

**Interpretive Letter #1191**  
**June 2026**

March 9, 2026

Eric F. Grossman  
Chief Legal Officer  
Morgan Stanley  
1585 Broadway  
New York, New York 10036

Subject: Morgan Stanley Bank, N.A. – Section 23A Exemption Request

Dear Mr. Grossman:

I am writing in response to your letter dated July 24, 2025 (Request), submitted on behalf of Morgan Stanley Bank, National Association, Salt Lake City, Utah (MSBNA or Bank), requesting an exemption from the quantitative limits of Section 23A of the Federal Reserve Act (Section 23A) and the implementing regulations in 12 C.F.R Part 223 (Regulation W).<sup>1</sup> MSBNA is a national bank with approximately \$253 billion in assets, as of December 31, 2025. The Bank is a direct wholly owned subsidiary of Morgan Stanley Capital Management LLC (MSCM) and an indirect wholly owned subsidiary of Morgan Stanley.<sup>2</sup>

The exemption request relates to a proposed internal corporate reorganization in which the Bank’s parent holding company Morgan Stanley would contribute all of the equity of a German bank subsidiary, Morgan Stanley Europe SE (MSESE), and its wholly owned German bank subsidiary, Morgan Stanley Bank AG (MSBAG), to the Bank (the “MSESE Contribution”). MSBAG would subsequently be merged with and into MSESE, with MSESE as the surviving foreign bank<sup>3</sup> subsidiary of MSBNA.<sup>4</sup>

Section 23A imposes certain qualitative and quantitative limits on covered transactions between member banks and their affiliates. Section 23A and Regulation W limit the amount of covered transactions between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus and the aggregate amount of covered transactions between a bank and all of its affiliates

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<sup>1</sup> See 12 U.S.C. § 371c(f)(2)(B)(i); 12 C.F.R. § 223.43. See also 12 C.F.R. §§ 31.3(c)–31.3(d).

<sup>2</sup> Morgan Stanley and MSCM are registered financial holding companies under the Bank Holding Company Act.

<sup>3</sup> See 12 C.F.R. § 211.2(j) for the definition of “foreign bank” as defined under Regulation K, 12 C.F.R. part 211.

<sup>4</sup> Morgan Stanley and the Bank represent that at the time of the proposed MSESE Contribution all activities of MSESE and MSBAG would be permissible for a national bank or a foreign bank subsidiary under Regulation K.

to 20 percent of the bank’s capital stock and surplus.<sup>5</sup> In addition, Section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate<sup>6</sup> and also require that all covered transactions between a bank and an affiliate be on terms that are consistent with safe and sound banking practices.<sup>7</sup>

An “affiliate” with respect to a member bank includes “any company that controls the member bank and any other company that is controlled by the company that controls the member bank.”<sup>8</sup> The Bank, MSESE, and MSBAG are all commonly controlled by Morgan Stanley and, thus, are affiliates for purposes of Section 23A and Regulation W.

Section 23A and Regulation W define covered transaction to include a purchase of assets from an affiliate.<sup>9</sup> A member bank’s acquisition of a security issued by a company that was an affiliate before the acquisition is treated as a purchase of assets from an affiliate if the acquisition results in the affiliate becoming an operating subsidiary<sup>10</sup> of the bank and the affiliate has liabilities, or the bank provides any consideration in exchange for the securities.<sup>11</sup> Morgan Stanley’s proposed contribution of 100 percent of the equity of MSESE, inclusive of its wholly owned subsidiary MSBAG, to the Bank would be an asset purchase and a “covered transaction” for purposes of Section 23A and Regulation W.

The covered transaction must be valued at the greater of: (i) the sum of (A) the total amount of consideration given by the member bank in exchange for the security, and (B) the total liabilities of the company whose security has been acquired by the bank as of the time of the acquisition; or (ii) the total value of all covered transactions acquired by the member bank as a result of the security acquisition.<sup>12</sup> MSBNA would pay no consideration for the acquisition of shares of MSESE but would assume all of the liabilities. MSESE (including MSBAG) had total liabilities of approximately \$ [REDACTED] as of December 31, 2025, which is greater than the total value of all covered transactions to be acquired of approximately \$ [REDACTED]. The covered transaction value of \$ [REDACTED] represents approximately [REDACTED] percent of the Bank’s capital and surplus, as of December 31, 2025.<sup>13</sup> The Bank is requesting an exemption up to [REDACTED] percent of capital and surplus to cover potential fluctuations prior to completion of the MSESE Contribution.

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<sup>5</sup> See 12 U.S.C. § 371c(a)(1); 12 C.F.R. § 223.11-12. See also 12 C.F.R. § 223.3(d) and 223.3(h) for the definitions of “capital stock and surplus” and “covered transaction,” respectively.

<sup>6</sup> 12 U.S.C. § 371c(a)(3); 12 C.F.R. § 223.15.

<sup>7</sup> 12 U.S.C. § 371c(a)(4); 12 C.F.R. § 223.13.

<sup>8</sup> 12 U.S.C. § 371c(b)(1)(A); 12 C.F.R. § 223.2(a)(1)-(2).

<sup>9</sup> 12 U.S.C. § 371c(b)(7)(C); 12 C.F.R. § 223.3(h)(3).

<sup>10</sup> Pursuant to 12 C.F.R. § 223.3(aa), “operating subsidiary” generally refers to “any subsidiary of the member bank or depository institution,” with certain exceptions described in paragraphs (b)(1)(i) through (v) of 12 C.F.R. § 223.2. MSESE would be an “operating subsidiary” of the Bank for purposes of Regulation W but would not be an operating subsidiary subject to the OCC’s licensing requirements. See 12 C.F.R. § 5.34.

<sup>11</sup> *Id.* § 223.31(a).

<sup>12</sup> *Id.* § 223.31(b)(1).

<sup>13</sup> The Bank had \$26.4 billion in capital and surplus, as of December 31, 2025.

The MSESE Contribution exceeds the ten percent quantitative limit for a bank's covered transactions with a single affiliate and the twenty percent limit for a bank's covered transactions with all affiliates under Section 23A and Regulation W.<sup>14</sup> Accordingly, the MSESE Contribution would be prohibited without an exemption from Section 23A.<sup>15</sup>

Section 23A specifically authorizes the OCC by order to exempt transactions or relationships of a national bank from the requirements of the statute if: (i) the OCC and the Board of Governors of the Federal Reserve System (Board) jointly find that the exemption is in the public interest and consistent with the purposes of Section 23A; and (ii) the Federal Deposit Insurance Corporation (FDIC), within 60 days of receiving notice of such joint finding, does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.<sup>16</sup> The Board has stated that the dual purposes of Section 23A are: (i) to protect against a depository institution suffering losses in transactions with affiliates; and (ii) to limit the ability of a depository institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net.<sup>17</sup>

An exemption may be in the public interest if, among other things, it reduces operational costs, increases efficiency, or improves a member bank's ability to serve its clients, or otherwise enhance the functioning of a particular market segment.<sup>18</sup> The Board, which had sole exemptive authority under Section 23A prior to the effective date of section 608 of the Dodd-Frank Wall

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<sup>14</sup> The Bank's single affiliate limit and aggregate affiliate limit were approximately \$2.6 billion and \$5.3 billion, respectively, as of December 31, 2025.

<sup>15</sup> The proposed MSESE Contribution would not satisfy all the requirements to qualify for Regulation W's exemption for internal corporate reorganizations. *See* 12 C.F.R. § 223.41(d).

<sup>16</sup> 12 U.S.C. § 371c(f)(2)(B)(i); 12 C.F.R. § 31.3(c). Prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Board possessed exclusive authority to issue orders granting exemptions from the requirements of Section 23A. Section 608 of the Dodd-Frank Act transferred this authority to the OCC for national banks, subject to the additional findings by the OCC, Board, and FDIC. *See* Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), codified at 12 U.S.C. § 371c(f)(2)(B). The evaluation criteria for exemptions under section 23A has not changed post-Dodd Frank Act.

<sup>17</sup> 67 Fed. Reg. 76560, 76560 (Dec. 12, 2002).

<sup>18</sup> *See, e.g.*, OCC Letter 1189 (Dec. 19, 2025) (finding a proposed internal corporate reorganization to be in the public interest due to organizational efficiencies, cost savings, and customer experience benefits); OCC Letter 1187 (Aug. 13, 2025) (finding a proposed internal corporate reorganization to be in the public interest due to organizational efficiencies and enhanced services); Board Letter to OCC Acting Comptroller Blake Paulson (Jan 29, 2021) (finding a proposed transaction to be in the public interest because of expected reduction in operating costs and resulting lower fees and better service for clients); Board Letter to FDIC Acting Chairman Martin Gruenberg (Nov. 23, 2022) (finding a proposed internal corporate reorganization transaction to be in the public interest because of the expectation that it would achieve efficiencies and cost savings and improve the bank's ability to provide products and services to customers).

Street Reform and Consumer Protection Act, has also approved exemptions in conjunction with internal corporate reorganizations that are structured to ensure the quality of transferred assets.<sup>19</sup>

The Bank asserts that granting the exemption is in the public interest. The Bank asserts that the MSESE Contribution would result in organizational efficiencies and enable the Bank to grow, diversify revenue sources, and expand its competitiveness with U.S. and European peers.

The Bank also asserts that granting the exemption is also consistent with the dual purposes of Section 23A. The Bank asserts that the MSESE Contribution would not pose a material financial risk to the Bank or a material risk of MSBNA improperly passing its federal subsidy to affiliates.

Based on Bank representations and supervisory assessment of the potential impact on the Bank, the MSESE Contribution should not pose a heightened risk of financial losses for the Bank.<sup>20</sup> The Bank is not providing any consideration to Morgan Stanley in exchange for the assets acquired in the MSESE Contribution. MSESE and MSBAG are also subject to consolidated supervision and regulatory oversight. The MSESE Contribution should not pose a risk of a transfer of subsidy arising from transactions with affiliates, because the reorganization would result in the transfer of existing affiliates to the bank chain and reduce affiliated transactions.

In light of these considerations and all the facts presented, the OCC finds that the exemption is in the public interest and consistent with the purposes of Section 23A. The Board has informed the OCC that it similarly finds that the exemption is in the public interest and consistent with the purposes of Section 23A. Furthermore, the FDIC has informed the OCC that the exemption does not present an unacceptable risk to the Deposit Insurance Fund. Accordingly, the OCC hereby grants the requested exemption.

The granting of this exemption is based on Morgan Stanley and the Bank complying with all the commitments and representations made in connection with this exemption request, including the commitments provided to the Board. This action is also based on the specific facts and circumstances described in the Bank's correspondence and this letter. This action is also conditioned upon the Bank's receipt of all other regulatory approvals required for the MSESE Contribution and any conditions imposed in connection with the proposed transaction. The OCC may modify, suspend, or rescind this decision based on any material change in information or representations on which the OCC relied.

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<sup>19</sup> Board Letter (Dec. 12, 2025); Board Letter (Jul 31, 2025); Board Letter (Apr. 13, 2009); Board Letter (Dec. 21, 2007); Board Letter (Oct. 24, 2006); Board Letter (June 30, 2006); Board Letter (May 1, 2006); Board Letter (May 14, 2004); Board Letter (Feb. 27, 2003); Board Letter (Oct. 11, 2002); Board Letter (Jan. 8, 2001).

<sup>20</sup> Morgan Stanley has also made certain commitments to the Board to ensure the quality of transferred assets pursuant to the exemption request.

Sincerely,

/s/

Jonathan V. Gould  
Comptroller of the Currency

cc: Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation