



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

Washington, D.C.

September 21, 2008

Richard K. Kim, Esq.
Wachtell, Lipton, Rosen & Katz
51 W. 52nd Street
New York, New York 10019

Re: Application to Convert Morgan Stanley Bank

Dear Mr. Kim:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application of Morgan Stanley Bank, Salt Lake City, Utah, to convert to a national banking association to be called Morgan Stanley Bank, National Association (“MSB-NA”). This approval is granted after a thorough review of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by representatives of the Bank during the application process. This approval is also subject to the conditions set out herein.

The Application

Morgan Stanley Bank (the “Bank”) is a wholly-owned direct subsidiary of Morgan Stanley Domestic Holdings, Inc. (“MSDH”) and a wholly-owned indirect subsidiary of Morgan Stanley Capital Management, LLC (“MSCM”), the parent company of MSDH, and Morgan Stanley, the top-tier parent company.¹ The Bank is a Utah-chartered industrial bank. Its deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). Its head office is in Salt Lake City, Utah. It has no branches. The Bank is “well-capitalized.”

The Bank engages in several lines of business, including participating in syndicated lending to corporate clients, providing warehouse lending facilities to mortgage banking clients, providing backstop facilities for commercial paper programs and otherwise engaging in relationship banking with clients of Morgan Stanley. The Bank also receives deposits from retail

¹ Morgan Stanley, MSCM, and MSDH have filed an application with the Board of Governors of the Federal Reserve System for approval to become a bank holding company, including a declaration to become a financial holding company.

brokerage customers of Morgan Stanley who elected to have the excess cash balances in their retail brokerage accounts swept into FDIC-insured bank deposits.

The Bank represents in the application that no significant changes will be made to the Bank's existing business plan immediately following the conversion. In the future, Morgan Stanley plans to expand the scope of the products and services that the Bank offers as well as to enlarge its geographic footprint and believes that converting the Bank to a national bank would facilitate this plan. The Bank also represents in the application that it has no subsidiaries, and that it has no assets or investments, and engages in no activities, that are not legally permissible for a national bank. The Bank does not exercise fiduciary powers, and it has not requested fiduciary powers in the conversion.

Discussion

State banks may convert to a national charter under 12 U.S.C. § 35. Section 35 provides in relevant part:

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word "national": *Provided, however,* That said conversion shall not be in contravention of the State law.

Revised Statutes § 5154, 12 U.S.C. § 35.

Section 35 does not define "state bank." In construing this term, the OCC has looked to the definition of "State bank" in 12 U.S.C. § 214(a) that applies to the reciprocal situation in which a national bank converts to a state bank. This interpretation is now codified in 12 C.F.R. § 5.24(b). Under section 214(a), "state bank" includes "any bank, banking association, . . . or other banking institution which is engaged in the business of receiving deposits and which is incorporated under the laws of any State . . ." An industrial bank or industrial loan company is a "state bank" for purposes of sections 35 and 214a as long as it is a banking institution under state law and is engaged in the business of receiving deposits. The Bank meets this standard. The OCC has approved the conversion of other industrial banks under section 35.²

² See, e.g., *Decision on the Application of CreditAmerica Savings Company to Convert to a National Bank* (OCC Corporate Decision No. 2001-17, June 28, 2001 (pages 4-5)).

The Bank meets the other criteria in section 35. It has capital sufficient to meet the statutory requirement for a national bank. MSDH, the sole shareholder, has approved the conversion. The conversion would not be in contravention of state law. Utah permits a Utah-chartered industrial bank to convert to a national charter.³ The OCC also concluded the proposed conversion is consistent with policy considerations in 12 C.F.R. § 5.24(d). Therefore, the Bank is legally authorized to convert to a national charter.

Pre-Conversion Process and Requirements

You are reminded that the following items must be satisfactorily addressed on or before the effective date of the conversion:

1. The Bank must confirm that it maintains adequate fidelity bond coverage in accordance with 12 C.F.R. § 7.2013, which lists four factors the directors should consider to determine adequacy.
2. The board of directors must adopt and have in place policies, practices, and procedures to ensure the safe and sound operation of the national bank. The board also must review those policies, practices, and procedures continually and ensure the national bank's compliance with them.
3. The Bank must apply to the Federal Reserve for membership.
4. The Bank must ensure that all other required regulatory approvals have been obtained.
5. The directors must own qualifying shares in conformance with 12 U.S.C. § 72 and 12 C.F.R. § 7.2005.
6. The Bank must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion. Any changes to the executive officers or directors must receive a prior "no objection" from the OCC.

Upon completion of all steps required to convert to a national bank, submit the "Conversion Completion Certification" (enclosed) certifying that you have done so. When the Bank has satisfactorily completed all of the above steps, the OCC will issue a Conversion Completion Acknowledgment officially authorizing the institution to commence business as a national bank. At that time you will receive the charter certificate. If the conversion is not consummated within six months from the date of this decision, the approval will automatically

³ Utah Code Ann. § 7-1-713(3).

terminate unless the OCC grants an extension of the time period. The OCC is opposed to granting extensions, except under the most extenuating circumstances and expects the conversion to occur as soon as possible.

Conditions

This approval is subject to the following conditions:

1. MSB-NA shall, at all times, remain well-capitalized.
2. MSB-NA shall not significantly deviate from the business, structure, asset composition and asset size, deposit composition and deposit size, management, operations, policies, procedures, markets, activities, and products that existed on the day the application to convert was filed with the OCC without first (A) obtaining the OCC's prior written determination of no supervisory objection to such significant deviation or (B) entering an Operating Agreement with the OCC, acceptable to the OCC, and thereafter implementing and adhering to such agreement.⁴
3. If the OCC deems it necessary in the exercise of its supervisory responsibilities to require MSB-NA to enter an Operating Agreement with the OCC addressing matters other than a significant deviation, MSB-NA shall enter such Operating Agreement with the OCC, acceptable to the OCC, within ten (10) days of receiving notice from the OCC, (or any longer period specified by the OCC) and shall thereafter implement and adhere to such agreement.

The conditions of this 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.

Conclusion

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

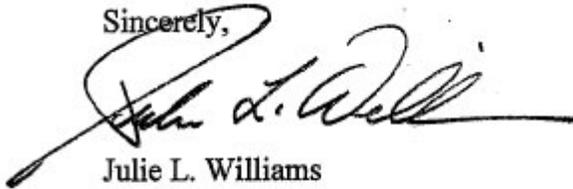
⁴ If the deviation is the subject of an application filed with the OCC, the OCC does not require any further notice to the Supervisory Office. For purposes of this condition, the phrase "significantly deviate" and "significant deviation" shall be construed in the light of the guidance provided in Appendix G (Significant Deviations After Opening) of the "Charters" booklet of the *Comptroller's Licensing Manual* (December 2007), and shall include but not be limited to (1) an increase in total asset size or deposit size of more than five percent (5%) over any twelve month period, (2) a change (increase or decrease) of more than ten percent (10%) in the relative size of an asset class as a portion of MSB-NA's balance sheet, and (3) the offering of any product or service not offered prior to the day on which the application to convert was filed with the OCC.

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 foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller's Licensing Manual*, which is available in electronic form on our Web site <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

All correspondence regarding this application should reference the application control number. If you have any questions, call Large Bank Licensing Expert Stephen Lybarger at (202) 874-5294.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie L. Williams", written over a horizontal line.

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel