

OFFICE OF THRIFT SUPERVISION

Approval of Applications to Form Operating Subsidiaries and to Amend a Business Plan

Order No.: 2009-54
Date: October 21, 2009
Docket No.: 13521

Morgan Stanley Trust, Jersey City, New Jersey (Savings Bank), a Deposit Insurance Fund (DIF) insured federal stock savings bank, has filed an application with the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1828(m) and 12 C.F.R. § 559.11, to establish a first-tier operating subsidiary, Morgan Stanley Credit Corporation, Vernon Hills, Illinois (MSCC), and three second-tier operating subsidiaries, Morgan Stanley Credit Corporation of Iowa (MSCCI), Morgan Stanley Credit Corporation of Minnesota (MSCCM), and Morgan Stanley Credit Corporation of Tennessee (MSCCT). Collectively, the four operating subsidiaries are hereinafter referred to as the Operating Subsidiaries. The Savings Bank will establish the Operating Subsidiaries to facilitate residential mortgage lending. In addition, the Savings Bank seeks OTS approval to modify its business plan to engage in additional activities. The operating subsidiary application and the application to modify the business plan are together hereinafter referred to as the Application.

Background

The Savings Bank is a wholly owned, first-tier subsidiary of Morgan Stanley, New York, New York (Holding Company). The Savings Bank, a special purpose savings association, as defined under 12 C.F.R. § 563e.11(c)(2), is exempt from the requirements of the Community Reinvestment Act (CRA). The Holding Company is a bank holding company, and is regulated by the Board of Governors of the Federal Reserve System.

MSCC is a domestic residential mortgage origination company headquartered in Vernon Hills, Illinois, which originates residential mortgage loans and home equity lines of credit and second mortgages throughout the United States. MSCC is a wholly owned subsidiary of Morgan Stanley Capital Management LLC (LLC), which is a wholly owned subsidiary of Morgan Stanley. MSCCI, MSCCM, and MSCCT are all wholly owned subsidiaries of MSCC, and exist for the purpose of holding mortgage lending licenses in Iowa, Minnesota and Tennessee, respectively, and do not presently originate any loans or otherwise conduct business activities.

In the proposed transaction, the Holding Company will cause its subsidiary, LLC, to transfer all of the stock of MSCC to the Holding Company. The Holding Company will immediately contribute all of the common stock of MSCC to the Savings Bank, along with cash equal to the liabilities of MSCC at the time of the transfer.

Upon consummation of the proposed transaction, the Savings Bank proposes to offer various deposit products, residential mortgage products, and home equity lines of credit. The Savings Bank's business activities will be expanded to include: (1) originating, holding, selling,

and securitizing, conforming and non-conforming jumbo residential first and second mortgage loans and home equity lines of credit, and (2) accepting brokered deposits pursuant to certain selling arrangements with the Holding Company.

Operating Subsidiary Application

Generally, a federal savings association may invest in an operating subsidiary only if: (1) the subsidiary engages only in activities permissible for federal savings associations to engage in directly; (2) the federal savings association owns, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary; and (3) no person or entity other than the federal savings association exercises effective operating control over the operating subsidiary.¹ In addition, OTS may, at any time, limit a federal savings association's investment in operating subsidiaries, or may limit or refuse to permit any activities of an operating subsidiary, for supervisory, legal, or safety and soundness reasons.²

With regard to the requirement that the operating subsidiary engage only in activities permissible for federal savings associations to engage in directly, the proposed activities of MSCC, residential mortgage lending and home equity lines of credit, and MSCC's three subsidiaries, holding mortgage lending licenses, are permissible for a federal savings association.

With regard to the requirement that the federal savings association own, directly or indirectly, more than 50 percent of the voting shares of the operating subsidiary, the Savings Bank proposes to own, directly or indirectly, all of the voting shares of each of the Operating Subsidiaries.

With regard to the requirement that no person or entity other than the federal savings association exercise effective operating control over the proposed operating subsidiary, the Savings Bank proposes to own, directly or indirectly, all of the voting securities of each of the Operating Subsidiaries and the information provided in the Application indicates that no person or entity other than the federal savings association will have a role in managing the operations of the Operating Subsidiaries.

The Application adequately demonstrates that the Savings Bank and the Operating Subsidiaries will comply with the corporate separateness requirements set forth in 12 C.F.R. § 559.10.

With regard to supervisory considerations, the Savings Bank and MSCC will be dependent on the Holding Company for financing, deposits, and customers. For these reasons, the OTS is imposing: (i) conditions 8, 9, and 10, below, which address the composition of the Savings Bank's board of directors, audit committee, and management committees, and help ensure that the Savings Bank and MSCC will have sufficient independence from the Holding Company; and (ii) condition 13, below, which requires the Savings Bank and the Holding

¹ 12 C.F.R. § 559.3(c)(1), and (e)(1) (2009).

² 12 C.F.R. § 559.1(a) (2009).

Company to enter into a Capital Maintenance Agreement and a Funding Agreement with OTS, and thereby helps ensure that the Holding Company will be a source of strength to the Savings Bank and MSCC.

Furthermore, because of recent changes in the financial information submitted and in order to ensure that the proposed accounting treatment conforms to generally accepted accounting principals, OTS is imposing condition 11, requiring that no later than 30 calendar days after the date of consummation of the proposed transaction, the Savings Bank submit to the Regional Director a copy of its balance sheet immediately before and after the transaction, with adjusting entries and footnotes explaining each adjustment, along with an accounting opinion confirming that the transaction was accounted for in accordance with generally accepted accounting principles.

Finally, because the Savings Bank is currently a special purpose savings association pursuant to 12 C.F.R. § 563e.11(c)(2) and accordingly is not currently subject to the CRA, but will become subject to the CRA upon consummation of the proposed transaction, and because the Savings Bank will be using a non-traditional, non-branch, nationwide distribution channel, OTS is imposing condition 12, requiring that the Savings Bank identify an appropriate number of Major Market Areas and designate them as Supplemental CRA Evaluation Areas. This condition is intended to ensure that the Savings Bank complies with the CRA.

Modification of Business Plan

The OTS letter of May 8, 2007, approving the Savings Bank's sweep deposit program, requires the Savings Bank to submit for prior non-objection an updated business plan and CRA plan if management proposes for the Savings Bank to conduct additional activities. Because MSCC's proposed activities are not among the activities described in the 2007 application, the Savings Bank must receive OTS approval to engage in the proposed additional activities.

OTS has reviewed the proposed business plan and CRA plan, and has no objection to the revised business plan and CRA plan, subject to compliance with the conditions set forth below. In particular, because the proposed transaction constitutes a material expansion of business activities that would cause the Savings Bank to convert from a special purpose savings bank to a full service federal savings bank, OTS is imposing conditions 5, 6 and 7, addressing compliance with the revised business plan, prior review for material changes to the business plan, reports of material deviations from the business plan, and prior review for material deviation from proposed activities and representations made by the Operating Subsidiaries. These conditions will help ensure the Savings Bank's safety and soundness by helping to ensure that the Savings Bank operates pursuant to an acceptable business plan and that the Operating Subsidiaries operations remain consistent with the representations made in the Application.

Conclusion

Based on the foregoing, OTS concludes that the Application satisfies all applicable approval standards and criteria, provided that the following conditions are complied with in a

manner satisfactory to the Northeast Regional Director, or his designee (Regional Director). Accordingly, the Application is hereby approved, subject to the following conditions:

1. Prior to the date of consummation of the proposed transaction, the Savings Bank must receive all required regulatory approvals and submit copies of all such approvals to the Regional Director;
2. The proposed transaction must be consummated within 120 calendar days from the date of this Order;
3. No earlier than the business day prior to and no later than the date of consummation of the proposed transaction, the chief financial officers of the Savings Bank and MSCC, respectively, must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the Savings Bank and MSCC, as disclosed in the Application. If additional information having a material adverse bearing on any feature of the Application is brought to the attention of Savings Bank, MSCC, or OTS since the date of the financial statements submitted with the Application, the transaction must not be consummated unless the information is presented to the Regional Director, and the Regional Director provides written non-objection to consummation of the transaction;
4. Within five calendar days after the effective date of the proposed transaction, the Savings Bank must: (a) advise the Regional Director in writing of the effective date of the transaction; and (b) advise the Regional Director in writing that the transaction was consummated in accordance with all applicable laws and regulations, the Application, and this Order;
5. The Savings Bank must operate within the parameters of its three year business plan. The Savings Bank must submit any proposed major deviations or material changes from the plan, including but not limited to any proposal to open retail branch offices and/or engaging in any new type of activity (inclusive of those approved through the Savings Bank's New Product Approval Policy) that were not fully discussed in the business plan submitted with the Application and reflected in the financial projections accompanying such business plan, for the prior, written non-objection of the Regional Director. The request for change must be submitted no later than 60 calendar days prior to the desired implementation date.
6. For three years following the date of consummation of the proposed transaction, the Savings Bank must submit to the Regional Director within 45 calendar days after the end of each calendar quarter, a business plan variance report detailing the Savings Bank's compliance with the business plan and an explanation of any deviations;
7. The Operating Subsidiaries must not materially deviate from any of the activities, facts, or representations described in the Application, except with prior written non-objection of the Regional Director;

8. At least 40 percent of the Savings Bank's board of directors must be individuals who are not officers or employees of the Holding Company or its affiliates and who have not otherwise been determined by the Regional Director to lack sufficient independence; and at least one member of the Savings Bank's board of directors must be an individual who is not an officer, director, or employee of the Holding Company or its affiliates and who is not an officer or employee of the Savings Bank, and has not otherwise been determined by the Regional Director to lack sufficient independence;
9. At least 50 percent of the Savings Bank's audit committee must be directors who are not officers or employees of the Savings Bank, the Holding Company or its affiliates and have not otherwise been determined by the Regional Director to lack sufficient independence;
10. Except with the prior written non-objection of the Regional Director, all members of management committees of the Savings Bank and its subsidiaries must be employees of the Savings Bank and all voting members of such committees must be employees of the Savings Bank who are principally dedicated to the Savings Bank.
11. No later than 30 calendar days after the date of consummation of the proposed transaction, the Savings Bank must submit to the Regional Director a copy of its balance sheet immediately before and after the transaction, with adjusting entries and footnotes explaining each adjustment, along with an accounting opinion confirming that the transaction was accounted for in accordance with generally accepted accounting principles;
12. The Savings Bank must amend the CRA plan to identify an appropriate number of Major Market Areas and designate them as Supplemental Evaluation Areas;
13. Prior to the date of consummation of the proposed transaction, the Savings Bank and the Holding Company must enter into a Capital Maintenance Agreement and a Funding Agreement with OTS in a form that is acceptable to the Regional Director; and

The Regional Director may, for good cause, extend for up to 120 calendar days any time period set forth herein.

By order of the Acting Director of the Office of Thrift Supervision, or his designee, effective October 21, 2009.



Grovetta N. Gardineer
Managing Director,
Corporate & International Activities

CAPITAL MAINTENANCE AGREEMENT

THIS CAPITAL MAINTENANCE AGREEMENT (“Agreement”) is entered into, and is effective as of, the Fourteenth day of October, 2009 (the “Effective Date”), by and among MORGAN STANLEY TRUST (the “FSB”), a federal savings association with its home office in Jersey City, New Jersey, MORGAN STANLEY (the “Parent”), a Delaware corporation with its principal place of business in New York, New York, and the OFFICE OF THRIFT SUPERVISION (the “OTS”).

RECITALS

WHEREAS, the FSB is a wholly-owned subsidiary of the Parent;

WHEREAS, the Parent and the FSB have determined that it is in the best interests of both the Parent and the FSB to ensure that the FSB is able to continue to operate, safely and soundly and in accordance with all applicable laws, regulations and regulatory requirements, as a going concern;

WHEREAS, in order to meet all regulatory capital requirements and carry out its business plans, the FSB may need additional capital from time to time;

WHEREAS, the OTS seeks to ensure that the FSB complies with all its capital requirements and that the FSB operates in a safe and sound manner; and

WHEREAS, the Parent may realize the benefits of contributions to the equity capital of the FSB through continued ownership of an equity interest in the FSB.

NOW, THEREFORE, in consideration of the foregoing premises, the OTS, and the Parent and the FSB do hereby agree as follows:

ARTICLES

1. CONSTRUCTION OF AGREEMENT.

A. This Agreement is a “written agreement” entered into with an agency within the meaning and for the purposes of Section 8 of the Federal Deposit Insurance Act, as amended (12 USC § 1818).

B. This Agreement shall not be construed as a “written agreement, order, capital directive or prompt corrective action directive issued by the OTS” requiring the FSB “to meet and maintain a specific capital level” for purposes of 12 CFR § 565.4.

2. CAPITAL ASSURANCES.

A. During the term of this Agreement and except as otherwise provided herein, the Parent commits and promises to make such capital contributions as may be necessary from time to time to ensure that the FSB has sufficient “core capital” and “supplementary capital”, as computed in accordance with the rules and regulations of the OTS at 12 CFR Part 567 (“Capital”), so that the FSB maintains capital ratios at the greater of: (i) the capital ratios projected in the FSB’s business plan, as revised, during the periods for which such plan is in effect; (ii) the minimum regulatory capital requirements set forth at 12 CFR § 567.2 or as may be established pursuant to 12 CFR § 567.3; or (iii) the capital ratios required for the FSB to be considered “well capitalized” as set forth at 12 CFR § 565.4(b)(1)(i)-(iii). The greatest of the three above capital ratios is defined herein as the “Minimum Capital Requirement.”

B. Parent agrees that if, at any time, the FSB’s Capital level falls below the Minimum Capital Requirement (a “Capital Deficiency”), then the Parent will, within five (5) business days of receiving written notification from either the FSB or OTS of a Capital Deficiency, contribute additional Capital in cash, in an amount sufficient to cause the FSB’s Capital to meet the Minimum Capital Requirement; provided, that such time period for compliance may be extended by the appropriate Regional Director of the OTS in the sole discretion of the OTS, and further provided, that, in the event the FSB is less than wholly-owned by the Parent, the Parent shall be entitled, upon its contribution of such additional Capital, to receive from the FSB additional shares of common stock of the FSB having a value equal to the Capital contributed by the Parent at a price per share mutually agreed upon by the Parent and the FSB so as to prevent dilution of the Parent’s interest in the FSB. The Parent and the FSB hereby agree to use reasonable efforts to promptly obtain or provide all corporate, regulatory and other approvals necessary to authorize the issuance of such common stock to Parent.

C. During the term of this Agreement, without the prior written approval or non-objection of the OTS, the FSB commits and promises not to make a “capital distribution” (as defined at 12 CFR § 563.141) if, (i) following such capital distribution, the FSB’s Capital would be less than the amount of the FSB’s Capital on the later of the Effective Date or the date on which Morgan Stanley Credit Corporation (“MSCC”) becomes an operating subsidiary of the FSB, (ii) following such capital distribution, the FSB’s Capital would be less than the Minimum Capital Requirement, or (iii) the amount of capital distributions in any calendar year would exceed the FSB’s net income for that year to date plus retained net income for the preceding two years. For the avoidance of doubt, the amount of the FSB’s Capital on the Effective Date or the date MSCC becomes an operating subsidiary of the FSB shall include any contribution to the FSB’s Capital (x) in an amount equal to the liabilities on the balance sheets of MSCC and its subsidiaries on the date MSCC becomes an operating subsidiary and (y) made by the Parent at or contemporaneous with the transfer by the Parent to the FSB of the Parent’s interest in MSCC.

3. TERM AND TERMINATION OF AGREEMENT.

A. The term of this Agreement shall commence on the Effective Date and shall terminate (i) when the Parent no longer has control as herein defined of the FSB, (ii) upon

the conversion of the FSB to another form of depository institution charter other than a “savings association” within the meaning of Section 2(4) of the Home Owners’ Loan Act, as amended (the “HOLA”), or (iii) with the written consent of the parties hereto. For purposes of this Agreement, “control” shall have the meaning set forth at Section 10(a)(2) of the HOLA (12 USC § 1467a(a)(2)), and 12 CFR § 574.4, notwithstanding Sections 10(a)(1)(D)(ii) and 10(t) of the HOLA (12 USC §§ 1467a(a)(1)(D)(ii) and 1467a(t)) and 12 CFR §§ 574.2(q)(3) and 574.3(c)(1)(iii). Without limiting the generality of the foregoing, for the avoidance of doubt, the Parent shall be deemed to control the FSB if the OTS may presume that the Parent controls the FSB pursuant to 12 CFR § 574.4(b), unless the OTS shall have accepted a rebuttal of control submission made by the Parent using the standards set forth in 12 CFR § 574.4(e) to establish an absence of such control.

B. During the term of this Agreement, without obtaining the prior written approval or non-objection of the OTS, the Parent may not transfer or dispose of voting stock or other securities of the FSB if such transaction would cause the Parent to no longer control the FSB and, consequently, result in the termination of this Agreement.

4. REQUIRED APPROVALS. The Parent and the FSB will not execute this Agreement unless and until all approvals which may be required for the Parent and the FSB to enter into this Agreement have been received.

5. MODIFICATION OR AMENDMENT OF AGREEMENT. This Agreement may be modified or amended only by the mutual written consent of the Parent and the FSB and with the prior written approval or non-objection of the OTS.

6. ASSIGNABILITY OF AGREEMENT. This Agreement shall not be assigned without the written consent of the Parent and the FSB and the prior written approval or non-objection of the OTS.

7. SUCCESSORS IN INTEREST. This Agreement shall remain in full force and effect against any successors in interest to the Parent and shall inure to the benefit of any regulatory successor of the OTS.

8. NOTICES. All notices or other communications required hereunder shall be in writing and shall be made by facsimile transmission, with a copy sent via overnight courier to the following persons, addressed as follows:

if to the Parent, to: Morgan Stanley
750 Seventh Avenue
New York, New York 10019
Facsimile: (212) 507-3375
Attn: David Wong, Treasurer

if to the FSB, to: Morgan Stanley Trust
Harborside Financial Center, Plaza 2

Jersey City, New Jersey 07311
Facsimile: (212) 507-8478
Attn: Roy Swan, President

if to the OTS, to: Office of Thrift Supervision
Department of the Treasury
Harborside Financial Center, Plaza 5
Jersey City, New Jersey 07311
Facsimile: (201) 413-7543
Attn: Michael Finn, Regional Director

Such notice or communication shall be deemed to have been given or made as of the date that the notice or communication was sent via facsimile transmission.

9. COMMITMENT TO THE OTS. The undertakings of the Parent in this Capital Agreement constitute a commitment by the Parent to the OTS (and any regulatory successors) that the Parent will maintain the Capital of the FSB as provided in this Agreement, and such commitment is intended to be a commitment to maintain the capital of an insured depository institution made to a Federal depository institutions regulatory agency for purposes of title 11 of the United States Code.

10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, arrangements, and negotiations between the parties, whether oral or written, with respect to this Agreement are deemed to be merged herein.

11. GOVERNING LAW. To the extent that Federal law does not control, this Agreement shall be governed, construed and controlled by the laws of the State of New York without reference to conflicts of laws principles thereof that would otherwise result in the application of the laws of another jurisdiction.

12. SEVERABILITY. If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid or inoperative, then, so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative, and effect will be given to the intent manifested by the portion held invalid or inoperative.

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IN WITNESS WHEREOF, the parties have executed this Agreement.

Morgan Stanley

By: /s/ Colm Kelleher
Name: Colm Kelleher
Title: Executive Vice President and Chief Financial Officer

Morgan Stanley Trust

By: /s/ Susan Carroll
Name: Susan Carroll
Title: Chief Executive Officer

Office of Thrift Supervision

By: /s/ Michael E. Finn
Name: Michael E. Finn
Title: Northeast Regional Director

**FUNDING AGREEMENT BETWEEN
MORGAN STANLEY
And
MORGAN STANLEY TRUST
And
OFFICE OF THRIFT SUPERVISION**

October 14, 2009

This Funding Agreement (this "Agreement") is entered into as of the Fourteenth day of October, 2009, by and among Morgan Stanley Trust (the "Borrower"), a federal savings association with its principal place of business at Harborside Financial Center, Plaza Two, Jersey City, New Jersey 07311-3977, as Borrower, and Morgan Stanley (the "Lender"), a Delaware corporation with its principal place of business at 1585 Broadway, New York, New York 10036, as Lender, and the Office of Thrift Supervision ("OTS").

INTRODUCTION.

- (A) The Borrower is a wholly-owned subsidiary of the Lender.
- (B) The Borrower and the Lender have determined that it is in their respective interests to enter into this Agreement.

1. DEFINITIONS.

- 1.1 "Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks located in New York City are authorized or required by law to close.
- 1.2 "Federal funds (open) rate" means, for any period, a fluctuating interest rate per annum equal, for each day during such period, to the opening rate (expressed as a percentage per annum) on that date for U.S. dollar federal funds as displayed on Bloomberg under the symbol FEDSOPEN Index (or, if such day is not a Business Day, the applicable rate for the next preceding Business Day).
- 1.3 "Note" means a promissory note of the Borrower payable to the order of the Lender, in substantially the form of Exhibit A hereto, evidencing the aggregate indebtedness of the Borrower to the Lender resulting from the Loans (as defined in Section 2.1) made by the Lender pursuant to this Agreement. Each Note shall bear the following legend: "**THIS NOTE IS NOT A SAVINGS ACCOUNT OR A DEPOSIT AND IT IS NOT INSURED BY THE UNITED STATES OR ANY AGENCY OR FUND OF THE UNITED STATES.**"

2. OBLIGATIONS.

This Agreement confirms the following funding arrangements between the Lender and the Borrower:

- 2.1 Subject to Section 2.2 and Section 2.3 and to compliance by the Borrower with the terms of this Agreement, the Lender is unconditionally obligated to lend funds to the Borrower (a "Loan") following written notification ("Notice of Borrowing") provided by the Borrower in the manner required herein. The Borrower shall give such Notice of Borrowing to the Lender not later than 11:00 A.M. (New York City time) on the second Business Day prior to the date of the proposed Loan by telephone, confirmed immediately by facsimile, with a copy sent via overnight courier, specifying therein the requested (i) date on which the Lender shall make the Loan, (ii) the maturity date (which shall in no event be earlier than the date which is seven days after the date of the Loan nor later than the earlier of one year from the date of the Loan or the date on which this Agreement is terminated pursuant to Section 6.1 (each such date, a "Maturity Date")), (iii) the aggregate amount of such Loan, (iv) if agreed upon by the Lender and the Borrower, the applicable interest rate with respect to such Loan, which shall not exceed the closest corresponding National Rate for Certificates of Deposit plus seventy-five (75) basis points (as published by the Federal Deposit Insurance Corporation) on the date the Loan is made or renewed, and (v) the manner in which the Lender shall transfer funds to the Borrower. Each Notice of Borrowing shall be binding on the Lender, and the Lender shall promptly fund the requested Loan by the Borrower's close of business on the date requested in such Notice of Borrowing. In the event that Borrower's Prompt Corrective Action capital category falls below "well capitalized", Borrower shall comply with any written directions provided by OTS to make a Notice of Borrowing.
- 2.2 The commitment by the Lender set forth in Section 2.1 shall be subject to delivery by the Borrower of one or more Notes in substantially the form of Exhibit A hereto evidencing the obligations of the Borrower arising under this Agreement.
- 2.3 The Lender shall not be obligated to make a Loan to the Borrower pursuant to this Agreement if the Loans outstanding pursuant to this Agreement, together with the requested Loan, would exceed the greater of: (a) Five Billion Dollars (\$5,000,000,000) in the aggregate; or (b) the amount of the Borrower's total funding liabilities (defined as Deposits and Borrowings reported on the Thrift Financial Report, but excluding obligations arising out of this Agreement) on the date of the requested Loan; provided, however, that the Borrower may extend the Maturity Date of an existing Loan by providing a Notice of Borrowing with respect to

such Loan specifying a new Maturity Date (which shall in no event be earlier than the date which is seven days after the original Maturity Date of the Loan nor later than the earlier of one year from the date of the Loan or the date on which this Agreement is terminated pursuant to Section 6.1).

- 2.4 Loans may be secured by assets selected by the Borrower that have a risk-based capital credit-risk weighting of fifty percent (50%) or higher, except that if Loans made (or requested) pursuant to this Agreement would exceed the amount of such assets on the Borrower's books, then the Borrower may select assets having a risk-based capital credit-risk weighting of twenty percent (20%). The provision of collateral may not be a condition precedent to the Lender's provision of funds to Borrower. At no time shall the aggregate book value of assets (as reported on the Borrower's most recently filed Thrift Financial Report) pledged by Borrower exceed one-hundred and ten percent (110%) of the amount of Loan(s) outstanding.
- 2.5 The Borrower shall pay the unpaid principal amount of each Loan on the Maturity Date.
- 2.6 The Borrower shall pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount shall be paid in full, at a rate per annum equal at all times to (A) if no interest rate is specified in the Notice of Borrowing with respect to such Loan, the sum of (i) the Federal funds (open) rate as in effect from time to time, plus (ii) 0.35%, or (B) such other interest rate as agreed upon by the Borrower and Lender and set forth in the Notice of Borrowing with respect to such Loan, in all cases payable in arrears quarterly on the last Business Day of each March, June, September and December during such periods and on the date such Loan shall be paid in full. Interest will be computed on the basis of a 360-day year and the actual number of days elapsed. Notwithstanding anything in this Agreement to the contrary, the applicable interest rate on any Loan shall not exceed the closest corresponding National Rate for Certificates of Deposit plus seventy-five (75) basis points (as published by the Federal Deposit Insurance Corporation) on the date the Loan is made or renewed.
- 2.7 Any principal of, and, to the extent permitted by applicable law, any interest on, any Loan that is not paid when due (whether at the stated Maturity Date thereof, by acceleration or otherwise), shall bear interest from such due date until payment in full thereof, at the rate per annum equal to the Lender's overnight cost of funds (calculated on the basis of a 360 day year for the actual number of days elapsed). A lower rate may be agreed to by the Lender and the Borrower from time to time, subject to any applicable statutory, regulatory or other limitations imposed by any court or governmental agency.

- 2.8 The Borrower shall have the right to repay all or any portion of the outstanding principal amount of any Loan prior to the Maturity Date hereof, with the prior consent of the Lender, which consent shall not be unreasonably withheld.
- 2.9 The Borrower shall make all payments due hereunder to the Lender to its office set forth above or to such other location or by credit to such account of the Lender as the Lender shall specify to the Borrower in writing, in lawful money of the United States, or the currency in which the Loan is denominated, and in immediately available funds. Whenever any payment to be made hereunder is due on a day other than a Business Day, such payment shall be made on the next such succeeding Business Day.

3. DEFAULT.

- 3.1 If one or more of the following events ("Events of Default") shall have occurred and be continuing:
- (a) The Borrower shall fail to pay when due any principal on any Loan, or the Borrower shall fail to pay any interest on any Loan or any other amount payable hereunder within three (3) Business Days of the due date thereof; or
 - (b) the granting of consent by the Borrower to or the entry by a court or other governmental agency of an order or decree for the appointment of a receiver or similar official in a liquidation, insolvency or similar proceeding with respect to the Borrower or all or substantially all of its property and, in the case of a decree or order, such decree or order shall have remained unstayed and in force and effect for a period of 60 consecutive days,

then, and in every such event, the Lender may by notice to the Borrower declare the unpaid principal amount of all or any portion of the Loans (together with accrued interest thereon, if any) to be, and the unpaid principal amount of all or any such portion of the Loans (together with accrued interest thereon, if any) shall thereupon become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided that in the case of an the Event of Default described in clauses (b) above with respect to the Borrower, without any notice to the Borrower or any other act by the Lender, the unpaid principal amount of all Loans (together with accrued interest thereon, if any) shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

4. WAIVER OF RIGHTS.

The Lender shall not by any act, delay, omission or otherwise be deemed to have waived any rights or remedies hereunder. Such rights and remedies are cumulative and not exclusive of any rights or remedies provided by law. No waiver shall be valid unless signed the Lender. No amendment hereof, unless signed by the Borrower and the Lender, shall be effective to modify or discharge this Agreement.

5. TRANSACTIONS WITH AFFILIATES RULES.

This Agreement is governed by, and the parties intend to comply with, the transactions with affiliates rules set forth at 12 CFR Section 563.41, as amended from time to time.

6. TERM AND TERMINATION OF AGREEMENT.

6.1 The term of this Agreement shall commence on the date on which this Agreement is executed and shall terminate (i) when the Lender no longer has control of the Borrower as hereinafter defined, (ii) upon the conversion of the Borrower to another form of depository institution charter other than a "savings association" within the meaning of Section 2(4) of the Home Owners' Loan Act of 1933, as amended (the "HOLA"), or (iii) with the written consent of the parties hereto. For purposes of this Agreement, "control" shall have the meaning set forth at Section 10(a)(2) of the HOLA (12 USC § 1467a(a)(2)), and 12 C.F.R. § 574.4, notwithstanding Sections 10(a)(1)(D)(ii) and 10(t) of the HOLA (12 USC §§ 1467a(a)(1)(D)(ii) and 1467a(t)) and 12 CFR §§ 574.2(q)(3) and 574.3(c)(1)(iii). Without limiting the generality of the foregoing, for the avoidance of doubt, the Lender shall be deemed to control the Borrower if the OTS may presume that the Lender controls the Borrower pursuant to 12 CFR § 574.4(b), unless the OTS shall have accepted a rebuttal of control submission made by the Lender using the standards set forth in 12 CFR § 574.4(e) to establish an absence of such control.

6.2 During the term of this Agreement, without obtaining the prior written approval or non-objection of the OTS, the Lender may not transfer or dispose of voting stock or other securities of the Borrower if such transaction would cause the Lender to no longer control the Borrower and, consequently, result in the termination of this Agreement.

7. REQUIRED APPROVALS.

The Borrower and the Lender will not execute this Agreement unless and until all approvals which may be required for the Borrower and the Lender to enter into this Agreement have been received.

8. MODIFICATION OR AMENDMENT OF AGREEMENT.

This Agreement may be modified or amended only by the mutual written consent of the Lender and the Borrower and with the prior written approval or non-objection of the OTS.

9. ASSIGNABILITY OF AGREEMENT.

This Agreement shall not be assigned without the written consent of the Lender and the Borrower and the prior written approval or non-objection of the OTS.

10. SUCCESSORS IN INTEREST.

This Agreement shall remain in full force and effect against any successors in interest to the Lender and shall inure to the benefit of any regulatory successor of the OTS.

11. NOTICES.

- 11.1 Except as otherwise provided, all notices or other communications required hereunder shall be in writing and shall be made by facsimile transmission, with a copy sent via overnight courier to the following persons, addressed as follows:

if to the Parent, to: Morgan Stanley
750 Seventh Avenue
New York, New York 10019
Facsimile: (212) 507-3375
Attn: David Wong, Treasurer

if to the FSB, to: Morgan Stanley Trust
Harborside Financial Center, Plaza 2
Jersey City, New Jersey 07311
Facsimile: (212) 507-8478
Attn: Roy Swan, President

if to the OTS, to: Office of Thrift Supervision
Department of the Treasury
Harborside Financial Center, Plaza 5
Jersey City, New Jersey 07311
Facsimile: (201) 413-7543
Attn: Michael Finn, Regional Director

- 11.2 Such notice or communication shall be deemed to have been given or made as of the date that the notice or communication was sent via facsimile transmission.

12. ENTIRE AGREEMENT.

A. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, arrangements, and negotiations between the parties, whether oral or written, with respect to this Agreement are deemed to be merged herein.

13. GOVERNING LAW.

To the extent that Federal law does not control, this Agreement shall be governed, construed and controlled by the laws of the State of New York without reference to conflicts of laws principles thereof that would otherwise result in the application of the laws of another jurisdiction.

14. SEVERABILITY.

If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid or inoperative, then, so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative, and effect will be given to the intent manifested by the portion held invalid or inoperative.

15. CONSTRUCTION OF AGREEMENT.

15.1 This Agreement is a “written agreement” entered into with an agency within the meaning and for the purposes of Section 8 of the Federal Deposit Insurance Act, as amended (12 USC § 1818).

15.2 This Agreement shall not be construed as a “written agreement, order, capital directive or prompt corrective action directive issued by the OTS” requiring FSB “to meet and maintain a specific capital level” for purposes of 12 CFR § 565.4.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Morgan Stanley

By: /s/ Colm Kelleher
Name: Colm Kelleher
Title: Executive Vice President and Chief Financial Officer

Morgan Stanley Trust

By: /s/ Susan Carroll
Name: Susan Carroll
Title: Chief Executive Officer

Office of Thrift Supervision

By: /s/ Michael E. Finn
Name: Michael E. Finn
Title: Northeast Regional Director

EXHIBIT A - FORM OF
PROMISSORY NOTE

U.S.\$ _____

Dated: _____, 20__

FOR VALUE RECEIVED, the undersigned, Morgan Stanley Trust, a federal savings association (the "Borrower"), HEREBY PROMISES TO PAY to the order of Morgan Stanley, a Delaware corporation (the "Lender") to the Lender's Account on each Maturity Date (as defined in the Funding Agreement referred to below) the aggregate principal amount of the Loans made by the Lender to the Borrower pursuant to the Funding Agreement dated as of _____, 2009 by and among the Borrower, the Lender and the Office of Thrift Supervision, or any regulatory successor thereto (as amended or modified from time to time, the "Funding Agreement"; the terms defined therein being used herein as therein defined) that are due and payable pursuant to Section 2.5 of the Funding Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Funding Agreement.

Both principal and interest are payable in lawful money of the United States of America, or the currency in which the Loan is denominated, to Morgan Stanley, as Lender. Interest shall be paid in arrears quarterly on the last day of each September, December, March and June in same day funds. Principal outstanding on each Maturity Date shall be paid on such Maturity Date in same day funds. Each Loan owing to the Lender by the Borrower pursuant to the Funding Agreement, and all payments made on account of principal thereof, shall be recorded by the Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Promissory Note.

This Promissory Note is one of the Notes referred to in, and is entitled to the benefits of, the Funding Agreement.

THIS NOTE IS NOT A SAVINGS ACCOUNT OR A DEPOSIT AND IT IS NOT INSURED BY THE UNITED STATES OR ANY AGENCY OR FUND OF THE UNITED STATES.

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EXECUTED, as of the date first set forth above.

MORGAN STANLEY TRUST,
as Borrower

By: _____
Name:
Title:

