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

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Licensing Department  
250 E Street, S.W.  
Washington, D.C. 20219

**Conditional Approval #1002  
July 2011**

June 17, 2011

Mr. William E. Stern  
Goodwin Procter LLP  
680 Eighth Avenue  
New York, New York 10018-1405

Re: Application to merge Morgan Stanley Trust N.A., Wilmington, Delaware, into Morgan Stanley Trust Interim N.A., Wilmington, Delaware  
Application Control Number: 2011-ML-02-0005

Application to merge Morgan Stanley Trust Interim N.A., Wilmington, Delaware, into Morgan Stanley Private Bank, N.A., Purchase, New York  
Application Control Number: 2011-ML-02-0006

Dear Mr. Stern:

The Office of the Comptroller of Currency (“OCC”) hereby conditionally approves the applications to merge Morgan Stanley Trust National Association, Wilmington, Delaware, into Morgan Stanley Trust Interim National Association, Wilmington, Delaware, and then immediately thereafter to merge Morgan Stanley Trust Interim National Association, Wilmington, Delaware, into Morgan Stanley Private Bank, National Association, Purchase, New York. These approvals are 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 the Banks’ representatives during the application process. These approvals are also subject to the conditions set out herein.

**The Transactions**

Morgan Stanley Private Bank, N.A., and Morgan Stanley Trust, N.A., are both direct, wholly-owned subsidiaries of Morgan Stanley (“Morgan Stanley”), a Delaware corporation that is a bank holding company that has elected to become a financial holding company.

Morgan Stanley Private Bank, N.A., Purchase, New York (“MSPBNA”), is an insured national bank. Its main office is in Purchase, New York, and it has no branches. It became a

national bank on July 1, 2010, when it converted from a federal savings association.<sup>1</sup> Its principal current businesses include offering residential mortgage loans, acting as a depository for funds transferred from brokerage accounts at an affiliated broker-dealer as part of an insured deposit sweep program, and offering Global Currency deposits. It also offers certain lending products to clients of its affiliate, Morgan Stanley Smith Barney.

Morgan Stanley Trust, N.A., Wilmington, Delaware (“MSTNA”), is an uninsured national bank whose operations are limited to those of a trust company and activities related thereto. It does not accept deposits. It was chartered in 2003.<sup>2</sup> Its main office is in Wilmington, Delaware. It has no branches. It has trust offices in New York, California, Florida, Missouri, and New Jersey and trust representative offices in Illinois and Arizona. Its two lines of business are offering personal trust services on a nationwide basis and offering custody services to certain clients of Morgan Stanley’s Prime Brokerage business.

## **Legal Authority for the Transactions**

Morgan Stanley plans to combine MSTNA into MSPBNA. In order to accomplish the combination, the parties propose a two-step merger transaction. First, an application was filed with the OCC to merge MSTNA with and into a newly chartered interim national bank, Morgan Stanley Trust Interim National Association (“MST Interim”), located in Wilmington, Delaware, under 12 U.S.C. § 215a (“Interim Merger”). Second, an application was filed with the OCC to merge MST Interim with and into MSPBNA immediately after the Interim Merger, under 12 U.S.C. §§ 215a-1 & 1831u (“Interstate Merger”).<sup>3</sup>

### **A. The Interim Merger**

Interim national banks may be chartered by the OCC to accomplish a “business combination.”<sup>4</sup> An interim national bank is an insured bank upon issuance of its charter. 12 U.S.C. § 1815(a)(2). MST Interim is being established to facilitate the business combination that will occur in the Interim Merger and then the Interstate Merger into MSPBNA.<sup>5</sup>

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<sup>1</sup> See OCC CRA Decision No. 147 (June 28, 2010).

<sup>2</sup> See OCC Conditional Approval No. 575 (January 27, 2003).

<sup>3</sup> The OCC has previously approved similar two-step mergers to merge an uninsured trust company in another state into an affiliated insured national bank. See, e.g., OCC Conditional Approval No. 859 (June 13, 2008); OCC Corporate Decision No. 97-52 (June 25, 1997).

<sup>4</sup> See 12 U.S.C. § 24(Seventh); 12 C.F.R. § 5.33(d)(7), (e)(4) & (f)(2). Cf. 12 U.S.C. §§ 1831u(a)(6) (use of interim shell banks in interstate mergers) & 1815(a)(2) (insured status for interim Federal depository institutions).

<sup>5</sup> The applicants requested a waiver of the residency requirement for the board of directors of MST Interim. Under 12 U.S.C. § 72, the majority of the board of directors of a national bank must reside in the state in which the bank is located or within 100 miles of the location of the office of the association. The OCC has the authority to waive the residency requirement. The OCC hereby grants the residency waiver.

MST Interim applied to the OCC for approval to merge MSTNA with and into MST Interim, under the charter and title of MST Interim, under 12 U.S.C. § 215a.<sup>6</sup> MST Interim and MSTNA are both located in Delaware. A national bank may merge into a national bank located in the same state under 12 U.S.C. § 215a. In the Interim Merger, MST Interim also will acquire the main office, trust offices, and trust representative offices of MSTNA. The Interim Merger is legally authorized under 12 U.S.C. § 215a.<sup>7</sup>

MSTNA exercises fiduciary powers. The OCC's regulations provide that, when two or more national banks merge and any of them had received OCC approval to exercise fiduciary powers and that approval is in force at the time of the merger, the national bank resulting from the merger may exercise fiduciary powers in the same manner and to the same extent as the national bank to which the approval was originally granted. 12 C.F.R. § 5.26(b)(1). Accordingly, MST Interim succeeds to the fiduciary powers and appointments of MSTNA in the Interim Merger.

## **B. The Interstate Merger**

In the Interstate Merger, MST Interim will be merged with and into MSPBNA. Mergers of insured banks with different home states are authorized under 12 U.S.C. § 1831u(a)(1), which was adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle Neal Act").<sup>8</sup>

An application to engage in an interstate transaction under 12 U.S.C. § 1831u is subject to certain requirements and conditions set forth in the Riegle Neal Act. These conditions are compliance with state-imposed age requirements, if any, which cannot exceed five years; compliance with federal and certain state filing requirements, to the extent the state filing

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<sup>6</sup> The application for approval under 12 U.S.C. § 215a was made to the OCC. An application for approval under the Bank Merger Act for the Interim Merger was made to the FDIC, since this is a merger of a noninsured institution (MSTNA) into an insured bank (MST Interim). *See* 12 U.S.C. § 1828(c)(1)(A). Because review of the Interim Merger under the Bank Merger Act is with the FDIC, review of the Interim Merger under the Community Reinvestment Act is also with the FDIC. *See* 12 U.S.C. § 2902(3)(E).

<sup>7</sup> Although MST Interim is not paying any consideration, the Interim Merger may constitute a covered transaction under 12 U.S.C. § 371c to the extent that MSTNA has liabilities that are becoming liabilities of MST Interim. The applicants represent that prior to the Interim Merger Morgan Stanley will make a capital contribution to MSTNA in a sufficient amount to enable MSTNA to eliminate all or substantially all of its liabilities. As a result the applicants believe the value of any covered transaction resulting from the Interim Merger will be immaterial for purposes of determining compliance with the quantitative limits of 12 U.S.C. § 371c. The applicants also represent that MST Interim will not acquire any low quality assets.

<sup>8</sup> The "home state" of a national bank is the state where its main office is located. 12 U.S.C. § 1831u(g)(4)(A)(i). MSPBNA's home state is New York; MST Interim's home state is Delaware. The Riegle Neal Act permitted a state to elect to prohibit such interstate transactions if they did so between September 29, 1994, and May 31, 1997. Neither New York nor Delaware exercised this opt-out authority.

requirements are permitted; compliance with certain deposit concentration limits; community reinvestment compliance; and adequacy of capital and management skills. The OCC has determined that the Interstate Merger satisfies these requirements to the extent applicable. The Interstate Merger is legally authorized under 12 U.S.C. § 215a-1 & 1831u.

MSPBNA does not plan to retain the main office of MST Interim/MSTNA as a branch. It will be retained as a trust office. MSPBNA will also acquire and continue to operate the trust offices and trust representative offices of MST Interim/MSTNA. MSPBNA's operation of these trust offices and trust representative offices is legally authorized. 12 C.F.R. § 9.7(c). MST Interim/MSTNA exercise fiduciary powers. As discussed above, OCC's regulations provide that, when two or more national banks merge and any of them had received OCC approval to exercise fiduciary powers, the national bank resulting from the merger may exercise fiduciary powers in the same manner and to the same extent as the national bank to which the approval was originally granted. 12 C.F.R. § 5.26(b)(1). Accordingly, MSPBNA succeeds to the fiduciary powers and appointments of MST Interim/MSTNA in the Interstate Merger.

### **Bank Merger Act and Community Reinvestment Act**

The Interstate Merger is also subject to OCC review under the Bank Merger Act and the Community Reinvestment Act.<sup>9</sup>

The OCC reviewed the proposed Interstate Merger under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Among other matters, we found that the proposed merger 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 Bank Merger Act requires the OCC to consider "the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches." 12 U.S.C. § 1828(c)(11). The OCC considered these factors and found them consistent with approval of this application.<sup>10</sup>

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, including low- and moderate-income ("LMI") neighborhoods, when evaluating certain applications, including transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29.

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<sup>9</sup> As noted above, the Interim Merger is subject to review under the Bank Merger Act and the Community Reinvestment Act by the Federal Deposit Insurance Corporation.

<sup>10</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA"), P.L. 111-203, 124 Stat. 1608 (2010), added a new provision to the Bank Merger Act under which the responsible agency may not approve any interstate merger transaction that results in the resulting insured depository institution controlling more than 10% of the total amount of deposits of insured depository institutions in the United States. *See* DFA, Title VI, § 623. However, it does not apply to mergers between affiliates. In addition, MSPBNA and its affiliates will not control more than 10% of the deposits in the United States.

A review of the record of MSPBNA and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the bank's record of helping to meet the credit needs of its communities, including LMI neighborhoods, is less than satisfactory. MSTNA is not subject to the CRA since it is not an insured bank; MST Interim would have no record. The OCC determined that approval of the Interstate Merger was consistent with the CRA.

### **Public Comments**

The OCC received a public comment letter that cited two lawsuits involving Saxon Mortgage Services, Inc. ("Saxon"), which is a subsidiary of Morgan Stanley. The lawsuits involve issues with respect to the Homeowners Affordable Modification Program ("HAMP") and the Servicemembers Civil Relief Act ("SCRA"). The letter also noted an Assurance of Discontinuance that Morgan Stanley entered into with the Attorney General of Massachusetts with respect to residential mortgages in that State.<sup>11</sup>

Saxon was acquired by Morgan Stanley in 2006, at which time it originated, securitized, and serviced mortgage loans. Subsequently, Saxon ceased making new loans and no longer engages in securitization activities. Its primary business at this time is servicing residential mortgage loans.

Saxon is a nonbank subsidiary of Morgan Stanley and is not subject to OCC jurisdiction. Saxon has no ownership interest in either bank involved in the current merger application, and neither of the banks has any ownership interest in Saxon. The commenter does not express concern that either of the banks involved in the application engaged in any of the conduct at issue in the lawsuits. Moreover, matters related to Saxon have been reviewed by the OCC and the Federal Reserve in previous applications and found not to be a barrier to approval. The OCC will monitor developments related to Saxon to determine whether they could have an impact on the national bank subsidiaries of Morgan Stanley.

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

### *Request for a Hearing*

The commenter requested that the OCC conduct a public hearing. The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11(b), which provides:

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<sup>11</sup> Neither MSPBNA or MSTNA were involved in the activities that led to the Assurance of Discontinuance. The comment letter also appeared to question the CRA assessment area of Morgan Stanley's lead bank, which is not involved in the proposed transaction.

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

After careful consideration, the OCC determined not to hold a public hearing. The OCC is not aware of any reason why written comments would be insufficient or why a public hearing would be in the public interest. The OCC has thoroughly reviewed the written comment submitted.

#### *Request for Extension of the Comment Period*

The commenter also requested an extension of the comment period. The general standard the OCC applies to decide a request to extend a comment period is contained in 12 C.F.R. § 5.10(b)(2)(ii), which provides:

Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application.

After careful consideration, the OCC determined not to extend the comment period. The commenter offered no reasons that an extension is necessary. In addition, the OCC is not aware of any reason that would warrant an extension pursuant to any of the provisions contained in 12 C.F.R. § 5.10(b)(2)(i) and (iii).

#### **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. This includes, but is not limited to, loans or extensions of credit, including overdrafts, from the bank to accounts administered by the trust division in any capacity.

3. MSPBNA shall include in its New Product Approval (“NPA”) process a specific written assessment of the benefit and/or profit to MSPBNA of the new product under consideration using 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 MSPBNA’s proposal to comply with any other applicable legal requirements. MSPBNA shall conduct a post NPA implementation assessment on each product within 12 months of introduction. The assessment should be designed to determine the profitability of the new product, the accuracy of the scenarios used in the NPA to support its approval, and whether the ultimate risk profile of the new product is consistent with that outlined in the NPA.
4. All transactions between the Bank and any affiliates, domestic or foreign, shall be conducted subject to the applicable provisions of 12 U.S.C. § 371c and c-1 or other applicable Federal law. The Board of Directors of the Bank annually shall review and approve the Bank’s program for compliance with 12 U.S.C. 371c and c-1, which shall include a review of service agreements and any other transactions with domestic and foreign affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions in excess of \$100,000 for compliance with 12 U.S.C. 371c and c-1.
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 banking 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.

### **Consummation Requirements**

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

1. A Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the merger.
2. Executed merger agreements and, if necessary, the amended Articles of Association for the resulting bank.
3. A Secretary's Certificate from each institution certifying that shareholder approvals have been obtained, if required.

## **Conclusion**

These approvals are granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the transactions.

If the transactions have not been consummated within twelve months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time.

This approval, and the activities and communications by OCC employees in connection with the filing, 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. The OCC may modify, suspend or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the transaction 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.

If you have any questions regarding this letter, I may be reached at (202) 874-4588 or by e-mail at [David.Reilly@occ.treas.gov](mailto:David.Reilly@occ.treas.gov). Please include the CAIS control number on any correspondence related to this filing.

Sincerely,

David Reilly  
Large Bank Licensing Lead Expert

Attachment

## Attachment

### Significant Deviation Requirement

(1) For four years from the date of the MSTNA merger, MSPBNA shall not significantly deviate from the products, fiduciary activities, services, asset composition and size, funding sources, structure, and markets of MSPBNA that existed immediately after consummation of the merger 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 merger of MSTNA into MSPBNA.

(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 at consummation of merger.
- (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.