

Morgan Stanley
1585 Broadway
New York, NY 10036

Morgan Stanley

June 30, 2020

VIA E-APPS

Brian S. Steffey
Assistant Vice President, Bank Applications Function
Federal Reserve Bank of New York
33 Liberty Street, New York, NY 10045

Re: Application of Morgan Stanley to Acquire by Merger E*TRADE Financial Corporation – Morgan Stanley Responses to Public Comments Addressing Competition

Dear Mr. Steffey:

By this letter Morgan Stanley is responding to certain comments filed in relation to its application (the “**Application**”) requesting approval of the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”) to acquire by merger E*TRADE Financial Corporation (“**E*TRADE**”) with Morgan Stanley as the surviving entity (the “**Proposed Transaction**”). The comment period for the Proposed Transaction has now closed, and Federal Reserve staff have provided to us copies of the 72 comments received.

Of the 72 comment letters received, 71 address the Community Reinvestment Act (“**CRA**”) record and activities of Morgan Stanley, E*TRADE and the proposed combined firm. One addresses competitive issues under the U.S. antitrust laws. In this response we address the comments received on the antitrust laws. In a separate response we address the comments with respect to the CRA.

Competitive Effects of the Proposed Transaction

The lone comment in opposition to the Proposed Transaction was submitted by the Consumer Federation of America (“**CFA**”) and consists of general observations about the philosophical and economic bases of antitrust policy, including reprints of testimony

from over a decade ago.¹ Morgan Stanley respectfully submits that these broad, untailed comments are not applicable to the Proposed Transaction.

The Comment Letter identifies no cognizable theory of competitive harm that would result from the Proposed Transaction. Antitrust enforcement authorities have identified three basic mechanisms by which a merger may harm competition: (1) it may eliminate significant “horizontal” competition between the merging parties; (2) it may eliminate “potential competition” where one of the merging firms is likely to enter into competition with the other; and (3) it may create or enhance a vertical buyer-seller relationship that harms competition by excluding or damaging competitors.² Here, the Comment Letter identifies no horizontal competition, no potential competition, and no vertical buyer-seller relationship between Morgan Stanley and E*TRADE *at all*.

E*TRADE’s core business is running a digital brokerage platform for self-directed trading of securities. Morgan Stanley does not compete to any material degree in this space. Instead, in the wealth management space, Morgan Stanley offers a traditional financial advisory service to customers in which financial advisors offer tailored investment advice to clients. As a result, the two firms are not competitors in any material degree in these lines of business. The Comment Letter does not suggest (nor, in Morgan Stanley’s view, could it) that the two firms are likely to become material competitors in these lines of business.³ The Comment Letter refers to “vertical” issues, but does not identify any vertical buyer-seller relationship between Morgan Stanley and E*TRADE. In fact, there is no buyer-seller relationship between the companies and the Comment Letter’s expressed concern about supposed lax antitrust enforcement is contradicted by its concession that “[f]ierce competition has lowered prices and squeezed profits among firms offering financial advice.”⁴

Instead, Morgan Stanley views the Proposed Transaction as either competitively neutral or even procompetitive, in that the transaction will bring *complementary*

¹ See Comments of the Consumer Federation of America Submitted to the Federal Reserve on the Proposed Morgan Stanley-E*Trade Merger on May 1, 2020 (as revised May 4), at 1-4 [hereinafter the “**Comment Letter**”].

² See U.S. FED. TRADE COMMISSION, GUIDE TO THE ANTITRUST LAWS, MERGERS, COMPETITIVE EFFECTS, available at <https://www.ftc.gov/enforcement/merger-review> (“The law bars mergers when the effect ‘may be substantially to lessen competition or to tend to create a monopoly.’ Three basic kinds of mergers may have this effect: horizontal mergers, which involve two competitors; vertical mergers, which involve firms in a buyer-seller relationship; and potential competition mergers, in which the buyer is likely to enter the market and become a potential competitor of the seller, or vice versa.”).

³ Morgan Stanley and E*TRADE do both offer stock plan administration (“SPA”) services. The comments make no reference to this business line and no competitive issue could arise from this overlap given the many other competitors that also compete in the SPA business, including, as described below, BofA Securities, Carta, Certent, Charles Schwab, Computershare, Fidelity, Global Shares, UBS, and other institutions.

⁴ CFA Comment, at 5.

businesses together and therefore will result in a stronger, more effective competitor.⁵ That conclusion was confirmed by the federal antitrust review of the transaction. Morgan Stanley and E*TRADE made the required filings with the U.S. antitrust authorities pursuant the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “**HSR Act**”) and the waiting period under the HSR Act expired without the antitrust authorities taking any action.

In the absence of identifying any specific competitive harm, the Comment Letter relies primarily on speculative consequences. CFA suggests, for example, that Morgan Stanley “will seek to move consumers to its proprietary products, even when they are inferior to other options now available on the E*TRADE platform.”⁶ But the Comment Letter never explains how or why Morgan Stanley could successfully execute on this supposed strategy. The continued use of E*TRADE’s online brokerage platform by its customers demonstrates a preference for self-directed digital investing on E*TRADE’s platform. Morgan Stanley will only be able to sell these customers additional services by offering them *superior* or *complementary* products and services. Any attempt to force customers to purchase unwanted or allegedly inferior products would simply cause customers to switch to other providers, as CFA concedes that there is “[f]ierce competition” among providers of financial advice.⁷ As described in Morgan Stanley’s response to Additional Information Request 15 of the Federal Reserve’s Additional Information Request dated April 17, 2020,⁸ there are numerous alternative providers eager to poach E*TRADE’s customers if Morgan Stanley does not maintain and improve its services and offerings.

The Comment Letter also asserts that “Morgan Stanley is buying a large potential market for its other products” and “will gain an advantage over its potential competitors in its core businesses.”⁹ However, the Comment Letter never identifies these allegedly disadvantaged competitors. In fact, no competitor has filed an opposition to Proposed Transaction in this proceeding, nor (to the knowledge of the parties) did any competitor oppose the deal before antitrust enforcement authorities. In reality, Morgan Stanley faces numerous other significant and well-financed competitors in the two major channels that comprise its Wealth Management business – Financial Advisory and Workplace.

⁵ See U.S. DEP’T OF JUSTICE & FED. TRADE COMM’N, HORIZONTAL MERGER GUIDELINES (2010), available at <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010> (“[M]erger-generated efficiencies may enhance competition by permitting two ineffective competitors to form a more effective competitor, e.g., by combining complementary assets.”).

⁶ CFA Comment, at 6.

⁷ *Id.* at 5.

⁸ Morgan Stanley submitted this response on June 12, 2020 and the Federal Reserve has made a copy of it available here: <https://www.federalreserve.gov/foia/files/additional-information-response-20200612.pdf>.

⁹ *Id.* at 6.

In the Financial Advisory channel, Morgan Stanley competes against the following institutions, depending on the intermediary channels, among others:

Advisor Group	Hightower Advisors
Ameriprise Financial	John Hancock
AMG Wealth Partners	JP Morgan
AXA Advisors	Lincoln Financial Network
Beacon Pointe Advisors	LPL Financial
BofA Securities	Mariner Wealth Advisors
CAPTRUST Financial Advisors	MML Investor Services
Cerity Partners	Northwestern Mutual
Charles Schwab	NYLIFE Securities
Commonwealth Financial Network	Oppenheimer
Credit Suisse	Raymond James
Dynasty Financial Partners	Robert W. Baird
Edward Jones	Royal Bank of Canada
Fifth Third Securities	UBS Wealth Management Americas
First Republic Bank	United Capital
Fisher Investments	Wells Fargo
Focus Financial Partners	Wilmington Trust
Goldman Sachs	

In the Workplace channel, Morgan Stanley competes against BofA Securities, Carta, Certent, Charles Schwab, Computershare, E*TRADE, Fidelity, Global Shares, UBS, among other institutions. In both the Financial Advisory and Workplace channels, Morgan Stanley’s competitors are more than capable of continuing to compete vigorously in the marketplace following the Proposed Transaction.

The Comment Letter also emphasizes that “this is precisely the moment that innovation and new technology can produce more consumer-friendly, sustainable business models” in the financial advice sector.¹⁰ Morgan Stanley agrees. Morgan Stanley believes that the transaction will allow it to innovate in mobile and digital services and enhance E*TRADE’s platform with brokerage capabilities and investment advice, making available more options and higher quality services to customers across the wealth spectrum. In turn, as detailed in the Application, Morgan Stanley expects to continue E*TRADE’s current commission pricing practices (most notably, commission-free equities trading) through the self-directed channel and expects to utilize E*TRADE’s digital banking platform to enable Morgan Stanley customers to open deposit accounts directly with one or more of its insured depository institution subsidiaries, a capability which is not presently available to Morgan Stanley customers.

Finally, Morgan Stanley respectfully submits that the Comment Letter’s suggestion that review of the Proposed Transaction should “pause” during the COVID-19

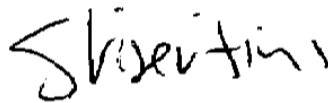
¹⁰ *Id.*

crisis is self-serving and unwarranted. There is no basis for the Federal Reserve to suspend consideration of the Proposed Transaction in anticipation of hypothetical “new approaches and guidelines” that have neither been identified by CFA nor publicly announced. To the contrary, it is now more important than ever that the Proposed Transaction proceed in a timely fashion so that the parties can move ahead to achieve the substantial pro-consumer benefits that they expect the Proposed Transaction will generate.

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If you have any questions regarding this letter, please feel free to contact me.

Very truly yours,



Sebastiano Visentini

cc: Alison M. Thro, Federal Reserve
Eric F. Grossman, Morgan Stanley
Andrew S. Baer, Morgan Stanley
Lori S. Sher, E*TRADE Financial Corporation
Neil Barr, Davis Polk & Wardwell LLP
Arthur J. Burke, Davis Polk & Wardwell LLP
Luigi L. De Ghenghi, Davis Polk & Wardwell LLP
Marc O. Williams, Davis Polk & Wardwell LLP
Brian Wolfe, Davis Polk & Wardwell LLP
Stephen F. Arcano, Skadden, Arps, Slate, Meagher & Flom LLP
Brian D. Christiansen, Skadden, Arps, Slate, Meagher & Flom LLP
David C. Hepp, Skadden, Arps, Slate, Meagher & Flom LLP
Dohyun Kim, Skadden, Arps, Slate, Meagher & Flom LLP