and governmental officials to learn about other community credit needs and opportunities within its assessment area.

¹² 12 U.S.C. § 1828(c).

¹³ 12 U.S.C. § 1828(c)(11).

¹⁴ 12 U.S.C. §§ 2903(a)(2) and 2902(3)(D), (E); 12 C.F.R. § 25.29(a)(4).

¹⁵ *See* 12 C.F.R. § 563e.11(c)(2).

¹⁶ The assessment area includes the New York portion of the New York-Wayne-White Plains, NY-NJ Metropolitan Division, consisting of (i) the Bronx, Kings, Queens, and Richmond boroughs in New York City; and (ii) Putnam, Rockland, and Westchester counties in New York State.

MST anticipates that MSPBNA's CRA activities will be supplemented by its affiliates, including its corporate parent, Morgan Stanley. The CRA program will be implemented and managed by Morgan Stanley's Office of Community Reinvestment, which also manages MSBNA's CRA program. The OCC rated MSBNA "Outstanding" in its most recent PE dated January 25, 2010. This rating was based on MSBNA's excellent responsiveness to credit and community development needs; high levels of community development lending and services; qualified investment activity, particularly investments that are not routinely provided by private investors; and occasional use of innovative or complex qualified investments and community development loans.

Public Comments

The OCC received a letter from a community organization requesting that the OCC consider the appropriate designation of Morgan Stanley offices in the context of compliance with the CRA.

The OCC recognizes that MSPBNA's product delivery structure will be different from that of most banks that are subject to the OCC's large bank CRA examination procedures. The OCC plans to carefully monitor the CRA activities of MSPBNA and its affiliates both inside the New York Assessment Area and in other areas in which MSPBNA conducts a significant amount of business. *See infra* p.7.

The OCC also received a copy of a letter to the Board of Governors of the Federal Reserve System regarding Morgan Stanley's related application under Section 3 of the Bank Holding Company Act. The commenter expressed concern regarding Morgan Stanley's involvement in subprime mortgage lending activities, specifically activities conducted by Saxon Mortgage Services, Inc. ("Saxon"), a subsidiary of Morgan Stanley. The commenter states that based on the most recent Home Mortgage Disclosure Act ("HMDA") data publicly available for the New York City MSA, Saxon denied refinance loans at a higher rate for African Americans than whites.¹⁷

Saxon was acquired by Morgan Stanley in December 2006. At the time of the purchase, Saxon originated mortgages. Morgan Stanley discontinued all of Saxon's mortgage origination business in April 2008. Currently, Saxon's primary business activity is mortgage servicing. Saxon is a subsidiary of Morgan Stanley, and is not a national bank or national bank operating subsidiary subject to the OCC's supervisory jurisdiction.

The OCC's review of the record of the applications, including the materials submitted with the applications, the public comments, responses to the public comments, representations of MST's representatives, and our review of supervisory materials, has not revealed any information inconsistent with approval of the applications.

¹⁷ Denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. However, HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities or efforts.

Retention of Morgan Stanley Credit Corporation

Following the conversion of MST into MSPBNA, MSPBNA will retain Morgan Stanley Credit Corporation (“MSCC”) as an operating subsidiary. MSCC is engaged in residential real estate mortgage lending. This activity is a permissible activity for a national bank operating subsidiary pursuant to 12 U.S.C. §§ 24(Seventh) and 371 and 12 C.F.R. § 5.34(e)(5)(v)(C) and (D). Moreover, MST represents and commits that the activities to be conducted by MSCC will be in accordance with OCC policies contained in the guidance issued by the OCC regarding the activity. Additionally, MST has represented that MSCC will meet the management, control, and financial statement consolidation standards set forth in 12 C.F.R. § 5.34(e)(2) to qualify as an operating subsidiary upon consummation of the conversion. Accordingly, the retention of MSCC as an operating subsidiary following the conversion is approved.¹⁸

III. Section 1818 conditions

These approvals are subject to the following conditions:

- 1) MSPBNA shall at all times maintain capital ratios at levels specified in the business plan, but in no case shall Tier 1 capital fall below eight percent (8%) of adjusted total assets, or total risk-based capital fall below twelve percent (12%) of risk-weighted assets. For purposes of this Condition, “tier 1 capital,” “total risk-based capital,” “adjusted total assets,” and “risk-weighted assets” are defined as in 12 C.F.R. Parts 3 and 6.
- 2) MSPBNA shall not significantly deviate or undertake any significant deviation, as defined in, and during the time frame specified in, the Attachment to this decision letter, without first submitting a written request, which includes information specified in the Attachment, to the OCC seeking the OCC’s prior written supervisory nonobjection to any such significant deviation and receiving such prior written supervisory nonobjection.
- 3) MSPBNA shall include in its New Product Approval (“NPA”) process a specific written assessment of the benefit and/or profit to MSPBNA under various anticipated scenarios. This shall include break-even analysis so that MSPBNA can assess the volumes necessary to support anticipated infrastructure. This process shall be incorporated in the initial product review and with respect to any subsequent changes or enhancements to the product. In addition, the written assessment shall address compliance with Regulation W (supported by a legal opinion) and include a discussion of how MSPBNA will continue to comply with any other applicable legal requirements.
- 4) MSPBNA shall review the manner in which loan underwriters earn incentive compensation and provide the OCC with a written summary of its review within 90 days of consummation of the conversion of MST to a national bank. Such compensation shall not be based on number or dollar volume of loans approved.

¹⁸ MST has represented that fiduciary activities currently undertaken by MST will be transferred to Morgan Stanley simultaneously with the conversion and that MSPBNA will not provide fiduciary services. Consequently, MSPBNA does not require fiduciary authority.

5) As requested by the OCC, MSPBNA shall periodically provide to the OCC, in a form and with a level of detail satisfactory to the OCC, reports describing the products, services, investments, advisory services, volunteer and other outreach efforts provided by MSPBNA; MSBNA; any direct or indirect parent company of MSPBNA, including all other affiliates and subsidiaries of any parent company; and any subsidiaries of MSPBNA and MSBNA, in low and moderate income areas of the United States, outside of MSPBNA's CRA assessment area, that are located within geographies from which MSPBNA draws a material portion of its deposits obtained through, or facilitated by, offices of MSSB, including any deposit production offices or loan production offices located in or near the site of any MSSB office.

These conditions of approval are conditions "imposed in writing by a Federal Agency in connection with any action on any application, notice or other request" within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

IV. Consummation requirements

With respect to these applications, please ensure that you have submitted the following prior to your desired consummation date:

1. Executed Organization Certificate and Articles of Association for MSPBNA.
2. A Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the transaction.
3. An executed purchase and assumption agreement.
4. A Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained, if required.

You have six months from the date of these decisions to consummate the transactions herein approved. These approvals will automatically terminate unless the OCC grants an extension of the time period. The OCC generally is opposed to granting extensions, except under extenuating circumstances, and expects the transactions to occur as soon as possible.

V. Conclusion

For the reasons set forth above, and subject to the commitments and representations made in the applications and by representatives of MST, the section 1818 conditions set forth above, and subject to the receipt by MST of all other applicable regulatory approvals, nonobjections and waivers, the OCC hereby approves:

- 1) the conversion of MST to a national bank, MSPBNA, with its main office in Jersey City, New Jersey;¹⁹
- 2) the relocation, following consummation of the conversion, of the main office of MSPBNA to Purchase, New York;
- 3) the acquisition, subsequent to consummation of the conversion, of deposit liabilities of MSBNA by MSPBNA; and
- 4) the retention by MSPBNA, following consummation of the conversion, of MSCC as an operating subsidiary.

This conditional approval, and the activities and communications by OCC employees in connection with these filings, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. Our conditional approval is based on MST's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this conditional approval if a material change in the information on which the OCC relied occurs prior to the date of the transactions to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

In the event of questions, I may be contacted by e-mail, Stephen.Lybarger@occ.treas.gov or at (202) 874-5294. Please include the application control numbers in all correspondence.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Large Bank Licensing Lead Expert

Attachment

¹⁹ The OCC also has determined that consideration and approval of the conversion application is consistent with the standards set forth in the Statement on Regulatory Conversions issued by the Federal Financial Institutions Examination Counsel on July 1, 2009.

Attachment

Significant Deviation Requirement

(1) For four years from the date of conversion to a national bank, MSPBNA shall not significantly deviate from the products, services, asset composition and size, funding sources, structure, and markets of MSPBNA that existed immediately after consummation of the conversion to a national charter without first submitting written notice to the OCC at least sixty (60) days prior to MSPBNA's intent to undertake such significant deviation and obtaining the OCC's prior written determination of no supervisory objection to the significant deviation.

(2) Any request to the OCC for prior written determination of no supervisory objection to a significant deviation shall be in writing and include: (a) an assessment of the adequacy of MSPBNA's management, staffing levels, organizational structure, financial condition, capital adequacy, funding sources, management information systems, internal controls, and written policies and procedures with respect to the proposed significant deviation; (b) MSPBNA's evaluation of its capability to identify, measure, monitor, and control the risks associated with the proposed significant deviation; and (c) where applicable, the written assessment, and any related legal opinions, prepared as part of the New Product Approval process required by Condition 3 of the section 1818 conditions imposed by the OCC in approving the conversion of MST to a national bank charter.

(3) For purposes of this Significant Deviation Requirement, the phrase "significantly deviate" and "significant deviation" shall be construed in light of the guidance provided in Appendix G (Significant Deviations After Opening) of the "Charters" booklet of the *Comptroller's Licensing Manual* (February 2009), and any subsequent revisions, and shall include, but not be limited to, the following:

- (a) any change in the products and services offered, the funding sources used, the composition of funding, and the geographic or product markets served compared to MSPBNA's Initial Business.
- (b) an increase in MSPBNA's asset size, total loan portfolio, or borrowed funds that exceeds pro forma projections submitted with the application by more than 5%.
- (c) any change in MSPBNA's personnel, policies, procedures, or operations, including any change in operations resulting from changes in external factors, that may have a material adverse impact on MSPBNA's operations or financial performance.

(4) Deviations in MSPBNA's financial performance during the transition period, or infusions of capital in MSPBNA, shall not, by themselves, be significant deviations for purposes of this condition.

(5) The requirement that MSPBNA obtain the OCC's prior written determination of no supervisory objection to a significant deviation does not apply to transactions for which MSPBNA is required by statute or regulation to seek formal prior written OCC approval or nonobjection.