
PUBLIC EXHIBIT VOLUME

NOTIFICATION

to the

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

by

MORGAN STANLEY

for prior approval to acquire by merger

E*TRADE FINANCIAL CORPORATION

Pursuant to Sections 4(j) and 4(k)
of the Bank Holding Company Act of 1956, as amended, and
Regulation Y promulgated thereunder,
and
Section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

March 25, 2020

PUBLIC EXHIBIT VOLUME

MORGAN STANLEY

MARCH 25, 2020

Document Title	Exhibit
Merger Agreement	1
Form 8-K Report Filed by Morgan Stanley with the SEC Announcing the Proposed Transaction	2
Subsidiaries of E*TRADE	3
Pro Forma Organizational Chart of E*TRADE.....	4
Resolutions of the Board of Directors of Morgan Stanley.....	5
MSBNA CRA Performance Evaluation	6
MSPBNA CRA Performance Evaluation.....	7
ETB CRA Performance Evaluation.....	8
ETSB CRA Performance Evaluation	9
Pro Forma Balance Sheet and Regulatory Capital (Redacted)	10
Overview of Morgan Stanley’s Enterprise Risk Management Framework.....	11
Overview of Morgan Stanley’s Compliance Risk Management Program.....	12
Overview of Morgan Stanley’s Fair Lending Compliance Program	13
Overview of Morgan Stanley’s Financial Crimes Compliance Program.....	14
Deposits and Liabilities Concentration Limit Analyses	15
Additional Information Regarding Financial Stability (Redacted)	16
Form of Newspaper Notice	17
E*TRADE Financial Statements.....	18

Morgan Stanley Financial Statements 19

Information Regarding Litigation Matters..... 20

Public Exhibit 1

Merger Agreement

EX-2.1 6 dp121716_ex0201.htm EXHIBIT 2.1

Exhibit 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

dated as of

February 20, 2020

by and among

MORGAN STANLEY,

MOON-EAGLE MERGER SUB, INC.

and

E*TRADE FINANCIAL CORPORATION

TABLE OF CONTENTS

Page

ARTICLE 1

Definitions

Section 1.01. Definitions	6
Section 1.02. Other Definitional and Interpretative Provisions	21

ARTICLE 2

Closing; Merger

Section 2.01. Closing	22
Section 2.02. The Merger	22
Section 2.03. Conversion of Shares.	23
Section 2.04. Surrender and Payment	24
Section 2.05. Company Equity Awards	27
Section 2.06. Adjustments	28
Section 2.07. Fractional Shares	28
Section 2.08. Withholding Rights	29
Section 2.09. Lost Certificates	29
Section 2.10. Further Assurances	29

ARTICLE 3

Organizational Documents; Directors and Officers

Section 3.01. Certificate of Incorporation and Bylaws of the Surviving Corporation	29
Section 3.02. Directors and Officers of the Surviving Corporation	30
Section 3.03. Board of Parent	30

ARTICLE 4

Representations and Warranties of the Company

Section 4.01. Corporate Existence and Power	30
Section 4.02. Corporate Authorization	31
Section 4.03. Governmental Authorization	31
Section 4.04. Non-contravention	31
Section 4.05. Capitalization	32
Section 4.06. Subsidiaries	33
Section 4.07. Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act	34
Section 4.08. Financial Statements and Financial Matters	36
Section 4.09. Disclosure Documents	36
Section 4.10. Absence of Certain Changes	36
Section 4.11. No Undisclosed Material Liabilities	37
Section 4.12. Litigation	37
Section 4.13. Permits	37

Section 4.14. Compliance with Applicable Laws	38
Section 4.15. [Intentionally Omitted]	40
Section 4.16. RIA Compliance Matters	40
Section 4.17. Client Agreements	42
Section 4.18. Broker-Dealer Compliance Matters	42
Section 4.19. FCM Compliance Matters	44
Section 4.20. Material Contracts	46
Section 4.21. Taxes	48
Section 4.22. Employees and Employee Benefit Plans	49
Section 4.23. Labor Matters	51
Section 4.24. Intellectual Property	52
Section 4.25. Properties	54
Section 4.26. Environmental Matters	55
Section 4.27. Antitakeover Statutes	55
Section 4.28. Opinion of Financial Advisor	55
Section 4.29. Finders' Fees	55
Section 4.30. No Ownership of Parent Common Stock	56
Section 4.31. No Ownership of Company Common Stock	56
Section 4.32. No Other Company Representations and Warranties	56

ARTICLE 5

Representations and Warranties of Parent

Section 5.01. Corporate Existence and Power	57
Section 5.02. Corporate Authorization	57
Section 5.03. Governmental Authorization	58
Section 5.04. Non-contravention	58
Section 5.05. Capitalization	58
Section 5.06. Subsidiaries	60
Section 5.07. Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act	60
Section 5.08. Financial Statements and Financial Matters	62
Section 5.09. Disclosure Documents	62
Section 5.10. Absence of Certain Changes	62
Section 5.11. No Undisclosed Material Liabilities	63
Section 5.12. Litigation	63
Section 5.13. Permits	63
Section 5.14. Compliance with Applicable Laws	64
Section 5.15. RIA Compliance Matters	66
Section 5.16. Client Agreements	67
Section 5.17. Broker-Dealer Compliance Matters	67
Section 5.18. FCM Compliance Matters	69
Section 5.19. Material Contracts.	71
Section 5.20. Taxes	71
Section 5.21. Employees and Employee Benefit Plans	73
Section 5.22. Labor Matters	74
Section 5.23. Intellectual Property	74
Section 5.24. Properties	76

Section 5.25. Environmental Matters	77
Section 5.26. Antitakeover Statutes	77
Section 5.27. Finders' Fees	77
Section 5.28. No Ownership of Company Common Stock	77
Section 5.29. No Other Parent Representations and Warranties	77

ARTICLE 6
Covenants of the Company

Section 6.01. Conduct of the Company	78
Section 6.02. Access to Information; Confidentiality	82
Section 6.03. No Solicitation by the Company	83
Section 6.04. Transition	88
Section 6.05. Indenture	88
Section 6.06. Advisory Client Consents	89

ARTICLE 7
Covenants of Parent

Section 7.01. Conduct of Parent	90
Section 7.02. Obligations of Merger Sub	90
Section 7.03. Director and Officer Liability	90
Section 7.04. Employee Matters	91

ARTICLE 8
Covenants of Parent and the Company

Section 8.01. Reasonable Best Efforts	93
Section 8.02. Certain Filings; SEC Matters	96
Section 8.03. Company Stockholder Meeting	98
Section 8.04. Public Announcements	99
Section 8.05. Notices of Certain Events	99
Section 8.06. Section 16 Matters	99
Section 8.07. Transaction Litigation	100
Section 8.08. Stock Exchange Delisting	100
Section 8.09. Dividends	100
Section 8.10. State Takeover Statutes	100
Section 8.11. Tax Matters	100
Section 8.12. Treatment of Existing Indebtedness	101
Section 8.13. Second Merger	102

ARTICLE 9
Conditions to the Merger

Section 9.01. Conditions to the Obligations of Each Party	103
Section 9.02. Conditions to the Obligations of Parent and Merger Sub	103
Section 9.03. Conditions to the Obligations of the Company	104

ARTICLE 10
Termination

Section 10.01. Termination	105
Section 10.02. Effect of Termination	107
Section 10.03. Termination Fees	107

ARTICLE 11
Miscellaneous

Section 11.01. Notices	109
Section 11.02. Survival	110
Section 11.03. Amendments and Waivers	111
Section 11.04. Expenses	111
Section 11.05. Disclosure Schedule References and SEC Document References	111
Section 11.06. Confidential Supervisory Information	111
Section 11.07. Binding Effect; Benefit; Assignment	112
Section 11.08. Governing Law	112
Section 11.09. Jurisdiction/Venue	112
Section 11.10. WAIVER OF JURY TRIAL	113
Section 11.11. Counterparts; Effectiveness	113
Section 11.12. Entire Agreement	113
Section 11.13. Severability	114
Section 11.14. Specific Performance	114

ANNEXES

Annex I - Terms of New Parent Replacement Series A Preferred Stock

Annex II - Terms of New Parent Replacement Series B Preferred Stock

EXHIBITS

Exhibit A - Certificate of Incorporation of Surviving Corporation

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of February 20, 2020, is entered into by and among Morgan Stanley, a Delaware corporation (“**Parent**”), Moon-Eagle Merger Sub, Inc., a Delaware corporation and a direct, wholly owned Subsidiary of Parent (“**Merger Sub**”), and E*TRADE Financial Corporation, a Delaware corporation (the “**Company**”).

WHEREAS, the Board of Directors of the Company has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the Company’s stockholders, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directed that the approval and adoption of this Agreement (including the Merger) be submitted to a vote at a meeting of the Company’s stockholders, and (iv) recommended the approval and adoption of this Agreement (including the Merger) by the Company’s stockholders;

WHEREAS, the Board of Directors of Parent has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Parent Share Issuance) are fair to and in the best interests of Parent’s stockholders and (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Parent Share Issuance);

WHEREAS, (A) the Board of Directors of Merger Sub has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to and in the best interests of the sole stockholder of Merger Sub, (ii) approved, adopted and declared advisable this Agreement and the transactions contemplated hereby (including the Merger), (iii) directed that this Agreement (including the Merger) be submitted for approval and adoption by the sole stockholder of Merger Sub and (iv) recommended the approval and adoption of this Agreement (including the Merger) by the sole stockholder of Merger Sub, and (B) Parent, promptly following the execution of this Agreement, as the sole stockholder of Merger Sub, shall approve and adopt this Agreement (including the Merger);

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with Delaware Law and other Applicable Law, the parties intend that (a) promptly following the date of this Agreement, Parent will form a newly established Delaware limited liability company as a direct, wholly owned Subsidiary of Parent (“**Second Merger Sub**”), (b) immediately following the Merger, and as part of an integrated transaction with the Merger, the Surviving Corporation will merge with and into Second Merger Sub (the “**Second Merger**”, together with the Merger, the “**Mergers**”), with Second Merger Sub being the surviving entity of the Second Merger (Second Merger Sub, in its capacity as the surviving entity of the Second Merger, is sometimes referred to as the “**Surviving Entity**”);

WHEREAS, for U.S. federal income tax purposes, each of the parties intends that the Mergers, taken together, will constitute an integrated transaction, described in Rev. Rul. 2001-46, 2001-2 C.B. 321, that qualifies as a “reorganization” within the meaning of Section 368(a) of the Code and the Treasury Regulations, and that this Agreement be, and hereby is, adopted as a “plan

of reorganization” for the purposes of Section 368 of the Code and Treasury Regulations Section 1.368-2(g); and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements specified in this Agreement in connection with the Merger and to prescribe certain conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE 1
Definitions

Section 1.01. *Definitions.* (a) As used in this Agreement, the following terms have the following meanings:

“**Advisory Agreement**” means an investment advisory agreement entered into by the Company RIA Subsidiary with an Advisory Client for the purpose of providing Investment Advisory Services to such Advisory Client.

“**Advisory Client**” means any client or customer of the Company RIA Subsidiary for Investment Advisory Services.

“**Affiliate**” means, (i) with respect to any Person (other than Parent or Merger Sub), any other Person, whether now or in the future, directly or indirectly controlling, controlled by, or under common control with such Person and (ii) with respect to Parent or Merger Sub, any other Person, whether now or in the future, directly or indirectly controlled by Parent or Merger Sub.

“**Antitrust Laws**” shall mean the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, the HSR Act and all other Applicable Laws in effect from time to time that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition, including through merger or acquisition.

“**Applicable Law(s)**” means, with respect to any Person, any U.S., non-U.S. or transnational federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, executive order, Order, directive or other similar legislation or requirement enacted, adopted, promulgated or applied by a Governmental Authority or Self-Regulatory Organization that is binding upon or applicable to such Person, as the same may be amended from time to time unless expressly specified otherwise in this Agreement.

“**BHC Act**” means the Bank Holding Company Act of 1956.

“**Broker-Dealer**” means a “broker” or “dealer” (as defined in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act) engaging in such activity in the United States. For the avoidance of doubt, the Company Broker-Dealer Subsidiary shall constitute a “Broker-Dealer” for all purposes hereof.

“**Brokerage Client**” means any client or customer of a Broker-Dealer who receives Brokerage Services from such Broker-Dealer.

“**Brokerage Services**” means brokerage, broker-dealer transaction processing, dealer, distributorship, custodial, and related services, or any other services that involve acting as a Broker-Dealer, and performing ancillary services and activities related or incidental thereto.

“**Business Day**” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“**CEA**” means the Commodity Exchange Act.

“**CFPB**” means the Consumer Financial Protection Bureau.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**Client**” means any Advisory Client or Brokerage Client.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Company Acquisition Proposal**” means (other than the Transactions) any indication of interest, proposal or offer from any Person or Group, other than Parent and its Subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of the Company or its Subsidiaries (including securities of the Company’s Subsidiaries) equal to 15% or more of the consolidated assets of the Company, or to which 15% or more of the revenues or earnings of the Company on a consolidated basis are attributable, (ii) direct or indirect acquisition or issuance (whether in a single transaction or a series of related transactions) of (1) 15% or more of any class of equity or voting securities of the Company or (2) any equity or voting securities of the Company or any of the Company’s Subsidiaries representing, directly or indirectly, 15% or more of the consolidated assets of the Company or 15% or more of the revenues or earnings of the Company and its Subsidiaries on a consolidated basis, (iii) tender offer or exchange offer that, if consummated, would result in such Person or Group beneficially owning (1) 15% or more of any class of equity or voting securities of the Company or (2) any equity or voting securities of the Company or any of the Company’s Subsidiaries representing, directly or indirectly, 15% or more of the consolidated assets of the Company and its Subsidiaries or 15% or more of the revenues or earnings of the Company and its Subsidiaries on a consolidated basis, or (iv) merger, consolidation, share exchange, business combination, joint venture, reorganization, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Subsidiaries, under which such Person or Group would acquire, directly or indirectly, (A) assets (including securities of the Company’s Subsidiaries) equal to 15% or more of the consolidated assets of the Company and its Subsidiaries, or to which 15% or more of the revenues or earnings of the Company and its Subsidiaries on a consolidated basis are attributable, or (B) beneficial ownership of (1) 15% or more of any class of equity or voting securities of the Company or (2) any equity or voting securities of the Company or any of the Company’s Subsidiaries representing, directly or indirectly, 15% or more of the consolidated assets of the Company and its Subsidiaries or 15% or more of the revenues or earnings of the Company and its Subsidiaries on a consolidated basis.

“**Company Balance Sheet**” means the consolidated balance sheet of the Company and its Subsidiaries as of the Company Balance Sheet Date, and the footnotes to such consolidated balance sheet, in each case set forth in the Draft Company 10-K.

“**Company Balance Sheet Date**” means December 31, 2019.

“**Company Bank Subsidiary**” means each of E*TRADE Bank and E*TRADE Savings Bank.

“**Company Broker-Dealer Subsidiary**” means E*TRADE Securities LLC.

“**Company Collective Bargaining Agreement**” means any written or oral agreement, memorandum of understanding or other contractual obligation between the Company or any of its Subsidiaries and any labor organization or other authorized employee representative representing Company Service Providers.

“**Company Common Stock**” means the common stock, \$0.01 par value, of the Company.

“**Company Condition Regulatory Approvals**” means the Consents set forth on Section 9.03(b) of the Company Disclosure Schedule.

“**Company Disclosure Schedule**” means the Company Disclosure Schedule delivered to Parent and Merger Sub on the date of this Agreement.

“**Company Employee Plan**” means any Employee Plan (i) that is sponsored, maintained, administered, contributed to or entered into by the Company or any of its Subsidiaries for the current or future benefit of any Company Service Provider, or (ii) for which the Company or any of its Subsidiaries has any direct or indirect liability.

“**Company Equity Awards**” means Company RSU Awards, Company PSU Awards, Company Director Restricted Stock Awards and Company Director Deferred RSU Awards.

“**Company Material Adverse Effect**” means any event, circumstance, development, change, occurrence or effect that, individually or in the aggregate, is or is reasonably likely to result in, a material adverse effect on (x) the condition (financial or otherwise), assets, liabilities, business or results of operations of the Company and its Subsidiaries, taken as a whole, or (y) the ability of the Company and its Subsidiaries to timely consummate the Closing (including the Merger) on the terms set forth herein or to perform their agreements or covenants hereunder; *provided* that, in the case of clause (x) only, no event, circumstance, development, change, occurrence or effect to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Company Material Adverse Effect, or whether a Company Material Adverse Effect would reasonably be expected to occur: (i) any changes after the date hereof in general United States or global economic conditions, including changes in United States or global securities, credit, financial, debt or other capital markets, (ii) any changes after the date hereof in conditions generally affecting the securities brokerage industry or the other industries in which the Company or any of its Subsidiaries materially engages, (iii) any decline, in and of itself, in the market price or trading volume of the Company Stock, any changes in credit ratings and any changes in any

analysts' recommendations or ratings with respect to the Company or any of its Subsidiaries (it being understood and agreed that this clause (iii) shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (iv) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that this clause (iv) shall not preclude Parent from asserting that any facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Company Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), (v) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement (it being understood and agreed that this clause (v) shall not apply with respect to any representation or warranty that is intended to address the consequences of the execution and delivery of this Agreement or the public announcement or the pendency of this Agreement), (vi) any changes after the date hereof in any Applicable Law or GAAP (or authoritative interpretations thereof), (vii) any action or omission taken by the Company pursuant to the written request of Parent or Merger Sub or (viii) any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war, epidemic, pandemic or disease outbreak (including the COVID-19 virus), except in the case of each of clauses (i), (ii), (vi) or (viii), to the extent that any such event, circumstance, development, change, occurrence or effect has a disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, relative to the adverse effect such event, circumstance, development, change, occurrence or effect has on other companies operating in the securities brokerage industry or the other industries in which the Company or any of its Subsidiaries materially engages.

“Company Preferred Stock” means the Company Series A Preferred Stock and the Company Series B Preferred Stock.

“Company RIA Subsidiary” means E*TRADE Capital Management, LLC.

“Company Series A Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series A, par value \$0.01 per share, of the Company.

“Company Series B Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series B, par value \$0.01 per share, of the Company.

“Company Service Provider” means any director, officer, employee or individual independent contractor of the Company or any of its Subsidiaries.

“Company Stock” means the Company Common Stock and the Company Preferred Stock.

“Company Stock Plans” means the E*TRADE 2005 Equity Incentive Plan and the E*TRADE 2015 Omnibus Incentive Plan, in each case, as amended from time to time.

“Consent” means any consent, approval, waiver, license, permit, variance, exemption, franchise, clearance, authorization, acknowledgment, Order or other confirmation.

“**Contract**” means, with respect to a Person, any written or oral contract, agreement, obligation, commitment, arrangement, understanding, instrument, lease, sublease or license to which such Person is a party or by which such Person is otherwise bound.

“**control**,” unless otherwise specified, has the same meaning as set forth in Section 2(a)(2) of the BHC Act, and the terms “controlling” and “controlled” have correlative meanings.

“**Draft Company 10-K**” means the draft of the Company’s annual report on Form 10-K for the fiscal year ended December 31, 2019 that was made available by the Company to Parent on February 18, 2020.

“**Draft Parent 10-K**” means the draft of Parent’s annual report on Form 10-K for the fiscal year ended December 31, 2019 that was made available by Parent to the Company on February 18, 2020.

“**DTC**” means the Depository Trust Company.

“**DTCC**” means the Depository Trust & Clearing Corporation.

“**Employee Plan**” means any (i) “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA), (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy, or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers’ compensation, supplemental unemployment benefits or post-employment or retirement benefits, excluding, in each case, any such arrangement required to be maintained, sponsored or contributed to by a Governmental Authority.

“**Environmental Law**” means any Applicable Law relating to (i) human health and safety, (ii) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (iii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances.

“**Environmental Permits**” means all Consents (including consents required by Contract) of Governmental Authorities required by Environmental Law and affecting, or relating to, the business of the Company or any of its Subsidiaries, or the business of Parent or any of its Subsidiaries, as applicable.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means, with respect to any entity, any other entity that, together with such entity, would (at any relevant time) be treated as a single employer under Section 414 of the Code.

“**ERISA Client**” means each Client that is (i) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (ii) a plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code, (iii) an employee benefit plan, plan, account or arrangement that is subject to any Similar Law, or (iv) any entity whose underlying assets are considered to include “plan assets” (as defined by the regulations of the Department of Labor, as amended by Section 3(42) of ERISA) of any such employee benefit plan, plan, account or arrangement, or a Person acting on behalf of such a Client.

“**FCM**” means a “futures commission merchant” (as defined in Section 1a(28) of the CEA).

“**FCM Subsidiary**” means E*TRADE Futures LLC.

“**FDIC**” means the Federal Deposit Insurance Corporation.

“**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System.

“**FICC**” means the Fixed Income Clearing Corporation.

“**Fiduciary Shares**” means any shares of Company Stock or Parent Stock owned by the Company, Parent, or any of their respective Subsidiaries, in each case, (i) in such Person’s fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account, (ii) as a result of debts previously contracted by such Person, (iii) in such Person’s capacity as an underwriter or market-maker or in connection with its proprietary trading or arbitrage activities or other similar activities in the ordinary course of business, (iv) in the context of ordinary course brokerage (including prime brokerage), asset management, private banking, wealth management, research or similar activities of such Person, or (v) in connection with such Person’s transactions that are undertaken by pension funds or employee benefit programs.

“**Filing**” means any registration, petition, statement, application, schedule, form, declaration, notice, notification, report, submission or other filing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**FINRA Application**” means an application pursuant to FINRA Rule 1017 seeking FINRA’s approval of the change of ownership or control of a FINRA member Broker-Dealer.

“**GAAP**” means United States generally accepted accounting principles.

“**Governmental Authority**” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, bureau, office, board, instrumentality, commission or official, including any political subdivision thereof, or any non-governmental self-regulatory agency, commission or authority, including FINRA or any other applicable Self-Regulatory Organization, and any individual, body or entity exercising or having the authority to exercise under the Applicable Laws thereof any executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any Taxing Authority, board of trade, federal revenue offices, securities exchanges commission, stock

exchange, and any court, arbitrator or arbitration panel with proper authority and jurisdiction under such Applicable Laws.

“**Group**” means a “group” as defined in Section 13(d) of the Securities Exchange Act.

“**Hazardous Substance**” means any substance, material or waste that is listed, defined, designated or classified as hazardous, toxic, radioactive, dangerous or a “pollutant” or “contaminant” or words of similar meaning under any Applicable Law relating to the environment or natural resources or that is otherwise regulated, or for which liability may be imposed, by any Governmental Authority with jurisdiction over Environmental Laws.

“**HOLA**” means the Home Owners’ Loan Act of 1933.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“**Intellectual Property**” means any and all of the following, whether or not registered, and all rights therein, arising in the United States or any other jurisdiction throughout the world: (i) trademarks, service marks, trade names, certification marks, logos, trade dress, brand names, corporate names, Internet domain names and other indicia of origin, together with all goodwill associated therewith or symbolized thereby, and all registrations and applications relating to the foregoing; (ii) patents and pending patent applications and all divisions, continuations, continuations-in-part, reissues, reexaminations, and any extensions thereof; (iii) registered and unregistered copyrights (including those in Software), all registrations and applications to register the same, and all renewals, extensions, reversions and restorations thereof; (iv) trade secrets and rights in confidential technology and information, know-how, inventions, improvements, processes, formulae, algorithms, models, methodologies, customer and supplier lists, pricing and cost information and business and marketing plans and proposals; (v) rights in Software; and (vi) other similar types of proprietary or intellectual property.

“**International Plan**” means any Employee Plan that is not a U.S. Plan.

“**Investment Advisers Act**” means the Investment Advisers Act of 1940.

“**Investment Advisory Services**” means investment management or investment advisory services, including any subadvisory services, that involve acting as an “investment adviser” within the meaning of the Investment Advisers Act.

“**Investment Company Act**” means the Investment Company Act of 1940.

“**IRS**” means the U.S. Internal Revenue Service.

“**IT Assets**” means any and all computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology equipment, and all associated documentation, owned by or purported to be owned by an applicable Person or any of its Subsidiaries, or licensed or leased, or purported to the licensed or leased, to an applicable Person or any of its Subsidiaries (excluding any public networks).

“**Key Employee**” means an employee of the Company or any of its Subsidiaries with the title of managing director or above.

“**knowledge**” of any Person that is not an individual means the knowledge, after reasonable inquiry, of those officers of the Company or Parent, as the case may be, set forth in Section 1.01 of the Company Disclosure Schedule or Section 1.01 of the Parent Disclosure Schedule, as applicable.

“**Licensed Intellectual Property**” means any and all Intellectual Property owned by a Third Party and licensed or sublicensed to or purported to be licensed or sublicensed to the Company or any of its Subsidiaries.

“**Lien**” means, with respect to any property or asset, any mortgage, lien, license, pledge, charge, security interest, real property covenant, encumbrance or other adverse claim of any kind in respect of such property or asset. For purposes of this Agreement, a Person shall be deemed to own subject to a Lien any property or asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

“**NASDAQ**” means The NASDAQ Stock Market LLC, or any successor thereto.

“**New Client**” means a Person who becomes an Advisory Client during the period from the date of this Agreement through the Closing.

“**NFA**” means the National Futures Association.

“**NSCC**” means the National Securities Clearing Corporation.

“**NYSE**” means the New York Stock Exchange, Inc., or any successor thereto.

“**OCC**” means the Office of the Comptroller of the Currency.

“**Order**” means any order, writ, decree, judgment, award, decision, injunction, ruling, settlement, subpoena, verdict, consent decree, compliance order, civil or administrative order, or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Authority or arbitrator (in each case, whether temporary, preliminary or permanent).

“**Owned Intellectual Property**” means, with respect to any Person, any and all Intellectual Property owned or purported to be owned by such Person.

“**Parent Advisory Agreement**” means an investment advisory agreement entered into by a Parent RIA Subsidiary with a Parent Advisory Client for the purpose of providing Investment Advisory Services to such Parent Advisory Client.

“**Parent Advisory Client**” means any client or customer of a Parent RIA Subsidiary for Investment Advisory Services.

“Parent Balance Sheet” means the consolidated balance sheet of Parent and its Subsidiaries as of the Parent Balance Sheet Date, and the footnotes to such consolidated balance sheet, in each case set forth in Parent’s quarterly report on Form 10-Q for the fiscal quarter ended September 30, 2019.

“Parent Balance Sheet Date” means September 30, 2019.

“Parent Bank Subsidiary” means each of Morgan Stanley Bank, N.A. and Morgan Stanley Private Bank, N.A.

“Parent Broker-Dealer Subsidiary” means each Subsidiary of Parent that is registered as a broker-dealer with the SEC.

“Parent Collective Bargaining Agreement” means any written or oral agreement, memorandum of understanding or other contractual obligation between the Parent or any of its Subsidiaries and any labor organization or other authorized employee representative representing Parent Service Providers.

“Parent Common Stock” means the voting common stock, \$0.01 par value, of Parent.

“Parent Condition Regulatory Approvals” means the Consents set forth on Section 9.02(b) of the Parent Disclosure Schedule.

“Parent Disclosure Schedule” means the Parent Disclosure Schedule delivered to the Company on the date of this Agreement.

“Parent Employee Plan” means any Employee Plan (i) that is sponsored, maintained, administered, contributed to or entered into by the Parent or any of its Subsidiaries for the current or future benefit of any Parent Service Provider, or (ii) for which the Parent or any of its Subsidiaries has any direct or indirect liability.

“Parent FCM Subsidiary” means each Subsidiary of Parent that is registered as an FCM with the CFTC.

“Parent Material Adverse Effect” means any event, circumstance, development, change, occurrence or effect that, individually or in the aggregate, is or is reasonably likely to result in, a material adverse effect on (x) the condition (financial or otherwise), assets, liabilities, business or results of operations of Parent and its Subsidiaries, taken as a whole, or (y) the ability of Parent and its Subsidiaries to timely consummate the Closing (including the Merger) on the terms set forth herein, or to perform their agreements or covenants hereunder; *provided* that, in the case of clause (x) only, no event, circumstance, development, change, occurrence or effect to the extent resulting from, arising out of, or relating to any of the following shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Parent Material Adverse Effect, or whether a Parent Material Adverse Effect would reasonably be expected to occur: (i) any changes after the date hereof in general United States or global economic conditions, including changes in United States or global securities, credit, financial, debt or other capital markets, (ii) any changes after the date hereof in conditions generally affecting the securities brokerage industry or the other industries in which the Parent or any of its Subsidiaries materially engages, (iii) any

decline, in and of itself, in the market price or trading volume of Parent Stock, any changes in credit ratings and any changes in any analysts' recommendations or ratings with respect to Parent or any of its Subsidiaries (it being understood and agreed that this clause (iii) shall not preclude the Company from asserting that any facts or occurrences giving rise to or contributing to such decline that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (iv) any failure, in and of itself, by Parent or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that this clause (iv) shall not preclude the Company from asserting that any facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (v) the execution and delivery of this Agreement, the public announcement or the pendency of this Agreement (it being understood and agreed that this clause (v) shall not apply with respect to any representation or warranty that is intended to address the consequences of the execution and delivery of this Agreement or the public announcement or the pendency of this Agreement), (vi) any changes after the date hereof in any Applicable Law or GAAP (or authoritative interpretations thereof), (vii) any action or omission taken by Parent or Merger Sub pursuant to the written request of the Company or (viii) any acts of God, natural disasters, terrorism, armed hostilities, sabotage, war or any escalation or worsening of acts of war, epidemic, pandemic or disease outbreak (including the COVID-19 virus), except in the case of each of clauses (i), (ii), (vi) or (viii), to the extent that any such event, circumstance, development, change, occurrence or effect has a disproportionate adverse effect on Parent and its Subsidiaries, taken as a whole, relative to the adverse effect such event, circumstance, development, change, occurrence or effect has on other companies operating in the securities brokerage industry or the other industries in which the Parent or any of its Subsidiaries materially engages.

"Parent Preferred Stock" means the Parent Series A Preferred Stock, the Parent Series C Preferred Stock, the Parent Series E Preferred Stock, the Parent Series F Preferred Stock, the Parent Series H Preferred Stock, the Parent Series I Preferred Stock, the Parent Series J Preferred Stock, the Parent Series K Preferred Stock and the Parent Series L Preferred Stock.

"Parent RIA Subsidiary" means each Subsidiary of Parent that is registered as an investment adviser under the Investment Advisers Act.

"Parent Series A Preferred Stock" means the Floating Rate Non-Cumulative Preferred Stock, Series A, par value \$0.01 per share, of Parent.

"Parent Series C Preferred Stock" means the 10% Non-Cumulative, Non-Voting Perpetual Preferred Stock, Series C, par value \$0.01 per share, of Parent.

"Parent Series E Preferred Stock" means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series E, par value \$0.01 per share, of Parent.

"Parent Series F Preferred Stock" means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series F, par value \$0.01 per share, of Parent.

“Parent Series H Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series H, par value \$0.01 per share, of Parent.

“Parent Series I Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, par value \$0.01 per share, of Parent.

“Parent Series J Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series J, par value \$0.01 per share, of Parent.

“Parent Series K Preferred Stock” means the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, par value \$0.01 per share, of Parent.

“Parent Series L Preferred Stock” means the 4.875% Non-Cumulative Preferred Stock, Series L, par value \$0.01 per share, of Parent.

“Parent Service Provider” means any director, officer, employee or individual independent contractor of the Parent or any of its Subsidiaries.

“Parent Share Issuance” means the issuance of shares of Parent Stock in connection with the Merger, as contemplated hereby.

“Parent Stock” means the Parent Common Stock and the Parent Preferred Stock.

“Permitted Lien” means (i) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and, in each case, with respect to which adequate reserves have been established in accordance with GAAP and set forth in the audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included or incorporated by reference in the Company Draft 10-K, (ii) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other similar liens, in each case, arising in the ordinary course of business, in each case, with respect to which adequate reserves have been established in accordance with GAAP and set forth in the audited consolidated financial statements and unaudited consolidated interim financial statements as of the Company included or incorporated by reference in the Company Draft 10-K, (iii) pledges or deposits in connection with workers’ compensation, unemployment insurance and other social security legislation, in each case, arising in the ordinary course of business, (iv) easements, rights-of-way, covenants, restrictions and other encumbrances incurred in the ordinary course of business that do not, in any case, materially detract from the value or the use of the property subject thereto, (v) statutory landlords’ liens and liens granted to landlords under any lease, (vi) non-exclusive licenses to Intellectual Property granted in the ordinary course of business or (vii) any Liens which are disclosed on the Company Balance Sheet (in the case of Liens applicable to the Company or any of its Subsidiaries) or the Parent Balance Sheet (in the case of Liens applicable to Parent or any of its Subsidiaries) or the notes thereto or (viii) any Liens that are not material to the Company and its Subsidiaries or Parent and its Subsidiaries, as applicable, taken as a whole.

“Person” means any individual, corporation, partnership, limited liability company, association, bank, savings association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality of such government or political subdivision.

“**Proceeding**” means any legal, administrative, arbitral or other proceeding (including disciplinary proceeding), claim, suit, action or governmental or regulatory investigation or inquiry of any nature.

“**Regulatory Documents**” means, with respect to a Person, all Filings (including the current Form ADV of the Company, Parent or any of their respective Affiliates, as applicable, the current Form BD(s) of the Company Broker-Dealer Subsidiary or the Parent Broker-Dealer Subsidiary, as applicable, and the current Form 7-R of the FCM Subsidiary or the Parent FCM Subsidiary, as applicable), together with any amendments required to be made with respect thereto, filed, or required to be filed, by such Person with any applicable Governmental Authority pursuant to Applicable Law, including the Securities Laws or the applicable rules and regulations of any Governmental Authority.

“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002.

“**SEC**” means the United States Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934.

“**Securities Laws**” means the Securities Act, the Securities Exchange Act, the Investment Company Act, the Investment Advisers Act, state “blue sky,” securities and investment advisory laws, all applicable foreign securities laws and, in each case, the rules of each applicable Self-Regulatory Organization relating to securities.

“**Self-Regulatory Organization**” means a self-regulatory organization, including any “self-regulatory organization” as such term is defined in Section 3(a)(26) of the Securities Exchange Act, any “self-regulatory organization” as such term is defined in CFTC Rule 1.3, and any other U.S. or non-U.S. securities exchange, futures exchange, futures association, commodities exchange, clearinghouse or clearing organization.

“**Similar Law**” means any law similar to Title I of ERISA or Section 4975 of the Code.

“**Software**” means all (i) computer programs and other software including any and all software implementations of algorithms, models and, methodologies, assemblers, applets, compilers, development tools, design tools and user interfaces, whether in source code or object code form, (ii) databases and compilations, including all data and collections of data, whether machine readable or otherwise, and (iii) updates, upgrades, modifications, improvements, enhancements, derivative works, new versions, new releases and corrections to or based on any of the foregoing.

“**Subsidiary**” means, when used with reference to a Person, (A) any other Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other governing body or Persons performing similar functions, or more than 50% of the outstanding voting securities of which, are owned, directly or indirectly, by such first Person or (B) any other Person with respect to which such first Person controls the management; *provided* that, when “Subsidiary” is used with reference to the Company or any of its Subsidiaries,

it shall also be deemed to include any “subsidiary” as defined under Section 10(a)(1)(G) of HOLA. For purposes of this Agreement, a Subsidiary shall be considered a “wholly owned Subsidiary” of a Person as long as such Person directly or indirectly owns all of the securities or other ownership interests (excluding any securities or other ownership interests held by an individual director or officer required to hold such securities or other ownership interests pursuant to Applicable Law) of such Subsidiary.

“**Tax**” means any income, gross receipts, franchise, sales, use, ad valorem, property, payroll, withholding, excise, severance, transfer, employment, estimated, alternative or add-on minimum, value added, stamp, occupation, premium, environmental or windfall profits taxes, and any other taxes, charges, fees, levies, imposts, duties, licenses or other assessments, together with any interest, penalties, additions to tax or other additional amounts with respect to any of the foregoing (including penalties for failure to file or late filing of any tax return, report or other filing, and any interest in respect of such penalties, additions to tax or other additional amounts) imposed by any federal, state, local, non-U.S. or other Taxing Authority.

“**Tax Return**” means any report, return, document, statement, declaration or other information or filing filed or required to be filed with any Taxing Authority with respect to Taxes, including information returns, claims for refunds, any documents with respect to or accompanying payments of estimated Taxes or any documents with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“**Tax Sharing Agreement**” means any existing agreement binding any Person that provides for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, losses, revenues, receipts, or gains for the purpose of determining any Person’s Tax liability, other than agreements entered into in the ordinary course of business that do not have as a principal purpose addressing Tax matters.

“**Taxing Authority**” means any Governmental Authority responsible for the imposition or collection of any Tax.

“**Third Party**” means any Person or Group, other than the Company, Parent, any of their respective Affiliates or the Representatives of any such Persons acting in such capacity.

“**Transactions**” means the transactions contemplated by this Agreement (including the Merger).

“**Treasury Regulations**” means the Treasury regulations promulgated under the Code.

“**U.S. Plan**” means any Employee Plan that covers Company Service Providers or Parent Service Providers located primarily within the U.S.

“**WARN**” means the Worker Adjustment and Retraining Notification Act and any comparable foreign, state or local law.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Affected Employees	7.04(a)
Agreement	Preamble
Alternate Company Acquisition Agreement	6.03(i)
Anti-Money Laundering Laws	4.14(a)
Bankruptcy and Equity Exceptions	4.02(a)
BD Compliance Policies	4.18(f)
Burdensome Condition	8.01(c)
Cash Sweep Program	4.18(i)
Certificate	2.04(a)
Certificate of Merger	2.02(a)
Closing	2.01
Closing Date	2.01
Collection Expenses	10.03(d)
Common Merger Consideration	2.03(i)
Common Stock Certificates	2.04(a)
Company	Preamble
Company Acquisition Proposal	10.03(a)
Company Adverse Recommendation Change	6.03(a)
Company Approval Time	6.03(b)
Company Board Recommendation	4.02(b)
Company Credit Agreement	8.12
Company Debt	8.12
Company Director Deferred RSU Award	2.05(d)(ii)
Company Director Deferred RSU Award Consideration	2.05(d)(ii)
Company Director Restricted Stock Award	2.05(d)(i)
Company Governmental Authorizations	4.03
Company Indemnified Parties	7.03(a)
Company Intervening Event	6.03(g)
Company Material Contract	4.20(a)
Company Notes	6.05
Company Organizational Documents	4.01
Company Permits	4.13(a)
Company PSU Award	2.05(c)
Company PSU Award Consideration	2.05(c)
Company Registered IP	4.24(a)
Company Regulatory Agreement	4.14(j)
Company RSU Award	2.05(b)
Company RSU Award Consideration	2.05(b)
Company SEC Documents	4.07(b)
Company Securities	4.05(a)
Company Stockholder Approval	4.02(a)
Company Stockholder Meeting	8.03(a)
Company Subsidiary Credit Agreement	8.12
Company Subsidiary Securities	4.06(b)

Company Superior Proposal	6.03(f)
Company Superior Proposal Termination	6.03(b)
Company Termination Fee	10.03(a)
Confidentiality Agreement	6.02(a)
Delaware Law	2.02(a)
DER	2.05(b)
DTCC Notifications	8.01(h)
Effective Time	2.02(a)
e-mail	11.01
End Date	10.01(b)(i)
ESPP	7.04(f)
Exchange Agent	2.04(a)
Exchange Fund	2.04(a)
Exchange Ratio	2.03(i)
Excluded Shares	2.03(i)
Existing Indebtedness Payoff Amount	8.12
FCM Compliance Policies	4.19(f)
Indenture	6.05
internal controls	4.07(g)
Lease	4.25
Merger	2.02(b)
Merger Consideration	2.03(iii)
Merger Sub	Preamble
Mergers	Recitals
New Parent Replacement Series A Preferred Stock	2.03(ii)
New Parent Replacement Series B Preferred Stock	2.03(iii)
Other Regulatory Notifications	8.01(i)
Parent	Preamble
Parent BD Compliance Policies	5.17(f)
Parent Director Deferred RSU Awards	5.05(a)
Parent Equity Awards	5.05(a)
Parent FCM Compliance Policies	5.18(f)
Parent Governmental Authorizations	5.03
Parent Material Contract	5.19
Parent Organizational Documents	5.01
Parent Permits	5.13(a)
Parent Preferred Stock	5.05(a)
Parent PSU Awards	5.05(a)
Parent Qualified Plan	7.04(e)
Parent Registered IP	5.23(a)
Parent Regulatory Agreement	5.14(i)
Parent RSU Awards	5.05(a)
Parent SEC Documents	5.07(b)
Parent Securities	5.05(a)
Parent Stock Options	5.05(a)
Parent Subsidiary Securities	5.06(b)

Premium Cap	7.03(b)
principal executive officer	4.07(f)
principal financial officer	4.07(f)
Proxy Statement/Prospectus	8.02(a)
QPAM Exemption	4.14(g)
Registration Statement	8.02(a)
Regulation S-K	4.11
Regulation S-X	6.01(m)
Regulatory Agencies	4.07(a)
Related Party	4.20(a)(xi)
Related Party Contract	4.20(a)(xi)
Release	8.04
Representatives	6.03(a)
Reverse Termination Fee	10.03(b)
Sanctions	4.14(d)
Second Effective Time	8.13(c)
Surviving Entity	Recitals
Second Merger	Recitals
Second Surviving LLC	Recitals
Series A Preferred Merger Consideration	2.03(ii)
Series A Preferred Stock Certificates	2.04(a)
Series B Preferred Merger Consideration	2.03(iii)
Series B Preferred Stock Certificates	2.04(a)
Surviving Corporation	2.02(b)
Transaction Litigation	8.07
Transition Team	6.04(a)
Uncertificated Common Shares	2.04(a)
Uncertificated Series A Preferred Shares	2.04(a)
Uncertificated Series B Preferred Shares	2.04(a)
Uncertificated Shares	2.04(a)

Section 1.02. *Other Definitional and Interpretative Provisions.* The following rules of interpretation shall apply to this Agreement: (i) the words “hereof,” “hereby,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) the table of contents and captions in this Agreement are included for convenience of reference only and shall be ignored in the construction or interpretation hereof; (iii) references to Articles, Sections and Exhibits are to Articles, Sections and Exhibits of this Agreement unless otherwise specified; (iv) all Exhibits and schedules annexed to this Agreement or referred to in this Agreement, including the Company Disclosure Schedule and the Parent Disclosure Schedule, are hereby incorporated in and made a part of this Agreement as if set forth in full in this Agreement; (v) any capitalized term used in any Exhibit, the Company Disclosure Schedule or the Parent Disclosure Schedule but not otherwise defined therein shall have the meaning set forth in this Agreement; (vi) any singular term in this Agreement shall be deemed to include the plural, and any plural term shall be deemed to include the singular, and references to any gender shall include all genders; (vii) whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import; (viii) “writing,” “written” and comparable terms refer to printing,

typing and other means of reproducing words (including by electronic media) in a visible form; (ix) references to any Applicable Law shall be deemed to refer to such Applicable Law as amended or supplemented from time to time and to any rules, regulations and interpretations promulgated thereunder; (x) references to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any Contract listed on any schedule hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule; (xi) references to any Person include the successors and permitted assigns of that Person; (xii) references to “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including,” respectively; (xiii) references to “dollars” and “\$” means U.S. dollars; (xiv) the term “made available” and words of similar import mean that the relevant documents, instruments or materials were (A) posted and made available prior to the date hereof by the Company on the Merrill Data Site / Eagle 20 due diligence data site maintained by the Company, (B) provided via electronic mail or in person prior to the date hereof, or (C) filed with or furnished to the SEC and publicly available on the SEC’s EDGAR reporting system prior to the date hereof; (xv) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if”; and (xvi) the parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2

Closing; Merger

Section 2.01. *Closing.* The closing of the Merger (the “**Closing**”) shall take place in New York City at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017 at 10:00 a.m., Eastern time, on the third (3rd) Business Day after the date the conditions set forth in Article 9 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted by Applicable Law, waiver of such conditions by the party or parties entitled to the benefit thereof at the Closing) have been satisfied or, to the extent permitted by Applicable Law, waived by the party or parties entitled to the benefit thereof, or at such other place, at such other time or on such other date as Parent and the Company may mutually agree (the date on which the Closing occurs, the “**Closing Date**”).

Section 2.02. *The Merger.* (a) At the Closing, the Company shall file a certificate of merger (the “**Certificate of Merger**”) with the Delaware Secretary of State and make all other filings or recordings required by the General Corporation Law of the State of Delaware (the “**Delaware Law**”) in connection with the Merger. The Merger shall become effective at such time (the “**Effective Time**”) as the Certificate of Merger is duly filed with the Delaware Secretary of State (or at such later time as Parent and the Company shall agree and is specified in the Certificate of Merger).

(b) At the Effective Time, Merger Sub shall be merged (the “**Merger**”) with and into the Company in accordance with Delaware Law, whereupon the separate existence of Merger Sub shall cease, and the Company shall be the surviving corporation (the “**Surviving Corporation**”) and a wholly owned subsidiary of Parent.

(c) From and after the Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and Merger Sub, all as provided under the Delaware Law.

Section 2.03. *Conversion of Shares.* At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company, the holders of the Company Stock or any other Person:

(i) each share of Company Common Stock outstanding immediately prior to the Effective Time (other than shares of Company Common Stock to be cancelled pursuant to Section 2.03(iv) (the “**Excluded Shares**”)) shall, subject to Section 2.07, be converted into the right to receive 1.0432 shares (the “**Exchange Ratio**”) of Parent Common Stock (the “**Common Merger Consideration**”);

(ii) each share of Company Series A Preferred Stock outstanding immediately prior to the Effective Time (other than, if applicable, each share of Company Series A Preferred Stock held immediately prior to the Effective Time by the Company as treasury stock or by Parent (other than any such shares held by Parent that are Fiduciary Shares)) shall be converted into the right to receive one share of a newly created series of preferred stock of Parent having the terms set forth in Annex I hereto (the “**Series A Preferred Merger Consideration**”) and all shares of such newly created series, the “**New Parent Replacement Series A Preferred Stock**”; *provided* that Parent shall ensure that shares of the New Parent Replacement Series A Preferred Stock shall have such rights, preferences, privileges and voting powers, and limitations and restrictions, that, taken as a whole, shall not be materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Company Series A Preferred Stock, taken as a whole;

(iii) each share of Company Series B Preferred Stock outstanding immediately prior to the Effective Time (other than, if applicable, each share of Company Series B Preferred Stock held immediately prior to the Effective Time by the Company as treasury stock or by Parent (other than any such shares held by Parent that are Fiduciary Shares)) shall be converted into the right to receive one share of a newly created series of preferred stock of Parent having the terms set forth in Annex II hereto (the “**Series B Preferred Merger Consideration**”) and all shares of such newly created series, the “**New Parent Replacement Series B Preferred Stock**,” and each of the Common Merger Consideration, the Series A Preferred Merger Consideration and the Series B Preferred Merger Consideration, as applicable, the “**Merger Consideration**”); *provided* that Parent shall ensure that shares of the New Parent Replacement Series B Preferred Stock shall have such rights, preferences, privileges and voting powers, and limitations and restrictions, that, taken as a whole, shall not be materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Company Series B Preferred Stock, taken as a whole;

(iv) each share of Company Stock held immediately prior to the Effective Time by the Company as treasury stock or by Parent (other than any such shares held by Parent

that are Fiduciary Shares) shall be cancelled, and no consideration shall be paid with respect thereto;

(v) each share of common stock of Merger Sub outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock, par value \$0.01 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation; and

(vi) all outstanding shares of Company Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each share of Company Stock that was outstanding immediately prior to the Effective Time shall thereafter represent only the right to receive the applicable Merger Consideration, any dividends or other distributions pursuant to Section 2.04(f) and any cash in lieu of any fractional shares of Parent Common Stock pursuant to Section 2.07, in each case to be issued or paid in accordance with Section 2.04, without interest, as applicable.

Section 2.04. *Surrender and Payment.* (a) Prior to the Effective Time, Parent shall appoint an exchange agent reasonably acceptable to the Company (the “**Exchange Agent**”) and enter into an exchange agent agreement with the Exchange Agent for the purpose of exchanging (in each case, other than Excluded Shares) (i) for the Common Merger Consideration (A) certificates representing shares of Company Common Stock (the “**Common Stock Certificates**”) or (B) uncertificated shares of Company Common Stock which immediately prior to the Effective Time were registered to a holder on the stock transfer books of the Company (the “**Uncertificated Common Shares**”), (ii) for the Series A Preferred Merger Consideration (A) certificates representing shares of Company Series A Preferred Stock (the “**Series A Preferred Stock Certificates**”) or (B) uncertificated shares of Company Series A Preferred Stock which immediately prior to the Effective Time were registered to a holder on the stock transfer books of the Company (the “**Uncertificated Series A Preferred Shares**”), and (iii) for the Series B Preferred Merger Consideration (A) certificates representing shares of Company Series B Preferred Stock (the “**Series B Preferred Stock Certificates**”) and each of the Common Stock Certificates, Series A Preferred Stock Certificates and Series B Preferred Stock Certificates, a “**Certificate**”) or (B) uncertificated shares of Company Series B Preferred Stock which immediately prior to the Effective Time were registered to a holder on the stock transfer books of the Company (the “**Uncertificated Series B Preferred Shares**”) and each of the Uncertificated Common Shares, the Uncertificated Series A Preferred Shares and the Uncertificated Series B Preferred Shares, the “**Uncertificated Shares**”). At or prior to the Effective Time, Parent shall deposit with the Exchange Agent, (i) for the benefit of the holders of shares of Company Common Stock, for exchange in accordance with this Section 2.04 through the Exchange Agent, evidence of shares in book-entry form representing the shares of Parent Common Stock issuable pursuant to Section 2.03(i) in exchange for outstanding shares of Company Common Stock, (ii) for the benefit of the holders of shares of Company Series A Preferred Stock, for exchange in accordance with this Section 2.04 through the Exchange Agent, evidence of shares in book-entry

form representing the shares of New Parent Replacement Series A Preferred Stock issuable pursuant to Section 2.03(ii) in exchange for outstanding shares of Company Series A Preferred Stock, and (iii) for the benefit of the holders of shares of Company Series B Preferred Stock, for exchange in accordance with this Section 2.04 through the Exchange Agent, evidence of shares in book-entry form representing the shares of New Parent Replacement Series B Preferred Stock issuable pursuant to Section 2.03(iii) in exchange for outstanding shares of Company Series B Preferred Stock. Parent agrees to make promptly available, directly or indirectly, to the Exchange Agent from time to time as needed additional cash sufficient to pay any dividends or other distributions to which holders of Company Stock are entitled pursuant to Section 2.04(f) and cash in lieu of any fractional shares of Parent Common Stock to which such holders are entitled pursuant to Section 2.07. Promptly after the Effective Time and in any event within three (3) Business Days after the Closing Date, Parent shall send, or shall cause the Exchange Agent to send, to each holder of shares of Company Common Stock represented by a Certificate at the Effective Time a letter of transmittal and instructions (which shall specify that delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates or transfer of the Uncertificated Shares to the Exchange Agent and which shall otherwise be in customary form and shall include customary provisions with respect to delivery of an “agent’s message” regarding the book-entry transfer of Uncertificated Shares) for use in such exchange. All evidence of shares in book-entry form and cash deposited with the Exchange Agent pursuant to this Section 2.04 shall be referred to in this Agreement as the “**Exchange Fund.**” Parent shall cause the Exchange Agent to deliver the Merger Consideration contemplated to be issued or paid pursuant to this Article 2 out of the Exchange Fund in accordance herewith. The Exchange Fund shall not be used for any other purpose. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; *provided* that no such investment or losses thereon shall affect the dividends or other distributions to which holders of Company Common Stock are entitled pursuant to Section 2.04(f) or cash in lieu of fractional interests to which holders of Company Common Stock are entitled pursuant to Section 2.07. Any interest and other income resulting from such investments shall be the property of, and paid to, Parent upon termination of the Exchange Fund.

(b) Each holder of shares of Company Stock that have been converted into the right to receive the Merger Consideration shall be entitled to receive, upon (i) surrender to the Exchange Agent of a Certificate, together with a properly completed letter of transmittal, or (ii) receipt of an “agent’s message” by the Exchange Agent (or such other evidence, if any, of transfer as the Exchange Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, in respect of each share of Company Stock represented by such Certificate or Uncertificated Share (A) the applicable Merger Consideration and (B) any cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect thereto as contemplated by Section 2.07 and Section 2.04(f), as applicable). The shares of Parent Common Stock, New Parent Replacement Series A Preferred Stock and New Parent Replacement Series B Preferred Stock constituting part of such Merger Consideration shall, at Parent’s option, be in uncertificated book-entry form, unless a physical certificate is required under Applicable Law.

(c) If any portion of the Merger Consideration (or cash in lieu of any fractional shares of Parent Common Stock or any dividends and distributions with respect thereto contemplated by Section 2.07 or Section 2.04(f), as applicable) is to be paid to a Person other than the Person in whose name the surrendered Certificate or the transferred Uncertificated Share is registered, it shall be a condition to such payment that (i) either such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer or such Uncertificated Share shall be properly transferred and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or similar Taxes required as a result of such payment to a Person other than the registered

holder of such Certificate or Uncertificated Share or establish to the satisfaction of the Exchange Agent that such transfer or similar Taxes have been paid or are not payable.

(d) From and after the Effective Time, there shall be no further registration of transfers of shares of Company Stock on the records of the Company. If, after the Effective Time, Certificates or Uncertificated Shares are presented to Parent, the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged for the applicable Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect to the Merger Consideration as contemplated by Section 2.07 and Section 2.04(f), as applicable) with respect thereto in accordance with the procedures set forth in, or as otherwise contemplated by, this Article 2.

(e) Any portion of the Exchange Fund that remains unclaimed by the holders of shares of Company Stock twelve (12) months following the Closing Date shall be delivered to Parent or as otherwise instructed by Parent, upon demand, and any such holder who has not exchanged shares of Company Stock for the applicable Merger Consideration in accordance with this Section 2.04 prior to such time shall thereafter look only to Parent for payment of such Merger Consideration (and cash in lieu of any fractional shares of Parent Common Stock and any dividends and distributions with respect thereto as contemplated by Section 2.07 and Section 2.04(f), as applicable), without any interest thereon. Notwithstanding the foregoing, Parent and its Subsidiaries (including, after the Closing, the Surviving Corporation and its Subsidiaries) shall not be liable to any holder of shares of Company Stock for any amounts properly paid to a public official in compliance with applicable abandoned property, escheat or similar laws. Any amounts remaining unclaimed by holders of shares of Company Stock immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Authority shall become, to the extent permitted by Applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(f) Following the surrender of any Certificates or the transfer of any Uncertificated Shares as provided in this Section 2.04, and in any event within two (2) Business Days of such surrender or transfer, the Exchange Agent shall promptly pay, or cause to be paid, without interest, to the Person in whose name the shares of Parent Common Stock constituting the Common Merger Consideration have been registered, (i) in connection with the payment of the Common Merger Consideration, (x) the amount of any cash payable in lieu of fractional shares to which such Person is entitled pursuant to Section 2.07, as applicable, and (y) the aggregate amount of all dividends or other distributions payable with respect to such shares of Parent Common Stock with a record date on or after the Effective Time that were paid prior to the time of such surrender or transfer, and (ii) at the appropriate payment date after the payment of the Common Merger Consideration, the amount of all dividends or other distributions payable with respect to whole shares of Parent Common Stock constituting the Common Merger Consideration with a record date on or after the Effective Time and prior to the time of such surrender or transfer and with a payment date subsequent to the time of such surrender or transfer. No dividends or other distributions with respect to shares of Parent Common Stock constituting the Common Merger Consideration, and no cash payment in lieu of fractional shares pursuant to Section 2.07, as applicable, shall be paid to the holder of any Certificates not surrendered or of any Uncertificated Shares not transferred until such Certificates or Uncertificated Shares are surrendered or transferred, as the case may be, as provided in this Section 2.04.

(g) The payment of any transfer, documentary, sales, use, stamp, registration, value added and other Taxes and fees (including any penalties and interest) incurred solely by a holder of Company Stock in connection with the Merger, and the filing of any related Tax Returns and other documentation with respect to such Taxes and fees, shall be the sole responsibility of such holder.

Section 2.05. *Company Equity Awards.*

(a) [Intentionally Omitted]

(b) *Company Restricted Stock Units.* At the Effective Time, each restricted stock unit award with respect to shares of Company Common Stock that is outstanding under any Company Stock Plan (other than the Company Director Deferred RSU Awards) as of immediately prior to the Effective Time that is eligible to vest solely based on the continued service (each, a “**Company RSU Award**”), whether vested or unvested, shall vest (if unvested) and be cancelled and converted into the right to receive the Common Merger Consideration in accordance with Section 2.03, as if such Company RSU Award (including any shares of Company Common Stock in respect of dividend equivalent units credited thereon (each such credited share, a “**DER**”) had been settled in shares of Company Common Stock immediately prior to the Effective Time (the “**Company RSU Award Consideration**”).

(c) *Company Performance-Based Restricted Stock Units.* At the Effective Time, each restricted stock unit award with respect to shares of Company Common Stock that is outstanding under any Company Stock Plan as of immediately prior to the Effective Time that is eligible to vest based on the achievement of performance goals (each, a “**Company PSU Award**”), whether vested or unvested, shall vest (if unvested) as set forth in the following sentence and be cancelled and converted into the right to receive the Common Merger Consideration in accordance with Section 2.03, as if such Company PSU Award (including any DERs credited thereon) had been settled in shares of Company Common Stock immediately prior to the Effective Time (the “**Company PSU Award Consideration**”). With respect to any performance periods that are completed on or before the Effective Time, a Company PSU Award shall vest at the greater of the target or actual level of performance, as determined by the Company’s Board of Directors or a committee thereof prior to the Effective Time. With respect to any performance periods that are not completed on or before the Effective Time, a Company PSU Award shall vest at the target level of performance.

(d) *Company Director Restricted Stock and Deferred Restricted Stock Units.* At the Effective Time:

(i) each outstanding restricted stock award made to the Company’s directors with respect to shares of Company Common Stock outstanding as of immediately prior to the Effective Time (each, a “**Company Director Restricted Stock Award**”) shall be cancelled and converted into the right to receive the Common Merger Consideration in accordance with Section 2.03.

(ii) each deferred restricted stock unit award made to the Company’s directors with respect to shares of Company Common Stock outstanding as of immediately prior to

the Effective Time (each, a “**Company Director Deferred RSU Award**”), whether vested or unvested, shall vest (if unvested) and be cancelled and converted into the right to receive the Common Merger Consideration in accordance with Section 2.03, as if such Company Director Deferred RSU Award (including any DERs credited thereon) had been settled in shares of Company Common Stock immediately prior to the Effective Time (the “**Company Director Deferred RSU Award Consideration**”).

(e) *Delivery of Company Equity Award Consideration; Withholding; Section 409A.* Parent shall cause the Surviving Corporation to pay through the payroll system of the Surviving Corporation (to the extent applicable) to each holder of a Company Equity Award the Company RSU Award Consideration, Company PSU Award Consideration, and Company Director Deferred RSU Award Consideration, as applicable, less any required withholding Taxes and without interest, no later than the first payroll date of the Surviving Corporation following the Effective Time; *provided*, that any such withholding Taxes required to be paid by or collected on behalf of such holder shall be satisfied by retaining a number of shares of Parent Common Stock having a fair market value (determined by reference to the closing price of a share of Parent Common Stock on the Closing Date) equal to the minimum statutory amount required to be withheld. Notwithstanding anything herein to the contrary, with respect to any Company Equity Award that constitutes nonqualified deferred compensation subject to Section 409A of the Code and that the Company determines prior to the Effective Time is not eligible to be terminated in accordance with Treasury Regulation Section 1.409A-3(j)(4)(ix)(B), such payment will be made at the earliest time permitted under the applicable Company Equity Plan that will not trigger a Tax or penalty under Section 409A of the Code.

(f) *Board Actions.* Prior to the Effective Time, the Board of Directors of the Company (and/or the Compensation Committee of the Board of Directors of the Company) and the Board of Directors of Parent (and/or the Compensation Management Development and Succession Committee of the Board of Directors of Parent) shall adopt such resolutions as are necessary to give effect to the transactions contemplated by this Section 2.05.

Section 2.06. *Adjustments.* Without limiting or affecting any of the provisions of Section 6.01 or Section 7.01 (or any corresponding sections of the Company Disclosure Schedule or Parent Disclosure Schedule, as applicable), if, during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company or Parent shall occur as a result of any reclassification, recapitalization, stock split (including reverse stock split), merger, combination, exchange or readjustment of shares, subdivision or other similar transaction or event, or any stock dividend thereon with a record date during such period (but, for the avoidance of doubt, excluding any change that results from (i) the exercise of stock options or other equity awards to purchase shares of Parent Common Stock or Company Stock or the settlement of restricted stock, restricted stock units or performance units of Parent or the Company or (ii) the grant of equity-based compensation to directors or employees of Parent or the Company), the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to eliminate the effect of such event on the Merger Consideration or any such other amounts payable pursuant to this Agreement, as applicable.

Section 2.07. *Fractional Shares.* Notwithstanding anything in this Agreement to the contrary, no fractional shares of Parent Stock shall be issued in the Merger. All fractional shares

of Parent Stock that a holder of shares of Company Stock would otherwise be entitled to receive as a result of the Merger shall be aggregated and, if a fractional share results from such aggregation, such holder shall be entitled to receive, in lieu thereof, an amount in cash, without interest, determined by multiplying the fraction of the applicable share of Parent Stock to which such holder would otherwise have been entitled by the closing price of such applicable share of Parent Stock on the NYSE on the last trading day preceding the Closing Date.

Section 2.08. *Withholding Rights.* Notwithstanding any provision contained herein to the contrary, but subject to Section 2.05(e), each of the Exchange Agent, Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of any Applicable Law, including federal, state, local or non-U.S. Tax law; *provided*, however, that Parent shall use its reasonable best efforts to provide the Company with written notice prior to any such withholding (other than in the case of any “backup withholding” pursuant to Section 3406 of the Code and the corresponding Treasury Regulations) and will reasonably cooperate with the Company’s efforts to reduce or eliminate such withholding. If the Exchange Agent, Parent or the Surviving Corporation, as the case may be, so deducts and withholds any such amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Parent or the Surviving Corporation, as the case may be, made such deduction and withholding. The Exchange Agent, Parent or the Surviving Corporation, as applicable, shall pay, or shall cause to be paid, all amounts so deducted or withheld to the appropriate Taxing Authority within the period required under Applicable Law.

Section 2.09. *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a customary bond issued for a lost, stolen or destroyed Certificate, in such amount as the Surviving Corporation may direct, as indemnity against any claim that may be made against the Surviving Corporation with respect to such Certificate, the Exchange Agent will issue, in exchange for such lost, stolen or destroyed Certificate, the applicable Merger Consideration to be paid in respect of the shares of Company Stock represented by such Certificate, as contemplated by this Article 2.

Section 2.10. *Further Assurances.* From and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company, any of its Subsidiaries or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

ARTICLE 3

Organizational Documents; Directors and Officers

Section 3.01. *Certificate of Incorporation and Bylaws of the Surviving Corporation.* At the Effective Time and by virtue of the Merger, the certificate of incorporation of the Company

shall be amended so that it reads in its entirety as set forth on Exhibit A hereto. From and after the Effective Time, the certificate of incorporation of the Company as so amended shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided therein or by Applicable Law. The bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation from and after the Effective Time until thereafter amended as provided therein, in the certificate of incorporation of the Surviving Corporation or by Applicable Law, except that the name of the corporation reflected therein shall be “E*TRADE FINANCIAL CORPORATION.”

Section 3.02. *Directors and Officers of the Surviving Corporation.* From and after the Effective Time, until their respective successors are duly elected or appointed and qualified in accordance with Applicable Law, (i) the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation.

Section 3.03. *Board of Parent.* Parent shall take all actions permitted by Applicable Law and the rules of any applicable stock exchange so that, effective as of the Closing, one individual from the Company’s Board of Directors designated by the Company prior to the Closing, and reasonably acceptable to Parent, shall become a director on the Board of Directors of Parent (for the avoidance of doubt, until his or her successor is duly elected or appointed and qualified in accordance with Applicable Law).

ARTICLE 4

Representations and Warranties of the Company

Subject to Section 11.05, except (i) other than with respect to the representations and warranties in Section 4.01, Section 4.02, Section 4.05, Section 4.06(b), Section 4.27, Section 4.28, Section 4.29 and Section 4.30, as disclosed in (A) any publicly available Company SEC Document filed after January 1, 2019 and prior to the date hereof or (B) the Draft Company 10-K or (ii) as set forth in the Company Disclosure Schedule, the Company represents and warrants to Parent and Merger Sub as of the date hereof and as of the Closing (in each case except to the extent that any such representation and warranty speaks as of a particular date, in which case such representation and warranty shall be true and correct as of such earlier date) that:

Section 4.01. *Corporate Existence and Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, is a savings and loan holding company within the meaning of HOLA and is duly registered with the Federal Reserve Board. The Company has all corporate powers required to own or lease all of its properties or assets and to carry on its business as now conducted. The Company is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Prior to the date of this Agreement, the Company has made available to Parent true and complete copies of the certificate of incorporation and bylaws of the Company as in effect on the date of this Agreement (the “**Company Organizational Documents**”).

Section 4.02. *Corporate Authorization.* (a) The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Transactions are within the corporate powers of the Company and, except for the Company Stockholder Approval required in connection with the consummation of the Merger, have been duly authorized by all necessary corporate action on the part of the Company. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock approving and adopting this Agreement (the “**Company Stockholder Approval**”). This Agreement has been duly executed and delivered by the Company and (assuming due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the “**Bankruptcy and Equity Exceptions**”).

(b) At a meeting duly called and held, the Board of Directors of the Company has (i) unanimously determined that this Agreement and the Transactions are fair to and in the best interests of the Company’s stockholders, (ii) approved, adopted and declared advisable this Agreement and the Transactions, (iii) directed that the approval of the Merger and approval and adoption of this Agreement be submitted to a vote at a meeting of the Company’s stockholders, and (iv) recommended approval and adoption of this Agreement (including the Merger) by the Company’s stockholders (such recommendation, the “**Company Board Recommendation**”). Except as permitted by Section 6.03, the Board of Directors of the Company has not subsequently rescinded, modified or withdrawn any of the foregoing resolutions.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by the Company of this Agreement, and the consummation of the Transactions, require no action by or in respect of, Consents of, or Filings with, any Governmental Authority other than (i) the filing of each of the Certificate of Merger with the Delaware Secretary of State, and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of the HSR Act and any other Antitrust Laws, (iii) compliance with any applicable requirements of the Securities Act, the Securities Exchange Act and any other applicable U.S. state or federal securities laws or pursuant to the listing requirements of NASDAQ or NYSE, (iv) the filing by Parent of any required Filings with the Federal Reserve Board under the BHC Act and approval of such Filings, (v) the filing by Parent of any required Filings with the OCC, and approval of such Filings, (vi) the filing of a FINRA Application relating to the Transactions by the Company Broker-Dealer Subsidiary and FINRA’s approval thereof, (vii) the submission of the DTCC Notifications, (viii) the submission of the Other Regulatory Notifications, (ix) the Consents set forth in Section 4.03 of the Company Disclosure Schedule, and (x) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (clauses (i) – (x), collectively “**Company Governmental Authorizations**”).

Section 4.04. *Non-contravention.* The execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Company Organizational Documents, (ii) assuming compliance with the matters referred to in Section 4.03

and receipt of the Company Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (iii) assuming compliance with the matters referred to in Section 4.03 and receipt of the Company Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default under, give rise to a payment obligation or other liability under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled under, any provision of any Contract binding upon the Company or any of its Subsidiaries, any governmental Consents (including Consents required by Contract) affecting, or relating in any way to, the Company or any of its Subsidiaries or any of its or their respective assets or businesses or any Company Permit or (iv) result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, with only such exceptions, in the case of each of clauses (ii) through (iv), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.05. *Capitalization.* (a) The authorized capital stock of the Company consists of (i) 400,000,000 shares of Company Common Stock and (ii) 1,000,000 shares of Company Preferred Stock. As of February 18, 2020, there were outstanding (i) 221,168,310 shares of Company Common Stock (none of which is restricted or subject to vesting conditions or is treasury stock or is owned by the Company or any of its Subsidiaries (other than any Fiduciary Shares)), (ii) 403,000 shares of Company Preferred Stock, of which 400,000 shares are Company Series A Preferred Stock and 3,000 shares are Company Series B Preferred Stock, (iii) no stock options to purchase shares of Company Common Stock, (iv) 1,951,139.92 shares of Company Common Stock subject to outstanding Company RSU Awards, (v) 312,593.08 shares of Company Common Stock subject to outstanding Company PSU Awards, determined assuming target performance levels were achieved, (vi) 18,916 shares of Company Common Stock subject to outstanding Company Director Restricted Stock Awards, (vii) 99,201 shares of Company Common Stock subject to outstanding Company Director Deferred RSU Awards and (viii) 6,477,720.8419 additional shares of Company Common Stock were reserved for issuance pursuant to the grant of future awards under the Company Stock Plans. All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. Except as set forth in this Section 4.05(a) and for changes since February 18, 2020 resulting from (A) the vesting and settlement of any Company RSU Awards, Company PSU Awards, Company Director Restricted Stock Awards and Company Director Deferred RSU Awards, and (B) the issuance of Company Equity Awards, in each case as and to the extent permitted by Section 6.01, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of, or other ownership interest in, the Company, (ii) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, the Company, (iii) warrants, calls, options or other rights to acquire from the Company or any of its Subsidiaries, or other obligations of the Company or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for capital stock or other voting securities of, or other ownership interests in, the Company, or (iv) restricted shares, stock appreciation rights, performance shares or units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of the

Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, the Company (the items in clauses (i) through (iv) being referred to collectively as the “**Company Securities**”).

(b) All outstanding shares of capital stock of the Company have been, and all shares that may be issued pursuant to any equity compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. Within ten (10) Business Days of the date of this Agreement, the Company will provide to Parent a true and complete list of all outstanding Company Equity Awards as of February 19, 2020, including with respect to each such equity award, the holder, date of grant, the vesting schedule, whether the award is in respect of a former Company Service Provider and the date on which such former Company Service Provider terminated their service with the Company, whether subject to performance conditions, number of shares of Company Common Stock subject to such award (assuming maximum performance levels were achieved, if applicable), and the amount of any accrued but unpaid dividend equivalent rights relating to such award. Five (5) Business Days prior to the Closing Date, the Company shall provide Parent with an updated version of the true and complete list referenced in the foregoing sentence, updated as of such date. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote. There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities.

(c) There are no shareholders agreements, voting trusts, registration rights agreements or other similar Contracts to which the Company or any Subsidiary of the Company is a party with respect to any Company Securities.

Section 4.06. *Subsidiaries.* (a) Each Subsidiary of the Company is a corporation or other entity duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and has all corporate or other organizational powers, as applicable, required to carry on its business as now conducted, except for those jurisdictions where failure to be so organized, validly existing and in good standing or to have such power has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each such Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Section 4.06 of the Company Disclosure Schedule sets forth a true and complete list of each Significant Subsidiary (as defined in Rule 1-02(a) of Regulation S-X) of the Company as of the date of this Agreement, and its jurisdiction of incorporation or organization.

(b) All of the outstanding capital stock or other voting securities of, or ownership interests in, each Subsidiary of the Company are owned by the Company, directly or indirectly, free and clear of any Lien and other free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities or other ownership interests) (other than restrictions arising under applicable Securities

Laws). There are no issued, reserved for issuance or outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company, (ii) warrants, calls, options or other rights to acquire from the Company or any of its Subsidiaries, or other obligations of the Company or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or any securities convertible into or exchangeable for any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company, or (iii) restricted shares, stock appreciation rights, performance shares or units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of the Company or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of the Company (the items in clauses (i) through (iii) being referred to collectively as the “**Company Subsidiary Securities**”), other than Company Subsidiary Securities directly or indirectly owned by the Company or any of its wholly owned Subsidiaries. There are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Subsidiary Securities, or to make any material investment in any other Person.

(c) Except for the capital stock or other voting securities of, or other ownership interests in, Subsidiaries of the Company and publicly traded securities held for investment which do not exceed 5% of the outstanding securities of any entity, neither the Company nor any of its Subsidiaries owns, directly or indirectly, any capital stock or other voting securities of, or other ownership interests in, any Person (other than capital stock or other voting securities of, or other ownership interests in, any Person owned by the Company or any Subsidiary of the Company in a fiduciary, representative or other capacity on behalf of other Persons, whether or not held in a separate account).

(d) The deposit accounts of each Company Bank Subsidiary is insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by Applicable Law, all premiums and assessments required to be paid in connection therewith have been paid when due and no proceedings for the termination of such insurance are pending or threatened.

Section 4.07. *Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act.* (a) The Company and each of its Subsidiaries have timely filed with or furnished all material Filings, together with any material amendments, required to be made with respect thereto, that they were required to file or furnish (as applicable) since January 1, 2017 with (i) any state regulatory authority, (ii) the SEC, (iii) the Federal Reserve Board, (iv) the CFTC, (v) the OCC, (vi) the FDIC, (vii) the CFPB, (viii) any foreign regulatory authority and (ix) any Self-Regulatory Organization (clauses (i) – (ix), collectively “**Regulatory Agencies**”), including any Filing required to be filed or furnished (as applicable) pursuant to the laws, rules or regulations of the United States, any state, any foreign entity, or any Regulatory Agency, and have paid all fees and assessments due and payable in connection therewith.

(b) As of its filing date (and as of the date of any amendment), each Filing filed with or furnished to the SEC by the Company since January 1, 2017 and the Draft Company 10-K (collectively, together with any exhibits and schedules thereto and other information incorporated therein, and as amended from time to time, the “**Company SEC Documents**”) and filed prior to

the date of this Agreement has complied, and each Company SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.09 is true and correct) will comply, in all material respects with the applicable requirements of NASDAQ, the Securities Act, the Securities Exchange Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Company SEC Document filed prior to the date of this Agreement did not, each Company SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Proxy Statement/Prospectus, that the representation and warranty set forth in Section 5.09 is true and correct) will not, and the Draft Company 10-K as of the date hereof does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) Each Company SEC Document that is a registration statement, as amended or supplemented, as applicable, filed pursuant to the Securities Act, as of the date such registration statement or amendment became effective, did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

(e) The Company is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of NASDAQ.

(f) The Company and its Subsidiaries have established and maintained since January 1, 2017, and continue and maintain, disclosure controls and procedures (as defined in Rule 13a-15 under the Securities Exchange Act). Such disclosure controls and procedures are designed to ensure that all material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Securities Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting the Company's principal executive officer and principal financial officer to material information required to be included in the Company's periodic and current reports required under the Securities Exchange Act. For purposes of this Agreement, "**principal executive officer**" and "**principal financial officer**" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(g) The Company and its Subsidiaries have established and maintained since January 1, 2017, and continue and maintain, a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Securities Exchange Act) ("**internal controls**"). Such internal controls are sufficient to provide reasonable assurance regarding the reliability of the Company's financial reporting and the preparation of the Company's consolidated financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on its most recent evaluation of such internal controls prior to the date of this Agreement, to the Company's auditors and the audit committee of the Board of Directors of the Company (x) all significant deficiencies

and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls. The Company has made available to Parent prior to the date of this Agreement a true and complete summary of such disclosure provided to the Company's auditors and the audit committee of the Board of Directors of the Company since December 31, 2017 through the date of this Agreement.

(h) Since January 1, 2017, each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) has made all certifications required by Rule 13a-14 and 15d-14 under the Securities Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and NASDAQ, and the statements contained in any such certifications are true and complete.

Section 4.08. *Financial Statements and Financial Matters.*

(a) The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company included or incorporated by reference in the Company SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), the consolidated financial position of the Company and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal, recurring and immaterial year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared from, and are in accordance with, the books and records of the Company and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, the Company has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 4.09. *Disclosure Documents.* The information relating to the Company and its Subsidiaries that is, or is to be, provided by the Company, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement/Prospectus will not (i) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto is filed with the SEC, at the time it becomes effective under the Securities Act and at the time of the Company Stockholder Meeting, and (ii) in the case of the Proxy Statement/Prospectus, at the time the Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact required to be stated therein or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 4.10. *Absence of Certain Changes.* (a) Since the Company Balance Sheet Date through the date of this Agreement, (i) the business of the Company and its Subsidiaries has been

conducted in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any event, circumstance, development, change, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Since the Company Balance Sheet Date through the date of this Agreement, there has not been any action taken by the Company or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time without Parent's consent, would constitute a breach of Section 6.01.

Section 4.11. *No Undisclosed Material Liabilities.* There are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (i) liabilities or obligations disclosed and provided for in the Company Balance Sheet or in the notes thereto, (ii) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Company Balance Sheet Date, and (iii) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act ("**Regulation S-K**") that have not been so described in the Company SEC Documents.

Section 4.12. *Litigation.* There is no Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of the Company or any of its Subsidiaries, before (or, in the case of threatened Proceedings, that would be before) any arbitrator or Governmental Authority, that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the Transactions. There is no Order outstanding or threatened against or affecting the Company, any of its Subsidiaries, any present or former officers, directors or employees of the Company or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of any of the Company or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or that would, or would reasonably be expected to, prevent, enjoin, alter or materially delay any of the Transactions.

Section 4.13. *Permits.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries hold all governmental Consents necessary for the operation of their respective businesses (the "**Company Permits**"). The Company and each of its Subsidiaries are and since January 1, 2017, have been in compliance with the terms of the Company Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no Proceeding pending, or, to the knowledge of the Company, threatened in writing that seeks, or, to the knowledge of the Company, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse

modification of any Company Permit except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Except as set forth on Section 4.13(b) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has any material business, conducts any material operations or engages in any material activities, in each case, outside of the U.S. and its territories.

(c) Section 4.13(c) of the Company Disclosure Schedule sets forth a complete list of all material securities exchange, commodities exchange, boards of trade, clearing organizations and similar organizations in which the Company or any of its Subsidiaries hold memberships or have been granted trading privileges.

Section 4.14. *Compliance with Applicable Laws.* (a) Each of the Company and its Subsidiaries (i) except as would not be material to the Company and its Subsidiaries, taken as a whole, are, and have been since January 1, 2017, in compliance in all material respects with and not in default or violation of Applicable Laws, including (to the extent applicable to the Company and its Subsidiaries) the BHC Act, HOLA, all Applicable Laws related to data protection or privacy, the USA PATRIOT Act, the Bank Secrecy Act, the Equal Credit Opportunity Act and Regulation B, the Fair Housing Act, the Community Reinvestment Act, the Fair Credit Reporting Act, the Truth in Lending Act and Regulation Z, the Home Mortgage Disclosure Act, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, the Foreign Corrupt Practices Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Investment Advisers Act, the Securities Act, the Securities Exchange Act, ERISA, any regulations promulgated by the CFPB, the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products, the SAFE Mortgage Licensing Act of 2008, the Real Estate Settlement Procedures Act and Regulation X, Title V of the Gramm-Leach-Bliley Act, and any other Applicable Law, policy or guideline relating to bank secrecy, discriminatory lending, financing or leasing practices, consumer protection, money laundering prevention, foreign assets control, U.S. sanctions laws and regulations, the Foreign Corrupt Practices Act of 1977 or any similar Applicable Law, Sections 23A and 23B of the Federal Reserve Act, the Sarbanes-Oxley Act and all Applicable Laws relating to the origination, sale and servicing of mortgage and consumer loans, (ii) are, and have been since January 1, 2017, conducting operations at all times in compliance with applicable money laundering laws administered or enforced by any Governmental Authority in jurisdictions where the Company and its Subsidiaries conduct business (collectively, the “**Anti-Money Laundering Laws**”) and (iii) have established and maintained, since January 1, 2017, a system of internal controls designed to provide compliance by the Company and its Subsidiaries with applicable financial recordkeeping and reporting requirements of the Anti-Money Laundering Laws, except where, in the case of clause (ii) or (iii), the failure to so comply has not had and would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(b) Each of the Company Bank Subsidiaries is in compliance in all material respects with the applicable provisions of the Community Reinvestment Act of 1977 and has had a rating of at least “satisfactory” or better since January 1, 2017.

(c) The Company meets the requirements set forth at 12 C.F.R. § 238.63 to engage in financial holding company activities, is not subject to any limitation on its authority under federal banking laws to engage in such activities, and is not aware of the existence of any facts or circumstances that would reasonably be expected to cause the Company to cease to meet such requirements or to become subject to any such limitation. Neither the Company nor any of its Subsidiaries engage, directly or indirectly (including through the Company Bank Subsidiaries), in any activity, or beneficially own any shares of capital stock or other equity interests in any person, not permitted under the HOLA, the Federal Reserve Board's Regulation LL or Section 4(k) of the BHC Act (12 U.S.C. § 1843(k)).

(d) Since January 1, 2017, neither the Company nor any of its Subsidiaries has engaged in, or is now engaged in, directly or indirectly, any dealings or transactions with any Person, or in any country or territory, that, at the time of the dealing or transaction, is or was the subject of any sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) or the U.S. Department of State ("**Sanctions**").

(e) The Company and its Subsidiaries (i) are, and since January 1, 2017 have been, in material compliance with all applicable Sanctions and export controls laws, (ii) have instituted, maintain and enforce policies and procedures designed to ensure material compliance with all applicable Sanctions and export controls laws. Since January 1, 2017, the Company and its Subsidiaries have not been penalized for or threatened to be charged with, or given notice of any violation of, or, to the knowledge of the Company, been under investigation with respect to, any Sanctions or export controls laws, and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to Sanctions or export controls laws is pending, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(f) Neither the Company nor any of its Subsidiaries is a party to any agreement or settlement with any Governmental Authority with respect to any actual or alleged violation of any Applicable Law, except for agreements and settlements that are not material to the Company and its Subsidiaries, taken as a whole.

(g) Neither the Company nor any of its Subsidiaries is precluded from acting as a fiduciary by operation of Section 411 of ERISA. The accounts of each ERISA Client have been managed by the Company or its Subsidiaries in compliance in all material respects with all applicable requirements under ERISA, Section 4975 of the Code and any Similar Law. There is no pending or, to the knowledge of the Company, threatened audit or investigation by the IRS, the Department of Labor or any other Governmental Authority with respect to the Company's provision of services to any ERISA Clients. Neither the Company nor any of its Subsidiaries has engaged in any non-exempt "prohibited transaction" under Section 406 of ERISA or Section 4975 of the Code or violated any Similar Law with respect to any ERISA Client that would reasonably be expected to result in material liability to the Company or any of its Subsidiaries. Neither the Company nor any of its affiliates (as defined in Section VI(d) of Prohibited Transaction Class Exemption 84-14 issued by the Department of Labor (the "**QPAM Exemption**")) fails to satisfy the conditions set forth in Part I(g) of the QPAM Exemption. Any revenue-sharing arrangements

entered into by the Company or any of its Subsidiaries with respect to assets managed for any ERISA Clients are in compliance with Applicable Law in all material respects.

(h) Subject to Section 11.06, except for normal examinations conducted by a Regulatory Agency in the ordinary course of business of the Company and its Subsidiaries, no Regulatory Agency has initiated or has pending any proceeding or, to the knowledge of the Company, formal investigation into the business or operations of the Company or any of its Subsidiaries since January 1, 2017, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(i) Subject to Section 11.06, there (i) is no unresolved violation or exception by any Regulatory Agency with respect to any report or statement relating to any examinations or inspections of the Company or any of its Subsidiaries and (ii) have been no inquiries by any Regulatory Agency with respect to the business, operations, policies or procedures of the Company or any of its Subsidiaries since January 1, 2017, in each case, which would reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(j) Except as would not be material to the Company and its Subsidiaries, taken as a whole, subject to Section 11.06, neither the Company nor any of its Subsidiaries is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been since January 1, 2017, a recipient of any supervisory letter from, or since January 1, 2017, has adopted any policies, procedures or board resolutions at the request or suggestion of, any Regulatory Agency or other Governmental Authority that currently restricts in any material respect or would reasonably be expected to restrict in any material respect the conduct of its business (each, whether or not set forth in the Company Disclosure Schedule, a “**Company Regulatory Agreement**”), nor have the Company nor any of its Subsidiaries been advised by any Regulatory Agency or other Governmental Agency since January 1, 2017 or have knowledge that such agency is considering issuing, ordering or requesting any Company Regulatory Agreement.

(k) Neither the Company nor any of its Subsidiaries is, nor since January 1, 2017, has been, required to be registered, licensed or qualified as a bank, trust company, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, transfer agent, real estate broker, municipal advisor, insurance company or insurance broker, except in each case as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.15. [Intentionally Omitted]

Section 4.16. *RIA Compliance Matters.* (a) The Company RIA Subsidiary is the only Subsidiary of the Company that is a registered investment adviser. Except as would not have a Company Material Adverse Effect, the Company RIA Subsidiary is and has been, (i) at all times required by Applicable Law, duly registered as an investment adviser under the Investment Advisers Act and under all applicable state statutes (if required to be so registered under Applicable

Law), and (ii) since January 1, 2017, duly registered and licensed as an investment adviser under all other Applicable Laws or exempt therefrom. Except for the Company RIA Subsidiary, neither the Company nor any of its Subsidiaries provides Investment Advisory Services in any jurisdiction or is required to be registered under the Investment Advisers Act or any similar law in any jurisdiction.

(b) The Company RIA Subsidiary has designated and approved an appropriate chief compliance officer in accordance with Rule 206(4)-7 under the Investment Advisers Act. The Company RIA Subsidiary has established in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, (i) written anti-money laundering policies and procedures that incorporate, among other things, a written customer identification program, (ii) a code of ethics and a written policy regarding insider trading and the protection of material non-public information, (iii) written cyber security and identity theft policies and procedures, (iv) written supervisory procedures and a supervisory control system, (v) written policies and procedures designed to protect non-public personal information about customers, clients and other third Parties, (vi) written recordkeeping policies and procedures and (vii) other policies required to be maintained by such Company RIA Subsidiary under Applicable Law, including Rules 204A-1 and 206(4)-7 under the Investment Advisers Act, except, in each case under clauses (i)-(vii), as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) With respect to the Company RIA Subsidiary, except as would not reasonably be expected to be, individually or in the aggregate, material to such Company RIA Subsidiary, (i) none of such Company RIA Subsidiary, its control persons, its directors, officers, or employees (other than employees whose functions are solely clerical or ministerial), nor, to the knowledge of the Company, any of such Company RIA Subsidiary's other "associated persons" (as defined in the Investment Advisers Act) is (A) subject to ineligibility pursuant to Section 203 of the Investment Advisers Act to serve as a registered investment adviser or as an "associated person" of a registered investment adviser, (B) subject to disqualification pursuant to Rule 206(4)-3 under the Investment Advisers Act or (C) subject to disqualification under Rule 506(d) of Regulation D under the Securities Act, unless in the case of clause (A), (B) or (C), such Company RIA Subsidiary or "associated person" has received effective exemptive relief from the SEC with respect to such ineligibility or disqualification, nor (ii) is there any Proceeding pending or, to the knowledge of the Company, threatened in writing by any Governmental Authority that would reasonably be expected to result in the ineligibility or disqualification of such Company RIA Subsidiary, or any of its "associated persons" to serve in such capacities or that would provide a basis for such ineligibility or disqualification which would reasonably be expected to be, individually or in the aggregate, material to the Company.

(d) The Company RIA Subsidiary is, and since January 1, 2017, has been, in compliance with (A) the applicable provisions of the Investment Advisers Act and (B) all other Applicable Laws of the jurisdictions in which such Company RIA Subsidiary acts as an investment adviser, except in each case under the foregoing clauses (A) and (B) for such matters that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are no unresolved issues with the SEC with respect to a Company RIA Subsidiary.

(f) As of the date hereof, the Company RIA Subsidiary is not currently subject to, and has not received written notice of, an examination, inspection, investigation or inquiry by a Governmental Authority.

(g) The Company RIA Subsidiary is not prohibited from charging fees to any Person pursuant to Rule 206 (4)-5 under the Investment Advisers Act or any similar “pay-to-play” rule or requirement, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.17. *Client Agreements.* (a) Each Advisory Agreement includes all provisions required by and complies in all respects with the Investment Advisers Act, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. No Advisory Client is, to the knowledge of the Company, registered or required to be registered as an investment company under the Investment Company Act. The Company RIA Subsidiary does not sponsor any public or private investment funds.

(b) The Company RIA Subsidiary and each of its Affiliates has complied with all applicable obligations, requirements and conditions of each Advisory Agreement, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) The Company RIA Subsidiary does not provide Investment Advisory Services to any Person other than the Advisory Clients. Each Company RIA Subsidiary provides Investment Advisory Services to Advisory Clients solely pursuant to written Advisory Agreements.

Section 4.18. *Broker-Dealer Compliance Matters.* (a) The Company Broker-Dealer Subsidiary is the only Subsidiary of the Company that is a Broker-Dealer. Since January 1, 2017, the Company Broker-Dealer Subsidiary has been duly registered as a Broker-Dealer with the SEC and each state and other jurisdictions in which it is required to be so registered. The Company Broker-Dealer Subsidiary is, and since January 1, 2017 has been a member in good standing of FINRA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as a representative or principal of, and registered with, the Company Broker-Dealer Subsidiary is registered with FINRA and all applicable states and other jurisdictions, such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, except as would not reasonably be expected to be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole, and no such natural Person is registered with more than one Broker-Dealer in any jurisdiction where such multiple registrations would violate any Applicable Law.

(b) Each current Form BD of the Company Broker-Dealer Subsidiary is, and any Form BD of the Company Broker-Dealer Subsidiary filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the Securities

Exchange Act, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) Since January 1, 2017, the Regulatory Documents of the Company Broker-Dealer Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the SEC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed.

(d) (i) Neither the Company Broker-Dealer Subsidiary, nor any of its Affiliates, nor any of its “associated persons” (as defined in the Securities Exchange Act) is (A) ineligible pursuant to Section 15(b) of the Securities Exchange Act to serve as a Broker-Dealer or as an “associated person” of a Broker-Dealer, (B) subject to a “statutory disqualification” as defined in Section 3(a)(39) of the Securities Exchange Act, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form BD or Forms U-4 or U-5 (and which disciplinary proceedings or Orders are not actually disclosed on such Person’s current Form BD or current Forms U-4 or U-5) to the extent that such Person or its associated persons is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Securities Exchange Act, and (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened in writing by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to the Company Broker-Dealer Subsidiary or any “control affiliate” of the Company Broker-Dealer Subsidiary, as defined in Form BD requires any response in the affirmative to any question in Item 11 of Form BD, except to the extent that such facts have been reflected on Form BD of the Company Broker-Dealer Subsidiary, as applicable.

(f) Since January 1, 2017, the Brokerage Services performed by the Company Broker-Dealer Subsidiary have been conducted in compliance with all material requirements of the Securities Exchange Act, the rules and regulations of the SEC, FINRA, and any applicable state securities regulatory authority or Self-Regulatory Organizations, as applicable. The Company Broker-Dealer Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the Securities Exchange Act, the SEC rules thereunder, and the rules of each applicable Self-Regulatory Organization (“**BD Compliance Policies**”), including those required by (i) applicable FINRA rules, including FINRA Rule 3110, 3120 and 3130, (ii) Rule 15c3-5 under the Securities Exchange Act, (iii) anti-money laundering laws, including a written customer identification program in compliance therewith, (iv) privacy laws including policies and procedures with respect to the protection of nonpublic personal information about customers, clients and other Third Parties and (v) identity theft laws, and approved such principals, managers and other supervisors as are required under the aforementioned laws, rules and regulations. All such BD Compliance Policies comply in all material respects with Applicable Laws.

(g) The Company Broker-Dealer Subsidiary currently maintains, and since January 1, 2017 has maintained, “net capital” (as such term is defined in Rule 15c3-1(c)(2) under the Securities Exchange Act) equal to or in excess of the minimum “net capital” required to be maintained by the Company Broker-Dealer Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under Rule 17a-11 under the Securities Exchange Act.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation (other than ordinary course examinations) into the Company Broker-Dealer Subsidiary and the Company Broker-Dealer Subsidiary has not received a written “wells notice,” other written indication of the commencement of an enforcement action from the SEC, FINRA or any other Governmental Authority, or other written notice alleging any material noncompliance with any Applicable Law governing the operations of Broker-Dealers. The Company has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the Company Broker-Dealer Subsidiary. Since January 1, 2017, the Company Broker-Dealer Subsidiary has not settled any claim or proceeding of the SEC, FINRA or any other Governmental Authority. The Company Broker-Dealer Subsidiary has not had an order, decree or judgement entered against the Company Broker-Dealer Subsidiary in connection with any Applicable Law governing the operation of Broker-Dealers. Except as would not be material to the Company and its Subsidiaries, taken as a whole, as of the date hereof, the Company Broker-Dealer Subsidiary is not currently subject to, and has not received any written notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no formal examination or inspection has been started or completed for which no examination report is available.

(i) The Company Broker-Dealer Subsidiary has received written affirmative consent from each of its Brokerage Clients as required under Rule 15c3-3(j)(2)(ii), including notification of the general terms and conditions of the products available through the cash sweep program or arrangement (a “**Cash Sweep Program**”) and that the products available to Brokerage Clients under the Cash Sweep Program may change, and the Company Broker-Dealer Subsidiary and its applicable Affiliates has conducted its Cash Sweep Program in accordance with Applicable Laws.

Section 4.19. *FCM Compliance Matters.* (a) The FCM Subsidiary is the only Subsidiary of the Company that is an FCM. Since January 1, 2017, the FCM Subsidiary has been (i) duly registered as an FCM under the CEA, and (ii) a member in good standing of the NFA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as an associated person of, and registered with, the FCM Subsidiary is registered with the NFA and all applicable states and other jurisdictions, and such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one FCM in any jurisdiction where such multiple registrations would violate any Applicable Law. Each natural Person who is required to be listed as a principal of the FCM Subsidiary has filed a current Form 8-R with the NFA, which is accurate in all material respects.

(b) The current Form 7-R of the FCM Subsidiary is, and any Form 7-R of the Company or any Affiliate filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the CEA, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the FCM Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the CFTC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed. Since January 1, 2017, no such Regulatory Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in light of the circumstances under which they were made.

(d) (i) None of the FCM Subsidiary, or any of its Affiliates, nor any of the FCM Subsidiary's "associated persons" (as defined in CFTC Rule 1.3) or "principals" (as defined in CFTC Rule 3.1) is (A) ineligible to serve as an FCM or as an "associated person" or "principal" of an FCM, (B) subject to a "statutory disqualification" under Section 8a(2) of the CEA, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form 7-R or Form 8-R (and which disciplinary proceedings or Orders are not actually disclosed on such Person's current Form 7-R or current Form 8-R) to the extent that such Person or its associated persons or principals is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as an FCM or associated person or principal of an FCM under Section 8a(4) of the CEA, and (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (A), (B), (C) and (D).

(e) No fact relating to the FCM Subsidiary or any "principal" of the FCM Subsidiary, as defined in Form 8-R, requires any response in the affirmative to any question relating to "Criminal Disclosures" in the FCM Subsidiary's Form 7-R or in the principal's Form 8-R, except to the extent that such facts have been reflected on such forms.

(f) The services performed by the FCM Subsidiary have been conducted in compliance with all material requirements of the CEA, the rules and regulations of the CFTC, the NFA, and any applicable state regulatory authority or Self-Regulatory Organizations, as applicable. The FCM Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the CEA, the CFTC rules thereunder, and the rules of each applicable Self-Regulatory Organization ("**FCM Compliance Policies**"), including those required by applicable NFA rules. All such FCM Compliance Policies comply in all material respects with Applicable Laws.

(g) The FCM Subsidiary currently maintains, and since January 1, 2017 has maintained, "adjusted net capital" (as such term is defined in CFTC Rule 1.17) equal to or in excess of the minimum "adjusted net capital" required to be maintained by the FCM Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under CFTC Rule 1.12 or NFA Financial Requirements Section 2.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the FCM Subsidiary and the FCM Subsidiary has not received any written indication of the commencement of an enforcement action from the CFTC,

the NFA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of the FCM Subsidiary. The Company has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the FCM Subsidiary. Since January 1, 2017, the FCM Subsidiary has not settled any claim or proceeding of the CFTC, the NFA or any other Governmental Authority. The FCM Subsidiary has not had an order, decree or judgment entered against it in connection with any Applicable Law governing the operation of an FCM. As of the date hereof, the FCM Subsidiary is not currently subject to, or has not received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

Section 4.20. *Material Contracts.* (a) Section 4.20(a) of the Company Disclosure Schedule sets forth a list as of the date of this Agreement of each of the following Contracts (other than Company Employee Plans and such Contracts solely among the Company and any of its wholly owned Subsidiaries) to which the Company or any of its Subsidiaries is a party or by which it is bound (each such Contract listed or required to be so listed, and each of the following Contracts to which the Company or any of its Subsidiaries becomes a party or by which it becomes bound after the date of this Agreement, a “**Company Material Contract**”):

(i) any Contract pursuant to which the Company or any of its Subsidiaries incurred payment obligations or received payments in excess of \$25,000,000 during the twelve (12) month period ended December 31, 2019, or is expected to incur payment obligations or receive payments in excess of (A) \$25,000,000 during any twelve (12) month period ending after December 31, 2019 or (B) \$25,000,000 over the remaining term of the Contract;

(ii) any Contract that, to the knowledge of the Company, (A) limits or purports to limit, in any material respect, the freedom of the Company or any of its Subsidiaries to engage or compete in any line of business or with any Person or in any area or that would so limit or purport to limit, in any material respect, the freedom of Parent, the Company or any of their respective Affiliates after the Effective Time, (B) contains any material exclusivity or material “most favored nation” obligations, material rights of first refusal, material rights of first offer, material put or call rights or other restrictions or similar provisions that are binding on the Company or any of its Subsidiaries (or, after the Effective Time, that would be binding on Parent or any of its Affiliates) or (C) otherwise limits or restricts, in any material respect, the Company or any of its Subsidiaries (or, after the Effective Time, Parent or any of its Affiliates) from hiring or soliciting any Person for employment;

(iii) any material deposit sweep agreement or similar agreement;

(iv) (A) any standard form Contract pursuant to which the Company or any of its Subsidiaries provides material Brokerage Services or material Investment Advisory Services to any Client and (B) any material Contract (or group of Contracts that, in the aggregate, are material) pursuant to which the Company or any of its Subsidiaries provides

Brokerage Services or Investment Advisory Services to any Client that is not on any such standard form or includes any material deviations from any such standard form;

(v) any Contract reasonably expected to result in payments made or received by the Company and its Subsidiaries in excess of \$25,000,000 in any year that provides for any referral arrangement, commission-sharing arrangement or co-marketing arrangement, including, any finder's agreement for soliciting, distributing or promoting Investment Advisory Services or Brokerage Services by or to the Company or any of its Subsidiaries;

(vi) any material Contract for which the execution, delivery and performance by the Company of this Agreement or the consummation of any of the Transactions would (A) require any consent or other action (including notice by the Company) thereunder, (B) constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default, thereunder, (C) cause or permit the termination, cancellation, acceleration or other change of any material right or obligation (including triggering of a price adjustment, right of renegotiation or other remedy) or the loss of any material benefit to which the Company or any of its Subsidiaries is entitled thereunder or (D) require any material payment by the Company or any of its Subsidiaries thereunder;

(vii) promissory notes, loan agreements, indentures, evidences of indebtedness or other instruments providing for or relating to the lending of money, (A) if as borrower or guarantor, in excess of \$15,000,000, and (B) if as lender, in excess of \$15,000,000, other than under Regulation U, Regulation T or the Community Reinvestment Act of 1977;

(viii) any Company Collective Bargaining Agreements;

(ix) any material joint venture, profit-sharing, partnership, stockholders, investors rights, registration rights or similar Contract;

(x) any Contracts or series of related Contracts entered into within the last three (3) years relating to the acquisition or disposition of the business, assets or securities of any Person or any business for a price in excess of \$200,000,000 (in each case, whether by merger, sale of stock, sale of assets or otherwise);

(xi) any Contracts or other transactions with any (A) executive officer or director of the Company, (B) record or, to the knowledge of the Company, beneficial owner of five percent (5%) or more of the voting securities of the Company, or (C) affiliates or "associates" (or members of any of their "immediate family") (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Securities Exchange Act) of any such executive officer, director or beneficial owner (each of the foregoing, a "**Related Party**") and each such Contract, a "**Related Party Contract**"; and

(xii) any other Contract required to be filed by the Company pursuant to Item 601(b)(10) of Regulation S-K.

(b) The Company has made available to Parent a true and complete copy of each Company Material Contract (other than any such Contracts relating to the corporate services business of the Company and its Subsidiaries, which, except to the knowledge of the Company

(for this purpose, without any duty of inquiry), also have not been listed in Section 4.20(a) of the Company Disclosure Schedule; *provided* that, within 10 Business Days after the date hereof, the Company shall provide to Parent a list of Contracts (subject to redaction with respect to competitively sensitive information to the extent required by Applicable Law) relating to the corporate services business of the Company and its Subsidiaries that would have been required to be scheduled on Section 4.20(a) of the Company Disclosure Schedule but for the foregoing). All of the Company Material Contracts are, subject to the Bankruptcy and Equity Exceptions, valid and binding obligations of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and in full force and effect and enforceable in accordance with their respective terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (except for such Company Material Contracts that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of the Company or any of its Subsidiaries, such termination must be in the ordinary course of business), except where the failure to be valid and binding obligations and in full force and effect and enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the knowledge of the Company, no Person is seeking to terminate or challenging the validity or enforceability of any Company Material Contract, except such terminations or challenges which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries, nor to the knowledge of the Company, any of the other parties thereto has violated any provision of, or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of, and neither the Company nor any of its Subsidiaries has received written notice that it has violated or defaulted under, any Company Material Contract, except for those violations and defaults (or potential defaults) which have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.21. *Taxes.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, the Company or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete.

(b) The Company and each of its Subsidiaries has paid (or has had paid on its behalf), or has withheld and remitted to the appropriate Taxing Authority, all Taxes due and payable, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which the Company and its Subsidiaries ordinarily record items on their respective books and records.

(c) (i) All federal income Tax Returns of the affiliated group of which the Company is the common parent through the Tax year ended December 31, 2015 have been examined and closed

or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to all extensions or waivers thereof, has expired, and (ii) neither the Company nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which the Company or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax.

(d) There is no Proceeding (including any audit) pending or, to the Company's knowledge, threatened in writing against or with respect to the Company or its Subsidiaries in respect of any Tax or Tax asset.

(e) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between the Company or any of its Subsidiaries and any Taxing Authority.

(f) During the two (2)-year period ending on the date of this Agreement, the Company was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(g) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of the Company or any of its Subsidiaries.

(h) No claim has been made in writing by any Taxing Authority in a jurisdiction where the Company or any of the Company's Subsidiaries does not file Tax Returns that the Company or any such Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(i) Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which the Company or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between the Company and its Subsidiaries), or (iii) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement, or as a transferee or successor.

(j) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action or has knowledge of any fact or circumstance that could reasonably be expected to prevent the Mergers, taken together, from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations.

Section 4.22. *Employees and Employee Benefit Plans.* (a) The Company Employee Plans that the Company has made available to Parent are true and correct copies of such Company Employee Plans. For each material Company Employee Plan, the Company will, within ten (10) Business Days of this Agreement, make available to Parent a copy of such plan (or a description, if such plan is not written) and all amendments thereto, together with a copy of (if applicable) (i) each trust, insurance or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the most recently filed IRS Forms 5500, (iv) the most recent favorable determination or opinion letter from the IRS, (v) the most recently prepared actuarial reports and financial statements in connection with each such Company Employee Plan,

and (vi) all material documents and correspondence relating thereto received from or provided to any Governmental Authority during the past year.

(b) The Company will provide to Parent a list, within ten (10) Business Days of the date of this Agreement, containing with respect to each Key Employee: (i) name, (ii) date of hire, (iii) position, (iv) employment location, (v) base salary or wage rate, (vi) the current incentive opportunities of such employee and (vii) the legal entity that employs such employee.

(c) Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or in the past six years has, sponsored, maintained, administered or contributed to (or had any obligation to contribute to), any plan subject to Title IV of ERISA, including any multiemployer plan, as defined in Section 3(37) of ERISA.

(d) Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or has applied to the IRS for such a letter within the applicable remedial amendment period or such period has not expired and, to the knowledge of the Company, no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being reissued or a penalty under the IRS Closing Agreement Program if discovered during an IRS audit or investigation. Each trust created under any such Company Employee Plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since January 1, 2017, each Company Employee Plan has been maintained in compliance with its terms and all Applicable Law. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no Proceeding (other than routine claims for benefits and including an audit) is pending against or involves or, to the Company's knowledge, is threatened against or reasonably expected to involve, any Company Employee Plan before any court or arbitrator or any Governmental Authority. To the knowledge of the Company, since January 1, 2017, no events have occurred with respect to any Company Employee Plan that would reasonably be expected to result in the assessment of any excise taxes or penalties against the Company or any of its Subsidiaries, except for events that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(f) With respect to each director, officer, employee or independent contractor (including each former director, officer, employee or independent contractor) of the Company or any of its Subsidiaries, the consummation of the Transactions will not, either alone or together with any other event: (i) entitle any such individual to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit, (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or materially increase the amount payable or trigger any other obligation under, any Company Employee Plan or (iii) limit or restrict the right of the Company or any of its Subsidiaries or, after the Closing, Parent to merge, amend or terminate any Company Employee Plan.

(g) Neither the Company nor any of its Subsidiaries has any current or projected liability for, and no Company Employee Plan provides or promises, any post-employment or post-retirement medical, dental, disability, hospitalization, life or similar benefits (whether insured or self-insured) to any director, officer, employee or individual independent contractor (including any former director, officer, employee or individual independent contractor) of the Company or any of its Subsidiaries (other than coverage mandated by Applicable Law).

(h) There has been no amendment to, written interpretation of or announcement (whether or not written) by the Company or any of its Affiliates relating to, or making a change in employee participation or coverage under, any Company Employee Plan that would materially increase the expense of maintaining such plan above the level of expense incurred in respect thereof for the fiscal year ended on the Company Balance Sheet Date, except as required in order to comply with Applicable Law.

(i) Without limiting the generality of Section 4.22(e), no amount paid or payable (whether in cash, in property, or in the form of benefits) by the Company or any of its Subsidiaries in connection with the Transactions (either solely as a result thereof or as a result of such transactions in conjunction with any other event) will be an “excess parachute payment” within the meaning of Section 280G of the Code. Neither the Company nor any of its Subsidiaries has any obligation to gross-up, indemnify or otherwise reimburse any current or former Company Service Provider for any tax incurred by such individual.

(j) Except as would not be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Company Employee Plan, and any award thereunder, that is or forms part of a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code has been timely amended (if applicable) to comply and has been operated in compliance with, and the Company and its Subsidiaries have complied in practice and operation with, all applicable requirements of Section 409A of the Code.

(k) With respect to any Company Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause the Company or any of its Subsidiaries to incur any material liability under ERISA or the Code.

(l) Each Company Employee Plan that is an International Plan (i) has been maintained in compliance with its terms and Applicable Law, (ii) if intended to qualify for special tax treatment, meets all the requirements for such treatment, and (iii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles, in each case, except as would not be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.23. *Labor Matters.*

(a) Except as would not be material to the Company and its Subsidiaries, taken as a whole, neither the Company nor any of its Subsidiaries is, or since January 1, 2017 has been, a party to or subject to, or is currently negotiating in connection with entering into, any Company

Collective Bargaining Agreement, and there have not been any, and to the Company's knowledge there are no threatened, organizational campaigns, card solicitations, petition or other unionization activity seeking recognition of a collective bargaining unit relating to any current or former Company Service Provider. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are no unfair labor practice complaints pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving any current or former Company Service Provider with respect to the Company or its Subsidiaries. Except as would not be material to Company and its Subsidiaries, taken as a whole, there is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to the Company's knowledge, threatened against or affecting the Company or any of its Subsidiaries.

(b) Since January 1, 2017, (i), no allegations of sexual harassment or other sexual misconduct have been made against any employee of the Company with the title of executive director or above through the Company's anonymous employee hotline or any formal human resources communication channels at the Company, and (ii) there are no Actions pending or, to the Company's knowledge, threatened related to any allegations of sexual harassment or other sexual misconduct by any employee of the Company with the title of executive director or above. Since January 1, 2017, neither the Company nor any of its Subsidiaries have entered into any settlement agreements related to allegations of sexual harassment or other sexual misconduct by any employee of the Company with the title of executive director or above.

(c) The Company and each of its Subsidiaries is, and has been since January 1, 2017, in material compliance with WARN and has no liabilities or other obligations thereunder. Neither the Company nor any of its Subsidiaries has taken any action that would reasonably be expected to cause Parent or any of its Affiliates to have any material liability or other obligation following the Closing Date under WARN.

Section 4.24. *Intellectual Property.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, none of the registrations (including patents and domain name registrations) and applications for registration for the Company's Owned Intellectual Property (the "**Company Registered IP**") has lapsed, expired, been abandoned or been adjudged invalid or unenforceable, and, to the knowledge of the Company, all Company Registered IP is valid, enforceable and subsisting.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries are the sole and exclusive owners of all of the Company's Owned Intellectual Property and hold all of their right, title and interest in and to all of the Company's Owned Intellectual Property free and clear of all Liens (other than non-exclusive licenses granted by the Company or one of its Subsidiaries in the ordinary course of business and Permitted Liens), (ii) immediately following the Closing, the Company and its Subsidiaries will own or have a valid and enforceable license to use any and all of the Intellectual Property necessary to, or used or held for use in, the conduct of the respective businesses of the Company and its Subsidiaries as currently conducted, and (iii) to the knowledge of the Company, there exist no material restrictions on the use of any of the Company's Owned Intellectual Property.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, no current or former employee, contractor or consultant of the Company or any of its Subsidiaries owns any rights in or to any of the Company's Owned Intellectual Property and, to the extent that any such Intellectual Property has been developed or created by any Third Party (including any current or former employee, contractor or consultant) for or on behalf of the Company or any of its Subsidiaries, the Company or one of its Subsidiaries, as applicable, has a written agreement with such Third Party with respect thereto, and thereby either (i) has obtained ownership of and is the exclusive owner of, or (ii) has obtained a valid right to exploit, sufficient for the conduct of the business of the Company and its Subsidiaries as currently conducted, such Intellectual Property.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) to the knowledge of the Company, since January 1, 2017, neither the Company nor any of its Subsidiaries nor the conduct of their respective businesses has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party, (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (A) alleging that the Company or any of its Subsidiaries has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party or (B) based upon, or challenging or seeking to deny or restrict, the rights of the Company or any Subsidiary of the Company in any of the Company's Owned Intellectual Property, and (iii) to the knowledge of the Company, no Third Party has infringed, misappropriated, diluted or otherwise violated any of the Company's Owned Intellectual Property.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries have provided reasonable notice of its privacy and personal data collection and use policies on its websites and through other customer and public communications and the Company and its Subsidiaries have complied with such policies, contractual requirements and all Applicable Law relating to (A) the privacy of the users of the Company's and its Subsidiaries' respective products, services and websites and (B) the collection, use, processing, storage and disclosure of any personally-identifiable information (including personal health information and any and all "personal data" as that term is defined in any applicable data protection Law and any and all other information, the collection, use, processing, storage and disclosure of which is regulated by an Applicable Law in relation to data protection or data privacy) and other data or information collected, used, processed, stored or disclosed by the Company or any of its Subsidiaries (or, to the knowledge of the Company, any Third Party that collects, uses, processes, stores or discloses such data or information on behalf of the Company or any of its Subsidiaries), (ii) there is no Proceeding pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries (or, to the knowledge of the Company, against any Third Party working on behalf of the Company or any of its Subsidiaries) alleging any violation of such policies, contractual requirements or Applicable Law, (iii) none of this Agreement or the consummation of the Transactions will violate any such policy, contractual requirements or Applicable Law and (iv) the Company and its Subsidiaries (and any Third Party working on behalf of the Company and its Subsidiaries) have taken commercially reasonable steps consistent with normal industry practice to protect the types of information referred to in this Section 4.24(e) against loss and unauthorized access, use, modification, disclosure or other misuse, and, to the knowledge of the Company, there

has been no unauthorized access, use, modification, disclosure or other misuse of such data or information.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company's IT Assets perform in a manner that permits the Company and its Subsidiaries to conduct their respective businesses as currently conducted, (ii) the Company and its Subsidiaries take commercially reasonable actions, consistent with current industry standards, to protect the confidentiality, integrity and security of the Company's IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation of commercially reasonable data backup, disaster avoidance and recovery procedures and business continuity procedures, and (iii) to the knowledge of the Company, there has been no unauthorized use, access, interruption, modification or corruption of the Company's IT Assets (or any information or transactions stored or contained therein or transmitted thereby).

Section 4.25. *Properties.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries have good, valid and marketable fee simple title (or its jurisdictional equivalent) to, or valid leasehold interests in, as the case may be, each parcel of real property owned or used by the Company or any of its Subsidiaries, free and clear of all Liens, except for Permitted Liens, (ii) each lease, sublease or license (each, a "**Lease**") under which the Company or any of its Subsidiaries leases, subleases or licenses any real property is, subject to the Bankruptcy and Equity Exceptions, a valid and binding obligation of the Company or a Subsidiary of the Company (as the case may be) and, to the knowledge of the Company, each of the other parties thereto, and in full force and effect and enforceable in accordance with its terms against the Company or its Subsidiaries (as the case may be) and, to the knowledge of the Company, each of the other parties thereto (except for such Leases that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of the Company or any of its Subsidiaries such termination must be in the ordinary course of business), (iii) neither the Company nor any of its Subsidiaries, nor, to the knowledge of the Company, any of the other parties thereto has violated or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of any Lease and (iv) neither the Company nor any of its Subsidiaries has received written notice that it has breached, violated or defaulted under any Lease, nor has the Company or any of its Subsidiaries delivered notice to any other party to a Lease that such other party has breached, violated or defaulted under any Lease that remains uncured as of the date hereof. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the real property owned or used by the Company or any of its Subsidiaries and any plants, buildings, structures and equipment thereon owned or leased by the Company and its Subsidiaries have no defects, are in good operating condition and repair and have been maintained consistent with standards generally followed in the industry (given due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present use. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries are in possession of and have good title to, or valid leasehold interests in or valid rights under contract to use, the material

machinery, equipment, furniture, fixtures and other tangible material personal property and assets used by the Company or any of its Subsidiaries.

Section 4.26. *Environmental Matters.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(i) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding (including a review) is pending or, to the knowledge of the Company, threatened by any Governmental Authority or other Person relating to the Company or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;

(ii) the Company and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and

(iii) there are no liabilities or obligations of the Company or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

(b) Except as set forth on Section 4.26(b) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries owns, leases or operates any real property, or conducts any operations, in New Jersey or Connecticut.

Section 4.27. *Antitakeover Statutes.* The Company has no “rights plan,” “rights agreement,” or “poison pill” in effect. Assuming the representations and warranties set forth in Section 5.29 are true and correct, neither the restrictions set forth in Section 203 of the Delaware Law nor any other “control share acquisition,” “fair price,” “moratorium” or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement or any of the Transactions with respect to the Company and its Subsidiaries.

Section 4.28. *Opinion of Financial Advisor.* The Board of Directors of the Company has received the oral opinion (to be confirmed by delivery of a written opinion promptly after the date hereof) of each of J.P. Morgan Securities LLC and Ardea Partners LP, financial advisor to the Company, to the effect that, as of the date of such opinion and subject to the assumptions, qualifications, limitations and other matters considered in connection with the preparation of such opinion, the Exchange Ratio is fair, from a financial point of view, to holders of Company Common Stock. A written copy of such opinion will be delivered promptly after the date hereof to Parent for informational purposes only.

Section 4.29. *Finders’ Fees.* Except for J.P. Morgan Securities LLC and Ardea Partners LP, a true and complete copy of whose engagement agreement has been provided to Parent prior to the date of this Agreement, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries

who might be entitled to any fee or commission from the Company or any of its Affiliates in connection with the Transactions.

Section 4.30. *No Ownership of Parent Common Stock.* Neither the Company nor any of its Subsidiaries beneficially owns, directly or indirectly, any shares of Parent Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Parent Common Stock (other than Fiduciary Shares) and neither the Company nor any of its Subsidiaries has any rights to acquire any shares of Parent Common Stock (other than any Fiduciary Shares). There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock or other equity interest of Parent or any of its Subsidiaries.

Section 4.31. *No Ownership of Company Common Stock.* No Subsidiary of the Company (i) beneficially owns, directly or indirectly, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock (other than Fiduciary Shares) or (ii) has any rights to acquire any shares of Company Common Stock (other than Fiduciary Shares).

Section 4.32. *No Other Company Representations and Warranties.* Except for the representations and warranties made by the Company in this Article 4 (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article 4), neither the Company nor any other Person makes or has made any representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement or the Transactions. The Company and its Subsidiaries disclaim any other representations or warranties, whether made by the Company or any of its Subsidiaries or any of their respective Affiliates or Representatives. The Company acknowledges and agrees that, except for the representations and warranties made by Parent in Article 5 (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to Article 5), neither Parent nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to Parent or made available to the Company in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. The Company specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Parent and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties. Notwithstanding the foregoing, this Section 4.32 shall not limit Parent’s, Merger Sub’s or the Company’s remedies in the case of fraud.

ARTICLE 5
Representations and Warranties of Parent

Subject to Section 11.05, except (i) other than with respect to the representations and warranties in Section 5.01, Section 5.02, Section 5.05, Section 5.27, Section 5.28 and Section 5.29, as disclosed in (A) any publicly available Parent SEC Document filed after January 1, 2019 and prior to the date hereof or (B) the Draft Parent 10-K or (ii) as set forth in the Parent Disclosure Schedule, Parent represents and warrants to the Company as of the date hereof and as of the Closing (in each case except to the extent that any such representation and warranty speaks as of a particular date, in which case such representation and warranty shall be true and correct as of such earlier date) that:

Section 5.01. *Corporate Existence and Power.* Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, is a bank holding company duly registered under the BHC Act and has elected to be treated as a financial holding company under the BHC Act. Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub has all corporate powers required to own or lease all of its properties or assets and to carry on its business as now conducted. Each of Parent and Merger Sub is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Prior to the date of this Agreement, Parent has made available to the Company true and complete copies of the certificate of incorporation and bylaws of each of Parent and Merger Sub, in each case, as in effect on the date of this Agreement (the “**Parent Organizational Documents**”). Since the date of its formation, Merger Sub has not engaged in any activities other than in connection with or as contemplated by this Agreement.

Section 5.02. *Corporate Authorization.* (a) The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation by Parent and Merger Sub of the Transactions are within the corporate powers of each of Parent and Merger Sub and, except for the required approval and adoption of this Agreement by the stockholder of Merger Sub, have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and (assuming due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of each of Parent and Merger Sub that is a party thereto enforceable against such Person in accordance with its terms (subject to the Bankruptcy and Equity Exceptions).

(b) At a meeting duly called and held, the Board of Directors of Parent has unanimously (i) determined that this Agreement and the Transactions (including the Parent Share Issuance) are fair to and in the best interests of Parent’s stockholders and (ii) approved, adopted and declared advisable this Agreement and the Transactions (including the Parent Share Issuance). The Board of Directors of Merger Sub has unanimously adopted resolutions (i) determining that this Agreement and the Transactions are fair to and in the best interests of the sole stockholder of Merger Sub, (ii) approving, adopting and declaring advisable this Agreement and the Transactions, (iii) directing that this Agreement be submitted for approval and adoption by the sole stockholder of Merger Sub, and (iv) recommending approval and adoption of this Agreement (including the

Merger) by the sole stockholder of Merger Sub. The Board of Directors of neither Parent nor Merger Sub has subsequently rescinded, modified or withdrawn any of the foregoing resolutions.

Section 5.03. *Governmental Authorization.* The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation by each of Parent and Merger Sub of the Transactions to which such Person is a party, require no action by or in respect of, Consents of, or Filings with, any Governmental Authority other than (i) the filing of each of (A) the Certificate of Merger and (B) certificates of designation with respect to the New Parent Replacement Series A Preferred Stock and the New Parent Replacement Series B Preferred Stock, with the Delaware Secretary of State, and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (ii) compliance with any applicable requirements of the HSR Act and any other Antitrust Laws, (iii) compliance with any applicable requirements of the Securities Act, the Securities Exchange Act and any other applicable U.S. state or federal securities laws or pursuant to the listing requirements of NASDAQ or NYSE, (iv) the filing by Parent of any required Filings with the Federal Reserve Board under the BHC Act and approval of such Filings, (v) the filing by Parent of any required Filings with the OCC, and approval of such Filings, (vi) the filing of a FINRA Application relating to the Transactions by the Company Broker-Dealer Subsidiary and FINRA's approval thereof, (vii) the submission of the DTCC Notifications, (viii) the submission of the Other Regulatory Notifications, (ix) the Consents set forth in Section 4.03 of the Parent Disclosure Schedule, and (x) any other actions, Consents or Filings the absence of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect (clauses (i) – (x), collectively the “**Parent Governmental Authorizations**”).

Section 5.04. *Non-contravention.* The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the consummation of the Transactions to which it is a party do not and will not (i) contravene, conflict with, or result in any violation or breach of any provision of the Parent Organizational Documents, (ii) assuming compliance with the matters referred to in Section 5.03 and receipt of the Company Stockholder Approval, contravene, conflict with or result in any violation or breach of any provision of any Applicable Law, (iii) assuming compliance with the matters referred to in Section 5.03 and receipt of the Company Stockholder Approval, require any Consent or other action by any Person under, constitute a default, or an event that, with or without notice or lapse of time or both, would constitute a default under, give rise to a payment obligation or other liability under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which Parent or any of its Subsidiaries is entitled under, any provision of any Contract binding upon Parent or any of its Subsidiaries, any governmental Consents (including Consents required by Contract) affecting, or relating in any way to, the of Parent or any of its Subsidiaries or any of its or their respective assets or businesses or any Parent Permit, or (iv) result in the creation or imposition of any Lien on any asset of Parent or any of its Subsidiaries, with only such exceptions, in the case of each of clauses (ii) through (iv), as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.05. *Capitalization.* (a) The authorized capital stock of Parent as of the date hereof consists of (i) 3,500,000,000 shares of Parent Common Stock and (ii) 30,000,000 shares of preferred stock of Parent, par value \$0.01 per share (“**Parent Preferred Stock**”). As of February 14, 2020, there were outstanding (i) 1,532,397,723 shares of Parent Common Stock (none of which

is restricted or subject to vesting conditions or is treasury stock or is owned by Parent or any of its Subsidiaries (other than any Fiduciary Shares)), (ii) 844,382 shares of Parent Preferred Stock, (iii) no options to purchase shares of Parent Common Stock (“**Parent Stock Options**”), (iv) restricted stock units with respect to an aggregate of 63,512,431 shares of Parent Common Stock (“**Parent RSU Awards**”), (v) performance-based restricted stock units with respect to an aggregate of 5,482,300 shares of Parent Common Stock (“**Parent PSU Awards**”), determined assuming maximum performance levels were achieved, and (vi) deferred restricted stock units with respect to an aggregate of 541,790 shares of Parent Common Stock (“**Parent Director Deferred RSU Awards**” and together with Parent Stock Options, Parent RSU Awards, Parent PSU Awards and any other equity or equity-linked awards granted after February 14, 2020, “**Parent Equity Awards**”), determined assuming maximum performance levels were achieved. All outstanding shares of capital stock of Parent have been, and all shares that may be issued pursuant to any employee stock option or other compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. The shares of capital stock of Parent to be issued as part of the Merger Consideration have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable and the issuance thereof will be free of preemptive right. Except as set forth in this Section 5.05(a) and for changes since February 14, 2020 resulting from (A) the exercise or vesting and settlement of Parent Equity Awards outstanding on such date or issued after such date or (B) the issuance of Parent Equity Awards after such date, as of the date hereof, there are no issued, reserved for issuance or outstanding (i) shares of capital stock or other voting securities of, or other ownership interest in, Parent, (ii) securities of Parent or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, Parent, (iii) warrants, calls, options or other rights to acquire from Parent or any of its Subsidiaries, or other obligations of Parent or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for capital stock or other voting securities of, or other ownership interests in, Parent, or (iv) restricted shares, stock appreciation rights, performance units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of Parent or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, Parent (the items in clauses (i) through (iv) being referred to collectively as the “**Parent Securities**”). Parent owns all of the issued and outstanding capital stock of Merger Sub.

(b) All outstanding shares of capital stock of Parent have been, and all shares that may be issued pursuant to any equity compensation plan or arrangement will be, when issued in accordance with the respective terms thereof, duly authorized and validly issued, fully paid and nonassessable and free of preemptive rights. No Subsidiary of Parent owns any shares of capital stock of Parent (other than any such shares owned by Subsidiaries of Parent that are Fiduciary Shares).

(c) There are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of Parent may vote. There are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Parent Securities.

Neither Parent nor any of its Subsidiaries is a party to any agreement with respect to the voting of any Parent Securities.

Section 5.06. *Subsidiaries.* (a) Each Subsidiary of Parent is a corporation or other entity duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and has all corporate or other organizational powers, as applicable, required to carry on its business as now conducted, except for those jurisdictions where failure to be so organized, validly existing and in good standing or to have such power has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Each such Subsidiary is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) As of the date hereof, all of the outstanding capital stock or other voting securities of, or ownership interests in, each Significant Subsidiary (as defined in Rule 1-02(a) of Regulation S-X) of Parent are owned by Parent, directly or indirectly, free and clear of any Lien and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other voting securities or other ownership interests) (other than restrictions arising under applicable Securities Laws). As of the date hereof, there are no issued, reserved for issuance or outstanding (i) securities of Parent or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities of, or other ownership interests in, any Subsidiary of Parent, (ii) warrants, calls, options or other rights to acquire from Parent or any of its Subsidiaries, or other obligations of Parent or any of its Subsidiaries to issue, any capital stock or other voting securities of, or other ownership interests in, or any securities convertible into or exchangeable for any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of Parent, or (iii) restricted shares, stock appreciation rights, performance shares or units, contingent value rights, “phantom” stock or similar securities or rights issued by or with the approval of Parent or any of its Subsidiaries that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock or other voting securities of, or other ownership interests in, any Subsidiary of Parent (the items in clauses (i) through (iii) being referred to collectively as the “**Parent Subsidiary Securities**”), other than Parent Subsidiary Securities directly or indirectly owned by Parent or any of its wholly owned Subsidiaries. As of the date hereof, there are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Parent Subsidiary Securities or make any material investment in any other Person.

(c) The deposit accounts of each Parent Bank Subsidiary is insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by Applicable Law, all premiums and assessments required to be paid in connection therewith have been paid when due and no proceedings for the termination of such insurance are pending or threatened.

Section 5.07. *Regulatory Reports, SEC Filings and the Sarbanes-Oxley Act.* (a) Parent and each of its Subsidiaries have timely filed with or furnished all material Filings, together with any material amendments, required to be made with respect thereto, that they were required to file or furnish (as applicable) since January 1, 2017 with any Regulatory Agency, including any Filing required to be filed or furnished (as applicable) pursuant to the laws, rules or regulations of the

United States, any state, any foreign entity, or any Regulatory Agency, and have paid all fees and assessments due and payable in connection therewith.

(b) As of its filing date (and as of the date of any amendment), each Filing filed with or furnished to the SEC by Parent since January 1, 2017 and the Draft Parent 10-K (collectively, together with any exhibits and schedules thereto and other information incorporated therein, and as amended from time to time, the “**Parent SEC Documents**”) and filed prior to the date of this Agreement has complied, and each Parent SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will comply, in all material respects with the applicable requirements of the NYSE, the Securities Act, the Securities Exchange Act and the Sarbanes-Oxley Act, as the case may be.

(c) As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseding filing), each Parent SEC Document filed prior to the date of this Agreement did not, and each Parent SEC Document filed subsequent to the date of this Agreement (assuming, in the case of each of the Registration Statement and the Proxy Statement/Prospectus, that the representation and warranty set forth in Section 4.09 is true and correct) will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(d) Each Parent SEC Document that is a registration statement, as amended or supplemented, as applicable, filed pursuant to the Securities Act, as of the date such registration statement or amendment became effective, did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

(e) Parent is, and since January 1, 2017 has been, in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of the NYSE.

(f) Parent and its Subsidiaries have established and maintained since January 1, 2017, and continue and maintain, controls and procedures (as defined in Rule 13a-15 under the Securities Exchange Act). Such disclosure controls and procedures are designed to ensure that all material information relating to Parent, including its consolidated Subsidiaries, is made known to Parent’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Securities Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting Parent’s principal executive officer and principal financial officer to material information required to be included in Parent’s periodic and current reports required under the Securities Exchange Act.

(g) Parent and its Subsidiaries have established and maintained since January 1, 2017, and continue and maintain, a system of internal controls. Such internal controls are sufficient to provide reasonable assurance regarding the reliability of Parent’s financial reporting and the preparation of Parent’s consolidated financial statements for external purposes in accordance with

GAAP. Parent disclosed, based on its most recent evaluation of such internal controls prior to the date of this Agreement, to Parent's auditors and the audit committee of the Board of Directors of Parent (x) all significant deficiencies and material weaknesses in the design or operation of internal controls which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in internal controls.

(h) Since January 1, 2017, each of the principal executive officer and principal financial officer of Parent (or each former principal executive officer and principal financial officer of Parent, as applicable) has made all certifications required by Rule 13a-14 and 15d-14 under the Securities Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC and the NYSE, and the statements contained in any such certifications are true and complete.

Section 5.08. *Financial Statements and Financial Matters.* (a) The audited consolidated financial statements and unaudited consolidated interim financial statements of Parent included or incorporated by reference in the Parent SEC Documents present fairly in all material respects, in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject to normal, recurring and immaterial year-end audit adjustments in the case of any unaudited interim financial statements). Such consolidated financial statements have been prepared from, and are in accordance with, the books and records of Parent and its Subsidiaries.

(b) From January 1, 2017 to the date of this Agreement, Parent has not received written notice from the SEC or any other Governmental Authority indicating that any of its accounting policies or practices are or may be the subject of any review, inquiry, investigation or challenge by the SEC or any other Governmental Authority.

Section 5.09. *Disclosure Documents.* The information relating to Parent and its Subsidiaries that is, or is to be, provided by Parent, any of its Subsidiaries or any of their respective Representatives for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement/Prospectus will not (i) in the case of the Registration Statement, at the time the Registration Statement or any amendment or supplement thereto is filed with the SEC, at the time it becomes effective under the Securities Act and at the time of the Company Stockholder Meeting, and (ii) in the case of the Proxy Statement/Prospectus, at the time the Proxy Statement/Prospectus or any amendment or supplement thereto is first mailed to the stockholders of the Company and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact required to be stated therein or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 5.10. *Absence of Certain Changes.* (a) Since the Parent Balance Sheet Date, (i) the business of Parent and its Subsidiaries has been conducted in all material respects in the ordinary course of business consistent with past practice and (ii) there has not been any event, circumstance, development, change, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Since the Parent Balance Sheet Date through the date of this Agreement, there has not been any action taken by Parent or any of its Subsidiaries that, if taken during the period from the date of this Agreement through the Effective Time without the Company's consent, would constitute a breach of Section 7.01.

Section 5.11. *No Undisclosed Material Liabilities.* There are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than (i) liabilities or obligations disclosed and provided for in the Parent Balance Sheet or in the notes thereto, (ii) liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Parent Balance Sheet Date, and (iii) other liabilities or obligations that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There are no off-balance sheet arrangements of any type pursuant to any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K that have not been so described in the Parent SEC Documents.

Section 5.12. *Litigation.* There is no Proceeding pending or, to the knowledge of Parent, threatened against or affecting Parent, any of its Subsidiaries, any present or former officers, directors or employees of Parent or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of Parent or any of its Subsidiaries, before (or, in the case of threatened Proceedings, that would be before) any arbitrator or Governmental Authority, that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the Transactions. There is no Order outstanding or threatened against or affecting Parent, any of its Subsidiaries, any present or former officers, directors or employees of Parent or any of its Subsidiaries in their respective capacities as such, or any of the respective properties of any of Parent or any of its Subsidiaries, that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect or that would, or would reasonably be expected to, prevent, enjoin, alter or materially delay any of the Transactions.

Section 5.13. *Permits.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and each of its Subsidiaries hold all governmental Consents necessary for the operation of their respective businesses (the "**Parent Permits**"). Parent and each of its Subsidiaries are and since January 1, 2017, have been in compliance with the terms of Parent Permits, except for failures to comply that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There is no Proceeding pending, or, to the knowledge of Parent, threatened that seeks, or, to the knowledge of Parent, any existing condition, situation or set of circumstances that would reasonably be expected to result in, the revocation, cancellation, termination, non-renewal or adverse modification of any Parent Permit except where such revocation, cancellation, termination, non-renewal or adverse modification has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Except as set forth on Section 5.13(b) of the Parent Disclosure Schedule, neither Parent nor any of its Subsidiaries has any material business, conducts any material operations or engages in any material activities, in each case, outside of the U.S. and its territories.

Section 5.14. *Compliance with Applicable Laws.*

(a) Each of Parent and its Subsidiaries (i) except as would not be material to Parent and its Subsidiaries, taken as a whole, are, and have been have since January 1, 2017, in compliance with and not in default or violation of Applicable Laws, including but (to the extent applicable to Parent and its Subsidiaries) the BHC Act, HOLA, all Applicable Laws related to data protection or privacy, the USA PATRIOT Act, the Bank Secrecy Act, the Equal Credit Opportunity Act and Regulation B, the Fair Housing Act, the Community Reinvestment Act, the Fair Credit Reporting Act, the Truth in Lending Act and Regulation Z, the Home Mortgage Disclosure Act, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, the Foreign Corrupt Practices Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Investment Advisers Act, the Securities Act, the Securities Exchange Act, ERISA, any regulations promulgated by the CFPB, the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products, the SAFE Mortgage Licensing Act of 2008, the Real Estate Settlement Procedures Act and Regulation X, Title V of the Gramm-Leach-Bliley Act, and any other Applicable Law, policy or guideline relating to bank secrecy, discriminatory lending, financing or leasing practices, consumer protection, money laundering prevention, foreign assets control, U.S. sanctions laws and regulations, the Foreign Corrupt Practices Act of 1977 or any similar Applicable Law, Sections 23A and 23B of the Federal Reserve Act, the Sarbanes-Oxley Act and all Applicable Laws relating to the origination, sale and servicing of mortgage and consumer loans, (ii) are, and have been since January 1, 2017, conducting operations at all times in compliance Anti-Money Laundering Laws and (iii) have established and maintained, since January 1, 2017, a system of internal controls designed to provide compliance by Parent and its Subsidiaries with applicable financial recordkeeping and reporting requirements of the Anti-Money Laundering Laws, except where, in each case, the failure to so comply has not had and would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(b) Each of the Parent Bank Subsidiaries is in compliance in all material respects with the applicable provisions of the Community Reinvestment Act of 1977 and has had a rating of at least “satisfactory” or better since January 1, 2017.

(c) Parent meets the requirements set forth at 12 C.F.R. § 225.14(c) for expedited action and at § 225.82 to make an effective election to be a financial holding company, is not subject to any limitation on its authority under federal banking laws to engage in activities pursuant to Section 4(k) of the BHC Act, and is not aware of the existence of any facts or circumstances that would reasonably be expected to cause Parent to cease to meet such requirements or to become subject to any such limitation. Neither Parent nor any of its Subsidiaries engage, directly or indirectly (including through the Parent Bank Subsidiaries) in any activity, or beneficially own any shares of capital stock or other equity interests in any person, not permitted under the BHC Act and the Federal Reserve Board’s Regulation Y.

(d) Since January 1, 2017, neither Parent nor any of its Subsidiaries has engaged in, or is now engaged in, directly or indirectly, any dealings or transactions with any Person, or in any country or territory, that, at the time of the dealing or transaction, is or was the subject of Sanctions which would reasonably be expected to have a Parent Material Adverse Effect.

(e) Parent and its Subsidiaries (i) are, and since January 1, 2017 have been, in material compliance with all applicable Sanctions and export controls laws, (ii) have instituted, maintain and enforce policies and procedures designed to ensure material compliance with all applicable Sanctions and export controls laws. Since January 1, 2017, Parent and its Subsidiaries have not been penalized for or threatened to be charged with, or given notice of any violation of, or, to the knowledge of Parent, been under investigation with respect to, any Sanctions or export controls laws, and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving Parent or any of its Subsidiaries with respect to Sanctions or export controls laws is pending, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(f) Neither Parent nor any of its Subsidiaries is a party to any agreement or settlement with any Governmental Authority with respect to any actual or alleged violation of any Applicable Law, except for agreements and settlements that are not material to Parent and its Subsidiaries, taken as a whole.

(g) Subject to Section 11.06, except for normal examinations conducted by a Regulatory Agency in the ordinary course of business of Parent and its Subsidiaries, no Regulatory Agency has initiated or has pending any proceeding or, to the knowledge of Parent, investigation into the business or operations of Parent or any of its Subsidiaries since January 1, 2017, except where such proceedings or investigations would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(h) Subject to Section 11.06, there (i) is no unresolved violation, criticism, or exception by any Regulatory Agency with respect to any report or statement relating to any examinations or inspections of Parent or any of its Subsidiaries and (ii) has been no inquiries by any Regulatory Agency with respect to the business, operations, policies or procedures of Parent or any of its Subsidiaries since January 1, 2017, in each case, which would reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(i) Except as would not have a Parent Material Adverse Effect, subject to Section 11.06, neither Parent nor any of its Subsidiaries is subject to any cease-and-desist or other order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any order or directive by, or has been ordered to pay any civil money penalty by, or has been since January 1, 2017, a recipient of any supervisory letter from, or since January 1, 2017, has adopted any policies, procedures or board resolutions at the request or suggestion of, any Regulatory Agency or other Governmental Authority that currently restricts in any material respect or would reasonably be expected to restrict in any material respect the conduct of its business (each, whether or not set forth in the Parent Disclosure Schedule, a “**Parent Regulatory Agreement**”), nor have Parent nor any of its Subsidiaries been advised since January 1, 2017 or have knowledge, of any pending or threatened regulatory investigation or that any Regulatory Agency or other Governmental Agency is considering issuing, initiating, ordering or requesting any Parent Regulatory Agreement.

(j) Neither Parent nor any of its Subsidiaries is, nor since January 1, 2017, has been, required to be registered, licensed or qualified as a bank, trust company, commodity trading advisor, commodity pool operator, introducing broker, swap dealer, transfer agent, real estate broker, municipal advisor, insurance company or insurance broker, except in each case as would not reasonably be expected to be, individually or in the aggregate, material to Parent and its Subsidiaries, taken as a whole.

Section 5.15. *RIA Compliance Matters.* (a) Except as would not have a Parent Material Adverse Effect, each Parent RIA Subsidiary is and has been, (i) at all times required by Applicable Law, duly registered as an investment adviser under the Investment Advisers Act and under all applicable state statutes (if required to be so registered under Applicable Law), and (ii) since January 1, 2017, duly registered and licensed as an investment adviser under all other Applicable Laws or exempt therefrom. Except for the Parent RIA Subsidiaries, neither Parent nor any of its Subsidiaries is required to be registered under the Investment Advisers Act.

(b) Each Parent RIA Subsidiary has designated and approved an appropriate chief compliance officer in accordance with Rule 206(4)-7 under the Investment Advisers Act. Each Parent RIA Subsidiary has established in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, (i) written anti-money laundering policies and procedures that incorporate, among other things, a written customer identification program, (ii) a code of ethics and a written policy regarding insider trading and the protection of material non-public information, (iii) written cyber security and identity theft policies and procedures, (iv) written supervisory procedures and a supervisory control system, (v) written policies and procedures designed to protect non-public personal information about customers, clients and other third Parties, (vi) written recordkeeping policies and procedures and (vii) other policies required to be maintained by such Parent RIA Subsidiary under Applicable Law, including Rules 204A-1 and 206(4)-7 under the Investment Advisers Act, except, in each case under clauses (i) – (vii), as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) With respect to each Parent RIA Subsidiary, except as would not reasonably be expected to be, individually or in the aggregate, material to such Parent RIA Subsidiary, (i) none of such Parent RIA Subsidiary, its control persons, its directors, officers, or employees (other than employees whose functions are solely clerical or ministerial), nor, to the knowledge of Parent, any of such Parent RIA Subsidiary's other "associated persons" (as defined in the Investment Advisers Act) is (A) subject to ineligibility pursuant to Section 203 of the Investment Advisers Act to serve as a registered investment adviser or as an "associated person" of a registered investment adviser, (B) subject to disqualification pursuant to Rule 206(4)-3 under the Investment Advisers Act or (C) subject to disqualification under Rule 506(d) of Regulation D under the Securities Act, unless in the case of clause (A), (B) or (C), such Parent RIA Subsidiary or "associated person" has received effective exemptive relief from the SEC with respect to such ineligibility or disqualification, nor (ii) is there any Proceeding pending or, to the knowledge of Parent, threatened in writing by any Governmental Authority that would reasonably be expected to result in the ineligibility or disqualification of such Parent RIA Subsidiary, or any of its "associated persons" to serve in such capacities or that would provide a basis for such ineligibility or disqualification which would reasonably be expected to be, individually or in the aggregate, material to Parent.

(d) Each Parent RIA Subsidiary is, and since January 1, 2017, has been, in compliance with (A) the applicable provisions of the Investment Advisers Act and (B) all other Applicable Laws of the jurisdictions in which such Parent RIA Subsidiary acts as an investment adviser, except in each case under clauses (A) and (B) for such matters that would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(e) Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, there are no unresolved issues with the SEC with respect to a Parent RIA Subsidiary.

(f) As of the date hereof, no Parent RIA Subsidiary is currently subject to, or has received any written notice of, an examination, inspection, investigation or inquiry by a Governmental Authority.

(g) The Parent RIA Subsidiary is not prohibited from charging fees to any Person pursuant to Rule 206(4)-5 under the Investment Advisers Act or any similar “pay-to-play” rule or requirement, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.16. *Client Agreements.* (a) Each Parent Advisory Agreement includes all provisions required by and complies in all respects with the Investment Advisers Act, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Each Parent RIA Subsidiary and each of its Affiliates has complied with all applicable obligations, requirements and conditions of each Parent Advisory Agreement, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(a) No Parent RIA Subsidiary provides Investment Advisory Services to any Person other than the Parent Advisory Clients. Each Parent RIA Subsidiary provides Investment Advisory Services to Parent Advisory Clients solely pursuant to written Parent Advisory Agreements.

Section 5.17. *Broker-Dealer Compliance Matters.* (a) The Parent Broker-Dealer Subsidiaries are the only Subsidiaries of the Parent that are a Broker-Dealer. Since January 1, 2017, each Parent Broker-Dealer Subsidiary has been duly registered as a Broker-Dealer with the SEC and each state and other jurisdictions in which it is required to be so registered. Each Parent Broker-Dealer Subsidiary is, and since January 1, 2017 has been, a member in good standing of FINRA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as a representative or principal of, and registered with, each Parent Broker-Dealer Subsidiary is registered with FINRA and all applicable states and other jurisdictions, such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one Broker-Dealer in any jurisdiction where such multiple registrations would violate any Applicable Law.

(b) The current Form BD of each Parent Broker-Dealer Subsidiary is, and any Form BD of each Parent Broker-Dealer Subsidiary filed before the Closing Date will be at the time of

filing, in compliance in all material respects with the applicable requirements of the Securities Exchange Act, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of each Parent Broker-Dealer Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the SEC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed. Since January 1, 2017, no such Regulatory Documents, as of their respective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in light of the circumstances under which they were made.

(d) (i) No Parent Broker-Dealer Subsidiary, or any of its Affiliates, nor any Parent Broker-Dealer Subsidiary's "associated persons" (as defined in the Securities Exchange Act) is (A) ineligible pursuant to Section 15(b) of the Securities Exchange Act to serve as a Broker-Dealer or as an "associated person" of a Broker-Dealer, (B) subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form BD or Forms U-4 or U-5 (and which disciplinary proceedings or Orders are not actually disclosed on such Person's current Form BD or current Forms U-4 or U-5) to the extent that such Person or its associated persons is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as broker-dealer, municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Securities Exchange Act, and (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to each Parent Broker-Dealer Subsidiary or any "control affiliate" of each Parent Broker-Dealer Subsidiary, as defined in Form BD requires any response in the affirmative to any question in Item 11 of Form BD, except to the extent that such facts have been reflected on Form BD of such Parent Broker-Dealer Subsidiary, as applicable.

(f) The Brokerage Services performed by each Parent Broker-Dealer Subsidiary have been conducted in compliance with all material requirements of the Securities Exchange Act, the rules and regulations of the SEC, FINRA, and any applicable state securities regulatory authority or Self-Regulatory Organizations, as applicable. Each Parent Broker-Dealer Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the Securities Exchange Act, the SEC rules thereunder, and the rules of each applicable Self-Regulatory Organization ("**Parent BD Compliance Policies**"), including those required by (i) applicable FINRA rules, including FINRA Rule 3110, 3120 and 3130, (ii) Rule 15c3-5 under the Securities Exchange Act, (iii) anti-money laundering laws, including a written customer identification program in compliance therewith, (iv) privacy laws including policies and procedures with respect to the protection of nonpublic personal information about customers, clients and other Third Parties and (v) identity theft laws, and

approved such principals, managers and other supervisors as are required under the aforementioned laws, rules and regulations. All such Parent BD Compliance Policies comply in all material respects with Applicable Laws.

(g) Each Parent Broker-Dealer Subsidiary currently maintains, and since January 1, 2017 has maintained, “net capital” (as such term is defined in Rule 15c3-1(c)(2) under the Securities Exchange Act) equal to or in excess of the minimum “net capital” required to be maintained by such Parent Broker-Dealer Subsidiary, and in an amount sufficient to ensure that it is not required to file a notice under Rule 17a-11 under the Securities Exchange Act.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into any Parent Broker-Dealer Subsidiary and no Parent Broker-Dealer Subsidiary has received a written “wells notice,” other written indication of the commencement of an enforcement action from the SEC, FINRA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of Broker-Dealers. Parent has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to any Parent Broker-Dealer Subsidiary. Since January 1, 2017, no Parent Broker-Dealer Subsidiary has settled any claim or proceeding of the SEC, FINRA or any other Governmental Authority. No Parent Broker-Dealer Subsidiary has had an order, decree or judgement entered against the Parent Broker-Dealer Subsidiary in connection with any Applicable Law governing the operation of Broker-Dealers. As of the date hereof, no Parent Broker-Dealer Subsidiary is currently subject to, and has not received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

(i) To the extent applicable to such Parent Broker-Dealer Subsidiary’s business, each Parent Broker-Dealer Subsidiary has received written affirmative consent from each of its Brokerage Clients as required under Rule 15c3-3(j)(2)(ii), including notification of the general terms and conditions of the products available through the Cash Sweep Program and that the products available to Brokerage Clients under the Cash Sweep Program may change, and such Parent Broker-Dealer Subsidiary and its applicable Affiliates has conducted its Cash Sweep Program in accordance with Applicable Laws.

Section 5.18. *FCM Compliance Matters.* (a) The Parent FCM Subsidiary is the only Subsidiary of Parent that is an FCM. Since January 1, 2017, the Parent FCM Subsidiary has been (i) duly registered as an FCM under the CEA, and (ii) a member in good standing of the NFA and each other Self-Regulatory Organization of which it is required to be a member. Each natural Person whose functions require him or her to be licensed as an associated person of, and registered with, the Parent FCM Subsidiary is registered with the NFA and all applicable states and other jurisdictions, and such registrations are not, and since January 1, 2017 have not been, suspended, revoked or rescinded and remain in full force and effect, and no such natural Person is registered with more than one FCM in any jurisdiction where such multiple registrations would violate any Applicable Law. Each natural Person who is required to be listed as a principal of the Parent FCM Subsidiary has filed a current Form 8-R with the NFA, which is accurate in all material respects.

(b) The current Form 7-R of the Parent FCM Subsidiary is, and any Form 7-R of Parent or any Affiliate filed before the Closing Date will be at the time of filing, in compliance in all material respects with the applicable requirements of the CEA, the rules thereunder and the rules of any Self-Regulatory Organization, as applicable.

(c) The Regulatory Documents of the Parent FCM Subsidiary have complied, and have been timely filed, in all material respects with and under Applicable Law and the rules and regulations of the CFTC promulgated thereunder and any Self-Regulatory Organization rules applicable to such Regulatory Documents, as in effect at the time the Regulatory Documents were filed. Each such Regulatory Document filed with the CFTC or the NFA since January 1, 2017, as of its respective date, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in light of the circumstances under which they were made.

(d) (i) None of the Parent FCM Subsidiary or any of its Affiliates, nor any of the Parent FCM Subsidiary's "associated persons" (as defined in CFTC Rule 1.3) or "principals" (as defined in CFTC Rule 3.1) is (A) ineligible to serve as an FCM or as an "associated person" or "principal" of an FCM, (B) subject to a "statutory disqualification" under Section 8a(2) of the CEA, (C) subject to any material disciplinary proceedings or Orders that would be required to be disclosed on Form 7-R or Form 8-R (and which disciplinary proceedings or Orders are not actually disclosed on such Person's current Form 7-R or current Form 8-R) to the extent that such Person or its associated persons or principals is required to file such forms, or (D) subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of the registration of such Person as an FCM or associated person or principal of an FCM under Section 8a(4) of the CEA, and (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened by any Governmental Authority that would reasonably be expected to result in any of the circumstances described in the foregoing clauses (i)(A), (i)(B), (i)(C) and (i)(D).

(e) No fact relating to the Parent FCM Subsidiary or any "principal" of the Parent FCM Subsidiary, as defined in Form 8-R, requires any response in the affirmative to any question relating to "Criminal Disclosures" in the Parent FCM Subsidiary's Form 7-R or in the principal's Form 8-R, except to the extent that such facts have been reflected on such forms.

(f) The services performed by the Parent FCM Subsidiary have been conducted in compliance with all material requirements of the CEA, the rules and regulations of the CFTC, the NFA, and any applicable state regulatory authority or Self-Regulatory Organizations, as applicable. The Parent FCM Subsidiary has established, in compliance with requirements of Applicable Law, and maintained in effect at all times required by Applicable Law since January 1, 2017, written policies and procedures reasonably designed to achieve compliance with the CEA, the CFTC rules thereunder, and the rules of each applicable Self-Regulatory Organization ("**Parent FCM Compliance Policies**"), including those required by applicable NFA rules. All such Parent FCM Compliance Policies comply in all material respects with Applicable Laws.

(g) The Parent FCM Subsidiary currently maintains, and since January 1, 2017 has maintained, "adjusted net capital" (as such term is defined in CFTC Rule 1.17) equal to or in excess of the minimum "adjusted net capital" required to be maintained by the Parent FCM Subsidiary,

and in an amount sufficient to ensure that it is not required to file a notice under CFTC Rule 1.12 or NFA Financial Requirements Section 2.

(h) No Governmental Authority has, since January 1, 2017, formally initiated any administrative proceeding or investigation into the Parent FCM Subsidiary and the Parent FCM Subsidiary has not received any written indication of the commencement of an enforcement action from the CFTC, the NFA or any other Governmental Authority, or other notice alleging any material noncompliance with any Applicable Law governing the operations of the Parent FCM Subsidiary. Parent has no knowledge of any unresolved material violation or material exception raised by any Governmental Authority with respect to the Parent FCM Subsidiary. Since January 1, 2017, the Parent FCM Subsidiary has not settled any claim or proceeding of the CFTC, the NFA or any other Governmental Authority. The Parent FCM Subsidiary has not had an order, decree or judgement entered against it in connection with any Applicable Law governing the operation of an FCM. As of the date hereof, the Parent FCM Subsidiary is not currently subject to, or has not received any notice of, an examination, inspection, investigation or inquiry by a Governmental Authority, and no examination or inspection has been started or completed for which no examination report is available.

Section 5.19. *Material Contracts.* Each “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K under the Securities Exchange Act but excluding any Parent Employee Plan) to which Parent or any of its Subsidiaries is a party or by which it is bound (each, a “**Parent Material Contract**”) is, subject to the Bankruptcy and Equity Exceptions, a valid and binding obligation of Parent or a Subsidiary of Parent (as the case may be) and, to the knowledge of Parent, each of the other parties thereto, and in full force and effect and enforceable in accordance with their respective terms against Parent or its Subsidiaries (as the case may be) and, to the knowledge of Parent, each of the other parties thereto (except for such Parent Material Contracts that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of Parent or any of its Subsidiaries, such termination must be in the ordinary course of business), except where the failure to be valid and binding obligations and in full force and effect and enforceable has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. To the knowledge of Parent, no Person is seeking to terminate or challenging the validity or enforceability of any Parent Material Contract, except such terminations or challenges which have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Neither Parent nor any of its Subsidiaries, nor to the knowledge of Parent, any of the other parties thereto has violated any provision of, or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of, and neither Parent nor any of its Subsidiaries has received written notice that it has violated or defaulted under, any Parent Material Contract, except for those violations and defaults (or potential defaults) which have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.20. *Taxes.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) All Tax Returns required by Applicable Law to be filed with any Taxing Authority by, or on behalf of, Parent or any of its Subsidiaries have been filed when due (giving effect to all extensions) in accordance with all Applicable Law, and all such Tax Returns are true and complete.

(b) Parent and each of its Subsidiaries has paid (or has had paid on its behalf), or has withheld and remitted to the appropriate Taxing Authority, all Taxes due and payable, or (i) where payment is not yet due, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate accrual or (ii) where payment is being contested in good faith pursuant to appropriate procedures, has established (or has had established on its behalf and for its sole benefit and recourse) in accordance with GAAP an adequate reserve, in each case for all Taxes through the end of the last period for which Parent and its Subsidiaries ordinarily record items on their respective books and records.

(c) (i) All federal income Tax Returns of the affiliated group of which Parent is the common parent through the Tax year ended December 31, 2012 have been examined and closed or are Tax Returns with respect to which the applicable period for assessment under Applicable Law, after giving effect to all extensions or waivers thereof, has expired, and (ii) except for Tax years 2013 to 2016 neither Parent nor any of its Subsidiaries (or any member of any affiliated, consolidated, combined or unitary group of which Parent or any of its Subsidiaries is or has been a member) has granted any extension or waiver of the limitation period applicable to the assessment or collection of any federal income Tax.

(d) There is no Proceeding (including any audit) pending or, to Parent's knowledge, threatened in writing against or with respect to Parent or its Subsidiaries in respect of any Tax or Tax asset.

(e) There are no requests for rulings or determinations in respect of any Tax or Tax asset pending between Parent or any of its Subsidiaries and any Taxing Authority.

(f) During the two (2)-year period ending on the date of this Agreement, Parent was not a distributing corporation or a controlled corporation in a transaction intended to be governed by Section 355 of the Code.

(g) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of Parent or any of its Subsidiaries.

(h) No claim has been made in writing by any Taxing Authority in a jurisdiction where Parent or any of Parent's Subsidiaries does not file Tax Returns that Parent or any such Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, that jurisdiction.

(i) Neither Parent nor any of its Subsidiaries (i) has been a member of an affiliated, consolidated, combined or unitary group other than one of which Parent or any of its Subsidiaries was the common parent, (ii) is party to any Tax Sharing Agreement (other than any such agreement solely between Parent and its Subsidiaries), or (iii) has any liability for the Taxes of any Person (other than Parent or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. law) or any Tax Sharing Agreement, or as a transferee or successor.

(j) Neither Parent nor any of its Subsidiaries has taken or agreed to take any action or has knowledge of any fact or circumstance that could reasonably be expected to prevent the Mergers, taken together, from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code and the Treasury Regulations.

(k) All of the equity interests in Second Merger Sub will be owned by Parent, and Second Merger Sub will be since formation either (i) disregarded as an entity (within the meaning of Section 301.7701-3 of the Treasury Regulations) separate from Parent or (ii) treated as a corporation, in each case for United States federal income tax purposes.

Section 5.21. *Employees and Employee Benefit Plans.*

(a) Neither Parent nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or in the past six years has, sponsored, maintained, administered or contributed to (or had any obligation to contribute to), any plan subject to Title IV of ERISA, including any multiemployer plan, as defined in Section 3(37) of ERISA.

(b) Each Parent Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or has applied to the IRS for such a letter within the applicable remedial amendment period or such period has not expired and, to the knowledge of Parent, no circumstances exist that would reasonably be expected to result in any such letter being revoked or not being reissued or a penalty under the IRS Closing Agreement Program if discovered during an IRS audit or investigation. Each trust created under any such Parent Employee Plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, since January 1, 2017, each Parent Employee Plan has been maintained in compliance with its terms and all Applicable Law. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, no Proceeding (other than routine claims for benefits and including an audit) is pending against or involves or, to Parent’s knowledge, is threatened against or reasonably expected to involve, any Parent Employee Plan before any court or arbitrator or any Governmental Authority. To the knowledge of Parent, since January 1, 2017, no events have occurred with respect to any Parent Employee Plan that would reasonably be expected to result in the assessment of any excise taxes or penalties against Parent or any of its Subsidiaries, except for events that have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) With respect to any Parent Employee Plan covered by Subtitle B, Part 4 of Title I of ERISA or Section 4975 of the Code, no non-exempt prohibited transaction has occurred that has caused or would reasonably be expected to cause Parent or any of its Subsidiaries to incur any material liability under ERISA or the Code.

(e) Each Parent Employee Plan that is an International Plan that covers Parent Service Providers located primarily in a jurisdiction where the Company operates (i) has been maintained

in compliance with its terms and Applicable Law, (ii) if intended to qualify for special tax treatment, meets all the requirements for such treatment, and (iii) if required, to any extent, to be funded, book-reserved or secured by an insurance policy, is fully funded, book-reserved or secured by an insurance policy, as applicable, based on reasonable actuarial assumptions in accordance with applicable accounting principles, in each case, except as would not be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.22. *Labor Matters.*

(a) Except as would not be material to Parent and its Subsidiaries, taken as a whole, neither Parent nor any of its Subsidiaries is, or since January 1, 2017 has been, a party to or subject to, or is currently negotiating in connection with entering into, any Parent Collective Bargaining Agreement, and there have not been any, and to Parent's knowledge there are no threatened, organizational campaigns, card solicitations, petition or other unionization activity seeking recognition of a collective bargaining unit relating to any current or former Parent Service Provider. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, there are no unfair labor practice complaints pending or, to Parent's knowledge, threatened against the Parent or any of its Subsidiaries before the National Labor Relations Board or any other Governmental Authority or any current union representation questions involving any current or former Parent Service Provider with respect to Parent or its Subsidiaries. Except as would not be material to Parent and its Subsidiaries, taken as a whole, there is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to the Parent's knowledge, threatened against or affecting Parent or any of its Subsidiaries.

(b) Since January 1, 2018, (i), no allegations of sexual harassment or other sexual misconduct have been made against any Parent Service Provider with the title of managing director or above and (ii) there are no Actions pending or, to Parent's knowledge, threatened related to any allegations of sexual harassment or other sexual misconduct by any Parent Service Provider with the title of managing director or above. Since January 1, 2018, neither Parent nor any of its Subsidiaries have entered into any settlement agreements related to allegations of sexual harassment or other sexual misconduct by any Parent Service Provider with the title of managing director or above.

(c) Parent and each of its Subsidiaries is, and has been since January 1, 2017, in material compliance with WARN and has no liabilities or other obligations thereunder.

Section 5.23. *Intellectual Property.* (a) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, none of the registrations (including patents and domain name registrations) and applications for registration for Parent's Owned Intellectual Property (the "**Parent Registered IP**") has lapsed, expired, been abandoned or been adjudged invalid or unenforceable, and, to the knowledge of Parent, all Parent Registered IP is valid, enforceable and subsisting.

(b) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and its Subsidiaries are the sole and exclusive owners of all of Parent's Owned Intellectual Property and hold all of their right, title

and interest in and to all of Parent's Owned Intellectual Property free and clear of all Liens (other than non-exclusive licenses granted by Parent or one of its Subsidiaries in the ordinary course of business and Permitted Liens), (ii) immediately following the Closing, Parent and its Subsidiaries will own or have a valid and enforceable license to use any and all of the Intellectual Property necessary to, or used or held for use in, the conduct of the respective businesses of Parent and its Subsidiaries as currently conducted, and (iii) to the knowledge of Parent, there exist no material restrictions on the use of any of Parent's Owned Intellectual Property.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, no current or former employee, contractor or consultant of Parent or any of its Subsidiaries owns any rights in or to any of Parent's Owned Intellectual Property and, to the extent that any such Intellectual Property has been developed or created by any Third Party (including any current or former employee, contractor or consultant) for or on behalf of Parent or any of its Subsidiaries, Parent or one of its Subsidiaries, as applicable, has a written agreement with such Third Party with respect thereto, and thereby either (i) has obtained ownership of and is the exclusive owner of, or (ii) has obtained a valid right to exploit, sufficient for the conduct of the business of Parent and its Subsidiaries as currently conducted, such Intellectual Property.

(d) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) to the knowledge of Parent, since January 1, 2017, neither Parent nor any of its Subsidiaries nor the conduct of their respective businesses has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party, (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened against or affecting Parent or any of its Subsidiaries (A) alleging that Parent or any of its Subsidiaries has infringed, misappropriated, diluted or otherwise violated any Intellectual Property rights of any Third Party or (B) based upon, or challenging or seeking to deny or restrict, the rights of Parent or any Subsidiary of Parent in any of Parent's Owned Intellectual Property, and (iii) to the knowledge of Parent, no Third Party has infringed, misappropriated, diluted or otherwise violated any of Parent's Owned Intellectual Property.

(e) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and its Subsidiaries have provided reasonable notice of its privacy and personal data collection and use policies on its websites and through other customer and public communications and Parent and its Subsidiaries have complied with such policies, contractual requirements and all Applicable Law relating to (A) the privacy of the users of Parent's and its Subsidiaries' respective products, services and websites and (B) the collection, use, processing, storage and disclosure of any personally-identifiable information (including personal health information and any and all "personal data" as that term is defined in European Union's General Data Protection Regulation and any and all other information, the collection, use, processing, storage and disclosure of which is regulated by an Applicable Law in relation to data protection or data privacy) and other data or information collected, used, processed, stored or disclosed by Parent or any of its Subsidiaries (or, to the knowledge of the Parent, any Third Party that collects, uses, processes, stores or discloses such data or information on behalf of Parent or any of its Subsidiaries), (ii) there is no Proceeding pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries (or, to the knowledge of the Parent, against any Third Party working on behalf of Parent or any of its Subsidiaries) alleging any violation of such

policies, contractual requirements or Applicable Law, (iii) none of this Agreement or the consummation of the Transactions will violate any such policy, contractual requirements or Applicable Law and (iv) Parent and its Subsidiaries (and any Third Party working on behalf of Parent and its Subsidiaries) have taken commercially reasonable steps consistent with normal industry practice to protect the types of information referred to in this Section 5.23(e) against loss and unauthorized access, use, modification, disclosure or other misuse, and, to the knowledge of Parent, there has been no unauthorized access, use, modification, disclosure or other misuse of such data or information.

(f) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent's IT Assets perform in a manner that permits Parent and its Subsidiaries to conduct their respective businesses as currently conducted, (ii) Parent and its Subsidiaries take commercially reasonable actions, consistent with current industry standards, to protect the confidentiality, integrity and security of Parent's IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation of commercially reasonable data backup, disaster avoidance and recovery procedures and business continuity procedures, and (iii) to the knowledge of the Parent, there has been no unauthorized use, access, interruption, modification or corruption of Parent's IT Assets (or any information or transactions stored or contained therein or transmitted thereby).

Section 5.24. *Properties.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and its Subsidiaries have good, valid and marketable fee simple title (or its jurisdictional equivalent) to, or valid leasehold interests in, as the case may be, each parcel of real property owned or used by Parent or any of its Subsidiaries, free and clear of all Liens, except for Permitted Liens, (ii) each Lease under which Parent or any of its Subsidiaries leases, subleases or licenses any real property is, subject to the Bankruptcy and Equity Exceptions, a valid and binding obligation of Parent or a Subsidiary of Parent (as the case may be) and, to the knowledge of Parent, each of the other parties thereto, and in full force and effect and enforceable in accordance with its terms against Parent or its Subsidiaries (as the case may be) and, to the knowledge of Parent, each of the other parties thereto (except for such Leases that are terminated after the date of this Agreement in accordance with their respective terms; *provided* that if such termination is at the option of Parent or any of its Subsidiaries such termination must be in the ordinary course of business), (iii) neither Parent nor any of its Subsidiaries, nor, to the knowledge of Parent, any of the other parties thereto has violated or committed or failed to perform any act which (with or without notice, lapse of time or both) would constitute a default under any provision of any Lease, and (iv) neither Parent nor any of its Subsidiaries has received written notice that it has breached, violated or defaulted under any Lease, nor has Parent or any of its Subsidiaries delivered notice to any other party to a Lease that such other party has breached, violated or defaulted under any Lease that remains uncured as of the date hereof. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, the real property owned or used by Parent or any of its Subsidiaries and any plants, buildings, structures and equipment thereon owned or leased by Parent and its Subsidiaries have no defects, are in good operating condition and repair and have been maintained consistent with standards generally followed in the industry (given due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present use. Except as has not had and would not reasonably be expected to have,

individually or in the aggregate, a Parent Material Adverse Effect, Parent and its Subsidiaries are in possession of and have good title to, or valid leasehold interests in or valid rights under contract to use, the material machinery, equipment, furniture, fixtures and other tangible material personal property and assets used by Parent or any of its Subsidiaries.

Section 5.25. *Environmental Matters.* Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect:

(a) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding (including a review) is pending or, to the knowledge of Parent, threatened by any Governmental Authority or other Person relating to Parent or any of its Subsidiaries that relates to, or arises under, any Environmental Law, Environmental Permit or Hazardous Substance;

(b) Parent and its Subsidiaries are, and since January 1, 2017 have been, in compliance with all Environmental Laws and all Environmental Permits and hold all applicable Environmental Permits; and

(c) there are no liabilities or obligations of Parent or any of its Subsidiaries of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such liability or obligation.

Section 5.26. *Antitakeover Statutes.* Parent has no “rights plan,” “rights agreement,” or “poison pill” in effect. Assuming the representations and warranties set forth in Section 4.30 are true and correct, no “control share acquisition,” “fair price,” “moratorium” or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement or any of the Transactions with respect to Parent and its Subsidiaries.

Section 5.27. *Finders’ Fees.* There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Parent or any of its Subsidiaries who might be entitled to any fee or commission from Parent or any of its Affiliates in connection with the Transactions.

Section 5.28. *No Ownership of Company Common Stock.* Neither Parent nor any Subsidiary of Parent beneficially owns, directly or indirectly, any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock (other than any Fiduciary Shares) and neither Parent nor any of its Subsidiaries has any rights to acquire any shares of Parent Common Stock (other than any Fiduciary Shares). There are no voting trusts or other agreements or understandings to which Parent or any Subsidiary of Parent is a party with respect to the voting of the capital stock or other equity interest of the Company.

Section 5.29. *No Other Parent Representations and Warranties.* Except for the representations and warranties made by Parent in this Article 5 (as qualified by the applicable items disclosed in the Parent Disclosure Schedule in accordance with Section 11.05 and the introduction to this Article 5), neither Parent nor any other Person makes or has made any

representation or warranty, expressed or implied, at law or in equity, with respect to or on behalf of Parent or its Subsidiaries, or the accuracy or completeness of any information regarding Parent or its Subsidiaries or any other matter furnished or provided to the Company or made available to the Company in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement or the Transactions. Parent and its Subsidiaries disclaim any other representations or warranties, whether made by Parent or any of its Subsidiaries or any of their respective Affiliates or Representatives. Parent acknowledges and agrees that, except for the representations and warranties made by the Company in Article 4 (as qualified by the applicable items disclosed in the Company Disclosure Schedule in accordance with Section 11.05 and the introduction to Article 4), neither the Company nor any other Person is making or has made any representations or warranty, expressed or implied, at law or in equity, with respect to or on behalf of the Company or its Subsidiaries, or the accuracy or completeness of any information regarding the Company or its Subsidiaries or any other matter furnished or provided to Parent or made available to Parent in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, this Agreement, or the transactions contemplated hereby or thereby. Parent specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Company and its Affiliates have specifically disclaimed and do hereby specifically disclaim any such other representations and warranties. Notwithstanding the foregoing, this Section 5.29 shall not limit Parent’s, Merger Sub’s or the Company’s remedies in the case of fraud.

ARTICLE 6

Covenants of the Company

Section 6.01. Conduct of the Company. From the date of this Agreement until the earlier of the Effective Time and the valid termination of this Agreement, except (x) as required by Applicable Law, (y) as set forth in Section 6.01 of the Company Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, unless Parent shall otherwise consent in writing (e-mail being sufficient) (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall, and shall cause each of its Subsidiaries to, conduct its business in the ordinary course of business consistent with past practice and use its commercially reasonable efforts to (A) preserve intact its business organization and relationships with customers, members, suppliers, lenders, licensors, licensees, Governmental Authorities with jurisdiction over the Company’s operations and other Third Parties having material business relationships with the Company and its Subsidiaries, (B) maintain in effect all material Company Permits and (C) maintain and preserve the goodwill associated with its business, affairs and properties, its reputation and its brand value; *provided* that neither the Company nor any of its Subsidiaries shall take any action to comply with the foregoing that would breach any of Section 6.01(a) through (r). Without limiting the generality of the foregoing, from the date of this Agreement until the earlier of the Effective Time and the valid termination of this Agreement, except (x) as required by Applicable Law, (y) as set forth in Section 6.01 of the Company Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, without Parent’s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed (other than with respect to Section 6.01(c) or Section 6.01(d)), the Company shall not, and shall cause each of its Subsidiaries not to:

(a) adopt or propose any change to its certificate of incorporation, bylaws or other organizational documents (whether by merger, consolidation or otherwise) (including the Company Organizational Documents);

(b) (i) merge or consolidate with any other Person, (ii) acquire (including by merger, consolidation, or acquisition of stock or assets) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property, other than (A) acquisitions of assets, securities or property in the ordinary course of business consistent with past practice in an amount not to exceed \$25,000,000 in the aggregate for all such acquisitions, (B) acquisitions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof, (C) acquisitions of any interest in partnerships, joint ventures or similar entities in an amount not to exceed \$25,000,000 in aggregate purchase price for all such interests and (D) transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries, or (iii) adopt or publicly propose a plan of complete or partial liquidation, dissolution, recapitalization, restructuring or other reorganization, or resolutions providing for or authorizing such a liquidation, dissolution, recapitalization, restructuring or other reorganization;

(c) (i) split, combine or reclassify any Company Securities (whether by merger, consolidation or otherwise) (other than transactions (1) solely among the Company and one or more of its wholly owned Subsidiaries or (2) solely among the Company's wholly owned Subsidiaries), (ii) amend any term or alter any rights of any of Company Securities (whether by merger, consolidation or otherwise), (iii) declare, set aside or pay or make any dividend or any other distribution (whether in cash, stock, property or any combination thereof) in respect of any Company Securities or Company Subsidiary Securities (other than dividends or distributions by a Subsidiary of the Company to the Company or a wholly owned Subsidiary of the Company) (in the case of this clause (iii), other than (A) in the case of the Company, (x) regular cash dividends in the ordinary course of business consistent with past practice (including with respect to record and payment dates) in an amount not to exceed \$0.14 per share of Company Common Stock per quarter (appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to Company Common Stock) or (y) dividends required to be paid in accordance with the terms of the Company Series A Preferred Stock and the Company Series B Preferred stock, in each case, as in effect on the date of this Agreement or (B) dividends or distributions by a Subsidiary of the Company to the Company or a Subsidiary of the Company), or (iv) redeem, repurchase, cancel or otherwise acquire or offer to redeem, repurchase, or otherwise acquire any Company Securities or Company Subsidiary Securities, other than repurchases of shares of Company Common Stock in connection with the exercise of Company Stock Options or the vesting or settlement of Company RSU Awards (including any DERs credited thereon), Company PSU Awards (including any DERs credited thereon), Company Director Restricted Stock Awards and Company Director Deferred RSU Awards (including any DERs credited thereon), in each case in accordance with the terms the Company Stock Plans and of such Company Equity Awards;

(d) issue, deliver or sell, or authorize the issuance, delivery or sale of, any Company Securities or Company Subsidiary Securities, other than (i) the issuance of any shares of Company Common Stock upon the exercise of Company Stock Options, the vesting or settlement of shares of Company RSU Awards (including any DERs credited thereon), Company PSU Awards

(including any DERs credited thereon), Company Director Restricted Stock Awards and Company Director Deferred RSU Awards (including any DERs credited thereon) in accordance with the terms of the Company Stock Plans and such Company Equity Awards, (ii) the grant of any Company Equity Award in accordance with Section 6.01(l) of the Company Disclosure Schedule, (iii) the issuance of any Company Subsidiary Securities to the Company or any wholly owned Subsidiary of the Company or (iv) the issuance of any shares of Company Common Stock necessary to comply with applicable regulatory capital requirements;

(e) authorize, make or incur any capital expenditures or obligations or liabilities in connection therewith, other than (i) as contemplated by the capital expenditure budget that has been made available to Parent prior to the date of this Agreement and is set forth on Section 6.01(e) of the Company Disclosure Schedule and (ii) any other capital expenditures not to exceed \$2,500,000 in the aggregate;

(f) sell, lease, license, sublicense, transfer or otherwise dispose of (by merger, consolidation, sale of stock or assets or otherwise), or fail to take any action necessary to maintain, enforce or protect, directly or indirectly, any Subsidiary or any division thereof or of the Company or any assets, securities, interests, businesses or property, other than (i) in the ordinary course of business consistent with past practice for fair market value in an amount not to exceed \$25,000,000 in the aggregate, (ii) dispositions of securities under the Company's investment portfolio consistent with the Company's investment policy in effect as of the date hereof, or (iii) transactions (A) solely among the Company and one or more of its wholly owned Subsidiaries or (B) solely among the Company's wholly owned Subsidiaries;

(g) sell, assign, license, sublicense, abandon, allow to lapse, transfer or otherwise dispose of (by merger, consolidation, sale of stock or assets or otherwise), create or incur any Lien (other than a Permitted Lien) on or otherwise fail to take any action necessary to maintain, enforce or protect, directly or indirectly, any of the Company's material Owned Intellectual Property or Licensed Intellectual Property, other than in the ordinary course of business consistent with past practice (i) pursuant to non-exclusive licenses or (ii) for the purpose of disposing of obsolete or worthless assets;

(h) (i) make any loans or extensions of credit (except for loans under Regulation T, Regulation U and/or the Community Reinvestment Act of 1977) in excess of \$10,000,000 in a single transaction or renewals of loans or extensions of credit in excess of \$25,000,000, in each case (it being understood that Parent shall be required to respond to any request for a consent to make such loan or extension of credit in writing within two (2) business days after the loan package is delivered to Parent), or make any advances or capital contributions to, or investments in, any other Person, other than loans, advances or capital contributions (A) by the Company to one or more of its wholly owned Subsidiaries or (B) by any Subsidiary of the Company to the Company or any wholly owned Subsidiary of the Company, or (ii) other than in connection with ordinary course activities related to the operations of the Company Bank Subsidiary or the Company Broker-Dealer Subsidiary, incur, assume, suffer to exist or otherwise be liable with respect to, or guarantee or repurchase, or enter into any Contract with respect to (in each case, whether evidenced by a note or other instrument, pursuant to an issuance of debt securities, financing lease, sale-leaseback transaction or otherwise), any indebtedness for borrowed money, other than any issuances of subordinated debt necessary to comply with applicable regulatory capital

requirements or additional borrowings under or refinancings or renewals (of an equivalent or lesser principal amount except any increase in the principal amount by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing or renewal) of the Company Debt on standard market terms available at such time (provided that no such renewals or refinancings shall include prepayment penalties);

(i) create or incur any Lien (except for a Permitted Lien) on any material asset other than Liens created or incurred under the Company Debt or Company Notes or similar Liens under any other permitted indebtedness under Section 6.01(h)(ii), and Liens on assets subject to capital leases entered into in the ordinary course of business;

(j) (i) enter into any Company Material Contract (including (x) by amendment of any Contract that is not a Company Material Contract such that such Contract becomes a Company Material Contract or (y) through acquisition of a subsidiary that is bound by a Company Material Contract) (in each case, other than in the ordinary course of business with respect to a Company Material Contract solely of a type described in Section 4.20(a)(i), Section 4.20(a)(iii), Section 4.20(a)(iv), Section 4.20(a)(v), Section 4.20(a)(vii) and, to the extent permitted under Section 6.01(b)(ii)(C), Section 4.20(ix)), (ii) terminate, renew, extend or amend in any material respect any Company Material Contract or waive any material right thereunder (other than in the ordinary course of business with respect to a Company Material Contract described in Section 4.20(a)(i) and not described in any other clause of Section 4.20(a)); provided, however that nothing in this Section 6.01(j) shall prevent or restrict the Company and its Subsidiaries from entering into, renewing, extending or amending any customer Contract (other than any such Contract described in any clause of Section 4.20(a) other than Section 4.20(a)(i)) with respect to the Company's corporate services business;

(k) terminate, amend or modify any material Company Permit in a manner material and adverse to the Company and its Subsidiaries, taken as a whole;

(l) except as required by any Company Employee Plan as in effect as of the date hereof, (i) grant any change in control, retention, severance or termination pay to (or amend any existing arrangement with) any of their respective current or former Company Service Providers, (ii) except as in the ordinary course of business consistent with past practices, enter into any employment, offer letter, term sheet, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any of their respective current or former Company Service Providers, (iii) establish, adopt, amend or enter into any material Company Employee Plan, other than in connection with routine, immaterial or ministerial amendments to health and welfare plans that do not materially increase benefits or result in a material increase in administrative costs, or Company Collective Bargaining Agreement, (iv) grant any equity or equity-based awards to, or discretionarily accelerate the vesting or payment of any such awards held by, any current or former Company Service Provider, (v) increase the compensation, bonus or other benefits payable to any of their respective current or former Company Service Providers, (vi) hire any Key Employees or (vii) terminate (other than for cause) any Key Employees;

(m) make any material change in any method of accounting or accounting principles or practice, except for any such change required by reason of a change in GAAP or Regulation S-X

under the Securities Exchange Act (“**Regulation S-X**”), as approved by its independent public accountants;

(n) enter into any material new line of business;

(o) (i) make or change any material Tax election; (ii) change any annual Tax accounting period; (iii) adopt or change any material method of Tax accounting; (iv) enter into any material closing agreement with respect to Taxes (other than a closing agreement described in clause (v) of this Section 6.01(o)); or (v) settle or surrender (including by entering into a closing agreement) any Tax claim, audit or assessment involving potential payments, or reductions in deferred tax assets, by the Company and its Subsidiaries in excess of \$5,000,000;

(p) settle or compromise, or offer or propose to settle or compromise, any claim, action, suit, dispute, investigation, regulatory examination, arbitration, or other Proceeding, whether pending or threatened, (i) involving or against the Company or any of its Subsidiaries, other than in the ordinary course of business consistent with past practice (*provided* that any individual settlement or compromise or any series of related settlements or compromises involving payments by the Company and its Subsidiaries in excess of \$5,000,000 individually or \$15,000,000 in the aggregate (in each case, net of any amounts that may be paid under one or more existing insurance policies) or providing for any non-monetary relief shall be deemed not to be in the ordinary course of business), (ii) that relates to the Transactions or (iii) initiated by a stockholder of the Company;

(q) enter into or materially expand any business outside of the U.S. and its territories; or

(r) agree, resolve, authorize, commit or propose to do any of the foregoing.

Section 6.02. *Access to Information; Confidentiality.* (a) From the date of this Agreement to the earlier of the Effective Time or the termination of this Agreement, upon reasonable notice and subject to Applicable Law, (A) the Company shall, and shall cause each of its Subsidiaries to, afford to Parent and its Representatives, reasonable access, during normal business hours, to all of its offices, properties, books, contracts and records and (B) each party shall, and shall cause each of its respective Subsidiaries to, (i) make available to the other party and its respective Representatives all other information concerning such Person’s businesses, properties and personnel as such party may reasonably request (including in connection with the preparation of the Registration Statement) and (ii) and instruct its respective Representatives to reasonably cooperate with such party’s investigation; *provided* that, notwithstanding anything to the contrary, neither Parent nor any of its Representatives shall be required to provide the Company or any of its Representatives any projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period or otherwise provide financial information that is not prepared internally in the ordinary course of business. All information furnished pursuant to this Agreement shall be subject to the confidentiality agreement, dated as of January 10, 2020, between Parent and the Company (the “**Confidentiality Agreement**”). No information or knowledge obtained in any investigation pursuant to this Section 6.02 shall affect or be deemed to modify any representation or warranty made by the Company or Parent pursuant to this Agreement.

(b) Notwithstanding anything to the contrary in this Section 6.02, Section 8.01 or Section 8.02, neither party nor any of its respective Subsidiaries shall be required to provide access to its offices, properties, books, contracts, records or personnel if such access would unreasonably disrupt its operations, or provide access to or to disclose information where such access or disclosure could reasonably be expected to result in the loss the attorney-client privilege of such party or any of its Subsidiaries or contravene any Applicable Law or Contract entered into prior to the date of this Agreement; *provided* that each party shall, and shall cause its respective Subsidiaries to, use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances in which such restrictions apply; *provided, however*, that in no event shall either party have access to individual performance or evaluation records, medical histories or other similar information that in the reasonable opinion of the other party the disclosure of which would reasonably be expected to subject such party or any of its Subsidiaries to risk of liability. Each of Parent and the Company agrees that it will not, and will instruct its Representatives not to, use any information obtained pursuant to this Section 6.02 for any competitive or other purpose unrelated to the consummation of the Transactions.

(c) Each party shall instruct its external auditors to cooperate with the other party's external auditors as soon as reasonably practicable to agree on the necessary processes and procedures that are required to be undertaken by each of them in relation to the preparation of the Registration Statement.

Section 6.03. *No Solicitation by the Company.* (a) From the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms, except as otherwise set forth in this Section 6.03, the Company shall not, and shall cause its Subsidiaries, and its and its Subsidiaries' officers, directors and employees, investment bankers, attorneys, accountants, consultants and other agents, advisors and representatives (collectively, "**Representatives**"), not to, directly or indirectly, (i) solicit, initiate or take any action to knowingly facilitate or knowingly encourage the submission of any Company Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to the Company or any of its Subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its Subsidiaries to, otherwise knowingly cooperate in any way with, or knowingly assist, participate in, facilitate or knowingly encourage any effort by, any Third Party that the Company knows, or should reasonably be expected to know, is seeking to make, or has made, a Company Acquisition Proposal, (iii) (A) (x) fail to make, (y) withdraw or (z) qualify, amend or modify in any manner adverse to Parent, the Company Board Recommendation (it being understood that any failure to publicly and without qualification either (x) recommend against such Company Acquisition Proposal or (y) reaffirm the Company Board Recommendation, in each case, within ten (10) Business Days after a Company Acquisition Proposal is made public or any request by Parent to do so will be treated as a withdrawal of the Company Board Recommendation that is adverse to Parent for purposes hereof), (B) fail to make, or to include in the Proxy Statement/Prospectus, the Company Board Recommendation or (C) recommend, adopt or approve or publicly propose to recommend, adopt or approve any Company Acquisition Proposal (any of the foregoing in this clause (iii), a "**Company Adverse Recommendation Change**"), (iv) take any action to make any "moratorium," "control share acquisition," "fair price," "supermajority," "affiliate transactions" or "business combination statute or regulation" or other similar anti-takeover laws and regulations of the State of Delaware, including Section 203 of the Delaware Law, inapplicable to any Third Party or any

Company Acquisition Proposal, or (v) fail to enforce, amend or grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries (*provided* that if the Board of Directors of the Company determines in good faith that failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law, then (I) the Company may waive any such standstill or similar agreement to the extent necessary to permit the Person bound by such provision or agreement to make a Company Acquisition Proposal to the Board of Directors of the Company and (II) concurrently with such waiver by the Company, any standstill or similar provisions in the Confidentiality Agreement shall immediately and automatically cease to be of any force or effect). Any breach or willful breach of the restrictions on the Company set forth in this Section 6.03(a) by any Subsidiary of the Company or any of its or their respective Representatives shall be deemed to be a breach or willful breach (as applicable) of this Section 6.03(a) by the Company.

(b) Notwithstanding Section 6.03(a), if at any time prior to the receipt of the Company Stockholder Approval (the “**Company Approval Time**”) (and in no event after the Company Approval Time), the Board of Directors of the Company receives a *bona fide* written Company Acquisition Proposal made after the date hereof which has not resulted from a violation of this Section 6.03, the Board of Directors of the Company may, subject to compliance with this Section 6.03(b), Section 6.03(c) and Section 6.03(e), (i) engage in negotiations or discussions with any Third Party that, subject to the Company’s compliance with Section 6.03(a), has made after the date of this Agreement an unsolicited *bona fide* written Company Acquisition Proposal that the Board of Directors of the Company determines in good faith, after consultation with a financial advisor of nationally recognized reputation and outside legal counsel to the Company, constitutes or is reasonably likely to lead to a Company Superior Proposal, (ii) thereafter furnish to such Third Party and its Representatives and financing sources nonpublic information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with terms (including “standstill” or similar terms) no less favorable to the Company than those contained in the Confidentiality Agreement, a copy of which shall be provided, promptly after its execution, to Parent for informational purposes; *provided* that all such non-public information (to the extent that such information has not been previously provided or made available to Parent) is provided or made available to Parent, as the case may be, prior to or substantially concurrently with the time it is provided or made available to such Third Party, and (iii) following receipt of a Company Superior Proposal after the date of this Agreement, (A) make a Company Adverse Recommendation Change and/or (B) terminate this Agreement in accordance with Section 10.01(d)(ii) in order to cause the Company to enter into an Alternate Company Acquisition Agreement with respect to a Company Superior Proposal (a “**Company Superior Proposal Termination**”), but in each case referred to in the foregoing clauses (i) through (iii) only if the Board of Directors of the Company determines in good faith by majority vote, after consultation with the Company’s outside legal counsel and a financial advisor of nationally recognized reputation, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law. Nothing contained herein shall prevent the Board of Directors of the Company from (A) complying with Rule 14e-2(a) under the Securities Exchange Act with regard to a Company Acquisition Proposal, so long as any action taken or statement made to so comply is consistent with this Section 6.03 or (B) making any required disclosure to the stockholders of the Company if the Board of Directors of the Company determines in good faith, after consultation with its outside legal counsel, that failure to take such action would be reasonably likely to be inconsistent with Applicable Law; *provided* that any Company Adverse Recommendation Change involving or relating to a Company

Acquisition Proposal and/or Company Superior Proposal Termination may only be made in accordance with the provisions of this Section 6.03(b), Section 6.03(c) and Section 6.03(e) and, even if permitted by this sentence, shall have the consequences set forth in this Agreement. For the avoidance of doubt, issuing a “stop, look and listen” disclosure or similar communication of the type contemplated by Rule 14d-9(f) under the Securities Exchange Act shall not be a Company Adverse Recommendation Change.

(c) In addition to the requirements set forth in Section 6.03(b), the Board of Directors of the Company shall not take any of the actions referred to in clauses (i) through (iii) of Section 6.03(b), other than interacting with the Person who made such Company Acquisition Proposal and its Representatives solely to clarify the terms and conditions thereof, unless the Company shall have first delivered to Parent written notice advising Parent that the Company intends to take such action. In addition, the Company shall notify Parent promptly (but in no event later than twenty-four (24) hours) after receipt by the Company (or any of its Representatives) of (i) any Company Acquisition Proposal or (ii) any written request for information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries by any Third Party that, to the knowledge of the Company or any member of its Board of Directors, is considering making, is reasonably likely to make or has made, a Company Acquisition Proposal, which notice shall be provided in writing and shall identify the relevant Third Party and, to the extent known, the material terms and conditions of, any such Company Acquisition Proposal (including any material changes thereto). The Company shall keep Parent reasonably informed, on a reasonably current basis, of the status and details of any such Company Acquisition Proposal (including any changes thereto) and shall promptly (but in no event later than twenty-four (24) hours after receipt) provide to Parent copies of all material correspondence and written materials sent or provided to the Company or any of its Affiliates that describes any material terms or conditions of any Company Acquisition Proposal (as well as written summaries of any material oral communications addressing such matters).

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Company Approval Time (and in no event after the Company Approval Time), the Board of Directors of the Company may effect a Company Adverse Recommendation Change involving or relating to the occurrence of a Company Intervening Event if the Board of Directors of the Company determines in good faith, after consultation with the Company’s outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law; *provided* that (i) the Company shall (A) promptly notify Parent in writing of its intention to take such action (which notice shall set forth in reasonable detail a description of the Company Intervening Event and the rationale for the Company Adverse Recommendation Change) and (B) negotiate in good faith with Parent (to the extent Parent wishes to so negotiate) for five (5) Business Days following such notice regarding revisions to the terms of this Agreement proposed by Parent, and (ii) the Board of Directors of the Company shall not effect any Company Adverse Recommendation Change involving or relating to a Company Intervening Event unless, after the five (5) Business Day period described in the foregoing clause (B), the Board of Directors of the Company determines in good faith by majority vote, after consultation with the Company’s outside legal counsel and financial advisor, that the failure to take such action would be reasonably likely to be inconsistent with its fiduciary duties under Applicable Law.

(e) Without limiting or affecting Section 6.03(a), Section 6.03(b) or Section 6.03(c), the Board of Directors of the Company shall not make a Company Adverse Recommendation Change and/or effect a Company Superior Proposal Termination involving or relating to a Company Superior Proposal unless (i) the Company promptly notifies Parent, in writing at least four (4) Business Days before taking such action, that the Company intends to take such action, which notice attaches the most current version of any proposed agreement or a reasonably detailed summary of all material terms of such Company Superior Proposal and the identity of the Third Party making such Company Superior Proposal, (ii) if requested by Parent, during such four (4) Business Day period, the Company and its Representatives have discussed and negotiated in good faith with Parent regarding any proposal by Parent to amend the terms of this Agreement in response to such Company Superior Proposal and (iii) after such four (4) Business Day period, the Board of Directors of the Company, after discussions with the Company's outside legal counsel and financial advisor, determines in good faith by majority vote, taking into account any proposal by Parent to amend the terms of this Agreement, that such Company Acquisition Proposal continues to constitute a Company Superior Proposal (it being understood and agreed that in the event of any amendment to the financial terms or other material terms of any such Company Superior Proposal, a new written notification from the Company consistent with that described in clause (i) of this Section 6.03(e) shall be required and a new notice period under clause (i) of this Section 6.03(e) shall commence, during which notice period the Company shall be required to comply with the requirements of this Section 6.03(e) anew, except that such new notice period shall be for two (2) Business Days (as opposed to four (4) Business Days)). After delivery of such written notice pursuant to the immediately preceding sentence until the termination of this Agreement in accordance with its terms, the Company shall promptly keep Parent informed of all material developments affecting the material terms of any such Company Superior Proposal (and the Company shall provide Parent with copies of any additional written materials received that relate to such Company Superior Proposal).

(f) For purposes of this Agreement, "**Company Superior Proposal**" means any *bona fide*, written, Company Acquisition Proposal (other than a Company Acquisition Proposal which has resulted from a violation of this Section 6.03) (with all references to "15%" in the definition of Company Acquisition Proposal being deemed to be references to "50%" and clauses (ii)(2), (iii)(2) and (iv)(B)(2) being disregarded) on terms that the Board of Directors of the Company determines in good faith by majority vote, after consultation with a financial advisor of nationally recognized reputation and the Company's outside legal counsel, and taking into account all the terms and conditions of the Company Acquisition Proposal (including the identity of the Person making the Company Acquisition Proposal and the expected timing and likelihood of consummation, any governmental or other approval requirements (including divestitures and entry into other commitments and limitations), break-up fees, expense reimbursement provisions, conditions to consummation, availability of necessary financing and all other financial, regulatory, legal and other aspects of such Company Acquisition Proposal), would result in a transaction (i) that, if consummated, is more favorable to the Company's stockholders from a financial point of view than the Transactions (taking into account any proposal by Parent to amend the terms of this Agreement proposed pursuant to Section 6.03(e)), (ii) that is reasonably capable of being completed on the terms proposed (taking into account the identity of the Person making the Company Acquisition Proposal, any approval requirements and all other financial, regulatory, legal and other aspects of such Company Acquisition Proposal) and (iii) for which financing, if a

cash transaction (whether in whole or in part), is then fully committed and reasonably determined to be available by the Board of Directors of the Company.

(g) “**Company Intervening Event**” means any material event, circumstance, development, change, occurrence or effect occurring or arising after the date of this Agreement that (i) was not known or reasonably foreseeable, or the material consequences of which were not known or reasonably foreseeable, in each case to the Board of Directors of the Company as of or prior to the date of this Agreement, and (ii) does not relate to (A) the receipt, existence, or terms of a Company Acquisition Proposal, or (B) any event, development, or change in circumstances resulting from a breach of this Agreement by the Company or any action relating to any Company Condition Regulatory Approvals or Parent Condition Regulatory Approvals (including the status thereof) taken pursuant to or in compliance with Section 8.01; *provided that*, in any case, in no event shall any of the following events constitute a Company Intervening Event: (1) any decline, in and of itself, in the market price or trading volume of Parent Stock, any changes in credit ratings and any changes in any analysts’ recommendations or ratings with respect to Parent or any of its Subsidiaries (but not including, in each case, the underlying causes thereof); (2) any failure, in and of itself, by Parent or any of its Subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (but not including, in each case, the underlying causes thereof); and (3) compliance with or performance under this Agreement or the transactions contemplated by this Agreement.

(h) The Company shall, and shall cause its Affiliates and its and its Affiliates’ respective Representatives to, cease immediately and cause to be terminated any and all existing activities, discussions or negotiations, if any, with any Third Party conducted prior to the date of this Agreement with respect to any Company Acquisition Proposal and shall use its reasonable best efforts to cause any such Third Party (and its agents or advisors) in possession of confidential information about the Company that was furnished by or on behalf of the Company to such Persons to return or destroy all such information.

(i) Notwithstanding (i) any Company Adverse Recommendation Change, (ii) the making of any Company Acquisition Proposal or (iii) anything in this Agreement to the contrary, until termination of this Agreement (including a Company Superior Proposal Termination), (x) in no event may the Company or any of its Subsidiaries (A) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar instrument constituting or relating to a Company Acquisition Proposal (an “**Alternate Company Acquisition Agreement**”) (other than a confidentiality agreement in accordance with Section 6.03(b) or an Alternative Company Acquisition Agreement with respect to a Company Superior Proposal pursuant to Section 6.03(b)), (B) except as required by Applicable Law, make, facilitate or provide information in connection with any SEC or other Filings in connection with the transactions contemplated by any Company Acquisition Proposal or (C) seek any Consents in connection with the transactions contemplated by any Company Acquisition Proposal and (y) the Company shall otherwise remain subject to all of its obligations under this Agreement, including, for the avoidance of doubt, the obligation to hold the Company Stockholder Meeting; *provided that*, for the avoidance of doubt, the Company may effect a Company Superior Proposal Termination pursuant to the terms of Section 6.03(b), upon which it shall have no obligation to hold the Company Stockholder Meeting.

Section 6.04. *Transition.* (a) In order to facilitate the integration and the operations of the Company and Parent and their respective Subsidiaries and to permit the coordination of their related operations on a timely basis after the Effective Time, and in an effort to accelerate to the earliest time possible after the Effective Time the realization of synergies, operating efficiencies and other benefits expected to be realized as a result of the Merger, upon Parent's request, the parties shall establish a transition planning team of at least six members (the "**Transition Team**") comprised of an equal number of representatives of Parent and the Company, which shall be responsible for facilitating a transition and integration planning process to ensure the successful combination of the operations of Parent and the Company. Upon Parent's request, subject to Applicable Law, the Transition Team shall be responsible for developing and implementing a detailed action plan for the combination of the businesses from and after the Effective Time and shall (i) confer on a regular and continued basis regarding the status of the transition and integration planning process, (ii) communicate and consult with its members with respect to the manner in which the respective businesses will be conducted from and after the Effective Time and (iii) coordinate human resources integration.

(b) Between the date of this Agreement and the Closing Date, (i) (A) Parent may implement retention and/or incentive programs for certain employees of Parent and of Company (which programs, for the avoidance of doubt, may be implemented in Parent's sole discretion), under which programs employees of the Company will be considered for participation based on substantially the same factors and in substantially the same manner as similarly situated employees of Parent and (B) at the reasonable request of Parent, the Company shall cooperate in good faith with Parent to establish and implement Company-sponsored employee retention and transition incentive programs designed to encourage the retention and performance of employees and groups of employees of the Company and its Subsidiaries who are mutually identified by the Company and Parent, and (ii) the Company shall, and shall cause its Subsidiaries to, coordinate with Parent with respect to the formulation and dissemination of internal and external communications and announcements relating to the impact on employees of the Company and its Subsidiaries of the Merger and the integration of the operations of the Company with those of Parent. Notwithstanding anything to the contrary in this Agreement, the adoption of a retention and transition incentive program described above in this Section 6.04(b) pursuant to the mutual written agreement of the Company and Parent, and the obligations and liabilities relating to such agreed program, shall be disregarded for purposes of determining the completeness, truthfulness and accuracy of the representations of the Company set forth in Article 4 and for purposes of determining the Company's compliance with its covenants under Section 6.01.

Section 6.05. *Indenture.* The Company shall timely provide or cause to be provided, in accordance with the provisions of the Company's indenture, dated August 27, 2017, as supplemented by the supplemental indentures relating thereto (the "**Indenture**") relating to the Company's 2.95% Senior Notes due August 2022, 3.80% Senior Notes due August 2027 and 4.50% Senior Notes due June 2028 (the "**Company Notes**"), to the trustee under the Indenture, any notices, announcements, certificates or legal opinions required by the Indenture to be provided in connection with the Merger prior to the Effective Time. In the event Parent requests that any of the Company Notes be amended, redeemed or satisfied and discharged prior to or at the Effective Time, Parent shall make available to the Company prior to or at the Effective Time, as applicable, all funds necessary to satisfy any obligations of the Company to the holders of the Company Notes that may arise including (i) any funds necessary to repurchase, redeem or otherwise acquire any of

the Company Notes and (ii) principal, interest and any applicable premiums or consent payments in connection with the repurchase, redemption or acquisition of the Company Notes. Parent shall, promptly upon written request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs, fees and expenses (including attorneys' fees and expenses) to the extent such costs, fees and expenses are incurred by the Company, its Subsidiaries or their respective Representatives in connection with the Company complying with its obligations under this Section 6.05. Parent and its counsel shall be given a reasonable opportunity to review and comment on any notice, announcement, certificate or legal opinion referred to in this Section 6.05, in each case, before such document is provided to the trustee under the Indenture, and such documents shall be reasonably acceptable to Parent. The Company shall not redeem the Company Notes without the prior written consent of Parent.

Section 6.06. *Advisory Client Consents.*

(a) *Negative Consents; Affirmative Consents.* The Company RIA Subsidiary shall use its reasonable best efforts to obtain, in accordance with Applicable Law and the applicable Advisory Agreement, the consent of each Advisory Client to the deemed assignment of its Advisory Agreement as a result of the Transactions prior to Closing. Without limiting the generality of the foregoing, the Company RIA Subsidiary shall send, within 60 days of the date hereof, notices complying with all Applicable Laws and applicable Advisory Agreements to each Person that is an Advisory Client as of the date hereof (i) informing such Advisory Client of the Transactions, (ii) informing such Advisory Client that such Company RIA Subsidiary intends to continue to provide Investment Advisory Services to such Advisory Client after Closing and requesting such Advisory Client's consent thereto and (iii) requesting the requisite consent of such Advisory Client to the Transactions. Notwithstanding the foregoing, in the event that the affirmative written consent of any Advisory Client is required under Applicable Law or Advisory Agreement in connection with the Transactions (including the deemed assignment of the Advisory Client's Advisory Agreement), then the Company RIA Subsidiary, with the cooperation of Parent, shall use reasonable best efforts to obtain such affirmative written consent prior to Closing. Parent shall have a reasonable opportunity to review and comment on all materials used to seek Advisory Client consents, or disclose the Transactions to New Clients, for purposes of this Section 6.06(a) prior to distribution. The Company agrees to cause the Company RIA Subsidiary to cooperate with and support the Company's efforts under this Section 6.06(a).

(b) *Cooperation.* Parent shall (i) reasonably cooperate with and assist the Company and the Company RIA Subsidiary in connection with obtaining the approvals and consents sought pursuant to this Section 6.06 and (ii) promptly provide to the Company RIA Subsidiary in writing all information concerning Parent and its Affiliates as is required under Applicable Law, reasonably required or otherwise reasonably requested in order for such Company RIA Subsidiary to seek to obtain the approvals and consents to be sought pursuant to this Section 6.06. Each party shall cause all information relating to such party and its Affiliates supplied by it for inclusion in such requests for approvals and consents, at the time of the mailing or delivery of such requests for approvals and consents or supplemental communications related thereto, to not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 7
Covenants of Parent

Section 7.01. *Conduct of Parent.* From the date of this Agreement until the earlier of the Effective Time and the valid termination of this Agreement, except (x) as required by Applicable Law, (y) as set forth in Section 7.01 of the Parent Disclosure Schedule, or (z) as otherwise required or expressly permitted by this Agreement, unless the Company shall otherwise consent in writing (e-mail being sufficient) (which consent shall not be unreasonably withheld, conditioned or delayed), Parent shall not, and shall cause each of its Subsidiaries not to:

(a) adopt or propose any change to the Parent Organizational Documents (whether by merger, consolidation or otherwise) in a manner that would be materially adverse to the Company's stockholders;

(b) (i) merge or consolidate with any other Person or (ii) acquire (including by merger, consolidation, acquisition of stock or assets or entry into joint venture) any interest in any corporation, partnership, other business organization or any division thereof or any assets, securities or property (except in the ordinary course of business), in each case in this clause (b) that, individually or in the aggregate, would, or would reasonably be expected to, prevent, enjoin or delay beyond the End Date the receipt of the Parent Condition Regulatory Approvals;

(c) adopt or propose a plan of complete or partial merger, liquidation, consolidation, recapitalization, restructuring or other reorganization or dissolution with respect to Parent or Merger Sub, or resolutions providing for or authorizing such a merger, liquidation, consolidation, recapitalization, restructuring or other reorganization or dissolution with respect to Parent or Merger Sub;

(d) declare, set aside or pay or make any dividend or make any other distribution (whether in cash, stock, property or any combination thereof) in respect of Parent Common Stock or any shares of any Subsidiary of Parent's capital stock or other securities, other than (A) in the case of Parent, (x) regular cash dividends in the ordinary course of business consistent with past practice (including with respect to record and payment dates) or (y) subject to Section 2.06, stock dividends or (B) dividends or distributions by a Subsidiary of Parent to Parent or a Subsidiary of Parent;

(e) agree, resolve, authorize, commit or propose to do any of the foregoing.

Section 7.02. *Obligations of Merger Sub.* Until the Effective Time, Parent shall at all times be the direct owner of all of the outstanding shares of capital stock of Merger Sub. Parent shall take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement. Promptly following the execution of this Agreement, Parent shall cause the sole stockholder of Merger Sub to execute and deliver a written consent adopting this Agreement in accordance with the Delaware Law and provide a copy of such written consent to the Company, and thereafter neither Parent nor any of its Subsidiaries shall amend, modify or withdraw such consent.

Section 7.03. *Director and Officer Liability.* (a) For a period of six (6) years after the Effective Time, the Surviving Corporation and Parent shall (with respect to Parent, only to the

extent that the Surviving Company is permitted to do so under Applicable Law), jointly and severally, indemnify and hold harmless and shall advance expenses as incurred, in each case to the extent (subject to Applicable Law) such Persons are indemnified as of the date of this Agreement by the Company pursuant to the Company Organizational Documents, the governing or organizational documents of any Subsidiary of the Company and any indemnification agreements in existence as of the date hereof, each present and former director and officer of the Company and its Subsidiaries (in each case, when acting in such capacity) (collectively, the “**Company Indemnified Parties**”) against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, damages or liabilities incurred in connection with any threatened or actual Proceeding, whether civil, criminal, administrative or investigative, whether arising before or after the Effective Time, arising out of the fact that such person is or was a director, officer or employee of the Company or any of its Subsidiaries and pertaining to matters existing or occurring at or prior to the Effective Time, including the Transactions; *provided*, that in the case of advancement of expenses, any Company Indemnified Party to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Company Indemnified Party is not entitled to indemnification; *provided, further*, that such indemnification shall be subject to any limitation imposed from time to time under Applicable Law.

(b) For a period of six (6) years after the Effective Time, Parent shall cause to be maintained in effect policies of directors’ and officers’ liability insurance with terms, conditions, retentions and limits of liability that are at least as favorable to the Company Indemnified Parties as such policies maintained by the Company as of the date hereof with respect to claims arising from facts or events which occurred at or before the Effective Time; *provided, however*, that the Surviving Corporation shall not be obligated to expend, on an aggregate basis, an amount in excess of 300% of the current annual premium paid as of the date hereof by the Company for such insurance (the “**Premium Cap**”), and if such premiums for such insurance would at any time exceed the Premium Cap or such coverage is not otherwise available, then Parent shall cause to be maintained policies of insurance which, in Parent’s good faith determination, provide the maximum coverage available at an aggregate premium equal to the Premium Cap. In lieu of the obligations set forth in the foregoing sentence, Parent or the Company may obtain at or prior to the Effective Time a six (6)-year “tail” policy under the Company’s existing directors’ and officers’ insurance policy providing equivalent coverage to that described in the preceding sentence if and to the extent that the same may be obtained for an amount that, in the aggregate, does not exceed the Premium Cap.

(c) The provisions of this Section 7.03 shall survive the Effective Time and are intended to be for the benefit of, and shall be enforceable by, each Company Indemnified Party and his or her heirs and representatives. If Parent or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving entity of such consolidation or merger, or (ii) transfers all or substantially all of its assets to any other person, then in each such case, Parent will cause, to the extent necessary, proper provision to be made so that the successors and assigns of Parent or the Surviving Corporation, as applicable, will assume the obligations set forth in this Section 7.03.

Section 7.04. *Employee Matters.* (a) Section 7.04(a) of the Parent Disclosure Schedules sets forth the compensation and benefits that will be provided for a specified period of time following the Closing by the Surviving Corporation to the individuals who are employed by the

Company and its Subsidiaries immediately prior to the Effective Time to the extent they continue as employees of the Surviving Corporation, Parent or any of Parent's Subsidiaries (including Subsidiaries of the Surviving Corporation) during all or a portion of the period beginning on the Closing Date through December 31, 2021 (the "**Affected Employees**").

(b) In the event any Affected Employee first becomes eligible to participate under any Parent Employee Plan following the Effective Time, Parent shall, or shall cause its Subsidiaries to: (i) waive, or cause to be waived, any preexisting conditions, exclusions, limitations and waiting periods with respect to participation and coverage requirements applicable to such Affected Employee under any Parent Employee Plan providing medical, dental or vision benefits to the same extent such limitation would have been waived or satisfied under the applicable Company Employee Plan such Affected Employee participated in immediately prior to coverage under such Parent Employee Plan and (ii) provide such Affected Employee with credit for any copayments and deductibles paid under a Company Employee Plan during the calendar year in which the Closing Date occurs for purposes of satisfying such year's co-payment and deductible limitations under the relevant Parent Employee Plan in which such Affected Employee is eligible to participate from and after the Closing Date, to the same extent such credit was given under the Company Employee Plan such Affected Employee participated in immediately prior to coverage under such Parent Employee Plan in satisfying any applicable deductible or out-of-pocket requirements under such Parent Employee Plan.

(c) As of the Effective Time, Parent shall, or shall cause its Subsidiaries to, recognize all service of each Affected Employee prior to the Effective Time with the Company and its Subsidiaries (including any respective predecessors to the extent the Company has provided Parent with all reasonably necessary records documenting such service with such predecessors) for all purposes, except for equity compensation vesting purposes, under any benefit plan or arrangement of Parent, the Surviving Corporation or any of their respective Subsidiaries providing benefits to such Affected Employee after the Effective Time to the same extent such service credit was granted under any benefit plan or arrangement of the Company or any of its Subsidiaries. In no event shall anything contained in this Section 7.04(c) result in any duplication of benefits for the same period of service.

(d) Effective as of immediately prior to the Effective Time, unless otherwise directed in writing by Parent at least five Business Days prior to the Effective Time, the Company shall terminate the Company 401(k) Plan. In connection with the termination of such plan, Parent shall permit each Affected Employee to make rollover contributions of "eligible rollover distributions" (within the meaning of Section 401(a)(31) of the Code, including all participant loans) in cash or notes (in the case of participant loans) in an amount equal to the eligible rollover distribution portion of the account balance distributed to each such Affected Employee from such plan to an "eligible retirement plan" (within the meaning of Section 401(a)(31) of the Code) of Parent or any of its Subsidiaries (a "**Parent Qualified Plan**"). If the Company 401(k) Plan is terminated as described herein, the Affected Employees shall be eligible immediately upon the Closing Date to commence participation in a Parent Qualified Plan.

(e) Prior to the Effective Time, the Board of Directors of the Company or the appropriate committee thereof shall take all actions reasonably necessary, including adopting any resolutions or amendments and providing any notices to participants, (which resolutions,

amendments and notices, if applicable, shall be reasonably satisfactory to Parent) with respect to the Company's 2018 Employee Stock Purchase Plan (the "ESPP") to: (i) cause the Offering Period (as defined in the ESPP) ongoing as of the date of this Agreement to be the final Offering Period under the ESPP and the options under the ESPP to be exercised on the earlier of (x) the scheduled purchase date for such Offering Period and (y) the date that is five Business Days prior to the Closing Date (with any participant payroll deductions not applied to the purchase of shares of Company Common Stock promptly returned to the participant), (ii) prohibit any individual who is not participating in the ESPP as of the date of this Agreement from commencing participation in the ESPP following the date of this Agreement, (iii) prohibit participants in the ESPP from increasing their payroll deductions from those in effect as of the date of this Agreement and (iv) terminate the ESPP effective immediately at the end of 6-month period from the date of this Agreement.

(f) Without limiting the generality of Section 11.07, nothing contained in this Section 7.04 or elsewhere in this Agreement, express or implied (i) shall cause either Parent or any of its Affiliates to be obligated to continue to employ any Person, including any Affected Employees, for any period of time following the Effective Time, (ii) shall prevent Parent or its Affiliates from revising, amending or terminating any Company Employee Plan or any other employee benefit plan, program or policy in effect from time to time, (iii) shall be construed as an amendment of any Company Employee Plan or Parent Employee Plan, or (iv) shall create any third-party beneficiary rights in any director, officer, employee or individual Person, including any present or former employee, officer, director or individual independent contractor of the Company or any of its Subsidiaries (including any beneficiary or dependent of such individual).

ARTICLE 8

Covenants of Parent and the Company

The parties hereto agree that:

Section 8.01. *Reasonable Best Efforts.* (a) Subject to the terms and conditions of this Agreement, each of the Company and Parent shall use reasonable best efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case, such different standard shall apply) to take, or cause to be taken, all actions and to do, or cause to be done, and assist and cooperate with the other parties in doing, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the Transactions (including (i) preparing and filing, as promptly as practicable, with any Governmental Authority or other Third Party all documentation to effect all necessary Filings (including Filings pursuant to the HSR Act, which such Filings pursuant to the HSR Act shall be made within fifteen (15) Business Days after the date of this Agreement) (and, absent the prior written consent of the other party, not withdrawing any such Filings) and resubmitting any such Filings as soon as is reasonably practicable in the event such filings are rejected for any reason whatsoever by the relevant Governmental Authority and (ii) using reasonable best efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case, such different standard shall apply) to obtain, as promptly as practicable, all Consents required to be obtained from any Governmental Authority or other Third Party that are necessary, proper or advisable to consummate the Transactions). To the extent permitted by Applicable Law, the Company and Parent shall deliver as promptly as practicable to the appropriate Governmental Authorities any

additional information and documentary material that may be requested by any Governmental Authority in connection with the Transactions. Without limiting the foregoing, none of the Company or Parent or their respective Affiliates shall extend any waiting period or comparable period under the HSR Act or other Antitrust Laws or enter into any agreement with any Governmental Authority not to consummate the Transactions, except with the prior written consent of the other party (which shall not be unreasonably withheld, conditioned or delayed).

(b) Each of the Company and Parent shall, to the extent permitted by Applicable Law (i) promptly notify the other party of any written communication made or received by the Company or Parent, as applicable, with any Governmental Authority relating to Antitrust Law (or any other Filings made pursuant to this Section 8.01) and regarding this Agreement, the Merger or any of the other Transactions, and, if permitted by Applicable Law and reasonably practical, permit the other party to review in advance any proposed written communication to any such Governmental Authority and incorporate such other party's (and any of their respective outside counsel's) reasonable comments to such proposed written communication, (ii) not agree to participate in any in-person meeting or substantive discussion with any Governmental Authority in respect of any Filing, investigation or inquiry relating to Antitrust Law (or any other Filings made pursuant to this Section 8.01) and regarding this Agreement or any of the Transactions unless, to the extent reasonably practicable, it consults with such other party in advance and, to the extent permitted by such Governmental Authority, gives such other party the opportunity to attend or participate, as applicable, and (iii) promptly furnish the other party with copies of all correspondence, filings and written communications between it and its Affiliates and Representatives, on the one hand, and such Governmental Authority or its respective staff, on the other hand, with respect to this Agreement and the Transactions. Any materials exchanged in connection with this Section 8.01 may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material; *provided*, that the parties may, as they deem advisable and necessary, designate any materials provided to the other under this Section 8.01 as "outside counsel only."

(c) Notwithstanding anything to the contrary set forth in this Agreement, and in furtherance and not in limitation of the foregoing, Parent shall, and shall cause its Subsidiaries to, use reasonable best efforts to resolve, avoid, or eliminate impediments or objections, if any, that may be asserted by any Governmental Authority with respect to the Transactions so as to enable the Merger to occur prior to the End Date; *provided* that nothing in this Section 8.01 or anything else in this Agreement shall require Parent, any of its Affiliates or any of its Subsidiaries to (and neither the Company nor any of its Subsidiaries shall, or shall offer or agree to, do any of the following without Parent's prior written consent): (i) propose, negotiate, commit to or effect, by consent decree, hold separate orders or otherwise, the sale, divestiture, disposition, or license of any assets, properties, products, rights, services or businesses of Parent, Parent's Subsidiaries, Parent's Affiliates, or the Company or any of its Subsidiaries, or any interest therein, or agree to any other structural or conduct remedy, (ii) otherwise take or commit to take any actions that would limit Parent's, Parent's Subsidiaries, Parent's Affiliates, or the Company's or its Subsidiaries' freedom of action with respect to, or its or their ability to retain any assets, properties, products, rights, services or businesses of Parent, Parent's Subsidiaries, Parent's Affiliates, or the Company or any of its Subsidiaries, or any interest or interests therein; or (iii) agree to do any of the foregoing, in each case of the foregoing clauses (i), (ii) and (iii), except with respect to the wealth management

businesses of Parent, the Company and their respective Subsidiaries and only if such action (A) does not relate to any share plan administration or corporate services business (including Parent's "Shareworks by Morgan Stanley" business) and (B) would not otherwise reasonably be expected to materially and adversely affect the combined wealth management businesses of Parent and its Subsidiaries (including the Surviving Company), taken as a whole (after giving effect to the Merger) (any of the actions described in this proviso, a "**Burdensome Condition**"). Notwithstanding the foregoing, at the written request of Parent, the Company shall, and shall cause its Subsidiaries to, agree to take any action that would constitute a Burdensome Condition so long as such action is conditioned upon the occurrence of the Closing.

(d) In the event any Proceeding by any Governmental Authority or other Third Party is commenced which questions the validity or legality of, or otherwise challenges, the Transactions, or seeks damages in connection therewith, Parent and the Company shall, subject to the provisions set forth in this Section 8.01(d), reasonably cooperate and use reasonable best efforts to defend against such Proceeding, and if an injunction or other Order is issued in any such Proceeding, to use reasonable best efforts to have such injunction or other Order lifted or extinguished, and to cooperate reasonably regarding any other impediment to the consummation of the Transactions; *provided*, that, unless Parent elects to do so, nothing in this Agreement shall require Parent to commence any litigation against any Governmental Authority. Parent shall, in consultation with the Company, be entitled to direct the defense of the Transactions before any Governmental Authority and to take the lead in the scheduling of, and strategic planning for, any meetings with, and the conducting of negotiations with, Governmental Authorities regarding (x) the expiration or termination of any applicable waiting period relating to the Merger under the HSR Act, (y) any other Antitrust Law or (z) obtaining any Parent Governmental Authorization or Company Governmental Authorization or any other Consent from a Governmental Authority, so long as Parent's actions in connection therewith are otherwise in accordance with Parent's obligations under this Section 8.01.

(e) As soon as reasonably practicable, but in no event more than 30 days, following the date hereof, the Company shall make all Filings with the Federal Reserve Board and OCC necessary, proper or advisable to consummate and make effective as promptly as practicable the Transactions.

(f) As soon as reasonably practicable following the date hereof, the Company shall cause the Company Broker-Dealer Subsidiary to prepare and submit a FINRA Application consistent with the requirements of FINRA Rule 1017 seeking approval of the change of ownership and control of the Company Broker-Dealer Subsidiary contemplated by the Transactions and this Agreement. The Form of the FINRA Application shall be subject to the approval of Parent, which approval shall not unreasonably be withheld, conditioned or delayed. Parent shall (and shall cause its Affiliates to) timely provide to the Company all information required to complete the FINRA Application and respond to any further FINRA requests.

(g) Parent acknowledges and agrees that, notwithstanding anything in this Agreement to the contrary, the Company and the Company Broker-Dealer Subsidiary shall not be obligated to take any action that could reasonably be expected to give rise to any requirement for a FINRA Application pursuant to FINRA Rule 1017(a)(5) for approval of any material change in business

operations of the Company Broker-Dealer Subsidiary in connection with the transactions contemplated hereby prior to the Closing.

(h) As soon as reasonably practicable following the date hereof, the Company shall cause the Company Broker-Dealer Subsidiary and each other Subsidiary of the Company that is a participant in DTC, NSCC, or FICC to submit to DTCC, on behalf of each of DTC, NSCC and FICC, written notification regarding the change of ownership and control of the Company Broker-Dealer Subsidiary and such other Subsidiaries contemplated by the Transactions and this Agreement (the “**DTCC Notifications**”) consistent with the requirements of the rules of each of DTC, NSCC and FICC.

(i) At least thirty (30) days prior to the Closing Date, the Company shall cause the Company Broker-Dealer Subsidiary and the FCM Subsidiary to submit written notification regarding the change of ownership and control of such entities to any Self-Regulatory Organization of which it is a member and to each state or other U.S. jurisdiction in which it is registered to act as a Broker-Dealer (the “**Other Regulatory Notifications**”).

(j) The Company and Parent shall reasonably cooperate with each other and their respective Representatives in obtaining any other Consents that may be required in connection with the Transactions; *provided* that pursuing the Consents described in Section 6.06 and Section 8.01(a) to Section 8.01(i) shall be governed by Section 6.06 and Section 8.01(a) to Section 8.01(i), respectively. Notwithstanding anything to the contrary in this Agreement, nothing herein shall obligate or be construed to obligate the Company or any of its Affiliates or Parent or any of its Affiliates to, and without Parent’s prior written consent neither the Company nor any of its Affiliates shall, make, or to cause to be made, any payment or other accommodation to any Third Party in order to obtain the Consent of such Third Party under any Material Contract.

Section 8.02. *Certain Filings; SEC Matters.* (a) As promptly as practicable following the date of this Agreement, (i) the Company and Parent shall jointly prepare and file with the SEC a proxy statement relating to the Company Stockholder Meeting (together with all amendments and supplements thereto, the “**Proxy Statement/Prospectus**”) in preliminary form, and (ii) Parent shall prepare and file with the SEC a Registration Statement on Form S-4 which shall include the Proxy Statement/Prospectus (together with all amendments and supplements thereto, the “**Registration Statement**”) relating to the registration of the shares of Parent Stock to be issued to the stockholders of the Company pursuant to the Parent Share Issuance. The Proxy Statement/Prospectus and Registration Statement shall comply as to form in all material respects with the applicable provisions of the Securities Act and the Securities Exchange Act and other Applicable Law.

(b) Each of the Company and Parent shall use its reasonable best efforts to have the Proxy Statement/Prospectus cleared by the SEC as promptly as practicable after its filing, and Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after its filing and keep the Registration Statement effective for so long as necessary to consummate the Merger. Each of the Company and Parent shall, as promptly as practicable after the receipt thereof, provide the other party with copies of any written comments and advise the other party of any oral comments with respect to the Proxy Statement/Prospectus and the Registration Statement received by such party from the SEC,

including any request from the SEC for amendments or supplements to the Proxy Statement/Prospectus and the Registration Statement, and shall provide the other with copies of all material or substantive correspondence between it and its Representatives, on the one hand, and the SEC, on the other hand. Notwithstanding the foregoing, prior to filing the Registration Statement or mailing the Proxy Statement/Prospectus or responding to any comments of the SEC with respect thereto, each of the Company and Parent shall provide the other party and its counsel a reasonable opportunity to review such document or response (including the proposed final version of such document or response) and consider in good faith the comments of the other party in connection with any such document or response. None of the Company, Parent or their respective Representatives shall agree to participate in any material or substantive meeting or conference (including by telephone) with the SEC, or any member of the staff thereof, in respect of the Registration Statement or the Proxy Statement/Prospectus unless it consults with the other party in advance and, to the extent permitted by the SEC, allows the other party to participate. Parent shall advise the Company, promptly after receipt of notice thereof, of the time of effectiveness of the Registration Statement, and the issuance of any stop order relating thereto or the suspension of the qualification of shares of Parent Stock for offering or sale in any jurisdiction, and each of the Company and Parent shall use its reasonable best efforts to have any such stop order or suspension lifted, reversed or otherwise terminated. Each of the Company and Parent shall use its reasonable best efforts to take any other action required to be taken by it under the Securities Act, the Securities Exchange Act, Delaware Law and the rules of the NYSE (solely in the case of Parent) and NASDAQ (solely in the case of the Company) in connection with the filing and distribution of the Proxy Statement/Prospectus and the Registration Statement, and the solicitation of proxies from the stockholders of the Company thereunder. Subject to Section 6.03, the Proxy Statement/Prospectus shall include the Company Board Recommendation.

(c) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do or cause to be done all things, necessary, proper or advisable under Applicable Laws and the rules and policies of the NYSE and the SEC to enable the listing of the Parent Stock being registered pursuant to the Registration Statement on the NYSE no later than the Effective Time, subject to official notice of issuance. Parent shall also use its reasonable best efforts to obtain all necessary state securities law or “blue sky” permits and approvals required to carry out the Transactions (*provided* that in no event shall Parent be required to qualify to do business in any jurisdiction in which it is not now so qualified or file a general consent to service of process). Parent shall also take all actions necessary or appropriate to ensure that, at Closing, the New Parent Replacement Series A Preferred Stock and the New Parent Replacement Series B Preferred Stock will be validly issued and outstanding, including by filing of any certificates of designation with respect to the New Parent Replacement Series A Preferred Stock and the New Parent Replacement Series B Preferred Stock with the Delaware Secretary of State at or prior to Closing.

(d) Each of the Company and Parent shall, upon request, furnish to the other all information concerning itself, its Subsidiaries, directors, officers and (to the extent reasonably available to the applicable party) stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, Filing, notice or application made by or on behalf of the Company, Parent or any of their respective Subsidiaries, to the SEC, the NYSE or NASDAQ in connection with the Transactions, including the Registration Statement and the Proxy Statement/Prospectus. In addition, each of the Company and Parent shall use its reasonable best efforts to provide information concerning it necessary to enable the Company and Parent

to prepare required pro forma financial statements and related footnotes in connection with the preparation of the Registration Statement and/or the Proxy Statement/Prospectus.

(e) If at any time prior to the Company Approval Time, any information relating to the Company or Parent, or any of their respective Affiliates, officers or directors, should be discovered by the Company or Parent that should be set forth in an amendment or supplement to either of the Registration Statement or the Proxy Statement/Prospectus, so that either of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other party hereto and an appropriate amendment or supplement describing such information shall promptly be prepared and filed with the SEC and, to the extent required under Applicable Law, disseminated to the stockholders of the Company.

Section 8.03. *Company Stockholder Meeting.* (a) Following the execution of this Agreement, the Company shall, in consultation with Parent, set a record date for the Company Stockholder Meeting, which record date shall be prior to the date of effectiveness of the Registration Statement, and commence a broker search pursuant to Section 14a-13 of the Securities Exchange Act in respect thereof at least twenty (20) Business Days prior thereto. As promptly as practicable following the effectiveness of the Registration Statement, the Company shall, in consultation with Parent, in accordance with Applicable Law and the Company Organizational Documents, (i) duly call and give notice of a meeting of the stockholders of the Company entitled to vote on the Merger (the “**Company Stockholder Meeting**”) at which meeting the Company shall seek the Company Stockholder Approval, (ii) cause the Proxy Statement/Prospectus (and all other proxy materials for the Company Stockholder Meeting) to be mailed to its stockholders and (iii) duly convene and hold the Company Stockholder Meeting. Subject to Section 6.03, the Company shall use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, necessary, proper or advisable on its part to cause the Company Stockholder Approval to be received at the Company Stockholder Meeting or any adjournment or postponement thereof, and shall comply with all legal requirements applicable to the Company Stockholder Meeting. The Company shall not, without the prior written consent of Parent, adjourn, postpone or otherwise delay the Company Stockholder Meeting; *provided, however,* that Company may postpone or adjourn the Company Stockholder Meeting to allow reasonable additional time for the filing and mailing of any supplemental or amended disclosure which the Board of Directors of the Company has determined in good faith after consultation with outside counsel is necessary under Applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Company’s stockholders prior to the Company Stockholder Meeting. If, on the date of the Company Stockholder Meeting, Parent reasonably determines in good faith that the Company has not received proxies representing a sufficient number of shares of Company Common Stock to obtain the Company Stockholder Approval, the Company shall at its election or upon the written request of Parent adjourn the Company Stockholder Meeting until such date as shall be mutually agreed upon by the Company and Parent, which date shall be not less than five (5) days nor more than ten (10) days after the date of adjournment, and subject to the terms and conditions of this Agreement, shall continue to use its reasonable best efforts, together with its proxy solicitor, to assist in the solicitation of proxies from stockholders relating to the Company Stockholder Approval.

(b) The Company shall coordinate with Parent regarding the record date and the meeting date for the Company Stockholder Meeting.

Section 8.04. *Public Announcements.* The initial press release concerning this Agreement and the Transactions shall be a joint press release to be agreed upon by the Company and Parent. Following such initial press release, Parent and the Company shall consult with each other before issuing any additional press release, making any other public statement or scheduling any press conference, conference call or meeting with investors or analysts or making or distributing any broad-based employee communication, in each case, with respect to this Agreement or the Transactions (collectively, a “**Release**”) and, except as may be required by Applicable Law or any listing agreement with or rule of any national securities exchange or association, shall not issue any such press release, make any such other public statement or schedule any such press conference, conference call or meeting before such consultation (and, to the extent applicable, shall reasonably in advance provide copies of any such press release, statement or agreement (or any scripts for any conference calls) to the other party and shall consider in good faith the comments of the other party); *provided* that the restrictions set forth in this Section 8.04 shall not apply to any Release (a) made or proposed to be made by the Company in compliance with Section 6.03 with respect to the matters contemplated by Section 6.03, (b) if such Release does not disclose any non-public information regarding the Transactions beyond the scope of any previously agreed Release to which the other party had been consulted or (c) in connection with any dispute between the parties regarding this Agreement or the Transactions.

Section 8.05. *Notices of Certain Events.* Each of the Company and Parent shall promptly advise the other of (i) any notice or other material communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions; (ii) any notice or other communication from any Governmental Authority in connection with the Transactions; (iii) any Proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries or Parent and any of its Subsidiaries, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any Section of this Agreement or that relate to the consummation of the Transactions; (iv) any change, event or fact that has had or would be reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, in the case of the Company, or a Parent Material Adverse Effect, in the case of Parent; or (v) any change, event or fact that it believes would or would be reasonably likely to cause or constitute a material breach of any of its representations, warranties or covenants contained in this Agreement; *provided* that no such notification shall affect the representations, warranties, covenants or agreements of the parties (or remedies with respect thereto) or the conditions to the obligations of the parties under this Agreement; *provided, further*, that a failure to comply with this Section 8.05 shall not constitute the failure of any condition set forth in Article 9 to be satisfied unless the underlying change or event would independently result in the failure of a condition set forth in Article 9 to be satisfied.

Section 8.06. *Section 16 Matters.* Prior to the Effective Time, Parent and the Company shall take all such steps as may be required (to the extent permitted under Applicable Law) to cause any dispositions of Company Stock (including derivative securities with respect to Company Stock) or acquisitions of Parent Stock (including derivative securities with respect to Parent Stock) resulting from the Transactions by each individual who is subject to the reporting requirements of

Section 16(a) of the Securities Exchange Act with respect to the Company, or will become subject to such reporting requirements with respect to Parent, to be exempt under Rule 16b-3 promulgated under the Securities Exchange Act.

Section 8.07. *Transaction Litigation.* The Company shall promptly notify Parent of any stockholder demands, litigations, arbitrations or other similar Proceedings (including derivative claims) commenced against it and/or its respective directors or officers relating to this Agreement or any of the Transactions or any matters relating thereto (collectively, “**Transaction Litigation**”) and shall keep Parent informed regarding any such Transaction Litigation. The Company (i) shall give Parent the opportunity to participate in the defense and settlement of any Transaction Litigation, (ii) keep Parent reasonably apprised on a prompt basis of proposed strategy and other significant decisions with respect to any Transaction Litigation, and Parent may offer comments or suggestions with respect to such Transaction Litigation, which the Company shall consider in good faith. The Company shall not settle or offer, compromise or agree to settle or compromise, or take any other action to settle, compromise or moot, any Transaction Litigation without Parent’s prior written consent (which shall not be unreasonably withheld, conditioned or delayed).

Section 8.08. *Stock Exchange Delisting.* Each of the Company and Parent agrees to cooperate with the other party in taking, or causing to be taken, all actions necessary to delist the Company Common Stock from NASDAQ and terminate its registration under the Securities Exchange Act; *provided* that such delisting and termination shall not be effective until the Effective Time.

Section 8.09. *Dividends.* Each of the Company and Parent shall coordinate with the other regarding the declaration and payment of dividends in respect of Company Common Stock and Parent Stock and the record dates and payment dates relating thereto, it being the intention of the Company and Parent that no holder of Company Stock or Parent Stock shall receive two dividends, or fail to receive one dividend, for any single calendar quarter with respect to its shares of Company Stock, on the one hand, and shares of Parent Stock any holder of Company Stock receives pursuant to the Merger, on the other.

Section 8.10. *State Takeover Statutes.* Each of Parent, Merger Sub and the Company shall (a) take all action necessary so that no “moratorium,” “control share acquisition,” “fair price,” “supermajority,” “affiliate transactions” or “business combination statute or regulation” or other similar state anti-takeover laws or regulations, or any similar provision of the Company Organizational Documents or the Parent Organizational Documents, as applicable, is or becomes applicable to the Merger or any of the other Transactions, and (b) if any such anti-takeover law, regulation or provision is or becomes applicable to the Merger or any other Transactions, cooperate and grant such approvals and take such actions as are reasonably necessary so that the Transactions may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on the Transactions.

Section 8.11. *Tax Matters.*

(a) Notwithstanding anything to the contrary, and without limiting Section 6.01, the Company shall not effect, outside of the ordinary course of business, any internal reorganization

or restructuring involving the Company and/or any of its Subsidiaries without first giving Parent prior written notice thereof and consulting with Parent in good faith with respect thereto.

(b) Each of Parent and the Company shall use its reasonable best efforts (i) to cause the Merger and the Second Merger, taken together as an integrated transaction, to qualify as a “reorganization” within the meaning of Section 368(a) of the Code with respect to which Parent, Second Merger Sub and the Company, as applicable, will each be a “party to the reorganization” within the meaning of Section 368(b) of the Code and (ii) not to, and not permit or cause any of its respective Subsidiaries or Affiliates to, take or cause to be taken any action reasonably likely to cause the Mergers, taken together, to fail to qualify as a “reorganization” under Section 368(a) of the Code.

(c) Parent shall use its best efforts to cause its officers and the officers of Merger Sub and Second Merger Sub to execute and deliver to counsel of the Company letters of representation customary for transactions of this type and reasonably satisfactory to counsel of the Company at such time and times as such counsel shall reasonably request, including at the Closing.

(d) The Company shall use its best efforts to cause its officers to execute and deliver to counsel of the Parent letters of representation customary for transactions of this type and reasonably satisfactory to counsel of Parent at such time and times as such counsel shall reasonably request, including at the Closing.

(e) Parent and the Company intend to report, for U.S. federal income tax purposes, the Merger and the Second Merger, taken together, as an integrated transaction described in Rev. Rul. 2001-46, 2001-2 C.B. 321 that qualifies as a “reorganization” within the meaning of Section 368(a) of the Code. Notwithstanding any provision in this Agreement to the contrary, none of Parent, the Company or any Subsidiary of either Parent or the Company shall have any liability or obligation to any holder of Company Common Stock should the Mergers fail to qualify as a “reorganization” within the meaning of Section 368(a) of the Code.

Section 8.12. *Treatment of Existing Indebtedness.* Prior to the Closing Date, the Company shall use its commercially reasonable efforts to (or shall cause the Company Broker-Dealer Subsidiary to use its commercially reasonable efforts to), as reasonably requested by Parent, (i) deliver (or cause to be delivered) notices of the payoff, prepayment, discharge and termination of any outstanding Indebtedness or obligations of (a) the Company under that certain Credit Agreement, dated as of June 21, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Company Credit Agreement**”), by and among the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and (b) the Company Broker-Dealer Subsidiary under that certain 364-Day Credit Agreement, dated as of June 21, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Company Subsidiary Credit Agreement**”, and together with the Company Credit Agreement, the “**Company Debt**”), by and among the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (the amount outstanding under the Company Debt, the “**Existing Indebtedness Payoff Amount**”), (ii) take all other actions reasonably required to facilitate the repayment of the Existing Indebtedness Payoff Amount, including the termination of the commitments under the Company Debt substantially concurrently with the time when Parent makes (on behalf of the Company or the Company Broker-Subsidiary,

as applicable) payment or causes payment to be made as provided in the second sentence of this Section 8.12 and (iii) obtain customary payoff letters or other similar evidence with respect to the Company Debt in a form reasonably acceptable to Parent at least two (2) Business Days prior to the Closing Date (which payoff letters shall be subject to customary conditions). Parent shall (x) irrevocably pay off, or cause to be paid off, at or prior to the Effective Time, the Existing Indebtedness Payoff Amount and (y) use its commercially reasonable efforts to provide all customary cooperation as may be reasonably requested by the Company to assist the Company in connection with its obligations under this Section 8.12.

Section 8.13. Second Merger. (a) Parent shall take all actions necessary to: (i) promptly following the date of this Agreement, form Second Merger Sub, (ii) cause Merger Sub and Second Merger Sub to perform their obligations contemplated by this Agreement and to consummate the Mergers on the terms and conditions set forth in this Agreement and (iii) ensure that neither Merger Sub before the Effective Time nor Second Merger Sub prior to the Second Effective Time will conduct any business, incur or guarantee any indebtedness or any other liabilities or make any investments, other than those activities incident to their respective obligations under this Agreement or the transaction contemplated hereby.

(b) Parent shall take all actions necessary to cause, following the date of this Agreement but prior to the consummation of the Mergers, the Board of Directors of Second Merger Sub to (i) determine that the Mergers contemplated hereby (including the Second Merger) are fair to and in the best interests of the sole stockholder of Second Merger Sub, (ii) approve, adopt and declare advisable this Agreement and the Mergers contemplated hereby (including the Second Merger), (iii) direct that this Agreement (including the Second Merger) be submitted for approval and adoption by the sole stockholder of Second Merger Sub and (iv) recommend the approval and adoption of this Agreement (including the Second Merger) by the sole stockholder of Second Merger Sub.

(c) Parent shall take all actions necessary to cause, immediately following the consummation of the Merger on the terms and conditions set forth in this Agreement, the Surviving Corporation to be merged with and into Second Merger Sub (the “**Second Effective Time**”), following which the separate existence of the Surviving Corporation shall cease and Second Merger Sub shall continue as the Surviving Entity after the Second Merger and as a direct, wholly owned subsidiary of Parent (provided that references to the Company or the Surviving Corporation for periods after the Second Effective Time shall include the Surviving Entity). At the Second Effective Time, the effect of the Second Merger shall be as provided in this Agreement, the Certificate of Merger with respect to the Second Merger and the applicable provisions of Delaware law. Without limiting the generality of the foregoing, and subject thereto, at the Second Effective Time, all the property, rights, privileges, agreements, powers and franchises, debts, liabilities, duties and obligations of Second Merger Sub and Surviving Corporation shall become the property, rights, privileges, agreements, powers and franchises, debts, liabilities, duties and obligations of the Surviving Entity, which shall include the assumption by the Surviving Entity of any and all agreements, covenants, duties and obligations of Surviving Corporation to be performed after the Second Effective Time.

ARTICLE 9
Conditions to the Merger

Section 9.01. *Conditions to the Obligations of Each Party.* The obligations of the Company, Parent and Merger Sub to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by each such party; *provided* that the condition set forth in Section 9.01(a) shall not be waivable) of the following conditions:

- (a) the Company Stockholder Approval shall have been obtained in accordance with all Applicable Law;
- (b) no Applicable Law or Order preventing or making illegal the consummation of the Merger or any of the other Transactions shall be in effect, and no litigation or similar legal action by any Governmental Authority (in any jurisdiction in which Parent, the Company or any of their respective Subsidiaries conducts material operations) seeking to prohibit or restrain the Merger shall be pending;
- (c) the Registration Statement shall have been declared effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceedings for such purpose shall be pending; and
- (d) the shares of Parent Stock to be issued in the Parent Share Issuance shall have been approved for listing on the NYSE, subject to official notice of issuance.

Section 9.02. *Conditions to the Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Parent) of the following further conditions:

- (a) the Company shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Effective Time;
- (b) (i) any applicable waiting period or periods under the HSR Act shall have expired or been terminated and (ii) the Parent Condition Regulatory Approvals shall have been made, obtained or received (or the waiting periods with respect thereto as set forth in Section 9.02(b) of the Parent Disclosure Schedule shall have expired or been terminated), as applicable, and shall be in full force and effect, in each case in this Section 9.02(b), without the imposition of a Burdensome Condition (including any Burdensome Condition that would come into effect at the Closing), and no Applicable Law or Order shall be in force and effect that would impose a Burdensome Condition (including any Burdensome Condition that would come in effect at the Closing) and no litigation or similar legal action by any Governmental Authority (in any jurisdiction in which Parent, the Company or any of their respective Subsidiaries conducts material operations) seeking to impose a Burdensome Condition shall be pending;
- (c) (i) the representations and warranties of the Company contained in Section 4.05(a) shall be true and correct, subject only to *de minimis* exceptions, at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of the Company contained in Section 4.01, Section 4.02,

Section 4.04(i), Section 4.05 (other than 4.05(a)), Section 4.06(b), Section 4.27, Section 4.28 and Section 4.29 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (iii) the representations and warranties of the Company contained in Section 4.10(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing; and (iv) the other representations and warranties of the Company contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Company Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iv) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(d) since the date of this Agreement, there shall not have occurred any event, circumstance, development, change, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; and

(e) Parent shall have received a certificate signed by an executive officer of the Company confirming the satisfaction of the conditions set forth in Section 9.02(a), Section 9.02(c) and Section 9.02(d).

Section 9.03. *Conditions to the Obligations of the Company.* The obligations of the Company to consummate the Merger are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Company) of the following further conditions:

(a) each of Parent and Merger Sub shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Effective Time;

(b) both (i) any applicable waiting period or periods under the HSR Act shall have expired or been terminated and (ii) the Company Condition Regulatory Approvals shall have been made, obtained or received (or the waiting periods with respect thereto as set forth in Section 9.03(b) of the Company Disclosure Schedule shall have expired or been terminated), as applicable;

(c) (i) the representations and warranties of Parent contained in Section 5.05(a) shall be true and correct, subject only to *de minimis* exceptions, at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (ii) the representations and warranties of Parent contained in Section 5.01 (other than the third sentence thereof), Section 5.02, Section 5.04(i), Section 5.26, Section 5.27 and Section 5.28 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date); (iii) the representations and warranties of Parent contained in Section 5.10(a)(ii) shall be true and correct in all respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and

warranties are given as of another specific date, at and as of such date); and (iv) the other representations and warranties of Parent contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Parent Material Adverse Effect, shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of the Closing (or, if such representations and warranties are given as of another specific date, at and as of such date), except, in the case of this clause (iv) only, where the failure of such representations and warranties to be true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect;

(d) since the date of this Agreement, there shall not have occurred any event, circumstance, development, change, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; and

(e) the Company shall have received a certificate signed by an executive officer of Parent confirming the satisfaction of the conditions set forth in Section 9.03(a), Section 9.03(c) and Section 9.03(d).

ARTICLE 10

Termination

Section 10.01. Termination. This Agreement may be terminated and the Merger and the other Transactions may be abandoned at any time prior to the Effective Time (notwithstanding receipt of the Company Stockholder Approval):

(a) by mutual written agreement of the Company and Parent;

(b) by either the Company or Parent, if:

(i) the Merger has not been consummated on or before March 31, 2021 (as such date may be extended pursuant to the following proviso, the “**End Date**”); *provided*, that, if on such date, one or more of the conditions to the Closing set forth in (A) Section 9.02(b), (B) Section 9.03(b) and (C) Section 9.01(b) (if, in the case of clause (C), the Applicable Law relates to any of the matters referenced in Section 9.02(b) or Section 9.03(b) shall not have been satisfied, but all other conditions to the Closing shall have been satisfied (or in the case of conditions that by their terms are to be satisfied at the Closing, shall be capable of being satisfied on such date) or waived, then the End Date shall be automatically extended to and including June 30, 2021; *provided* that the right to terminate this Agreement or extend the End Date pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Merger to be consummated by such time;

(ii) there shall be in effect any Applicable Law that permanently enjoins, prevents or prohibits the consummation of the Merger and, if such Applicable Law is an Order, such Order shall have become final and non-appealable; *provided* that the right to terminate this Agreement pursuant to this Section 10.01(b)(ii) shall not be available to any party which has not complied with its obligations under this Agreement in respect of any such Applicable Law; or

(iii) the Company Stockholder Approval shall not have been obtained upon a vote taken thereon at the Company Stockholder Meeting (including any adjournment or postponement thereof); or

(c) by Parent, if:

(i) a Company Adverse Recommendation Change shall have occurred; *provided*, that in no event shall Parent be entitled to terminate this Agreement pursuant to this Section 10.01(c)(i) following the receipt of the Company Stockholder Approval;

(ii) any Governmental Authority that must provide a Consent to satisfy one or more of the conditions set forth in Section 9.02(b) has denied such Consent and such denial has become final and non-appealable; or

(iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.02(a) or Section 9.02(c) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by the Company within forty-five (45) days following written notice to the Company from Parent of such breach or failure to perform, but Parent may terminate this Agreement under this Section 10.01(c)(iii) only so long as Parent is not then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by Parent would cause any condition set forth in Section 9.03(a) or Section 9.03(c) not to be satisfied; or

(iv) the Company shall have willfully breached any of their respective obligations under Section 6.03 or Section 8.03 in any material respect, other than in the case where (w) such breach is a result of an isolated action by a Representative of the Company (other than a director or officer of the Company), (x) such breach was not caused by, or within the knowledge of, the Company, (y) the Company takes appropriate actions to remedy such breach promptly upon discovery thereof, and (z) Parent is not harmed as a result thereof; *provided* that in no event shall Parent be entitled to terminate this Agreement pursuant to this Section 10.01(c)(iv) following the receipt of the Company Stockholder Approval; or

(d) by the Company, if:

(i) any Governmental Authority that must provide a Consent to satisfy one or more of the conditions set forth in Section 9.03(b) has denied such Consent and such denial has become final and non-appealable;

(ii) at any time prior to the Company Approval Time in order to enter into an Alternate Company Acquisition Agreement with respect to a Company Superior Proposal pursuant to Section 6.03(b); *provided* that prior to or concurrently with such termination, the Company pays, or causes to be paid, to Parent, in immediately available funds the Company Termination Fee pursuant to Section 10.03; or

(iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement shall have occurred that would cause any condition set forth in Section 9.03(a) or Section 9.03(c) not to be satisfied, and such breach or failure to perform (A) is incapable of being cured by the End Date or (B) has not been cured by Parent or Merger Sub, as applicable, within forty-five (45) days following written notice to Parent from the Company of such breach or failure to perform, but the Company may terminate this Agreement under this Section 10.01(d)(iii) only so long as the Company is not then in breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach by the Company would cause any condition set forth in Section 9.02(a) or Section 9.02(c) not to be satisfied.

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other party.

Section 10.02. *Effect of Termination.* If this Agreement is terminated pursuant to Section 10.01, this Agreement shall become void and of no effect without liability of any party (or any stockholder or Representative of such party) to the other parties hereto, except as provided in Section 10.03; *provided* that neither Parent nor the Company shall be released from any liabilities or damages arising out of any (i) fraud by such party (ii) the willful breach by such party of any representation or warranty on the part of such party set forth in this Agreement or (iii) the willful breach by such party of any covenant or agreement binding on such party set forth in this Agreement. The provisions of this Section 10.02, Section 10.03 and Article 11 (other than Section 11.14) shall survive any termination hereof pursuant to Section 10.01. In addition, the termination of this Agreement shall not affect the parties' respective obligations under the Confidentiality Agreement.

Section 10.03. *Termination Fees.* (a) If this Agreement is terminated:

(i) by Parent pursuant to Section 10.01(c)(i) or Section 10.01(c)(iv) or by the Company or Parent pursuant to any other provision of Section 10.01 at a time when this Agreement was terminable by Parent pursuant to Section 10.01(c)(i) or Section 10.01(c)(iv);

(ii) by the Company or Parent pursuant to Section 10.01(b)(i) (without the Company Stockholder Approval having been obtained), by the Company or Parent pursuant to Section 10.01(b)(iii), or by Parent pursuant to Section 10.01(c)(iii) (without the Company Stockholder Approval having been obtained or, if such termination is after the Company Stockholder Approval has been obtained, as a result of a willful breach by the Company) and: (A) at or prior to the time of termination of this Agreement, a Company Acquisition Proposal shall have been publicly disclosed or announced (in each case, and not publicly withdrawn) or made known to the management or board of directors of the Company (in each case, and not publicly withdrawn), or any Person shall have publicly announced (in each case, and not publicly withdrawn) an intention (whether or not conditional) to make a Company Acquisition Proposal; and (B) on or prior to the first (1st) anniversary of such termination of this Agreement: (1) a transaction relating to a Company

Acquisition Proposal is consummated; or (2) a definitive agreement relating to any Company Acquisition Proposal is entered into by the Company; or

(iii) by the Company pursuant to Section 10.01(d)(ii).

then, in each case, the Company shall pay to Parent (or a Person designated by Parent), in cash at the time specified in the following sentence, a fee in the amount of \$375,000,000 (the “**Company Termination Fee**”). The Company Termination Fee shall be payable as follows: (i) in the case of Section 10.03(a)(i), in the event the Company Termination Fee is payable in connection with a termination of this Agreement (A) by Parent, within five (5) Business Days of such termination, and (B) by the Company, substantially concurrently with, and as a condition to, such termination, (ii) in the event the Company Termination Fee is payable under Section 10.03(a)(iii), substantially concurrently with, and as a condition to, such termination and (iii) in the event the Company Termination Fee is payable under Section 10.03(a)(ii), substantially concurrently with, and as a condition to, the earlier of the consummation of the applicable transaction and the entry into a definitive agreement with respect to the applicable transaction. For purposes of Section 10.03(a)(ii)(B), “**Company Acquisition Proposal**” shall have the meaning assigned thereto in Section 1.01, except that references in the definition to “15%” shall be replaced by “50%.”

(b) If this Agreement is terminated by Parent or the Company (as applicable) (x) pursuant to Section 10.01(b)(i) or Section 10.01(b)(ii) (solely as a result of any Antitrust Law) at a time when one or more of the conditions set forth in Section 9.01(b), Section 9.02(b) or Section 9.03(b) (in each case, solely as the result of any Antitrust Law) were not satisfied or waived or (y) pursuant to Section 10.01(c)(ii) or Section 10.01(d)(i) (in each case, solely as the result of any Antitrust Law) and, in the case of each of (x) and (y), at the time of such termination, all of the conditions set forth in Section 9.01 and Section 9.02 have otherwise been satisfied or waived (other than those conditions (I) that by their nature are to be satisfied at the Closing, which would have been satisfied at the Closing had the Closing occurred at the time of such termination, or (II) that have not been satisfied as a result of a breach of this Agreement by Parent or Merger Sub that was the proximate cause of such condition not having been satisfied), then Parent shall pay to the Company an amount equal to \$525,000,000 (the “**Reverse Termination Fee**”) within two Business Days after the date of the termination of the Agreement (in the case of any such termination by the Company) or prior to, and as a condition precedent to, the termination of the Agreement (in the case of any such termination by Parent).

(c) Any payment of the Company Termination Fee shall be made by wire transfer of immediately available funds to an account designated in writing by Parent.

(d) The parties agree and understand that (w) in no event shall the Company be required to pay the Company Termination Fee on more than one occasion, (x) in no event shall Parent be required to pay the Reverse Termination Fee on more than one occasion, (y) in no event shall Parent be entitled, pursuant to this Section 10.03, to receive an amount greater than an amount equal to (A) the Company Termination Fee *plus* (B) any Collection Expenses, and (z) in no event shall the Company be entitled, pursuant to this Section 10.03, to receive an amount greater than an amount equal to (A) the Reverse Termination Fee *plus* (B) any Collection Expenses. Notwithstanding anything to the contrary in this Agreement, except in the case of fraud, (i) in circumstances where the Company Termination Fee or the Reverse Termination Fee are payable

or is paid pursuant to this Section 10.03, such payment shall be the sole and exclusive remedy for damages of the Company, Parent or their respective Subsidiaries and their respective former, current or further partners, stockholders, managers, members, Affiliates and Representatives, as applicable, and none of Parent, the Company, any of their respective Subsidiaries or any of their respective former, current or future partners, stockholders, managers, members, Affiliates or Representatives, as applicable, shall have any further liability or obligation relating to or arising out of this Agreement or the Transactions, (ii) if Parent or Merger Sub receive any payments from the Company in respect of any breach of this Agreement and thereafter Parent receives the Company Termination Fee pursuant to this Section 10.03, the amount of such Company Termination Fee shall be reduced by the aggregate amount of such payments made by the Company prior to paying the Company Termination Fee in respect of any such breaches and (iii) if the Company receives any payments from Parent or Merger Sub in respect of any breach of this Agreement and thereafter the Company receives the Reverse Termination Fee pursuant to this Section 10.03, the amount of such Reverse Termination Fee shall be reduced by the aggregate amount of such payments made by Parent or Merger Sub prior to paying the Reverse Termination Fee in respect of any such breaches. The parties acknowledge that the agreements contained in this Section 10.03 are an integral part of the Transactions, that, without these agreements, the parties would not enter into this Agreement and that any amounts payable pursuant to this Section 10.03 do not constitute a penalty. Accordingly, if any party fails to promptly pay any amount due pursuant to this Section 10.03, such party shall also pay any reasonable and documented costs and expenses (including reasonable legal fees and expenses) incurred by the party entitled to such payment in connection with a legal action to enforce this Agreement that results in a judgment for such amount against the party failing to promptly pay such amount. Any amount not paid when due pursuant to this Section 10.03 shall bear interest from the date such amount is due until the date paid at a rate equal to the prime rate as published in *The Wall Street Journal, Eastern Edition* in effect on the date of such payment (such interest, together with reasonable and documented costs and expenses of enforcement as provided in the immediately preceding sentence, “**Collection Expenses**”).

ARTICLE 11 **Miscellaneous**

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including electronic mail (“**e-mail**”) transmission, so long as a receipt of such e-mail is requested and received) and shall be given,

If to the Company, to:

E*TRADE Financial Corporation
671 North Glebe Road, 15th Floor
Arlington VA 22203
Attn: Lori Sher, EVP, General Counsel
Email: lori.sher@etrade.com

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036

After March 1, 2020:
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
401 9th Avenue
New York, New York 10001
Attn: Stephen F. Arcano
David C. Hepp

Email: stephen.arcano@skadden.com
david.hepp@skadden.com

If to Parent or Merger Sub and, post-closing, the Surviving Corporation, to:

Morgan Stanley
1585 Broadway Avenue
New York, NY 10036
Attention: Eric F. Grossman, Chief Legal Officer
Email: Eric.Grossman@morganstanley.com

with a copy to (which shall not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attn: Neil Barr
Marc O. Williams
Brian Wolfe
Email: neil.barr@davispolk.com

marc.williams@davispolk.com
brian.wolfe@davispolk.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

Section 11.02. *Survival.* The representations, warranties, covenants and agreements contained in this Agreement and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time, except for the covenants and agreements set forth in Article 2, Section 7.03 and this Article 11, which shall survive the Effective Time.

Section 11.03. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived prior to the Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; *provided*, that after the Company Stockholder Approval has been obtained, there shall be no amendment or waiver that would require the further approval of the stockholders of the Company under Applicable Law without such approval having first been obtained.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 11.04. *Expenses.* Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense, except that expenses incurred with the filing fee for the Registration Statement and the printing and mailing the Proxy Statement/Prospectus and the Registration Statement shall be shared equally by Parent and the Company.

Section 11.05. *Disclosure Schedule References and SEC Document References.* (a) The parties hereto agree that each section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, shall be deemed to be an exception to and to qualify (or, as applicable, a disclosure for purposes of), the corresponding section or subsection of this Agreement, irrespective of whether or not any particular section or subsection of this Agreement specifically refers to the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable. The parties hereto further agree that (other than with respect to any items disclosed in Section 4.20(a) of the Company Disclosure Schedule, for which an explicit reference in any other section shall be required in order to apply to such other section) disclosure of any item, matter or event in any particular section or subsection of either the Company Disclosure Schedule or the Parent Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection of the Company Disclosure Schedule or the Parent Disclosure Schedule, as applicable, to which the relevance of such disclosure would be reasonably apparent on its face to a reasonable person without any independent knowledge regarding the matter (s) so disclosed, notwithstanding the omission of a cross-reference to such other section or subsections.

(b) The parties hereto agree that in no event shall any disclosure (other than statements of historical fact) contained in any part of any Company SEC Document or Parent SEC Document entitled "Risk Factors," "Forward-Looking Statements," "Cautionary Statement Regarding Forward-Looking Statements," "Special Note on Forward Looking Statements" or "Forward Looking Information" or containing a description or explanation of "Forward-Looking Statements" or any other disclosures in any Company SEC Document or Parent SEC Document that are cautionary, predictive or forward-looking in nature be deemed to be an exception to (or a disclosure for purposes of) any representations and warranties of any party contained in this Agreement.

Section 11.06. *Confidential Supervisory Information.* Notwithstanding any other provision of this Agreement, no disclosure, representation or warranty shall be made (or other action taken)

pursuant to this Agreement that results in the disclosure of confidential supervisory information (including confidential supervisory information as defined in 12 C.F.R. § 261.2(c) and as identified in 12 C.F.R. § 4.12(b)(8)) of a Governmental Authority by any party to this Agreement to the extent prohibited by applicable law. To the extent legally permissible, appropriate substitute disclosures or actions, which may include the disclosure of underlying facts or circumstances that do not themselves constitute confidential supervisory information, shall be made or taken under circumstances in which the limitations of the preceding sentence apply.

Section 11.07. *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto, except for: (i) only following the Effective Time, the right of (x) the Company's stockholders to receive the applicable Merger Consideration in respect of their shares of Company Stock pursuant to Section 2.03 and (y) the holders of Company Equity Awards to receive the applicable Merger Consideration in respect of their Company Equity Awards pursuant to Section 2.05 and (ii) the right of the Company Indemnified Parties to enforce the provisions of Section 7.03. Except as provided in Section 7.03 and in this Section 11.07, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(b) No party may assign, delegate or otherwise transfer (by operation of law or otherwise) any of its rights or obligations under this Agreement without the prior written consent of each other party hereto, except that Parent may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to any Person after the Closing, and Merger Sub may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to any other wholly owned direct Subsidiary of Parent, which Subsidiary shall be a Delaware corporation; *provided* that such transfer or assignment shall not relieve Parent or Merger Sub of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Parent or Merger Sub. Any assignment in contravention of the preceding sentence shall be null and void *ab initio*.

Section 11.08. *Governing Law.* This Agreement and all actions (whether in contract or tort) based on, arising out of or relating to the negotiation, execution or performance of this Agreement or the Transactions shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the Applicable Law that might otherwise govern under applicable principles of conflicts of law rules thereof.

Section 11.09. *Jurisdiction/Venue.* Each of the parties hereto agrees that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought, tried and determined only in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware). Each of the parties hereto (i) irrevocably consents to the service of the summons and complaint and any other process in any suit, action or proceeding relating to the Transactions, on behalf of itself or its property, in accordance with Section 11.01 or in such other manner as may be permitted by Applicable Law, and agrees that nothing in this Section 11.09 shall affect the right of any party to serve legal process

in any other manner permitted by Applicable Law, (ii) irrevocably and unconditionally consents and submits itself and its property in any suit, action or proceeding to the exclusive general jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware) in any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions or for recognition and enforcement of any judgment in respect thereof, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iv) waives any objection that it may now or hereafter have to the venue of any such suit, action or proceeding in any such court or that such suit, action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same and (v) agrees that it shall not bring any action relating to this Agreement or the Transactions in any court other than the aforesaid courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any suit, action or proceeding in such court as provided above shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

Section 11.10. *WAIVER OF JURY TRIAL.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER OR THE OTHER TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.10.

Section 11.11. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, including by e-mail with .pdf attachments, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and delivered (by e-mail or otherwise) by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 11.12. *Entire Agreement.* This Agreement (including, for the avoidance of doubt, the Company Disclosure Schedule and the Parent Disclosure Schedule) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

Section 11.13. *Severability*. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.

Section 11.14. *Specific Performance*. The parties acknowledge and agree that irreparable harm would occur and that the parties would not have any adequate remedy at law (even if monetary damages were available) (i) for any breach of the provisions of this Agreement or (ii) in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that, except where this Agreement is terminated in accordance with Section 10.01, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement in the courts referred to in Section 11.09, without proof of actual damages, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The parties further agree that (x) by seeking the remedies provided for in this Section 11.14, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement, including, subject to Section 10.03(d), monetary damages and (y) nothing contained in this Section 11.14 shall require any party to institute any proceeding for (or limit any party's right to institute any proceeding for) specific performance under this Section 11.14 before exercising any termination right under Section 10.01 or pursuing damages nor shall the commencement of any action pursuant to this Section 11.14 or anything contained in this Section 11.14 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Section 10.01 or pursue any other remedies under this Agreement that may be available then or thereafter. The parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Applicable Law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy for any such breach or that the parties otherwise have an adequate remedy at law.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

MORGAN STANLEY

By: /s/ James P. Gorman

Name: James P. Gorman

Title: Chairman & CEO

MOON-EAGLE MERGER SUB, INC.

By: /s/ Sebastiano Visentini

Name: Sebastiano Visentini

Title: President

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

E*TRADE FINANCIAL CORPORATION

By: /s/ Michael A. Pizzi

Name: Michael A. Pizzi

Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

Public Exhibit 2

Form 8-K Report Filed by Morgan Stanley with the SEC Announcing the
Proposed Transaction

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (date of earliest event reported): February 20, 2020 (February 20, 2020)

MORGAN STANLEY

(Exact name of registrant as specified in its charter)

Commission File Number: 1-11758

Delaware

(State or other jurisdiction of incorporation or organization)

36-3145972

(IRS Employer Identification No.)

1585 Broadway, New York, New York, 10036
(Address of principal executive offices, including zip code)

(212) 761-4000
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 140.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 par value	MS	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series A, \$0.01 par value	MS/PA	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series E, \$0.01 par value	MS/PE	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series F, \$0.01 par value	MS/PF	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, \$0.01 par value	MS/PI	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series K, \$0.01 par value	MS/PK	New York Stock Exchange
Depositary Shares, each representing 1/1,000th interest in a share of 4.875%	MS/PL	New York Stock Exchange

Non-Cumulative Preferred Stock, Series L, \$0.01 par value

Global Medium-Term Notes, Series A, Fixed Rate Step-Up Senior Notes Due 2026 of Morgan Stanley Finance LLC (and Registrant's guarantee with respect thereto)	MS/26C	New York Stock Exchange
Market Vectors ETNs due March 31, 2020 (two issuances)	URR/DDR	NYSE Arca, Inc.
Market Vectors ETNs due April 30, 2020 (two issuances)	CNY/INR	NYSE Arca, Inc.
Morgan Stanley Cushing® MLP High Income Index ETNs due March 21, 2031	MLPY	NYSE Arca, Inc.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events

On February 20, 2020, Morgan Stanley, a Delaware corporation (the “**Morgan Stanley**”) and E*TRADE Financial Corporation, a Delaware Corporation (“**E*TRADE**”) entered into an Agreement and Plan of Merger, among Morgan Stanley, E*TRADE and Moon-Eagle Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Morgan Stanley (the “**Merger Agreement**”), pursuant to which, subject to the satisfaction or waiver of certain conditions set forth therein, Morgan Stanley has agreed to acquire E*TRADE.

On February 20, 2020, Morgan Stanley issued a joint press release with E*TRADE announcing the execution of the Merger Agreement and that Morgan Stanley will hold an investor conference call. A copy of the joint press release is filed as Exhibit 99.1 hereto, and the full text of such joint press release is incorporated herein by reference. A copy of the investor presentation presented on the conference call is filed as Exhibit 99.2 hereto and posted on Morgan Stanley’s website, and the full text of such investor presentation is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits. The following exhibits are filed with this report:

Exhibit No.	Description
99.1	Joint Press Release dated February 20, 2020
99.2	Investor Presentation dated February 20, 2020
101	Interactive Data Files pursuant to Rule 406 of Regulation S-T formatted in Inline eXtensible Business Reporting Language (“Inline XBRL”).
104	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

Important Information about the Transaction and Where to Find It

In connection with the proposed transaction between Morgan Stanley and E*TRADE (“E*TRADE”), Morgan Stanley and E*TRADE will file relevant materials with the Securities and Exchange Commission (the “SEC”), including a Morgan Stanley registration statement on Form S-4 that will include a proxy statement of E*TRADE that also constitutes a prospectus of Morgan Stanley and a definitive proxy statement/prospectus will be mailed to stockholders of E*TRADE. BEFORE MAKING ANY VOTING OR INVESTMENT DECISION, INVESTORS AND SECURITY HOLDERS OF Morgan Stanley AND E*TRADE ARE URGED TO READ THE REGISTRATION STATEMENT, THE PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders may obtain free copies of the registration statement and the proxy statement/prospectus (when they become available), as well as other filings containing information about Morgan Stanley or E*TRADE, without charge at the SEC’s Internet website (<http://www.sec.gov>) or by contacting the investor relations department of Morgan Stanley or E*TRADE at the following:

Morgan Stanley
1585 Broadway
New York, NY 10036
Media Relations: 212-761-2448
mediainquiries@morganstanley.com
Investor Relations: 1-212-762-8131
investorrelations@morganstanley.com

E*TRADE
671 North Glebe Road, Ballston Tower
Arlington, VA 22203
Media Relations: 646-521-4418
mediainq@etrade.com
Investor Relations: 1-646-521-4406
IR@etrade.com

Participants in the Solicitation

Morgan Stanley, E*TRADE, their respective directors and certain of their respective executive officers may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding the directors and

executive officers of Morgan Stanley and E*TRADE, and their direct or indirect interests in the transaction, by security holdings or otherwise will be set forth in the proxy statement/prospectus and other relevant matters when they are filed with the SEC. Information regarding the directors and executive officers of Morgan Stanley is contained in Morgan Stanley's Form 10-K for the year ended December 31, 2018 and its proxy statement filed with the SEC on April 5, 2019. Information regarding the directors and executive officers of E*TRADE is contained in E*TRADE's Form 10-K for the year ended December 31, 2019 and its proxy statement filed with the SEC on March 26, 2019. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials filed with the SEC when they become available.

No Offer or Solicitation

This communication is for informational purposes and is not intended to, and shall not, constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote of approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Forward-Looking Statements

This communication contains "forward-looking statements" within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In this context, forward-looking statements often address expected future business and financial performance and financial condition, and often contain words such as "expect," "anticipate," "intend," "plan," "believe," "seek," "see," "will," "would," "target," similar expressions, and variations or negatives of these words. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements about the consummation of the proposed transaction and the anticipated benefits thereof. All such forward-looking statements are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from those expressed in such forward-looking statements. Important risk factors that may cause such a difference include, but are not limited to, (i) the completion of the proposed transaction on anticipated terms and timing, including obtaining required stockholder and regulatory approvals, anticipated tax treatment, unforeseen liabilities, future capital expenditures, revenues, expenses, earnings, synergies, economic performance, indebtedness, financial condition, losses, future prospects, business and management strategies for the management, expansion and growth of the combined company's operations and other conditions to the completion of the acquisition, including the possibility that any of the anticipated benefits of the proposed transaction will not be realized or will not be realized within the expected time period, (ii) the ability of Morgan Stanley and E*TRADE to integrate the business successfully and to achieve anticipated synergies, risks and costs, (iii) potential litigation relating to the proposed transaction that could be instituted against Morgan Stanley, E*TRADE or their respective directors, (iv) the risk that disruptions from the proposed transaction will harm Morgan Stanley's and E*TRADE's business, including current plans and operations, (v) the ability of Morgan Stanley or E*TRADE to retain and hire key personnel, (vi) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the acquisition, (vii) continued availability of capital and financing and rating agency actions, (viii) legislative, regulatory and economic developments, (ix) potential business uncertainty, including changes to existing business relationships, during the pendency of the acquisition that could affect Morgan Stanley's and/or E*TRADE's financial performance, (x) certain restrictions during the pendency of the acquisition that may impact Morgan Stanley's or E*TRADE's ability to pursue certain business opportunities or strategic transactions, (xi) unpredictability and severity of catastrophic events, including, but not limited to, acts of terrorism or outbreak of war or hostilities, as well as management's response to any of the aforementioned factors, (xii) dilution caused by Morgan Stanley's issuance of additional shares of its common stock in connection with the proposed transaction, (xiii) the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events, (xiv) those risks described in Item 1A of Morgan Stanley's most recently filed Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K, (xv) those risks described in Item 1A of E*TRADE's most recently filed Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K and (xvi) those risks that will be described in the proxy statement/prospectus on Form S-4 available from the sources indicated above. These risks, as well as other risks associated with the proposed acquisition, will be more fully discussed in the proxy statement/prospectus that will be included in the registration statement on Form S-4 that will be filed with the SEC in connection with the proposed acquisition. While the list of factors presented here is, and the list of factors to be presented in the registration statement on Form S-4 will be, considered representative, no such list should be considered to be a complete statement of all potential risks and uncertainties. Unlisted factors may present significant additional obstacles to the realization of forward-looking statements. Consequences of material differences in results as compared with those anticipated in the forward-looking statements could include, among other things, business disruption, operational problems, financial loss, legal liability to third parties and similar risks, any of which could have a material adverse effect on Morgan Stanley's or E*TRADE's consolidated financial condition, results of

operations, credit rating or liquidity. Neither Morgan Stanley nor E*TRADE assumes any obligation to publicly provide revisions or updates to any forward-looking statements, whether as a result of new information, future developments or otherwise, should circumstances change, except as otherwise required by securities and other applicable laws.

Signature(s)

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MORGAN STANLEY

By: /s/ Martin M. Cohen

Name: Martin M. Cohen

Title: Corporate Secretary

Date: February 20, 2020

Morgan Stanley to Acquire E*TRADE, Creating a Leader in all Major Wealth Management Channels

- Combined platforms will have \$3.1Tn client assets, 8.2MM retail client relationships and accounts, and 4.6MM stock plan participants
- Combination increases Wealth Management scale, fills product and services gaps through complementary offerings, and enhances digital capabilities; positions Morgan Stanley as a top player across all three channels: Financial Advisory, Workplace, and Self-Directed
- Significant cost and funding synergies will result in stronger financial performance and shareholder value creation
- Combination accelerates Morgan Stanley's transition to a more balance sheet light business mix and more durable sources of revenue

NEW YORK & ARLINGTON, Va.--(BUSINESS WIRE)--February 20, 2020--Morgan Stanley (NYSE: MS) and E*TRADE Financial Corporation (NASDAQ: ETFC) have entered into a definitive agreement under which Morgan Stanley will acquire E*TRADE, a leading financial services company and pioneer in the online brokerage industry, in an all-stock transaction valued at approximately \$13 billion. Under the terms of the agreement, E*TRADE stockholders will receive 1.0432 Morgan Stanley shares for each E*TRADE share, which represents per share consideration of \$58.74 based on the closing price of Morgan Stanley common stock on February 19, 2020.

The combination will significantly increase the scale and breadth of Morgan Stanley's Wealth Management franchise, and positions Morgan Stanley to be an industry leader in Wealth Management across all channels and wealth segments. E*TRADE has over 5.2 million client accounts with over \$360 billion of retail client assets, adding to Morgan Stanley's existing 3 million client relationships and \$2.7 trillion of client assets. Morgan Stanley's full-service, advisor-driven model coupled with E*TRADE's direct-to-consumer and digital capabilities, will allow the combined business to have best-in-class product and service offerings to support the full spectrum of wealth.

"E*TRADE represents an extraordinary growth opportunity for our Wealth Management business and a leap forward in our Wealth Management strategy. The combination adds an iconic brand in the direct-to-consumer channel to our leading advisor-driven model, while also creating a premier Workplace Wealth provider for corporations and their employees. E*TRADE's products, innovation in technology, and established brand will help position Morgan Stanley as a top player across all three channels: Financial Advisory, Self-Directed, and Workplace," said James Gorman, Chairman and CEO of Morgan Stanley. "In addition, this continues the decade-long transition of our Firm to a more balance sheet light business mix, emphasizing more durable sources of revenue."

“Finally, I am delighted that Mike Pizzi, CEO of E*TRADE, will be joining Morgan Stanley. Mike will continue to run the E*TRADE business within the Morgan Stanley franchise and lead the ongoing integration effort. Mike will report to me and will join the Morgan Stanley Operating and Management Committees. In addition, we will invite one of E*TRADE’s independent directors to join our Board. We look forward to welcoming the infusion of management and technology talent that E*TRADE will bring to Morgan Stanley.”

“Since we created the digital brokerage category nearly 40 years ago, E*TRADE has consistently disrupted the status quo and delivered cutting-edge tools and services to investors, traders, and stock plan administrators,” said Mike Pizzi, Chief Executive Officer of E*TRADE. “By joining Morgan Stanley, we will be able to take our combined offering to the next level and deliver an even more comprehensive suite of wealth management capabilities. Bringing E*TRADE’s brand and offerings under the Morgan Stanley umbrella creates a truly exciting wealth management value proposition and enables our collective team to serve a far wider spectrum of clients.”

The transaction will create a leading player in Workplace Wealth, combining E*TRADE’s leading U.S. stock plan business with Shareworks by Morgan Stanley, a top provider of public stock plan administration and private cap table management solutions. This combination will enable Morgan Stanley to accelerate initiatives aimed at enhancing the workplace offering through online brokerage and digital banking capabilities, providing a significantly enhanced client experience.

E*TRADE has been a pioneer in the digital brokerage and banking space for nearly 40 years and is an iconic brand. E*TRADE’s hallmark, consumer-facing technology platforms will complement Morgan Stanley’s leading advisor-facing technology. E*TRADE also provides a full suite of digital banking services, including direct integration with brokerage accounts, checking and high-yield savings accounts, significantly accelerating Morgan Stanley’s digital banking efforts. The transaction adds approximately \$56 billion of low-cost deposits, which will provide significant funding benefits to Morgan Stanley.

Importantly, the acquisition marks a continuation of Morgan Stanley’s decade-long effort to rebalance the Firm’s portfolio of businesses so that a greater percentage of Firm revenues and income are derived from balance sheet light and more durable sources of revenues. Upon integration, the combined Wealth and Investment Management businesses will contribute approximately 57% of the Firm’s pre-tax profits, excluding potential synergies, compared to only approximately 26% in 2010.

The transaction provides significant upside potential for shareholders of both Morgan Stanley and E*TRADE. Shareholders from both companies will benefit from potential cost savings estimated at approximately \$400 million from maximizing efficiencies of technology infrastructure, optimizing shared corporate services and combining the bank entities, as well as potential funding synergies of approximately \$150 million from optimizing E*TRADE's approximate \$56 billion of deposits. In addition, Morgan Stanley will have enhanced technology and service capabilities to capture a larger portion of the estimated approximate \$7.3 trillion of combined current customer assets held away, which will drive significant revenue opportunities.

Morgan Stanley will be better positioned to generate attractive financial returns through increased scale, improved efficiency, higher margins, stronger returns on tangible common equity, and long-term earnings accretion. Morgan Stanley expects the acquisition to be accretive once fully phased-in estimated cost and funding synergies are realized. Morgan Stanley will maintain its strong capital position, with the Firm's common equity tier 1 ratio estimated to increase by over 30bps at closing. The transaction is expected to increase the Firm's return on tangible common equity by more than 100bps with fully phased-in cost and funding synergies and improve Wealth Management's pre-tax profit margin to over 30%.

The acquisition is subject to customary closing conditions, including regulatory approvals and approval by E*TRADE shareholders, and is expected to close in the fourth quarter of 2020.

A conference call to discuss the announced transaction will be held today at 8:30 a.m. ET, hosted by Morgan Stanley Chairman and CEO, James Gorman; Morgan Stanley CFO, Jonathan Pruzan; and E*TRADE CEO, Michael Pizzi. The call and presentation will be available at www.morganstanley.com or by dialing 1-877-895-9527 (domestic) and 1-706-679-2291 (international); the passcode is 5097722. To listen to the playback, please visit our website or dial: 1-855-859-2056 (domestic) or 1-404-537-3406 (international); the passcode is 8469949.

About E*TRADE

E*TRADE Financial and its subsidiaries provide financial services including brokerage and banking products and services to traders, investors, stock plan administrators and participants, and registered investment advisers (RIAs). Securities products and services are offered by E*TRADE Securities LLC (Member FINRA/SIPC). Commodity futures and options on futures products and services are offered by E*TRADE Futures LLC (Member NFA). Managed Account Solutions are offered through E*TRADE Capital Management, LLC, a Registered Investment Adviser. Bank products and services are offered by E*TRADE Bank, and RIA custody solutions are offered by E*TRADE Savings Bank, both of which are federal savings banks (Members FDIC). Employee stock and student loan benefit plan solutions are offered by E*TRADE Financial Corporate Services, Inc. More information is available at <https://us.etrade.com/>.

About Morgan Stanley

Morgan Stanley is a leading global financial services firm providing a wide range of investment banking, securities, wealth management and investment management services. With offices in more than 41 countries, the Firm's employees serve clients worldwide including corporations, governments, institutions and individuals. For further information about Morgan Stanley, please visit www.morganstanley.com.

Important Information about the Transaction and Where to Find It

In connection with the proposed transaction Morgan Stanley and E*TRADE ("E*TRADE"), Morgan Stanley and E*TRADE will file relevant materials with the Securities and Exchange Commission (the "SEC"), including a Morgan Stanley registration statement on Form S-4 that will include a proxy statement of E*TRADE that also constitutes a prospectus of Morgan Stanley and a definitive proxy statement/prospectus will be mailed to stockholders of E*TRADE. BEFORE MAKING ANY VOTING OR INVESTMENT DECISION, INVESTORS AND SECURITY HOLDERS OF Morgan Stanley AND E*TRADE ARE URGED TO READ THE REGISTRATION STATEMENT, THE PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders may obtain free copies of the registration statement and the proxy statement/prospectus (when they become available), as well as other filings containing information about Morgan Stanley or E*TRADE, without charge at the SEC's Internet website (<http://www.sec.gov>) or by contacting the investor relations department of Morgan Stanley or E*TRADE at the following:

Morgan Stanley

1585 Broadway

New York, NY 10036

Media Relations: 212-761-2448

mediainquiries@morganstanley.com

Investor Relations: 1-212-762-8131

investorrelations@morganstanley.com

E*TRADE

671 North Glebe Road, Ballston Tower

Arlington, VA 22203

Media Relations: 646-521-4418

mediainq@etrade.com

Investor Relations: 1-646-521-4406

IR@etrade.com

Participants in the Solicitation

Morgan Stanley, E*TRADE, their respective directors and certain of their respective executive officers may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding the directors and executive officers of Morgan Stanley and E*TRADE, and their direct or indirect interests in the transaction, by security holdings or otherwise will be set forth in the proxy statement/prospectus and other relevant matters when they are filed with the SEC. Information regarding the directors and executive officers of Morgan Stanley is contained in Morgan Stanley's Form 10-K for the year ended December 31, 2018 and its proxy statement filed with the SEC on April 5, 2019. Information regarding the directors and executive officers of E*TRADE is contained in E*TRADE's Form 10-K for the year ended December 31, 2019 and its proxy statement filed with the SEC on March 26, 2019. Additional information regarding the participants in the proxy solicitations and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials filed with the SEC when they become available.

No Offer or Solicitation

This communication is for informational purposes and is not intended to, and shall not, constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote of approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Forward-Looking Statements

This communication contains "forward-looking statements" within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In this context, forward-looking statements often address expected future business and financial performance and financial condition, and often contain words such as "expect," "anticipate," "intend," "plan," "believe," "seek," "see," "will," "would," "target," similar expressions, and variations or negatives of these words. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements about the consummation of the proposed transaction and the anticipated benefits thereof. All such forward-looking statements are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from those expressed in such forward-looking statements. Important risk factors that may cause such a difference include, but are not limited to, (i) the completion of the proposed transaction on anticipated terms and timing, including obtaining required stockholder and regulatory approvals, anticipated tax treatment, unforeseen liabilities, future capital expenditures, revenues, expenses, earnings, synergies, economic performance, indebtedness, financial condition, losses, future prospects, business and management strategies for the management, expansion and growth of the combined company's operations and other conditions to the completion of the acquisition, including the possibility that any of the anticipated benefits of the proposed transaction will not be realized or will not be realized within the expected time period, (ii) the ability of Morgan Stanley and E*TRADE to integrate the business successfully and to achieve anticipated synergies, risks and costs, (iii) potential litigation relating to the proposed transaction that could be instituted against Morgan Stanley, E*TRADE or their respective directors, (iv) the risk that disruptions from the proposed transaction will harm Morgan Stanley's and E*TRADE's business, including current plans and operations, (v) the ability of Morgan Stanley or E*TRADE to retain and hire key personnel, (vi) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the acquisition, (vii) continued availability of capital and financing and rating agency actions, (viii) legislative, regulatory and economic developments, (ix) potential business uncertainty, including changes to existing business relationships, during the pendency of the acquisition that could affect Morgan Stanley's and/or E*TRADE's financial performance, (x) certain restrictions during the pendency of the acquisition that may impact Morgan Stanley's or E*TRADE's ability to pursue certain business opportunities or strategic transactions, (xi) unpredictability and severity of catastrophic events, including, but not limited to, acts of terrorism or outbreak of war or hostilities, as well as management's response to any of the aforementioned factors, (xii) dilution caused by Morgan Stanley's issuance of additional shares of its common stock in connection with the proposed transaction, (xiii) the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events, (xiv) those risks described in Item 1A of Morgan Stanley's most recently filed Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K, (xv) those risks described in Item 1A of E*TRADE's most recently filed Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K and (xvi) those risks that will be described in the proxy statement/prospectus on Form S-4 available from the sources indicated above. These risks, as well as other risks associated with the proposed acquisition, will be more fully discussed in the proxy statement/prospectus that will be included in the registration statement on Form S-4 that will be filed with the SEC in connection with the proposed acquisition. While the list of factors presented here is, and the list of factors to be presented in the registration statement on Form S-4 will be, considered representative, no such list should be considered to be a complete statement of all potential risks and uncertainties. Unlisted factors may present significant additional obstacles to the realization of forward-looking statements. Consequences of material differences in results as compared with those anticipated in the forward-looking statements could include, among other things, business disruption, operational problems, financial loss, legal liability to third parties and similar risks, any of which could have a material adverse effect on Morgan Stanley's or E*TRADE's consolidated financial condition, results of operations, credit rating or liquidity. Neither Morgan Stanley nor E*TRADE assumes any obligation to publicly provide revisions or updates to any forward-looking statements, whether as a result of new information, future developments or otherwise, should circumstances change, except as otherwise required by securities and other applicable laws.

Contacts

Morgan Stanley

1585 Broadway
New York, NY 10036
Media Relations: 212-761-2448
mediainquiries@morganstanley.com
Investor Relations: 1-212-762-8131
investorrelations@morganstanley.com

E*TRADE

671 North Glebe Road, Ballston Tower
Arlington, VA 22203
Media Relations: 646-521-4418

mediainq@etrade.com
Investor Relations: 1-646-521-4406
IR@etrade.com

Public Exhibit 3

Subsidiaries of E*TRADE

Entity	Regulatory Licenses	Summary of Activities Conducted by Entity	HOLA or Other Authority
ETB Holdings, Inc.	None	<ul style="list-style-type: none"> • Lower tier savings and loan holding company 	
E*TRADE Bank	FDIC-insured federal savings bank OCC Charter #: 705848 FDIC Cert #: 30746	<ul style="list-style-type: none"> • Federal savings bank; provides deposit accounts and holds loan portfolio 	<ul style="list-style-type: none"> • 12 USC 1464(b); 12 USC 1464(c)
E*TRADE Community Development Corporation	None	<ul style="list-style-type: none"> • Community development company that invests in and holds certain CRA qualifying community development investments 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
E*TRADE Savings Bank	FDIC-insured federal savings bank OCC Charter #: 718000 FDIC Cert #: 58119	<ul style="list-style-type: none"> • Federal savings bank that is a subsidiary of E*TRADE Bank; provides deposit accounts, lending, holds mortgages, and for unaffiliated registered investment advisers it provides custody solutions 	<ul style="list-style-type: none"> • 12 USC 1464(b); 12 USC 1464(c); 12 CFR 5.38(e)(5)(v)(K)
E*TRADE Financial Corporate Services, Inc.	Please see attached Exhibit A.1 for a list of pending state licenses	<ul style="list-style-type: none"> • Stock plan administration services • Student loan benefit and financial wellness provider 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F) and 12 USC 1467a(c)(2)(H) (including 12 USC 1843(k)(4)(a), 12 CFR 225.86(a)(v), and 12 CFR 225.28(b)(1) and (2))

Entity	Regulatory Licenses	Summary of Activities Conducted by Entity	HOLA or Other Authority
ETCM Holdings, LLC	None	<ul style="list-style-type: none"> • Holding company of E*TRADE Capital Management, LLC; E*TRADE Securities LLC; E*TRADE Next, LLC; and E*TRADE Futures LLC 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
E*TRADE Capital Management, LLC	SEC registered investment adviser	<ul style="list-style-type: none"> • Registered investment adviser, offering several discretionary advisory account solutions, including Blend Portfolios and Dedicated Portfolios 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
E*TRADE Securities LLC	SEC registered broker-dealer	<ul style="list-style-type: none"> • Registered broker-dealer that conducts substantially all our retail brokerage business • ETS currently has approval to conduct 12 types of businesses: <ul style="list-style-type: none"> ○ Broker or dealer retailing corporate equity securities over-the-counter ○ Broker or dealer selling corporate debt securities ○ Underwrite or selling group participant (corporate securities other than mutual funds) ○ Mutual fund retailer ○ US government securities dealer ○ US government securities broker ○ Municipal securities dealer ○ Municipal securities broker ○ Solicitor of time deposits in a financial institution ○ Put and call broker or dealer or option writer 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)

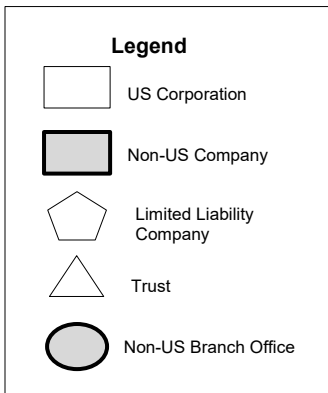
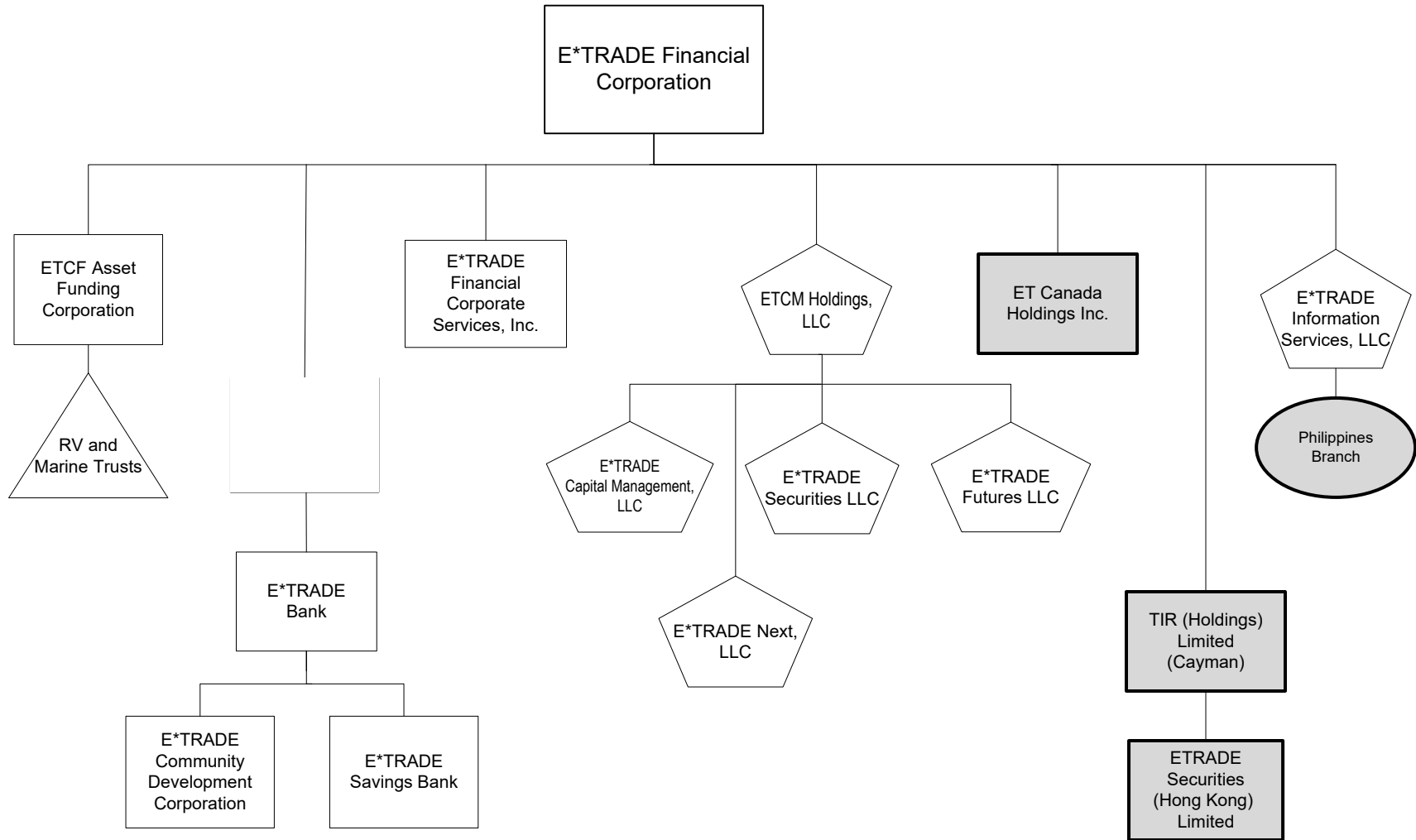
Entity	Regulatory Licenses	Summary of Activities Conducted by Entity	HOLA or Other Authority
		<ul style="list-style-type: none"> ○ Non-exchange member arranging for transactions in listed securities by exchange member ○ Trading securities for own account 	
E*TRADE Next, LLC	None	<ul style="list-style-type: none"> • No current business activities 	<ul style="list-style-type: none"> • This legal entity is not currently engaging in activities; future activities are TBD
E*TRADE Futures LLC	CFTC registered Futures Commission Merchant	<ul style="list-style-type: none"> • Registered non-clearing Futures Commission Merchant that provides retail commodity futures and options on futures transaction capabilities for its customers on a self-directed basis 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
ET Canada Holdings Inc.	None	<ul style="list-style-type: none"> • There are no external business operations conducted by this entity • Canadian special purpose holding company that holds intellectual property for its affiliates 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
E*TRADE Information Services, LLC	None	<ul style="list-style-type: none"> • Holder of registered branch office in the Philippines 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
Philippines Branch of E*TRADE Information Services, LLC	None	<ul style="list-style-type: none"> • Philippine Branch Office registered with The Philippines Securities & Exchange Commission. Branch provides call center and other back office operations support functions to E*TRADE's U.S. entities. This is a services entity only. It does not engage in cross-border, customer facing business in its own name and is not a broker-dealer entity 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)

Entity	Regulatory Licenses	Summary of Activities Conducted by Entity	HOLA or Other Authority
TIR (Holdings) Limited (Cayman)	None	<ul style="list-style-type: none"> • There are no external business operations conducted by this entity • Holding company for ETRADE Securities (Hong Kong) Limited. Entity is slated to be liquidated following the closure of the liquidation of ETRADE Securities (Hong Kong) Limited 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
ETRADE Securities (Hong Kong) Limited	None	<ul style="list-style-type: none"> • There are no external business operations conducted by this entity • Entity is currently in voluntary liquidation process 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
ETFC Asst Funding Corporation	None	<ul style="list-style-type: none"> • Holds RV and Marine trusts; created as a separate bankruptcy remote and special purpose entity 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)
RV and Marine Trusts ¹	None	<ul style="list-style-type: none"> • The Trusts issued notes in order to purchase receivables from ETCF Asset Funding Corporation. The notes are payable solely from the assets of the Trusts and do not represent obligations of, or interests held by, any other entity and are not guaranteed by any other entities. The receivables owned by the Trusts are pools of fixed rate installment loans or fixed rate installment sales contracts used to finance the purchase of recreational vehicles and marine assets 	<ul style="list-style-type: none"> • 12 USC 1467a(c)(2)(F)

¹ Trusts include: (a) Distribution Financial Services RV/Marine Trust 2001-1 and (b) ETRADE RV AND Marine Trust 2004-1.

Public Exhibit 4

Pro Forma Organizational Chart of E*TRADE



Public Exhibit 5

Resolutions of the Board of Directors of Morgan Stanley

Morgan Stanley

SECRETARY'S CERTIFICATE

I, Martin M. Cohen, the duly elected and acting Corporate Secretary of Morgan Stanley, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), certify that on February 19, 2020, the Board of Directors of the Corporation adopted the following resolutions, which are in full force and effect as of the date hereof:

Approval of Project Eagle

Approval of the Merger

WHEREAS, it is proposed that Morgan Stanley, a Delaware corporation (the "Corporation"), enter into the Agreement and Plan of Merger substantially on the terms presented to the Board of Directors (the "Merger Agreement") by and among the Corporation, Moon-Eagle Merger Sub, Inc., a Delaware corporation ("Merger Subsidiary"), and Eagle, a Delaware corporation ("Eagle"), pursuant to which, among other things, (i) Merger Subsidiary will be merged (the "Merger") with and into Eagle, with Eagle surviving the Merger as a wholly-owned subsidiary of the Corporation, (ii) (A) each share of common stock, par value \$0.01 per share, of Eagle (collectively, "Eagle Common Stock") outstanding at the Effective Time (as defined in the Merger Agreement), other than the shares of Eagle Common Stock to be cancelled pursuant to Section 2.03(iv) of the Merger Agreement (the "Excluded Shares") shall be converted into the right to receive a number of shares of common stock, par value \$0.01 per share, of the Corporation ("Parent Common Stock") equal to the Exchange Ratio (as defined in the Merger Agreement), (B) each share of Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series A, par value \$0.01 per share, of Eagle ("Eagle Series A Preferred Stock") outstanding immediately prior to the Effective Time, other than Excluded Shares, shall be converted into the right to receive one share of a newly created series of preferred stock of the Corporation having the terms set forth in Annex I of the Merger Agreement (the "New Parent Replacement Series A Preferred Stock") and (C) each share of Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series B, par value \$0.01 per share, of Eagle ("Eagle Series B Preferred Stock") outstanding immediately prior to the Effective Time, other than Excluded Shares, shall be converted into the right to receive one share of a newly created series of preferred stock of the Corporation having the terms set forth in Annex II of the Merger Agreement (the "New Parent Replacement Series B Preferred Stock" and together with the New Parent Replacement Series A Preferred Stock, the "New Parent Replacement Preferred Stock" and the issuance by the Corporation of Parent Common Stock and the New Parent Replacement Preferred Stock pursuant to Merger Agreement, the "Parent Share Issuance"), and (iii) immediately following the Merger, and as part of an integrated transaction with the Merger, Eagle will merge (the "Second Merger") with and into a wholly owned subsidiary of the Corporation to be formed and called Moon-Eagle Merger

Sub II, LLC (“Second Merger Sub”) with Second Merger Sub surviving the Second Merger as a wholly owned subsidiary of the Corporation; and

WHEREAS, the Board of Directors has unanimously determined that the Merger Agreement and the transactions contemplated thereby (including the Parent Share Issuance) are fair to and in the best interests of the Corporation’s stockholders;

NOW, THEREFORE, IT IS:

RESOLVED, that the Board of Directors hereby declares that the Merger Agreement and the transactions contemplated thereby (including the Merger, the Parent Share Issuance and the Second Merger) are fair to and in the best interests of the Corporation’s stockholders;

RESOLVED FURTHER, that the Board of Directors hereby approves, adopts and declares advisable the Merger Agreement and the transactions contemplated thereby (including the Merger, the Parent Share Issuance and the Second Merger); and

RESOLVED FURTHER, that each of the officers of the Corporation and Sebastiano Visentini (each, an “Authorized Officer”) be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Corporation, to execute and deliver, or cause to be executed and delivered, the Merger Agreement, with such changes in or additions to the provisions thereof as any Authorized Officer may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Parent Share Issuance

RESOLVED, that the Corporation is hereby authorized to issue the requisite number of shares of Parent Common Stock and New Parent Replacement Preferred Stock for purposes of paying the Merger Consideration (as defined in the Merger Agreement); *provided* that the powers, authority and discretion of the previously designated Preferred Stock Financing Committee of the Board of Directors will not be affected with respect to the New Parent Replacement Preferred Stock by any grant of authority to any Authorized Officer hereunder; and

RESOLVED FURTHER, that there are hereby reserved for issuance the requisite number of shares of Parent Common Stock and New Parent Replacement Preferred Stock for purposes of paying the Merger Consideration (as defined in the Merger Agreement).

SEC Approvals and Filings; NYSE Listing Application

RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to prepare or cause to be prepared and to execute, verify, deliver and file with the United States Securities and Exchange Commission (the “SEC”) any filings as any such officer may deem necessary, advisable or appropriate (and any amendments or supplements thereto) relating to the Merger and the other transactions contemplated by the Merger Agreement, including one or more Registration Statements on Form S-4 to register the distribution of shares of Parent Common Stock and the shares of New Parent Replacement Preferred Stock, in each case, to be delivered pursuant to the Merger Agreement;

RESOLVED FURTHER, that the Authorized Officers and representatives of outside counsel to the Corporation be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to appear before the SEC, the New York Stock Exchange (the “NYSE”), or other relevant body in connection with any documents herein authorized to be filed with the SEC or the NYSE, to file one or more amendments and/or supplements to any such documents as may be necessary or desirable as determined by any such officer and to take such further action and execute all such other documents as may be necessary or desirable in order to obtain clearance from the SEC and otherwise to comply with the applicable requirements of the Securities Act of 1933, the Securities Exchange Act of 1934 and the rules of the NYSE; and

RESOLVED FURTHER, that each Authorized Officer be, and each of them hereby is, authorized and directed to take, or cause to be taken, all actions necessary or advisable to effect any required supplemental listing and trading of the Parent Common Stock to be issued pursuant to the Merger Agreement, including the preparation, execution and filing of all necessary applications, documents, forms and agreements with the NYSE and the SEC, the payment by the Corporation of filing, listing or application fees, the preparation of any temporary and permanent certificates for the Parent Common Stock, and the appearance of any such Authorized Officer before NYSE officials.

Regulatory Filings

RESOLVED, that in furtherance of the transactions contemplated by the Merger Agreement, each of the Authorized Officers is authorized, in the name and on behalf of the Corporation, to prepare or cause to be prepared, execute and file or cause to be filed with any U.S. or non-U.S. federal, state, local authority or other regulatory agency or self-regulatory organization any reports, filings, applications or other documents, and to seek all governmental or regulatory or other consents or approvals, required with respect to the transactions contemplated by the Merger Agreement, including, without limitation, those required by (i) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, (ii) the Securities Act of 1933, the Securities Exchange Act of 1934 and any other applicable U.S. state or federal securities laws, (iii) the listing requirements of the NYSE, (iv) the Board of Governors of the Federal Reserve System and the Bank Holding Company Act of 1956, (v) the Office of the Comptroller of the Currency, (vi) the Financial Industry Regulatory Authority, (vii) the Depository Trust & Clearing Corporation and the National Securities Clearing Corporation, (viii) the Home Owners’ Loan Act of 1933, (ix) the Investment Advisers Act, (x) under any Blue Sky laws of any of the states or other jurisdictions of the U.S., (xi) the General Corporation Law of the State of Delaware (including, without limitation, certificates of designation of preferences and rights of the New Parent Replacement Preferred Stock) and/or (xii) any other applicable law, regulatory authority or self-regulatory organization, as applicable.

General Authorization

RESOLVED, that each Authorized Officer be, and each of them hereby is, authorized, in the name and on behalf of the Corporation, to do and perform all such further acts and things, to execute and deliver in the name and on behalf of the Corporation, and where necessary or appropriate, to file with the appropriate governmental authorities, all such further certificates, instruments, applications, notices, agreements and other writings and documents as may be required, and to make all such

payments, and to take all such other actions as in the judgment of any one or more of them shall be deemed necessary or advisable in order to carry out and effectuate the intent and purposes of the foregoing resolutions (or any of them), and any or all of the transactions contemplated therein or thereby, the authority therefore to be conclusively evidenced by the taking of such action or the execution or filing of such documents, as applicable; and

RESOLVED FURTHER, that all actions heretofore taken by any Authorized Officer in connection with any matter referred to in any of the foregoing resolutions are hereby approved, ratified and confirmed in all respects as fully as if such actions had been presented to the Board of Directors for its approval prior to such actions being taken.

IN WITNESS WHEREOF, I have hereunto set my name as of the 20th day of March,

2020.

DocuSigned by:
Martin Cohen
A83FD1A40519475...

Martin M. Cohen
Corporate Secretary

Public Exhibit 6

MSBNA CRA Performance Evaluation



WHOLESALE BANK

PUBLIC DISCLOSURE

January 30, 2017

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Morgan Stanley Bank, National Association
Charter Number 24908
201 South Main Street, 5th Floor
Salt Lake City, UT 84111

Office of the Comptroller of the Currency
Large Bank Supervision
400 7th Street SW
Washington, DC 20219

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion, or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Table of Contents

Overall CRA Rating.....	2
Definitions and Common Abbreviations.....	3
Scope of the Examination.....	6
Description of Institution.....	6
Description of Assessment Area.....	8
Conclusions.....	11
Discriminatory or Other Illegal Credit Practices Review.....	19

INSTITUTION'S CRA RATING:

This institution is rated Outstanding.

The conclusions for the three rating criteria are:

- The bank demonstrates a high level of community development lending and qualified investment activity, particularly investments not routinely provided by private investors. The bank demonstrates an adequate level of community development services.
- The bank demonstrates extensive use of innovative or complex community development loans and qualified investments.
- The bank demonstrates excellent responsiveness to credit and community development needs in its assessment area.

Definitions and Common Abbreviations

The following terms and abbreviations are used throughout this performance evaluation. The definitions are intended to provide the reader with a general understanding of the terms, not a strict legal definition.

Affiliate: Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if both companies are directly or indirectly controlled by the same company. A bank subsidiary is controlled by the bank and is, therefore, an affiliate.

Assessment Area (AA): A geographic area that consists generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

Benefit to Assessment Area: The OCC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

Benefit Outside Assessment Area: The OCC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

Census Tract (CT): A small subdivision of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan areas. Census tracts generally have a population between 1,200 and 8,000 people, with an optimal size of 4,000 people. Their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

Community Development: Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet Small Business Administration Development Company or Small Business Investment Company programs size eligibility standards or have gross annual revenues of \$1 million or less; activities that revitalize or stabilize low- or moderate-income geographies, distressed or underserved nonmetropolitan middle-income geographies, or designated disaster areas; or loans, investments, and services that support, enable or facilitate projects or activities under HUD Neighborhood Stabilization Program criteria that benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or outside the assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Community Reinvestment Act (CRA): The statute that requires the OCC to evaluate a bank's record of meeting the credit needs of its local community, consistent with the safe and

sound operation of the bank, and to take this record into account when evaluating certain corporate applications filed by the bank.

Geography: A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

Median Family Income (MFI): The median income determined by the U.S. Census Bureau every five years and used to determine the income level category of geographies. Also, the median income determined by the Federal Financial Institutions Examination Council (FFIEC) annually that is used to determine the income level category of individuals. For any given area, the median is the point at which half of the families have income above it and half below it.

Metropolitan Area (MA): Any metropolitan statistical area or metropolitan division, as defined by the Office of Management and Budget, and any other area designated as such by the appropriate federal financial supervisory agency.

Metropolitan Division: As defined by Office of Management and Budget, a county or group of counties within a Core Based Statistical Area that contains an urbanized population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area: An area, defined by the Office of Management and Budget, as a core based statistical area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Net Operating Income: As listed in the Consolidated Report of Condition and Income: Income before income taxes and extraordinary items and other adjustments. [*Schedule RI - Income Statement, line 8 or UBPR, page 2, "Pretax Operating Income (TE)"*]

Tier 1 Capital: The total of common shareholders' equity, perpetual preferred shareholders' equity with noncumulative dividends, retained earnings and minority interests in the equity accounts of consolidated subsidiaries. [*Schedule RC-R - Regulatory Capital, line 3a(1) or UBPR, page 11A, "Net Tier One"*]

Total Assets: Total bank assets as listed in the Consolidated Report of Condition and Income. [*Schedule RC - Balance Sheet, line 12 or UBPR, page 4, "Total Assets"*]

Total Income: From the Consolidated Report of Condition and Income – Total Interest income plus Total Noninterest income. [*Schedule RI - Income Statement, Total Interest Income, line 1g and Total Noninterest Income, line 5g, except for banks with domestic offices only and total assets less than \$100 million, line 5c or UBPR, page 2, "Total Interest Income" and "Noninterest Income"*]

Wholesale Institution: An institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and for which a designation as a wholesale bank is in effect.

Scope of the Examination

In evaluating the bank's performance under the CRA, the Office of the Comptroller of the Currency (OCC) reviewed community development (CD) activities from July 1, 2013, through December 31, 2016. The OCC reviewed the level and nature of qualified investments, CD lending, and CD services. At the bank's request, the OCC considered qualified investments, CD lending, and CD services provided by its affiliates. At the prior examination, dated July 29, 2013, the bank's assigned rating was Outstanding.

For a wholesale institution that adequately responds to the needs of its assessment area(s), the OCC considers qualified investments, as well as CD loans and services, originated by the institution at a nationwide level. In determining whether an institution is adequately responsive to the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

Description of Institution

Morgan Stanley Bank, National Association (MSBNA) is a nationally chartered bank, with its headquarters and main office located in Salt Lake City, Utah. MSBNA is an indirect, wholly-owned operating subsidiary of Morgan Stanley & Company (Morgan Stanley). MSBNA is a wholesale institution primarily focused on providing commercial loans to large institutional borrowers, and securities-based loans to institutions and individual borrowers. The bank has no branches or ATMs, and does not engage in retail deposit activities. The bank's deposit products include brokered savings and time deposits and brokered sweep deposits from broker-dealer client accounts of an affiliate, Morgan Stanley Smith Barney (MSSB). A loan production office and administrative offices are located in New York, NY. As of December 31, 2016, MSBNA had assets of approximately \$129.3 billion, deposits of \$113 billion, and Tier 1 Capital of \$13.4 billion. Total income for the year ending December 31, 2016, was nearly \$4 billion.

Morgan Stanley is a global financial services firm providing a wide range of securities, investment banking, investment management, and wealth management services primarily to corporations, governments, and high-net worth individuals. It is based in New York, NY, and serves its clients from offices in more than 42 countries. Morgan Stanley had just over 55,000 employees as of December 31, 2016. Morgan Stanley's assets totaled over \$811 billion as of December 31, 2016, while net income for the year totaled just under \$6 billion.¹ Morgan Stanley also owns a separate national bank: Morgan Stanley Private Bank, National Association.

In 2008, Morgan Stanley received approval from the Federal Reserve to become a financial holding company (FHC), and Morgan Stanley Bank converted from a Utah state-chartered industrial loan corporation to a national bank. The OCC approved MSBNA's wholesale designation for CRA purposes on March 10, 2009.

¹ Morgan Stanley Earnings Release 4Q 2016 as of December 31, 2016, <http://www.morganstanley.com/about-us-ir/finsup4q2016/finsup4q2016.pdf>

Following the creation of the FHC and the conversion to a national bank charter, MSBNA experienced a rapid increase in its asset base, a trend that continued over this evaluation period. Over the evaluation period, MSBNA's total assets increased by 54 percent, from \$83.7 billion to \$129.3 billion, while total income increased by 65 percent from \$2.4 billion annualized income as of July 1, 2013 to \$3.98 billion at December 31, 2016. Tier I capital increased 35 percent during the evaluation period to \$13.4 billion as of December 31, 2016.

During the evaluation period, MSBNA faced no legal, financial, or other factors impeding its ability to help meet the CD needs in its AA. There were no mergers or acquisitions during the evaluation period. MSBNA has no subsidiaries.

The following table provides a perspective regarding MSBNA's financial history.

Table 1: Financial Information (000s)

	Year-end 2013	Year-end 2014	Year-end 2015	Year-end 2016	Average for Evaluation Period
Tier 1 Capital	\$11,086,000	\$12,355,000	\$13,333,000	\$13,398,000	\$12,543,000
Total Income	\$2,443,000	\$2,872,000	\$3,769,000	\$3,982,000	\$3,266,500
Net Operating Income	\$955,000	\$1,172,000	\$1,784,000	\$2,084,000	\$1,498,750
Total Assets	\$103,074,000	\$125,528,000	\$136,028,000	\$129,288,000	\$123,479,500

Source: Consolidated Report of Condition and Income, and bank reported data.

Morgan Stanley originates qualified investments and CD loans on the books of MSBNA, Morgan Stanley Private Bank, N.A. (MSPBNA), and non-bank affiliates. All CD activities originated by non-bank affiliates count toward MSBNA's record of meeting the credit needs of its community, except for certain CD loans and investments that address the credit needs of the greater New York City Metropolitan Area. CD activities originated by MSPBNA, but are not in the MSPBNA assessment area, typically count towards MSBNA's record of meeting the credit needs of its communities.

The following is a partial list of non-bank affiliates that originate CD activities.

- **Qualified Investments and Grants**
 - Morgan Stanley & Co.: provides equity financing and philanthropic contributions to support low- and moderate-income (LMI) communities and neighborhood revitalization efforts;
 - Morgan Stanley Foundation: provides contributions and other philanthropic assistance to nonprofit organizations as a means of helping to strengthen its local communities;
 - Morgan Stanley Municipal Funding, Inc.: makes investments such as purchasing housing bonds that provide support for affordable housing; and,
 - Morgan Stanley Impact SBIC LP (also provides CD Loans): licensed under the Small Business Administration's (SBAs) Impact Investment Initiative, with the objective to promote economic development by providing capital to later stage companies in the lower middle market sector.

- Community Development Loans
 - Morgan Stanley Senior Funding, Inc.: provides debt financing to support LMI communities and individuals; and,
 - Morgan Stanley Community Investments LLC: Morgan Stanley’s CD Corporation provides debt and equity financing to meet the needs of LMI geographies and individuals.

In addition to the non-bank affiliates listed above, numerous subsidiaries of Morgan Stanley including Morgan Stanley Mortgage International Holdings Inc., Morgan Stanley Mortgage Capital Holdings LLC, MS Affordable Housing LLC, and Pinol II LLC provided grants and services noted in this PE.

Description of Assessment Area

MSBNA has designated Salt Lake County (SLC) as its AA. It is one of two counties that comprise the Salt Lake City, Utah Metropolitan Statistical Area (“MSA”) #41620. The MSA is part of the Salt Lake City-Provo-Orem Combined Statistical Area (“CSA”) #482. According to the 2010 U.S. Census, the population in SLC was 1.029 million, making it the most populous county in Utah, with total population of 2.8 million in the state. SLC contains two of the most populous cities in the state: Salt Lake City with a population of 186,440, the largest city in the state, and West Valley City with a population of 129,480. Salt Lake City is also the state capital and county seat, headquarters for many of the state’s largest corporations, and the center of the state’s economic activity. The AA is predominately a mix of urban and suburban areas. The bank’s AA does not arbitrarily exclude LMI geographies.

The SLC AA is comprised of 212 contiguous census tracts (CTs) that include 11 low-income CTs, 41 moderate-income CTs, 98 middle-income CTs, 60 upper-income CTs, and 2 CTs not designated because of low populations.

The following table provides a statistical summary of the AA:

Table 2: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	212	5.19%	19.34%	46.23%	28.30%
Families	236,504	3.66%*	17.12%*	50.40%*	28.82%*
Businesses	80,239	5.02%**	19.40%**	43.07%**	31.96%**

Source: Demographic Data – 2010 U.S. Census, 2016 Dun & Bradstreet Data.

*Represents families by income level.

**Represents businesses by income level of census tract. Percentage may not add to 100% due to rounding, and exclusion of the two census tracts with no income categorized.

The estimated annual median family income in the Salt Lake City MSA for 2016 was \$72,800², while the 2016 median family income for the SLC AA was \$67,016³. Approximately 9.8 percent

² FFIEC Estimated MSA Median Family Income 2016 – Note: the FFIEC provides this information at the MSA/MD level, but not at the county level

³ Demographic Data – 2010 U.S. Census

of the population in the AA was below the poverty level compared to the national average of 13.5 percent in 2015⁴.

The AA has experienced considerable growth since the previous evaluation period. The strong economy is led by a highly educated workforce, a stable base of state employment, high-tech jobs, below average business costs and a business-friendly climate. The AA has strong population growth and immigration. The Bureau of Labor Statistics reported a civilian labor force of 587,026 in SLC at year-end 2015 with an annual average unemployment rate of 3.3 percent for 2015, down from 5.5 percent for 2012⁵. This is lower than the 2015 average annual unemployment rate of 3.5 percent for the state of Utah, and nationwide annual average 5.3 percent for 2015.

Salt Lake City remains one of the healthiest economies in the country. Healthcare and the finance industry, particularly banking and insurance, are essential parts of the economy, with two-fifths of the job gains. Major employers include Intermountain Healthcare, State of Utah, University of Utah, World Financial Capital Bank, Comenity Capital Bank, Smith's Food and Drug, and the Church of Jesus Christ of Latter-Day Saints. These institutions and businesses each employ more than 6,000 people.

As of June 30, 2017, the Federal Deposit Insurance Corporation (FDIC) reported that MSBNA had over \$100 billion in deposits from SLC and the highest SLC deposit market share at 22.8%. However, these deposits are, in fact, from MSSB client accounts located throughout the United States. Deposits from MSSB client accounts located in SLC totaled \$280 million as of year-end 2016.

Salt Lake City has higher living costs compared to other metropolitan areas in Utah. Home sales are rising faster than the rest of the state and home prices are rapidly rising as well. Housing affordability remains a challenge for LMI families.

In an October 2016 report, the Salt Lake Board of Realtors reported that limited housing inventory coupled with high demand continues to push home prices higher. Although housing is affordable for middle-income residents, LMI residents are struggling. Single-family home prices in the third quarter of 2016 climbed to a median price of \$301,000. This represents a 7 percent increase compared to the median home price of \$279,000 in 2015.⁶ Affordable housing continues to become more strained as the gap between housing prices and income widens. According to the 2010 U.S. Census Data, the SLC housing market had approximately 357,000 housing units, including 64 percent that were owner-occupied and 32 percent renter-occupied. Only 6 percent of the housing units were vacant compared to 10 percent for the entire state of Utah. Local and federal programs provide housing assistance to low- and extremely low-income households through programs administered by the Utah Housing Corporation. These programs provide over 17,000 rent-assisted units to very low-income households in SLC. However, the supply of rent-assisted units falls short of the need. The HUD CHAS for SLC estimates almost 20,000 low-income renter households have no rental assistance and face severe housing cost burden, with more than 50 percent of their income

⁴ U.S. Census Bureau, Income and Poverty in the United States: 2015, report dated September 13, 2016

⁵ 2015 Labor Force Data by County, Annual Averages, Bureau of Labor Statistics, April 2016

⁶ Salt Lake Board of Realtors Report, October 31, 2016

devoted to housing.⁷ As a result, needs exist for CD efforts related to affordable housing within the AA.

The OCC's Community Affairs Officers conducted outreach and learned that activities to address homelessness are a critical need, as social service programs dwindle and the resources available to assist the homeless continue to disappear. Alleviating homelessness, providing resources for affordable housing, both rental and ownership, for the LMI population is critical. In order to address the needs of the homeless, government, both local and state, have developed a plan, future CD opportunities, to focus on housing the homeless. According to the 2016 SLC Consortium Consolidated Plan, over a five-year period, 300 homeless households, or households at risk of becoming homeless, will receive short-term rental assistance. In addition, 400 units of rental housing units are pending construction for the chronic homeless, seniors, and those with special needs. During 2015, SLC's Mayor developed a Collective Impact Steering Committee on Homelessness. The Steering Committee focuses on improving housing for the homeless and improving service delivery systems in SLC to meet the needs of the homeless, and persons at risk for homelessness. In addition, the SLC 10-Year Plan to End Chronic Homelessness includes the objective to prevent persons discharged from institutions such as prisons, hospitals, and treatment facilities from being homeless.

Housing for LMI and the homeless includes creating affordable housing within a half-mile to a mile of the transportation hubs, especially as transit hubs develop. CD needs include providing grants to CD-focused organizations to help fund operations, a lower loan rate, and access to additional lines of credit.

Other CD needs outside of housing include the following: 1) job creation and retention; 2) small business financing, including small dollar loans for small businesses, start-ups, workforce development and training; 3) support for housing counseling agencies; 4) financial education; 5) refugee settlement programs; 6) early childhood education; 7) help for children aging out of foster care; 8) help for those recently released from prison; and, 9) Individual Development Accounts (IDA) programs.

There are active nonprofit organizations with projects that will provide future CD opportunities. The creation of new homeless shelters, and mixed use and multifamily projects are potential opportunities in progress.

Performance Context

MSBNA operates in a highly competitive banking environment with 40 FDIC-insured institutions located in SLC. The county has a disproportionately high number of limited purpose or wholesale banks based on favorable state laws, and all compete for the same qualified investment and CD loans and services in response to the needs of its AA, which includes SLC. SLC also has numerous large commercial banks, including JPMorgan Chase, Wells Fargo, Zions Bank, US Bank, and Key Bank, as well as many state chartered banks, who again compete for the same CD opportunities as MSBNA in SLC. Based on the competition, the opportunity for any one of these institutions to obtain a sizable portion of qualified investments or CD loans benefiting SLC is limited.

⁷ Salt Lake County Consortium Plan 2016

An illustration of the high level of competition for CD products is the low rate of return for Low Income Housing Tax Credits (LIHTC) in SLC, which is typically 200 basis points below that of other markets. MSBNA bid and successfully purchased a LIHTC, but was outbid on three similar projects during the evaluation period. Competition for bankable transactions, including CD, has led to more aggressive underwriting by competitors. Competition in the construction market has resulted in a decrease of up to 100 basis points in the AA compared to outside the AA.

Conclusions about Performance

Summary

- MSBNA and affiliates provided a high level of qualified investments and CD loans, and an adequate level of CD services in relation to opportunities. Qualified investments and CD loans totaling \$227 million were in the SLC AA, representing 1.8 percent of average Tier 1 Capital and 7.0 percent of average total income. Employees of the bank and its affiliates provided services to 20 CD organizations in the AA.
- Additionally, the bank provided \$4.2 billion in qualified investments and CD loans in areas outside of the AA, representing 33.5 percent of average Tier 1 Capital and 128 percent of average total income. While these investments and loans benefit the nationwide area, some of the qualified investments impact the bank's AA directly. For example, MSBNA purchased eight mortgage-backed securities totaling \$788.5 million. The original underlying mortgages provided funding for 7,043 LMI borrowers nationwide, including 59 in the AA. Another example is a purchase of GNMA investments that included mortgages to LMI individuals, including \$119 million in the AA. While neither investment are innovative or complex, the investments display responsiveness to meet the needs for permanent single-family affordable housing for LMI individuals. MSBNA and its affiliates provided services to 81 CD organizations outside the AA.
- MSBNA and affiliates demonstrated extensive use of innovative or complex qualified investments and CD loans over the evaluation period. Eighty-three percent, or \$1 billion, of the total CD lending is innovative or complex, while 12.6 percent, or \$378 million, of the total qualified investments, excluding unfunded commitments, is innovative or complex.

The bank and its affiliates maintain partnerships with local and national nonprofit organizations in order to help the bank identify CD needs and create opportunities, including qualified investments not routinely provided by private investors. MSBNA and affiliates routinely leverage the firm's expertise and resources to initiate and provide leadership for innovative or complex qualified investment and CD loans. Morgan Stanley established and/or provided funding to multiple loan funds and programs managed by Community Development Financial Institutions (CDFIs). Morgan Stanley also provided funding to non-CDFI development-focused nonprofit organizations, which provides flexible financing for CD activities including affordable housing, economic development, and revitalization and stabilization of distressed and underserved communities. These innovative funds are structured to provide financing to organizations and small businesses by utilizing multiple

government programs (e.g. New Market Tax Credits (NMTCs), LIHTCs, and SBA loan programs) combined with philanthropic support from the private sector. As such, they are particularly complex and require significant effort and expertise from the bank.

Examples

Morgan Stanley launched the Healthy Futures Fund in partnership with Local Initiatives Support Corporation (LISC) and the Kresge Foundation. The Healthy Futures Fund aims to expand access to healthcare for LMI families through a co-location model linking health centers to affordable housing projects. The Fund uses a combination of LIHTCs and NMTCs.

During the evaluation period, Morgan Stanley designed and formed an Impact Small Business Investment Company (SBIC) under the SBA's Impact Investment program that targets the education and clean-tech sectors, and LMI individuals and geographies across the nation. There are only nine Impact SBICs in the country and the Morgan Stanley Impact SBIC is the only bank-sponsored Impact SBIC.

- MSBNA and affiliates' qualified investments and grants, and CD loans and services exhibit excellent responsiveness to credit and CD needs within the SLC AA, specifically affordable housing, and economic development. MSBNA is a leader and a partner in organizations that developed funds and new legislation to meet CD needs in the AA.

Examples

MSBNA participated and took a leadership position in the Equitable Transit Oriented Development Fund (ETOD Fund). Forming the Fund required approximately, three years of regular meetings hosted by MSBNA and included other community partners and stakeholders. The fund pooled the resources of several local banks and community partners to provide capital for the acquisition and development of LMI housing within a half mile of public transportation. The fund commenced in November 2015.

MSBNA demonstrated leadership in economic growth by developing the Greater Salt Lake Development Corporation, resulting in a \$10 million fund that promotes job growth and economic development. The fund provides alternative lending to developers seeking to improve blighted areas.

Finally, in recognition of MSBNA leadership roles, the state of Utah asked MSBNA to participate in the Refugee Advisory Housing Committee and Pioneer Park Coalition Committee. Both committees provided input into the 2016 state of Utah legislation that passed a \$27 million bill to help combat homelessness.

Qualified Investments

Originated investments, grants, and prior period investments in the AA total \$40.0 million, including \$3.2 million in grants. MSBNA and its affiliates originated three investments in the AA totaling \$18.7 million. One of the investments, an affordable housing project, was particularly responsive to a significant need within the AA. The other was a project to revitalize a

downtown Salt Lake City neighborhood through the renovation of a landmark theater. The third supports affordable housing in the broader statewide regional area.

MSBNA provided 150 grants totaling \$3.2 million to CD organizations with programs benefitting the AA. Seventy-three percent of the number of grants were to community service organizations for programs that benefit LMI individuals. Another 15 percent of the grants supported affordable housing, and 7 percent supported economic development. Five percent of the grants supported affordable housing and community service programs benefiting LMI individuals, which included supporting homeless individuals and families, and refugee settlement assistance. Grants, while not comparable in dollar volume to qualified investments, provide needed support and demonstrate responsiveness to CD groups and/or activities that may not get funding via other qualified investments or CD loans.

Prior period investments in the AA totaling \$18.1 million consisted of participation in eight SBIC funds, and two investments in funds that provide equity financing to small businesses. Unfunded commitments in place for the benefit of the AA totaled \$10 million.

Based on the level of competition for CD opportunities (refer to Description of Assessment Area), the OCC determined MSBNA was adequately responsive to the needs of its AA during this Evaluation Period. Therefore, the OCC considered nationwide investments, totaling an additional \$3.0 billion (\$75 million prior period), including \$31 million in grants, when evaluating the bank’s performance. The majority of these investments focused on affordable housing and economic development. The majority of the grants supported community service organizations for programs that benefit LMI individuals by providing a variety of social services such as homeownership counseling, financial education, job training and placement, and services targeting homeless individuals and families. Prior period investments outside the AA totaling \$75 million included 16 investments in LIHTCs, one investment in a fund that provides equity financing to companies providing financing services to the underbanked and non-banked population, and one fund that supports affordable housing for seniors and veterans, and disaster areas. Unfunded commitments outside the AA totaled \$115.7 million.

The following table summarizes the bank’s investments, grants, and unfunded commitments inside and outside the AA:

Table 3: Qualified Investment Activity (000s)

	Benefits AA	Outside AA	Totals
Originated Investments	18,763	2,857,345	2,876,108
Originated Grants	3,243	31,021	34,264
Prior-Period Investments that Remain Outstanding	18,054	74,878	92,932
Total Qualified Investments	40,060	2,964,244	3,003,304
Unfunded Commitments*	10,087	115,764	125,851

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the Bank’s financial reporting system.

The following table measures the level of total qualified investment activity in terms of average Tier 1 Capital and average total income over the evaluation period:

Table 4: Qualified Investment Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total Investments/Average Tier 1 Capital	0.32	23.62	23.94
Total Investments/Average Total Income	1.23	90.72	91.95

The bank’s dollar volume of investment in the AA increased nearly \$12 million compared to the previous CRA evaluation. Total investments in the AA compared to Tier 1 capital was similar when compared to the previous evaluations period, while investments outside the AA increased from 18.4 percent at the last evaluation to its current 23.6%. MSBNA has demonstrated its’ willingness to invest in CD as the bank continues to expand its volume of qualified investments both inside the AA and nationwide.

MSBNA extensively used innovative or complex qualified investments. MSBNA routinely leveraged its expertise and provided leadership by working with community partners to provide investments not routinely available by private investors and to meet identified needs both within the bank’s AA, as well as across the country.

Examples

- MSBNA committed \$10.4 million and funded \$1.71 million in a LIHTC development that will create 134 affordable housing units in the AA. Occupancy will be restricted to households with annual incomes below 60 percent of the area median income. The project is also notable for its proximity to public transportation, neighborhood conveniences, and services. Transit-oriented affordable housing, a key theme in the bank’s CD activities, reduces commuting costs and allows LMI families to better integrate into the community.
- In 2016, MSBNA and affiliates, working closely with the University of Utah, established the Morgan Stanley Salt Lake City Fellowship program. This innovative new program within the AA cultivates and nurtures the next generation of community leaders and provides additional capacity to local nonprofit organizations. The bank fully funded the program with four grants totaling \$80 thousand to four local nonprofit community organizations. The local organizations each hired a graduate student from the University of Utah to undertake critical community projects that the nonprofit organization would otherwise have been unable to complete. This is an example of an investment serving needs not routinely provided by other private investors.
- MSBNA provided three grants totaling \$55 thousand to a Salt Lake City based nonprofit organization whose primary focus is to facilitate sustainable eye care for underprivileged and LMI individuals within the AA. The organization provides free glasses and vision care to children in the Title One/Free and Reduced Lunch schools program, as well as the homeless population in the Salt Lake City area. The organization reported that a total of 2,588 children and 960 adults benefitted from their services, including providing 1,061 free pairs of glasses during 2016.

- The bank invested \$2.6 million in NMTCs to restore the Capitol Theater in downtown Salt Lake City. MSBNA collaborated with National Development Council to complete the project, which helped to revitalize and stabilize a downtown neighborhood. The renovated theater is a landmark within the AA and helps attract new businesses to the area.
- In 2015, MSBNA and affiliates established the National Equity Fund Preservation Fund, in partnership with LISC, to focus on the preservation of affordable housing. Nationwide, affordable housing projects are at risk of converting to market rate properties as they near the expiration of the compliance period for the LIHTCs that provide a 15-year guarantee period. The Fund acquires property and holds it until a nonprofit organization can arrange long-term financing that assures the preservation of the property's long-term affordability. Additionally, the Fund includes an innovative carve-out from management fees to fund value added services to the residents. During the evaluation period, MSBNA invested nearly \$94 million of its \$98 million commitment in the Fund, which has supported nine affordable housing projects to date.
- MSBNA and affiliates invested \$4 million in the Job Creation and Community Revitalization Fund. It is a flexible, complex, and innovative new fund that expanded on the LISC NMTC Small Business Fund, which uses SBA 504 loan financing to augment tax credits while meeting the higher job creation requirements under the NMTC program. This fund was the first of its kind to combine the benefits of the SBA 504 program with NMTCs. The fund enables loans to small businesses with cash flow constraints in distressed markets.
- The bank brought several community partners together to establish an innovative and complex collaborative fund for the financing of underserved small businesses in Cleveland. The fund is a unique application of NMTCs to benefit borrowers in need of micro- and very small loans. During the evaluation period, Morgan Stanley also designed and formed an Impact SBIC under the SBA's Impact Investment program that targets the education and clean-tech sectors, and LMI individuals and geographies across the nation.

Community Development Lending

During the evaluation period, MSBNA and affiliates extended 35 CD loans totaling \$187 million in or benefitting the AA, an increase of \$13 million, or 7.5 percent, compared to the previous evaluation period. The majority of CD lending supported affordable housing and economic development, 43 percent and 34 percent, respectively, both addressing significant needs within the AA. Twenty-three percent focused on affordable housing and economic development, combined, which were more complex due to its dual focus.

The bank was adequately responsive to the needs within the AA based on limited opportunities, as outlined in the *Description of the Assessment Area*. Therefore, we considered an additional 172 loans totaling \$1.2 billion made outside of the AA, approximately 13 percent increase compared to the previous evaluation period.

The following table quantifies the level of CD lending in terms of average Tier 1 Capital and average total income over the evaluation period:

Table 5: Community Development Lending Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total CD Lending/Average Tier 1 Capital	1.49%	9.95%	11.44%
Total CD Lending/Average Total Income	5.72%	38.20%	43.93%

Note: Total CD lending equals the current period CD lending activity (excluding binding CD loan commitments); average capital, income, and receivables are found in Table 1.

Overall, MSBNA and its affiliates made 207 CD loans totaling \$1.4 billion, both in the AA and nationwide. The total includes 109 originations totaling \$924 million and 98 purchases totaling \$511 million. The majority of the bank’s CD lending focused on affordable housing and economic development, both significant needs within the AA, and across the country. The bank provided 58 affordable housing loans totaling \$591 million. Economic development loans (74 loans) totaled \$181 million. An additional 57 loans totaling \$507 million are complex projects consisting of both affordable housing and economic development activities. The loans originated were for CD purposes outside housing and economic development.

MSBNA and affiliates extensively used innovative or complex lending practices to address the credit needs of LMI individuals or geographies. MSBNA routinely leveraged its expertise and provided leadership, both within the AA and nationwide, by initiating and/or structuring CD loans designed to meet CD needs.

AA Examples

- MSBNA provided \$11 million as three revolving lines of credit to a local CD entity. The lines of credit are for acquisition and rehabilitation of poorly conditioned residential properties, and subsequently sold as affordable housing units by the CD entity. One of the lines was unsecured, allowing the entity more flexibility for rehabilitation of condemned housing projects, which illustrates MSBNA’s responsiveness to affordable housing needs within the AA. The bank also works with this entity in other ways, including providing grants.
- MSBNA provided a \$10 million non-revolving facility to a local CD entity to finance a loan program. The program provides technical assistance, as well as CD loans for economic development, affordable housing and community facilities in Utah. Examples of some of the projects financed by facility include, a healthy food market, the expansion of small LMI and minority owned businesses, and the acquisition of property in LMI census tracts for the use of affordable housing. LIHTCs augmented the loan facility, which increases the complexity of the deals, and allows Morgan Stanley to support the entity using their knowledge and expertise of housing tax credits.
- MSBNA provided \$2 million as a participation to a statewide CDFI that provides affordable housing and small business loans throughout Utah. One hundred percent of the housing units financed by the overall fund will be designated for residents with income less than or equal to 80 percent of the area median income. Morgan Stanley played a significant role in the development of the fund.

- The bank provided a \$1.5 million loan to a nonprofit organization for a mixed-use project that included affordable housing and small business space. The project was the nonprofit's sixth completed project and included the rehabilitation of an old factory building into 13 affordable residential units and 8 street-level workspaces for artists, small businesses owners, and nonprofit organizations. The project contains sustainable design practices, including a rooftop solar panel installation. This complex project illustrates the bank's responsiveness and is a complex loan, as the project relied on the coordination of multiple financing parties to ensure its success. This facility was the final piece needed to complete the project and filled a gap in the timing of financing sources, including historic tax credits. MSBNA has had a long-term, ongoing relationship with this organization and provided additional support through \$80,000 in grants over the evaluation period.

Outside the AA Examples

- MSBNA originated \$38 million to a NMTC lending fund. Morgan Stanley, along with LISC, and the Kresge Foundation formed this Fund in 2012. The fund's purpose is to improve access to health care in low-income communities through Federally Qualified Health Centers (FQHCs). Morgan Stanley created the fund by bringing together a leading non-profit CD organization, pairing multiple government programs and philanthropic support with private sector capital. As of 2016, the Fund has \$225 million in committed capital. Leading the fund and coordinating the partners for this fund illustrates both MSBNA's responsiveness to community needs, as well as the bank's willingness to participate in complex CD lending practices.
- MSBNA purchased a \$17.7 million loan in a \$21.6 million construction project to fund the redevelopment of the former Hahnes Department Store building into a mixed-use project. This construction loan supported the NMTCs and Historic Tax Credits for the redevelopment of the store building in downtown Newark, New Jersey. The development is public transit accessible, which addresses an identified need, and includes access to healthy foods. MSBNA continues their innovative practice of focusing on transit oriented development projects, which provides significant benefits to LMI communities.
- MSBNA purchased a \$25 million loan in a \$58.6 million construction project to fund the acquisition and rehabilitation for affordable housing in Chicago. The funds were part of a "back-to-back" loan structure, with a tax-exempt loan by the City of Chicago, combining LIHTCs and Historic Tax Credits. The rehabilitated building will include 239 residential units, 73,000 square feet of retail office and community facility space, and 159 parking spaces. Of the 239 units, 225 units target LMI households. The combination of loans adds a layer of complexity and serves needs not routinely provided by other private investors.

Community Development Services

MSBNA and affiliate employees provided qualified CD service activities that were responsive to needs in the AA. The bank and its affiliates provided CD services nationwide, developing and maintaining strong relationships with organizations across the country. Bank employees' involvement with the organizations include leadership roles, such as: serving as board and committee members of affordable housing and community service organizations; assisting in

the creation of loan funds; supporting programs offered to low- and moderate-income individuals; partnering to perform research on various topics; and, offering capital markets and financial expertise. Bank employees also utilized their expertise to deliver financial literacy seminars, as well as provide other financial services, including credit counseling that benefit LMI individuals.

During the evaluation period, bank and affiliate employees provided qualified services to 101 various community service organizations, including 20 organizations serving the AA. Of the 20, 70 percent of the organizations support affordable housing and economic development activities. The remaining 30 percent were organizations that provide community services to LMI individuals within the AA.

In addition to services provided within the AA, bank and affiliate employees provided qualified services to 81 community service organizations outside the AA. The majority of these services, or 86 percent, involved organizations that provide services to LMI individuals. The remaining 11 organizations, or 14 percent, have missions that focus on either affordable housing, economic development, and/or the revitalization and stabilization of LMI geographies.

Examples

The following are three examples of CD services provided over the evaluation period that were responsive to identified needs of the AA. A fourth example details a service outside the AA.

- Qualified services were provided by two bank employees to an organization whose mission is to stabilize neighborhoods through its subsidiary organizations by providing single and multi-family affordable housing, small business lending and investing, and by supporting neighborhood revitalization. The two employees provided technical expertise to the organization's subsidiary that aims to provide flexible financing through a loan fund available to developers to purchase and/or develop affordable housing properties near public transportation throughout the Wasatch Front Region. Morgan Stanley led this effort, which entailed nearly three years of regular meetings, and involved community partners and stakeholders who helped define its structure. Morgan Stanley is a senior lender in the fund, and provided \$125,000 in grants to the organization during the evaluation period. A bank Vice President served as a member of the credit committee for the fund, while a bank associate was a member of the organization's advisory board.
- Throughout the evaluation period, a Vice President served on the Board of Directors and Loan Review Committee of an organization that works to revitalize, stabilize, and strengthen LMI neighborhoods in the Salt Lake City area by creating opportunities through affordable housing, resident leadership, youth workforce development, and economic development. The employee provided technical assistance to the organization by performing treasurer duties, assisting with donor development, fundraising, budgeting, and oversight of finances, such as the use of funds for programming or other activities. MSBNA has had a long-term, ongoing relationship with this organization and provided additional support including an \$850,000 land acquisition loan in Salt Lake City for a project that will include the development of 30 townhome units, a portion of which will be affordable housing units. This facility was renewed and extended in 2016, bringing the total committed to \$1.7 million. The bank also provided grants totaling \$136,500 over the evaluation period,

including a \$20,000 grant as part of the Salt Lake City Fellowship program, designed to cultivate and nurture the next generation of community leaders.

- A Vice President served on the Refugee Housing Advisory Committee for the State of Utah. The committee is designed to help resolve issues related to refugee housing and homelessness.
- As part of a 2014 Morgan Stanley internal program, three affiliate employees, including a Managing Director, provided financial and technical assistance to a community service organization whose mission is to end family homelessness in the San Francisco Bay Area. The program partnered the Morgan Stanley employees with an organization for a ten-week pro bono consulting project designed to help the organization amplify their meaningful impact on the communities that they serve.

Discriminatory or Other Illegal Credit Practices Review

Pursuant to 12 C.F.R. 25.28(c) and 195.28(c), in determining a national bank's or federal savings association's (collectively, bank) CRA rating, respectively, the OCC considers evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. As part of this evaluation process, the OCC consults with other federal agencies with responsibility for compliance with the relevant laws and regulations, including the U.S. Department of Justice, the U.S. Department of Housing and Urban Development (HUD), and the Consumer Financial Protection Bureau (CFPB), as applicable.

The OCC has not identified that this institution or any affiliate whose loans have been considered as part of the institution's lending performance has engaged in discriminatory or other illegal credit practices that require consideration in this evaluation.

The OCC does not have additional public information regarding non-compliance with statutes and regulations prohibiting discriminatory or other illegal credit practices with respect to this institution. In determining the institution's overall CRA rating, the OCC has considered information that was made available to the OCC on a confidential basis during its consultations.

The OCC will consider any information that this institution engaged in discriminatory or other illegal credit practices, identified by, or provided to the OCC before the end of the institution's next performance evaluation in that subsequent evaluation, even if the information provided concerns activities that occurred during the evaluation period addressed in this performance evaluation.

Public Exhibit 7

MSPBNA CRA Performance Evaluation



PUBLIC DISCLOSURE

December 31, 2018

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Morgan Stanley Private Bank, N.A.
Charter Number: 24981

2000 Westchester Avenue
Purchase, New York 10577

Office of the Comptroller of the Currency

Large Bank Supervision
400 7th Street Southwest
Washington, DC 20219

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion, or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Table of Contents

OVERALL CRA RATING 2

DEFINITIONS AND COMMON ABBREVIATIONS5

DESCRIPTION OF INSTITUTION.....9

SCOPE OF THE EVALUATION.....11

DISCRIMINATORY OR OTHER ILLEGAL CREDIT PRACTICES REVIEW.....12

STATE 13

 STATE OF NEW YORK 13

APPENDIX A - SCOPE OF EXAMINATION..... A

Morgan Stanley Private Bank, National Association

OVERALL COMMUNITY REINVESTMENT ACT (CRA) RATING: This institution rating is **Outstanding**.

The major factors that support this rating include:

- Morgan Stanley Private Bank, N.A. (MSPBNA) lending performance is Outstanding with Community Development (CD) lending exceeding the bank’s strategic goals.
- MSPBNA investment performance is Outstanding with CD investments, including grants, exceeding the bank’s strategic goals.
- MSPBNA service performance is Outstanding with CD services exceeding the bank’s strategic goals.

CONCLUSIONS

MSPBNA exceeded its strategic plan goals for CD lending, investments and services. MSPBNA defined its CRA strategic goals with consideration to its lack of a branch network and limited product offerings.

The following table compares MSPBNA’s CRA goals as established by the strategic plan with actual lending, investment, and service performance.

	Loans (000)		Investments/Grants (000)		Service (Hours)	
	Goal*	Performance	Goal*	Performance	Goal*	Performance
2015	\$46,265	\$89,810	\$185,058	\$425,895	1,032	6,778
2016	\$50,891	\$237,621	\$203,564	\$519,350	1,135	3,016
2017	\$55,980	\$158,242	\$223,920	\$234,261	1,249	1,319
Total	\$153,136	\$485,673	\$612,542	\$1,179,506	3,416	11,113

* Goal represents number of dollars or service hours provided to achieve a rating of Outstanding for each of the years included in the evaluation period.

Goals versus Performance

MSPBNA total assets grew significantly during the current CRA evaluation period. As a result, management increased CD lending and investment activity beyond its original approved strategic plan goals for an Outstanding CRA rating. The increased CD lending and investment activity is not required under the strategic plan adopted by management and approved by the Office of the Comptroller of the Currency (OCC). Nevertheless, management increased internal performance goals for loans and investments to reflect additional asset growth beyond the original strategic plan goals.

The following projects are specific examples of how MSPBNA exceeded the strategic goals.

Lending

- MSPBNA demonstrated response to the need for high-quality, affordable housing with its participation in a \$17 million letter of credit. The loan represents a 49 percent participation in a

construction-period stand-by letter of credit to provide credit enhancement for a fixed-rate New York City Housing Development Corporation tax exempt bond issuance. The project responds to the need to reposition and renovate multifamily rental housing for long-term affordability. It involved the acquisition, rehabilitation, and long term preservation of a portfolio of affordable multifamily apartment properties with 359 occupied apartments. The portfolio consists of six elevator buildings and 22 walk-up buildings in Harlem. The transaction demonstrated flexibility through its underwriting, and complexity due to the scattered-site nature of the portfolio and the need for extensive repairs.

- MSPBNA's loan origination of \$50 million supported the significant rehabilitation and acquisition of a severely distressed 1,393 unit public housing complex owned by the New York City Housing Authority (NYCHA). The transaction qualifies as complex due to the multiple layers of financing. It also qualifies as innovative since it is the first NYCHA rehabilitation in New York City financed through the Rental Assistance Demonstration program (RAD), after which the project will convert from Housing and Urban Development (HUD) public housing to HUD project-based Section 8 Housing Assistance Payment subsidy.

Investments

In 2012 (during the last CRA performance assessment), Morgan Stanley, the firm, along with MSPBNA and MSBNA, its sister bank, formed Morgan Stanley Community Investments LLC ("MSCIL"). The entity is a community development corporation created to bolster the bank's ability to respond to community needs by facilitating the creation of flexible product offerings.

Examples of investment activities by MSPBNA during the assessment period, include:

- MSPBNA responded to the need to rehabilitate distressed multifamily housing with a \$23 million investment in the NYC Distressed Multifamily Housing Fund (the Fund). The investment funded a loan for the purchase of 130 units of occupied multifamily housing in the bank's assessment area. Bridge financing from the Fund allowed a speedy acquisition while the sponsor put together the plans for a City-sponsored refinancing including resiliency improvements and tax abatements. The project positioned the multi-family units for long-term, regulated affordability in the face of pricing-pressure from recently rezoned neighboring areas.
- MSPBNA invested \$36 million to respond to the need for affordable and accessible supportive housing. This investment acquired a partnership interest for the new construction by a non-profit sponsor for the 175 unit low-income senior housing development with a senior and a community health center. The investment is responsive in addressing the needs of the homeless and critically ill, who face an emergency housing situation. All 175 units will have project based section 8 vouchers. Fifty-three units (30 percent) will be restricted to homeless persons referred from the NYC Department of Homeless Services (DHS) or NYS Office of Mental Health (OMH). Of the remaining 122 units, 20 will be handicap accessible, and the rest of the apartments will be adaptable. At least 30 units will be restricted to disabled homeless, individuals on Medicaid, and all 53 homeless-designated units will target chronically mentally ill persons. Supportive services are also a component of this project.

Services

MSBPNA's goals for community development services focus on revitalizing and stabilizing low and moderate income (LMI) communities. Services provided include employee membership on CD boards related to housing for LMI individuals and geographies, and economic development. Of special note is the *MS Strategy Challenge*, an initiative that provides 8 to 10 weeks of pro-bono strategic consulting to non-profit organizations. Employee volunteers provide strategic advice on issues relating to business models and growth strategies to help nonprofits become more sustainable and achieve the highest impact in more effective and efficient ways. For this exam cycle, the *MS Strategy Challenge* contributed **9,788 hours** or 88% of MSPBNA's total service hours to 11 community development-qualifying NY-based community groups.

Definitions and Common Abbreviations

The following terms and abbreviations are used throughout this performance evaluation, including the CRA tables. The definitions are intended to provide the reader with a general understanding of the terms, not a strict legal definition.

Affiliate: Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if the same company directly or indirectly controls both companies. A bank subsidiary is controlled by the bank and is, therefore, an affiliate.

Aggregate Lending: The number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the MA/assessment area.

Census Tract (CT): A small subdivision of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan areas. Census tracts generally have a population between 1,200 and 8,000 people, with an optimal size of 4,000 people. Their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

Community Development: Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet Small Business Administration Development Company or Small Business Investment Company programs size eligibility standards or have gross annual revenues of \$1 million or less; activities that revitalize or stabilize low- or moderate-income geographies, distressed or underserved nonmetropolitan middle-income geographies, or designated disaster areas; or loans, investments, and services that support, enable or facilitate projects or activities under HUD Neighborhood Stabilization Program criteria that benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or outside the assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Community Reinvestment Act (CRA): the statute that requires the OCC to evaluate a bank's record of meeting the credit needs of its local community, consistent with the safe and sound operation of the bank, and to take this record into account when evaluating certain corporate applications filed by the bank.

Consumer Loan(s): A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans.

Family: Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family, which is

further classified into ‘male householder’ (a family with a male householder’ and no wife present) or ‘female householder’ (a family with a female householder and no husband present).

Full Review: Performance under the Lending, Investment, and Service Tests is analyzed considering performance context, quantitative factors (e.g., geographic distribution, borrower distribution, and total number and dollar amount of investments), and qualitative factors (e.g., innovativeness, complexity, and responsiveness).

Geography: A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act (HMDA): The statute that requires certain mortgage lenders that conduct business or have banking offices in a metropolitan statistical area to file annual summary reports of their mortgage lending activity. The reports include such data as the race, gender, and the income of applicants, the amount of loan requested, the disposition of the application (e.g., approved, denied, and withdrawn, loan pricing, the lien status of the collateral, any requests for preapproval, and loans for manufactured housing.

Home Mortgage Loans: Such loans include home purchase, home improvement and refinancings, as defined in the HMDA regulation. These include loans for multifamily (five or more families) dwellings, manufactured housing and one-to-four family dwellings other than manufactured housing.

Household: Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

Limited Review: Performance under the Lending, Investment, and Service Tests is analyzed using only quantitative factors (e.g., geographic distribution, borrower distribution, total number and dollar amount of investments, and branch distribution).

Low-Income: Individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

Market Share: The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the MA/assessment area.

Median Family Income (MFI): The median income determined by the U.S. Census Bureau every five years and used to determine the income level category of geographies. Also, the median income determined by the Federal Financial Institutions Examination Council (FFIEC) annually that is used to determine the income level category of individuals. For any given area, the median is the point at which half of the families have income above it and half below it.

Metropolitan Area (MA): Any metropolitan statistical area or metropolitan division, as defined by the Office of Management and Budget, and any other area designated as such by the appropriate federal financial supervisory agency.

Metropolitan Division: As defined by Office of Management and Budget, a county or group of counties within a Core Based Statistical Area that contains an urbanized population of at least 2.5

million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area: An area, defined by the Office of Management and Budget, as a core based statistical area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Middle-Income: Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent, in the case of a geography

Moderate-Income: Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent, in the case of a geography.

Multifamily: Refers to a residential structure that contains five or more units.

Other Products: Includes any unreported optional category of loans for which the institution collects and maintains data for consideration during a CRA examination. Examples of such activity include consumer loans and other loan data an institution may provide concerning its lending performance.

Owner-Occupied Units: Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

Qualified Investment: A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

Rated Area: A rated area is a state or multi-state metropolitan area. For an institution with domestic branches in only one state, the institution's CRA rating would be the state rating. If an institution maintains domestic branches in more than one state, the institution will receive a rating for each state in which those branches are located. If an institution maintains domestic branches in two or more states within a multi-state metropolitan area, the institution will receive a rating for the multi-state metropolitan area.

Small Loan(s) to Business(es): A loan included in 'loans to small businesses' as defined in the Consolidated Report of Condition and Income (Call Report) instructions. These loans have original amounts of \$1 million or less and typically are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans.

Small Loan(s) to Farm(s): A loan included in 'loans to small farms' as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of \$500,000 or less and are either secured by farmland, or are classified as loans to finance agricultural production and other loans to farmers.

Tier One Capital: The total of common shareholders' equity, perpetual preferred shareholders' equity with non-cumulative dividends, retained earnings and minority interests in the equity accounts of consolidated subsidiaries.

Upper-Income: Individual income that is at least 120 percent of the area median income, or a median family income that is at least 120 percent, in the case of a geography.

Description of Institution

MSPBNA is a federally chartered bank, incorporated as a national association headquartered in Purchase, New York (Westchester County) and is a wholly owned subsidiary of Morgan Stanley Delta Holdings LLC (MSDH). MSDH is an indirect wholly owned subsidiary of Morgan Stanley & Company, the firm.

Morgan Stanley, the parent company, or the firm, is a global financial services institution with over 57,000 employees providing a wide range of securities, investment banking, investment management, and wealth management services. Morgan Stanley, based in New York, NY, serves clients worldwide including corporations, governments, institutions and individuals in 44 countries. As of December 31, 2018, Morgan Stanley's total assets were \$854 billion and net income was \$8.7 billion. Morgan Stanley is also the parent of Salt Lake City based Morgan Stanley Bank, N.A. (MSBNA).

MSPBNA has no branches or Automated Teller Machines (ATMs). The bank has no subsidiaries. MSPBNA's total assets as of December 31, 2018, were \$75 billion and net income was \$1 billion. Tier 1 Capital was approximately 10 percent at December 31, 2018; net loans and leases and total securities as a percentage of total assets were 74 percent and 17 percent, respectively. MSPBNA experienced significant growth during 2015, 2016, and 2017 of 26 percent, 22 percent, and 15 percent, respectively. MSPBNA ranked as the 7th largest bank in its defined assessment area by domestic deposits based on the Federal Deposit Insurance Corporation (FDIC) Deposit Market Share report dated June 30, 2018. MSPBNA's major competitors are other large United States (U.S.) banks, including, but not limited to: JP Morgan Chase, N.A., Goldman Sachs Bank USA, HSBC Bank USA, N.A., Citibank, N.A. and Bank of America, N.A.

The bank's deposit base is sweep deposits from the firm's wealth management clients' brokerage accounts and brokered deposits. MSPBNA has no foreign deposits. MSPBNA offers lending products primarily to customers of its affiliates and to Morgan Stanley's employees. MSPBNA has the following key lending businesses: residential mortgage, tailored lending, and liquidity access line.

Tailored lending provides credit through MSPBNA to ultra-high net worth clients of the firm, including individuals, trusts, foundations, not-for-profits, limited partnerships, or private corporations for a variety of purposes, including working capital and asset acquisitions. The portfolio includes Capital Call Subscription Facilities, Commercial Real Estate, Securities-Based Loans, and unsecured loan types. The Liquidity Access Line provides credit through MSPBNA to firm clients, including financial flexibility to borrow against eligible securities for multiple purposes (other than purchasing "margin stock"). Purposes include the purchase of real estate, tax obligations, education expenses, small business opportunities, debt consolidation, and unexpected expenses.

MSPBNA operates under a strategic plan for CRA purposes. The OCC approved the current strategic plan on May 22, 2014, which is in effect from July 1, 2014 through June 30, 2019. This plan covers the entire evaluation period of calendar years 2015, 2016, and 2017. MSPBNA did not merge or acquire other institutions during the CRA PE evaluation period that would impact its CRA rating. There are no known legal, financial or other factors that affect MSPBNA's ability to meet the credit and community development needs of its assessment area.

Per OCC regulation 12 CFR 25.27 (3)(f)(ii), a bank should address all three performance categories (lending, investment, and services) in its strategic plan, but the plan may emphasize different areas of

performance depending on the bank's performance context, including but not limited to capacity, products, and business strategy. Management allocated 80 percent of its community development dollars toward qualified investments and the remaining 20 percent to lending.

MSPBNA's previous CRA rating is Outstanding with an evaluation date of December 31, 2014.

MSPBNA has chosen to include the following activities from affiliates in this evaluation:

- Morgan Stanley & Co., LLC provides equity financing and philanthropic contributions to support LMI communities and neighborhood revitalization efforts;
- Morgan Stanley Bank, N.A. provides debt financing that supports affordable housing and LMI communities;
- Morgan Stanley Community Investments LLC, Morgan Stanley's community development corporation, provides debt financing to meet the needs of LMI geographies and individuals;
- MS Affordable Housing LLC provides CD investments, and;
- Morgan Stanley Foundation provides contributions and other philanthropic assistance to nonprofit organizations as a means to help strengthen local communities.

None of the aforementioned activities included in this CRA evaluation for consideration are included in any other affiliate of the bank for CRA purposes.

Community Contact Information

Prior to the start of MSPBNA's evaluation, OCC's community development personnel conducted a community contact to assess the credit needs of the bank's assessment area. The community contact identified affordable housing needs and economic development as opportunities for financial institutions to participate in community reinvestment.

Scope of the Evaluation

Evaluation Period/Products Evaluated

The OCC evaluates a financial institution's activities under the CRA based on information regarding:

- The institution and its capacity, constraints, business strategies, competitors, and peers; and
- The bank's community and its demographic and economic data, and lending, investment, and service opportunities.

The OCC evaluated MSPBNA's ability to meet community credit needs based on its business model, competitors, and CD opportunities within the assessment area and as outlined in MSPBNA's current strategic plan.

The evaluation period spans January 1, 2015, through December 31, 2017. MSPBNA's CRA evaluation goals are set forth in the strategic plan effective July 2014 through June 2019. The strategic plan establishes goals for both an Outstanding and Satisfactory rating.

Data Integrity

The OCC completed data integrity validation for 2015, 2016, and 2017, including documentation review of CD loans, investments, and services. CRA data is reliable. All loans, investments, and services tested qualified as community development. Management implemented satisfactory risk management and governance processes to ensure CD data accuracy.

Selection of Areas for Full-Scope Review

MSPBNA's only assessment area is located in New York State, and received a full-scope review.

Ratings

Areas receiving a full-scope review derive the bank's overall rating. MSPBNA overall performance and rating results from a full scope review of the single assessment area, located in New York State.

Discriminatory or Other Illegal Credit Practices Review

Pursuant to 12 C.F.R. §25.28(c) or §195.28(c), respectively, in determining a national bank's or federal savings association's (collectively, bank) CRA rating, the OCC considers evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. As part of this evaluation process, the OCC consults with other federal agencies with responsibility for compliance with the relevant laws and regulations, including the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and the Consumer Financial Protection Bureau, as applicable.

The OCC has not identified that this institution, or any affiliate whose loans have been considered as part of the institution's lending performance, has engaged in discriminatory or other illegal credit practices that require consideration in this evaluation.

The OCC will consider any information that this institution engaged in discriminatory or other illegal credit practices, identified by or provided to the OCC before the end of the institution's next performance evaluation in that subsequent evaluation, even if the information concerns activities that occurred during the evaluation period addressed in this performance evaluation.

State of New York

CRA RATING FOR NEW YORK STATE: Outstanding

- Lending performance is Outstanding.
- Investment performance is Outstanding.
- Service performance is Outstanding.

Please refer to comments under ***Overall CRA Rating*** beginning on page 2 for details.

Appendix A - Scope of Examination

SCOPE OF EXAMINATION: Strategic Plan	
TIME PERIOD REVIEWED:	Calendar years 2015, 2016, and 2017
FINANCIAL INSTITUTION: Morgan Stanley Private Bank, N.A. (MSPBNA)	PRODUCTS REVIEWED: Community Development Loans Community Development Investments/Grants Community Development Services
FINANCIAL INSTITUTION'S AFFILIATES: <ul style="list-style-type: none"> • Morgan Stanley & Co., LLC • Morgan Stanley Bank, N.A. • Morgan Stanley Community Investments LLC • MS Affordable Housing LLC • Morgan Stanley Foundation 	AFFILIATES PRODUCTS REVIEWED: Community Development Loans Community Development Investments/Grants Community Development Services
ASSESSMENT AREA: Counties within the New York-Jersey City-White Plains, NY-NJ Metropolitan Division (MD) of the New York-Newark- Jersey City, NY-NJ-PA Metropolitan Statistical Area (MSA): <ul style="list-style-type: none"> • Bronx County • Kings County (Brooklyn) • New York County (Manhattan) • Queens County • Richmond County (Staten Island) • Westchester County 	

Assessment Area Description

With only its headquarters considered as a branch within the CRA regulation, and a limited product set offered to Morgan Stanley customers and employees, MSPBNA is not a traditional large retail bank. MSPBNA has one assessment area: the six counties within the New York-Jersey City-White Plains, NY-NJ Metropolitan Division (MD) of the New York-Newark- Jersey City, NY-NJ-PA Metropolitan Statistical Area (MSA). The assessment area's six counties, all located within the state of New York, include the following:

- Bronx County
- Kings County (Brooklyn)
- New York County (Manhattan)
- Queens County
- Richmond County (Staten Island)
- Westchester County

The assessment area consists of whole geographies and meets the requirements of the CRA regulation. The assessment area reasonably reflects the trade area that the bank serves and does not arbitrarily exclude any low- or moderate-income (LMI) areas.

Bank competition is strong with most of the major U.S. banks present within the assessment area. There are a total of 120 banking organization within the assessment area with more than 2,000 branches, based on the FDIC deposit market share report for June 30, 2018.

Identification of Community Development Needs

MSPBNA chose a strategic plan in order to focus on community development lending, investments, and service opportunities that best meet the assessment area needs. MSPBNA maintains a network of community partnerships in its assessment area. This network enables bank management to understand the community needs and to develop and implement programs that can generate effective community impact throughout the assessment area. Bank management engages with a variety of community partners including the Morgan Stanley Community Development Advisory Board (MSCDAB) and with a number of other community-based organizations.

MSPBNA, in conjunction with its parent company, the firm, established MSCDAB. MSCDAB consists of nationally-recognized community development leaders. Its function is to help the bank better understand the needs of its communities and to serve as an informal think-tank for community development. Bank management is in frequent contact with individual board members to get updates on emerging community needs so it can initiate programs. MSCDAB meets formally at least twice a year, which allows it together with the bank to share ideas and expertise. Additionally, MSPBNA staff serve on the boards of directors and committees of numerous assessment area based organizations.

MSPBNA, through its partnerships, identified the following community development needs within its assessment area:

- Multifamily affordable rental housing, including:
 - Distressed multifamily affordable rental housing
 - Bond underwriting for state and municipal affordable housing

- Letters of credit for construction financing
- Assisting projects reaching year 15 of tax credit compliance
- Replacement housing to address Hurricane Sandy fallout
- Economic development, including:
 - Small business lending
 - Venture capital and private equity
 - Workforce development/job creation
 - Microfinance lending
 - Financial literacy
- Support Minority Depository Institution (MDIs) and Community Development Financial Institution (CDFIs)
- Grants to non-profit community development organizations

Support for Identified Community Development Needs

Demographic Data within Each Tract Category for MSPBNA assessment area

Housing Data Source: 2015 US Census	# of units	% of Owner Occupied	% Renter Occupied	% Vacant Units	Total Owner, renter and vacant	% Single Family Homes	% Multi- Family Homes	Total single and Multi Homes
Low Income Tracts	629,310	7.5%	85.5%	7.0%	100%	20.3%	79.4%	99.7%
Moderate Income Tracts	987,848	20.8%	70.8%	8.4%	100%	41.8%	58.0%	99.8%
Middle Income Tracts	902,562	41.3%	50.9%	7.8%	100%	60.0%	40.0%	100%
Upper Income Tracts	1,263,232	45.4%	43.6%	11.0%	100%	41.0%	59.0%	100%
NA	9,305	21.3%	66.8%	12.2%	100%	5.6%	94.4%	100%

Weighted average of FFIEC updated MSA median family income: \$78,000.

Weighted average of median year built: 1948.

Number of housing units where monthly owner costs > 30% of income: 12.1%

Number of housing units where monthly renter costs > 30% of income: 30.6%

Median housing values

Low-income tract	\$329,974
Moderate-income tract	\$433,347
Middle-income tract	\$468,168

Upper-income tract	\$759,962
NA	\$397,266
Overall assessment area	\$533,190

Median housing values reported are from 2015 census data, the latest available.

The demographic data provided above supports MSPBNA’s primary CD focus on multi-family affordable rental property. With the exception of upper-income tracts, rental units far exceed home ownership. Multi-family units represent a significant portion of housing units throughout the assessment area. The median housing cost in any income tract compared to the updated weighted MSA median family income of \$78,000 represents a financial challenge to first time home buyers. Further, approximately 30 percent of renters are paying 30 percent or more of their income for rent, indicating high rental cost in relation to income. Finally, the median year built for housing suggests an older housing universe.

MSPBNA’s assessment area has one of the highest concentrations of small businesses in the country, supporting the bank’s focus on economic development as a community development need.

MSPBNA’s support of MDIs and CDFIs helps meet already identified needs, especially housing for low-and moderate-income individuals and geographies, as well as promoting economic development.

Finally, MSPBNA identified that many non-profit CD organizations struggle to meet ever-growing needs, but are unable to find the resources to build or improve upon their own infrastructure. Many private and public funding sources support programs, but may not support non-profits, leaving them with outdated systems for Information Technology (IT), finance, and human resources. As a result, MS recognizes the need to provide grants to CD non-profits.

Public Exhibit 8

ETB CRA Evaluation



PUBLIC DISCLOSURE

October 21, 2019

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

E*TRADE Bank
Charter Number: 705848

Ballston Tower
671 North Glebe Road
Arlington, VA 22203

Office of the Comptroller of the Currency

Assistant Deputy Comptroller – Midsize Bank Supervision
400 7th Street SW, Suite 3E-218
Mail Stop 8E-11
Washington, DC 20219

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion, or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Table of Contents

Overall CRA Rating.....	1
Description of Institution.....	2
Scope of the Examination.....	3
Discriminatory or Other Illegal Credit Practices Review.....	4
Multistate Metropolitan Statistical Area Rating.....	5
(Washington-Arlington-Alexandria DC-VA-MD-WV).....	5
Appendix A: Summary of MMSA and State Ratings.....	A-1
Appendix B: Definitions and Common Abbreviations.....	B-1

Overall CRA Rating

Institution's CRA Rating: This institution is rated Outstanding.

The major factors that support this rating include:

- The institution demonstrates a high level of qualified investment activity and CD services.
- The institution demonstrates occasional use of innovative or complex qualified investments and CD services.
- The institution exhibits excellent responsiveness to CD needs in its assessment area.

Description of Institution

E*TRADE Bank (ETB or bank) is a \$50.4 billion financial institution headquartered in Arlington, Virginia. ETB is a subsidiary of E*TRADE Financial Corporation (ETFC), a financial services company that provides online investment products and brokerage services to primarily individual retail investors.

ETFC was founded in 1982 and became a publicly owned company in 1996. ETFC has seven operating subsidiaries: ETB; E*TRADE Securities, LLC, a registered broker-dealer; E*TRADE Community Development Corporation, which conducts CRA investment activities; E*TRADE Savings Bank, a federally chartered savings bank and subsidiary of ETB; E*TRADE Financial Corporate Services, a provider of software and services for managing equity compensation plans; E*TRADE Futures, LL, a registered non-clearing Futures Commission Merchant; and E*TRADE Capital Management, LLC, which provides investment advisory services.

ETB does not operate as a traditional bank and does not originate loans. ETB closed its only retail branch location in December 2016 and operates under a branchless business strategy. Deposits are only accepted through the mail or online. ETB offers a suite of brokerage, investing, and related banking products that are available only to E*TRADE brokerage customers. Retail banking products are offered online and include checking and savings accounts, online bill pay, and mobile banking.

ETB exited the mortgage lending business in July 2011 and did not originate any small business, small farm, consumer, or community development loans during the evaluation period. Lending activity is limited to loan modifications on the existing legacy portfolio of mortgage, home equity, and consumer products that were originated prior to 2011.

There are no known legal, financial, or other factors impeding the bank's ability to help meet the needs of its AAs. The bank received an Outstanding rating in its previous CRA evaluation, dated December 31, 2014.

Table 1: Financial Information (000s)

	Year-end 2015	Year-end 2016	Year-end 2017	Year-End 2018	Average for Evaluation Period
Tier 1 Capital	3,074,853	3,132,213	3,619,132	3,484,616	3,327,704
Total Income	604,683	886,996	1,117,563	1,422,888	1,008,033
Net Operating Income	86,069	398,675	360,261	541,980	346,746
Total Assets	33,359,802	35,772,782	48,838,799	50,410,469	42,095,463

Source: Consolidated Report of Condition and Income and bank reported data. **Annualized data reported.

Scope of the Examination

Evaluation Period/Products Evaluated

In evaluating ETB's performance under the CRA, we reviewed CD activities from January 1, 2015, through December 31, 2018. We reviewed the level and nature of qualified investments and CD services. At the prior examination dated December 31, 2014, we rated the bank Outstanding.

For purposes of this evaluation, bank delineated assessment areas located within the same metropolitan statistical area (MSA), multistate metropolitan statistical area (MMSA), or combined statistical area (CSA) are combined and evaluated as a single assessment area. Similarly, bank delineated non-MSA assessment areas within the same state are combined and evaluated as a single area.

Discriminatory or Other Illegal Credit Practices Review

Pursuant to 12 C.F.R. §25.28(c) or §195.28(c), respectively, in determining a national bank's or federal savings association's (collectively, bank) CRA rating, the OCC considers evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. As part of this evaluation process, the OCC consults with other federal agencies with responsibility for compliance with the relevant laws and regulations, including the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and the Consumer Financial Protection Bureau, as applicable.

The OCC has not identified that this institution has engaged in discriminatory or other illegal credit practices that require consideration in this evaluation.

The OCC will consider any information that this institution engaged in discriminatory or other illegal credit practices, identified by or provided to the OCC before the end of the institution's next performance evaluation in that subsequent evaluation, even if the information concerns activities that occurred during the evaluation period addressed in this performance evaluation.

Multistate Metropolitan Statistical Area Rating

Washington-Arlington-Alexandria, DC-VA-MD-WV MMSA (Washington MMSA)

CRA Rating for the Washington MMSA: Outstanding

The major factors that support this rating include:

- ETB demonstrates a high level of qualified investment and CD service activity in the Washington MMSA particularly investments that are not routinely provided by private investors.
- ETB demonstrates occasional use of innovative or complex qualified investments and CD services in the Washington MMSA. ETB exhibits excellent responsiveness to CD needs in the Washington MMSA.

Description of Washington MMSA

ETB has delineated two AAs, the Washington-Arlington-Alexandria, MD 47894 and the Silver Springs-Frederick-Rockville, MD 43524. Both reside within the greater Washington-Arlington-Alexandria, DC-VA-MD-WV MMSA 47900. MD 47894 consists of the District of Columbia and the counties of Arlington, Calvert, Charles, Clarke, Culpeper, Fairfax, Fauquier, Jefferson, Loudon, Prince George's, Prince William, Rappahannock, Spotsylvania, Stafford, and Warren, and the cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park. MD 43524 consists of the counties of Frederick and Montgomery. The AA consists of both urban and suburban areas, meets legal requirements, and does not arbitrarily exclude any low- or moderate-income geographies.

For the purposes of this evaluation, the two AAs are combined, analyzed, and presented as one AA, the Washington-Arlington-Alexandria MMSA 47900.

The AA consists of 1,358 geographies with a population of 1,302,884. Of the 1,358 geographies, 122 geographies or nine percent are classified as low-income, 338 geographies or 24.9 percent are classified as moderate-income, 482 geographies or 35.5 percent are classified as middle-income, 404 geographies or 29.8 percent are classified as upper-income, and 12 geographies or 0.9 percent have not been assigned an income classification.

The economy in the Washington MMSA is largely driven by the federal government, defense, and high technology. The area is characterized by a high per capita income and a highly educated workforce, as well as an above average cost of living and high business and regulatory costs. Currently, top employers in the region include the U. S. Navy and related services, MedStar Health, Marriott International, Inova Health System, SAIC Inc., and Booz Allen. The new development of Amazon's additional headquarters will energize the technology sector, boosting employment in the industry with 20,000 new high-wage jobs. In addition, the growth in jobs will generate spillover in retail and related services, healthcare, leisure/hospitality, and new housing-related and office space construction.

The economy in Frederick and Montgomery Counties, is largely driven by high technology and the federal government. Key industries include biotech, pharmaceuticals, and medical research. Similar to the Washington MSA this area has a high per capita income and highly educated workforce, but lower business costs. The economy stumbled a bit in 2018 due to the exodus of Discovery Communications

and additional layoffs in the federal government, information and consumer-reliant industries such as retail, hospitality, and construction. The home equity market has not fully recovered, but residential building has picked up in the past year due to strength in multifamily construction.

Table 2: Washington Multistate Metropolitan Statistical Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	1,358	9%	24.9%	35.5%	29.8%
Families	1,324,014	21.2%	17.6%	21.3%	40%
Businesses	509,912	4.1%	20.2%	35.8%	39.4%

Source: Demographic Data - 2015 American Community Survey, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding, 12 Census Tracts are not income categorized.

Five community contacts conducted in the AA were reviewed as part of this performance evaluation. Contacts included a community development financial institution focused on small business, two economic development organizations, a social services provider, and a housing counseling services agency. Several primary needs were identified for the Washington MMSA including affordable rental and permanent housing, access to transportation, career development, job training programs for youth, financial literacy, affordable medical and healthcare services, and access to credit and responsible small dollar credit products for small businesses.

ETB hosts a needs assessment in Arlington, VA to facilitate an open dialogue to address the community development needs of the region. Approximately 130 CD organizations have attended annually. Attending organizations represented affordable housing, local government, housing counseling, financial literacy, economic development, and the health and human services organizations. Topics for discussion have included suburban poverty, community partnerships, inequality, and the future of technology.

Conclusions About Performance

Summary

Overall, ETB’s CRA performance is Outstanding.

ETB has an excellent level of qualified investments, particularly those not provided by private investors, often in a leadership position. CD investment activity for the current evaluation period was 19.5 percent of average tier 1 capital. ETB exhibits excellent responsiveness to community development needs through hosting the annual community needs assessments. Specifically, creating a program to invest in the technological infrastructure of local CD organizations. This investment is recognized as innovative and highly impactful to the area.

ETB provides a relatively high level of CD services. CD services were effective and responsive in addressing community needs.

Qualified Investments

During the evaluation period, ETB made 260 investments and grants totaling \$505.8 million. Current period investments include 227 grants and donations totaling \$16.2 million, 13 investments in mortgage-backed securities (MBS) totaling \$365.3 million, and 20 other investments in low-income housing tax

credits (LIHTC) and small business investment corporations (SBIC) totaling \$124.3 million. Prior period investments consist of 10 MBSs totaling \$112.2 million. ETB has \$56.6 million in binding, unfunded, qualified investment commitments that primarily consist of SBIC investments.

Total investments including prior period are \$701.9 million and represent 20.1 percent of tier 1 capital as of December 31, 2018. The majority of the bank’s current and prior period investments focused on providing affordable housing, which is an identified need in the AA. Grants and donations were made to organizations that provide affordable housing, financial education, promoted economic development, revitalized and stabilized LMI census tracts, and other community service needs for LMI individuals and families.

Table 3b: Qualified Investment Activity (000s)

	Benefits AA**
Originated Investments	543,489
Originated Grants	16,239
Prior-Period Investments that Remain Outstanding	142,130
Total Qualified Investments	701,858
Unfunded Commitments*	5,448

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system. ** Investments included in the Benefits AA column are located in the AA or in the broader statewide or regional area that includes the AA.

Table 4b: Qualified Investment Percentages

	Benefits AA (%)*
Total Investments/Average Tier 1 Capital	21.1%
Total Investments/Average Total Income	69.6%

* Investments included in the Benefits AA column are located in the AA or in the broader statewide or regional area

Examples of qualified CD investment activity include:

- ETB partnered with a nonprofit organization technology provider to help support the infrastructure and technology development of other nonprofit organization ETB grantees. ETB granted \$800 thousand to the program during the evaluation period and has sponsored over 47 Washington area nonprofit organizations to undergo technology rehabilitation and consulting to help support their infrastructures that are critical to ongoing operations. The grantees in the program provide critical CD services to LMI individuals in the AA.
 - This innovative program was initially piloted in 2015 in response to feedback from a community needs assessment. Services offered to the nonprofit organizations include: data needs assessment and support, workstation and hardware upgrades, installation of enterprise level security software, Office 365 Mail and SharePoint migration, database consulting, and security consulting. This investment is considered both innovative and highly impactful to the AA.
- ETB has invested \$13 million in a SBIC that helped support job creation and retention. ETB’s investments funded 49 eligible SBA loans that helped to create and retain an estimated 768 jobs in the Washington AA.

- ETB invested in \$183.2 million in 13 syndicated LIHTCs funds during the evaluation period. The investments supported 3,237 individual LIHTC units through allocated projects within the bank's AA. All of the funds directly benefited the AA. LIHTC investments often involved complex investment structures and multiple stakeholders.

CD Services

ETB provides a relatively high level of CD services. CD services were effective and responsive in addressing community needs. ETB conducted or supported a significant number of CD services, consistent with its capacity and expertise to conduct specific activities. During the evaluation period, ETB employees provided over 3,460 hours of service to CD organizations that benefit LMI individuals and families in the AA. ETB partnered with local organizations that provide affordable housing, community services, and revitalization and stabilization in the AA.

Examples of qualified CD service activity include:

- ETB partnered with local nonprofit organizations to provide financial literacy classes targeted to youth in the Washington MMSA. ETB employees provided over 2,314 hours of financial education to more than 2000 LMI elementary and middle school students during the evaluation period.
- ETB employees hold several leadership positions on the Board of Directors of local nonprofit organizations that support affordable housing, community services to LMI individuals and families, and economic development. During the evaluation period, ETB employees provided 1,004 board service hours.

Appendix A: Summary of MMSA and State Ratings

RATINGS	E*TRADE Bank
Overall Bank:	Overall Bank Rating
E*TRADE Bank	Outstanding
State/MMSA Name	State/MMSA Rating
Washington MMSA	Outstanding

Appendix B: Definitions and Common Abbreviations

The following terms and abbreviations may be used in this performance evaluation, including the CRA tables. The definitions are intended to provide the reader with a general understanding of the terms, not a strict legal definition.

Affiliate: Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if the same company directly or indirectly controls both companies. For example, a bank subsidiary is controlled by the bank and is, therefore, an affiliate.

Aggregate Lending (Aggt.): The number of loans originated and purchased by all reporting lenders (HMDA or CRA) in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the assessment area.

Census Tract (CT): A small, relatively permanent statistical subdivision of a county delineated by a local committee of census data users for the purpose of presenting data. Census tracts nest within counties, and their boundaries normally follow visible features, but may follow legal geography boundaries and other non-visible features in some instances, Census tracts ideally contain about 4,000 people and 1,600 housing units.

Combined Statistical Area (CSA): A geographic entity consisting of two or more adjacent Core Based Statistical Areas with employment interchange measures of at least 15. An employment interchange measure is a measure of ties between two adjacent entities. The employment interchange measure is the sum of the percentage of workers living in the smaller entity who work in the larger entity and the percentage of employment in the smaller entity that is accounted for by workers who reside in the larger entity.

Community Development (CD): Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet Small Business Administration Development Company or Small Business Investment Company programs size eligibility standards or have gross annual revenues of \$1 million or less; or activities that revitalize or stabilize low- or moderate-income geographies, distressed or underserved nonmetropolitan middle-income geographies, or designated disaster areas.

Community Reinvestment Act (CRA): The statute that requires the OCC to evaluate a bank's record of meeting the credit needs of its entire community, including LMI areas, consistent with the safe and sound operation of the bank, and to take this record into account when evaluating certain corporate applications filed by the bank.

Consumer Loan(s): A loan(s) to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. This definition includes the following categories: motor vehicle loans, credit card loans, other secured consumer loans, and other unsecured consumer loans.

Family: Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family, which is further classified into ‘male householder’ (a family with a male householder’ and no wife present) or ‘female householder’ (a family with a female householder and no husband present).

Full-Scope Review: Performance under the Lending, Investment, and Service Tests is analyzed considering performance context, quantitative factors (e.g., geographic distribution, borrower distribution, and total number and dollar amount of investments), and qualitative factors (e.g., innovativeness, complexity, and responsiveness).

Geography: A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act (HMDA): The statute that requires certain mortgage lenders that conduct business or have banking offices in a metropolitan statistical area to file annual summary reports of their mortgage lending activity. The reports include such data as the race, gender, and the income of applicants, the amount of loan requested, the disposition of the application (e.g., approved, denied, and withdrawn), the lien status of the collateral, any requests for preapproval, and loans for manufactured housing.

Home Mortgage Loans: A closed-end mortgage loan or an open-end line of credit as these terms are defined under §1003.2 of this title, and that is not an excluded transaction under §1003.3(c)(1) through (10) and (13) of this title.

Household: Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

Limited-Scope Review: Performance under the Lending, Investment, and Service Tests is analyzed using only quantitative factors (e.g., geographic distribution, borrower distribution, total number and dollar amount of investments, and branch distribution).

Low-Income Individual: Individual income that is less than 50 percent of the area median income.

Low Income Geography: A census tract with a median family income that is less than 50 percent.

Market Share: The number of loans originated and purchased by the institution as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the assessment area.

Median Family Income (MFI): The median income determined by the U. S. Census Bureau every five years and used to determine the income level category of geographies. The median is the point at which half of the families have income above, and half below, a range of incomes. Also, the median income determined by the Federal Financial Institutions Examination Council (FFIEC) annually that is used to determine the income level category of individuals. For any given area, the median is the point at which half of the families have income above, and half below, a range of incomes.

Metropolitan Division: As defined by Office of Management and Budget, a county or group of counties within a Core Based Statistical Area that contains an urbanized population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main/secondary county or counties through commuting ties.

Metropolitan Statistical Area: An area, defined by the Office of Management and Budget, as a core based statistical area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Middle-Income: Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent, in the case of a geography.

Moderate-Income: Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent, in the case of a geography.

Multifamily: Refers to a residential structure that contains five or more units.

Owner-Occupied Units: Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

Qualified Investment: A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose CD.

Rating Area: A rated area is a state or multi-state metropolitan statistical area. For an institution with domestic branches in only one state, the institution's CRA rating would be the state rating. If an institution maintains domestic branches in more than one state, the institution will receive a rating for each state in which those branches are located. If an institution maintains domestic branches in two or more states within a multi-state metropolitan statistical area, the institution will receive a rating for the multi-state metropolitan statistical area.

Small Loan(s) to Business(es): A loan included in 'loans to small businesses' as defined in the Consolidated Report of Condition and Income (Call Report) instructions. These loans have original amounts of \$1 million or less and typically are either secured by nonfarm or nonresidential real estate or are classified as commercial and industrial loans.

Small Loan(s) to Farm(s): A loan included in 'loans to small farms' as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of \$500,000 or less and are either secured by farmland or are classified as loans to finance agricultural production and other loans to farmers.

Tier 1 Capital: The total of common shareholders' equity, perpetual preferred shareholders' equity with non-cumulative dividends, retained earnings and minority interests in the equity accounts of consolidated subsidiaries.

Upper-Income: Individual income that is at least 120 percent of the area median income, or a median family income that is at least 120 percent, in the case of a geography.

Public Exhibit 9

ETSB CRA Performance Evaluation



PUBLIC DISCLOSURE

December 31, 2014

**COMMUNITY REINVESTMENT ACT
PERFORMANCE EVALUATION**

E*TRADE Savings Bank

Charter Number: 718000

**Ballston Tower
671 North Glebe Road
Arlington, VA 22203**

Office of the Comptroller of the Currency

**Large Bank Supervision
400 7th Street SW
Washington, DC 20219**

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion, or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Table of Contents

GENERAL INFORMATION	3
INSTITUTION'S CRA RATING.....	4
SCOPE OF THE EXAMINATION.....	4
DESCRIPTION OF INSTITUTION	5
DESCRIPTION OF ASSESSMENT AREAS	7
STATE OF ARIZONA	10
STATE OF CALIFORNIA.....	13
STATE OF COLORADO.....	22
STATE OF FLORIDA.....	26
STATE OF GEORGIA.....	31
STATE OF ILLINOIS.....	34
STATE OF MICHIGAN	37
STATE OF MINNESOTA	40
STATE OF NEW YORK.....	43
STATE OF OREGON	48
STATE OF PENNSYLVANIA.....	51
STATE OF TEXAS.....	54
DISTRICT OF COLUMBIA.....	58
FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW	65
APPENDIX A: SUMMARY OF STATE RATINGS.....	66
APPENDIX B: SCOPE OF EXAMINATION	67
DEFINITIONS AND COMMON ABBREVIATIONS	69

GENERAL INFORMATION

The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority, when evaluating financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.

This document is an evaluation of the CRA performance of E*TRADE Savings Bank issued by the Office of the Comptroller of the Currency (OCC), the institution's supervisory agency, for the evaluation period January 1, 2013 through December 31, 2014. The OCC rates the CRA performance of a national bank or a Federal savings association consistent with the provisions set forth in appendix A to 12 CFR 25, or 12 CFR 195, respectively.

INSTITUTION'S CRA RATING

This institution is rated Satisfactory.

The conclusions for the three rating criteria are:

- The bank demonstrates an overall adequate level of community development activities. The levels of qualified investments and community development services are adequate.
- Qualified investments including grants totaled \$72.1 million. Of the amount, \$44.2 million is attributed to the District of Columbia assessment area. As of December 31, 2014, this represents 22 percent of Tier 1 Capital. The remaining \$27.9 million is attributed to all other assessments areas not including the District of Columbia. As of September 30, 2013, the total of qualified investments including grants in all other assessment areas represents 15 percent of Tier 1 Capital. These levels of qualified investments support the institution's CRA rating given the evaluation periods for assessments areas.
- Mortgage-backed security: The totals and percentages immediately above include a current period investment in a mortgage-backed security totaling \$1.4 million. This investment is backed by 17 affordable single-family homes financed across seven states in which the bank has designated assessment areas. The assessment areas are as follows: Phoenix-Mesa-Scottsdale, AZ; San Diego-Carlsbad, CA; Fort Lauderdale-Pompano Beach-Deerfield Beach, FL; Tampa-St. Petersburg-Clearwater, FL; Atlanta-Sandy Springs-Roswell, GA; Warren-Troy-Farmington Hills, MI; Nassau-Suffolk, NY; Portland-Vancouver-Hillsboro, OR-WA. The investment benefited a number of assessment areas and is considered in determining the individual state ratings. While neither innovative nor complex, the investment displays adequate responsiveness as it meets the financing need for permanent single-family housing for low- and moderate-income individuals.
- The level of community development services is high in the District of Columbia, and in New York. The remaining assessment areas reflected adequate, poor or very poor levels of community development services. In formulating our overall conclusion, we considered the fact that most assessment areas had only one branch with few employees available to provide community development services.
- The bank demonstrates no use of innovative or complex community development activities.
- Given the bank's qualified investments and community development services, the bank overall demonstrates adequate responsiveness to community development needs in its assessment areas.

SCOPE OF THE EXAMINATION

The Office of the Comptroller of the Currency (OCC) assessed E*TRADE Saving Bank ("ETSB") and reviewed the level and nature of qualified investments and community development services. At the bank's request, we considered qualified investments, community

development services provided by its affiliates, and community development activities outside of its assessment areas. ETSB has adequately addressed the needs in its assessment areas, and therefore, the OCC considered outside of assessment area qualified community development activities in evaluating the bank's performance. At the prior examination dated December 31, 2012, the OCC rated the bank "Needs to Improve."

On October 17, 2012, ETSB was approved for a Wholesale designation starting January 1, 2013. For the purpose of this evaluation, ETSB is considered a Wholesale institution.

Evaluation Period/Products Evaluated

The bank's performance within its assessment areas in Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New York, Oregon, Pennsylvania, and Texas was evaluated starting January 1, 2013 and ending on September 30, 2013, when branch offices closed for banking purposes in those states. As of October 1, 2013, the bank's assessment areas consist solely of two metropolitan divisions within the Washington-Alexandria-Arlington DC-VA-MD-WV metropolitan statistical area. The OCC evaluated the two metropolitan divisions starting January 1, 2013, and ending December 31, 2014.

The OCC evaluation included designating some assessment areas as "full scope" and some as "limited scope." Examiners conducted a thorough analysis of all community development activities in full-scope assessment areas. The OCC does not comment about community development services for limited-scope areas within this Public Disclosure. See **Appendix B – Scope of Examination** for more details.

Examiners evaluated qualified investments using September 30, 2013, or the average of year-end 2013 and 2014 Tier 1 Capital and Total Income to gauge the bank's capacity to meet credit needs and to assess its performance. Refer to **Table 1: Financial Information** to view those amounts.

Examiners evaluated the bank's record of providing community development services to determine if they were responsive to the needs of the assessment areas. Services that addressed the needs of the assessment areas, specifically the needs of low- and moderate-income populations, and that reflected ongoing relationships with organizations involved in community development received the most consideration in the evaluation. The bank did not make any community development loans during the evaluation period.

Previously, the OCC tested the appropriateness of community development activities presented for consideration in the evaluation. This included the testing of investments and services presented for consideration for their accuracy in amount and location, and to determine if they qualify as community development as defined under the CRA. The OCC determined the data provided is accurate.

DESCRIPTION OF INSTITUTION

ETSB is a federally chartered savings bank headquartered in Arlington, Virginia. ETSB operates

to provide E*TRADE Securities' brokerage clients the sweep deposit account program. ETSB's deposits consist of sweep accounts where excess funds of E*TRADE Securities customers flow. ETSB does not have bank customer deposits. ETSB is a wholly owned subsidiary of E*TRADE Bank (ETB). ETB is a second tier subsidiary of E*TRADE Financial Corporation (ETFC), a financial services company that provides online brokerage and related products and services primarily to individual, retail investors.

As of December 31, 2014, total assets were \$1.1 billion. ETSB does not offer or accept retail deposit accounts other than sweep deposits. Although it retains some legacy mortgage loans in its portfolio and engages in loan modifications, ETSB did not originate any residential mortgage, small business, small farm, commercial, or community development loans during the evaluation period. ETSB's specialized market and product offerings are more consistent with on-line and broker-dealer related financial institutions, and ETSB's principal peers are financial institutions that offer similar products and services.

During the first nine months of 2013, ETSB operated 26 branches. Each branch was licensed as a full-service branch and were co-located in E*TRADE Financial Service Centers. The Financial Service Centers were located in the states of Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New York, Oregon, Pennsylvania, Texas and District of Columbia. Although designated as branches, ETSB did not offer traditional retail banking services or products through those locations. The locations operated only nominally as ETSB branches; deposits were exclusively non-cash deposits of E*TRADE brokerage customers; and deposits were initially allocated entirely to ETB.

On June 20, 2013, ETSB notified this Office of its intent to close its branch offices located inside E*TRADE financial centers effective September 30, 2013. The E*TRADE financial centers remain open but would no longer offer banking services.

Banking services offered through ETB, located in Arlington, VA, are provided to E*TRADE brokerage customers who can avail themselves of these services online or through ETFC's network of customer service representatives, investment professionals, and investment advisors. Specific retail banking offerings are available online and include checking accounts with unlimited ATM fee refunds, free online bill pay, and comprehensive mobile banking tools. ETB's deposits are allocated to ETSB through sweep accounts to maximize deposit insurance coverage, and for purposes of this evaluation.

ETFC, headquartered in New York, was founded in 1982. At December 31, 2014, total assets were \$45.5 billion, and shareholder equity \$5.3 billion. ETFC operates a bank and a savings bank with the primary purpose of maximizing the value of deposits generated through its brokerage business and the amount of federal deposit insurance coverage for those deposits. ETFC has four major operating subsidiaries: E*TRADE Securities, LLC, a registered broker-dealer; E*TRADE Clearing, LLC, a registered broker-dealer engaged primarily in clearings and settlement; E*TRADE Community Development Corporation, organized to conduct CRA investment activities for ETB and ETSB; a federally chartered savings bank.

During the evaluation period, ETSB faced no legal, financial or other factors impeding its

ability to help meet the community development needs in its assessment areas. The bank is subject to various legal proceedings and claims arising out of the normal course of business with no material adverse effect expected. There was no merger and acquisition activity affecting the scope of the bank's operations during the evaluation period. Financial information, shown in **Table 1**, reflects ETSB's financial capacity to help meet the community development needs of its assessment areas.

Table 1: Financial Information \$(000)

	Quarter-End 9/30/2013*	Calendar Year-End 2013	Calendar Year-End 2014	Average for Evaluation Period**
Tier 1 Capital	\$185,214	\$191,102	\$203,283	\$197,192
Total Income	\$21,293	\$27,437	\$22,355	\$24,896
Net Operating Income	\$9,669	\$11,534	\$7,976	\$9,755
Total Assets	\$1,087,160	\$1,102,216	\$1,135,134	\$1,118,675

Source: Consolidated Report of Condition and Income and bank reported data.

* Annualized data reported

** Average of calendar years-ending 2013 and 2014

DESCRIPTION OF ASSESSMENT AREAS

ETSB's assessment area consists of two metropolitan divisions in the Washington-Arlington-Alexandria, DC-MD-VA-WV Metropolitan Statistical Area (#47900). The metropolitan divisions that are collectively known as District of Columbia are Silver Spring-Frederick-Rockville, MD (#43524), and Washington-Arlington-Alexandria, DC-VA-MD-WV (#47894).

Between January 1, 2013 and September 30, 2013, ETSB had additional assessment areas in the states of Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New York, Oregon, Pennsylvania, and Texas. The specific metropolitan areas within those states are listed in **Appendix B – List of Assessment Areas, Types of Review, Evaluation Periods**.

ETSB is an operating subsidiary of ETB. The FDIC reported as of June 30, 2013, deposits totaling \$0 (zero) in ETSB's branches. Non-cash deposits are accepted in ETSB branches from ETB and brokerage customers. For the purpose of this evaluation, \$2.5 billion of ETB's deposits were allocated to ETSB as of September 30, 2013. The deposits allocated to ETSB's assessment areas are based on where deposits were derived. The allocation of deposits was used to further distribute Tier 1 Capital and Total Income to each state and assessment area. This allocation does not apply to the District of Columbia. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area**.

Table 2a: Allocation of Deposits by State

State/Multistate	AA in State 1/1/2013 through 9/30/2013	Deposits Allocated by Dollar 9/30/2013*	% of Deposits Allocated 9/30/2013*	Allocated Tier 1 Capital	Allocated Total Income
Arizona	X	\$ 52,151,618	2%	\$ 3,830,921	\$ 440,419
California	X	\$ 1,265,884,219	50%	\$ 92,988,530	\$ 10,690,362
Colorado	X	\$ 53,744,986	2%	\$ 3,947,966	\$ 453,875
Florida	X	\$ 93,859,799	4%	\$ 6,894,694	\$ 792,644
Georgia	X	\$ 80,816,785	3%	\$ 5,936,589	\$ 682,496
Illinois	X	\$ 142,843,936	6%	\$ 10,492,940	\$ 1,206,314
Michigan	X	\$ 1,864,882	-	\$ 136,989	\$ 15,749
Minnesota	X	\$ 32,214,018	1%	\$ 2,366,357	\$ 272,047
New York	X	\$ 329,387,783	13%	\$ 24,195,961	\$ 2,781,672
Oregon	X	\$ 90,066,463	4%	\$ 6,616,046	\$ 760,609
Pennsylvania	X	\$ 24,549,700	1%	\$ 1,803,357	\$ 207,322
Texas	X	\$ 306,574,593	12%	\$ 22,520,164	\$ 2,589,015

AA – Assessment Area

* - Based on ETB's deposits derived from that state/multistate

For the District of Columbia, we used an average of calendar year-end 2013 and calendar year-end 2014 financial information to conduct our analysis. Refer to **Table 1: Financial Information** above.

Table 2b: Allocation of Deposits by Assessment Area

Assessment Area	% of Deposits Allocated 9/30/2013*	Allocated Tier 1 Capital	Allocated Total Income
State of Arizona:			
Phoenix-Mesa-Scottsdale, AZ	2%	\$ 3,830,921	\$ 440,419
State of California:			
Anaheim-Santa Ana-Irvine	0.4%	\$ 793,698	\$ 91,247
Los Angeles-Long Beach-Glendale	5%	\$ 8,789,715	\$ 1,010,504
Sacramento-Roseville-Arden Arcade	1%	\$ 1,726,009	\$ 198,429
San Diego-Carlsbad	13%	\$ 23,883,048	\$ 2,745,698
San Francisco-Redwood City-South San Francisco	13%	\$ 24,349,851	\$ 2,799,364
San Jose-Sunnyvale-Santa Clara	18%	\$ 33,446,208	\$ 3,845,120
State of Colorado:			
Denver-Aurora-Lakewood	2%	\$ 3,947,966	\$ 453,875
State of Florida:			
Fort Lauderdale-Pompano Beach- Deerfield Beach	1%	\$ 1,651,743	\$ 189,891
Orlando-Kissimmee-Sanford	1%	\$ 2,583,206	\$ 296,976
Tampa-St. Petersburg-Clearwater	2%	\$ 2,659,746	\$ 305,776
State of Georgia:			
Atlanta-Sandy Springs-Roswell	3%	\$ 5,936,589	\$ 682,496
State of Illinois:			
Chicago-Naperville-Arlington Heights	6%	\$ 10,492,940	\$ 1,206,314
State of Michigan:			
Warren-Troy-Farmington Hills	0.07%	\$ 136,989	\$ 15,749
State of Minnesota:			
Minneapolis-St. Paul-Bloomington, MN-WI	1%	\$ 2,366,357	\$ 272,047
State of New York:			
Nassau-Suffolk, NY	0.01%	\$ 27,054	\$ 3,110
New York-Jersey City-White Plains, NY-NJ	13%	\$ 24,168,908	\$ 2,778,562
State of Oregon:			
Portland-Vancouver-Hillsboro, OR-WA	4%	\$ 6,616,046	\$ 760,609
State of Pennsylvania:			
Philadelphia	1%	\$ 1,803,357	\$ 207,322
State of Texas:			
Dallas-Plano-Irving	4%	\$ 6,671,805	\$ 767,019
Houston-The Woodlands-Sugar Land	8%	\$ 15,848,360	\$ 1,821,996

* - Based on ETB's deposits derived from that assessment area; Rounded

** - District of Columbia is not allocated

STATE OF ARIZONA

STATE OF ARIZONA RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has a poor level of qualified investments given the short nine-month evaluation period. There is a poor level of community development services considering the bank's operations in the state of Arizona.
- One unallocated qualified mortgage backed security benefited a number of assessment areas and state ratings. We considered a portion of this investment in the state of Arizona.
- Community development activities are not innovative or complex.
- Community development activities exhibit poor responsiveness to the community development needs given the nine-month evaluation period.

Description of Institution's Operations in the State of Arizona

ETSB operated one branch in an upper-income geography in the Phoenix-Mesa-Scottsdale metropolitan statistical area. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Arizona branch. Deposits are accepted by ETSB on behalf of ETB customers. We allocated 2 percent of ETB's deposits to the state of Arizona to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Phoenix-Mesa-Scottsdale metropolitan statistical area (#38060). The assessment area includes Maricopa County and Pinal County. Principal cities include Mesa, Phoenix and Tempe. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The area is primarily urban with some suburban and rural areas. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 991 geographies for families and businesses by income level:

Table 3: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	991	9%	25%	34%	31%
Families	1,000,063	21.18%*	18%*	20%*	41%*
Businesses	418,413	6.33%**	16%**	31%**	47%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. Ten (10) census tracts are not income categorized.

The assessment area has a population of 4,192,887 according to 2010 census data. The U.S. Department of Housing and Urban Development’s (HUD) adjusted median family income for 2013 is \$62,200, and households living below the poverty level are 12 percent. As of December 31, 2013, the unemployment rate is 4 percent.

Phoenix is the largest city in Arizona and sixth largest in the country. Phoenix and most of the southern portion of the state were severely impacted by the housing crisis. Property values decreased drastically over the past several years. The area is now recovering, but property values remain low in comparison to other western states. The low values led to an influx of investors purchasing large numbers of properties in low- and moderate-income areas. A rising multifamily housing sector is in process with job gains in the healthcare and services areas. While Phoenix has a large employment corridor, affordable housing is available outside the city, which requires long commutes to jobs in the city.

Major industries include state and local government, employment services, food-serving establishments and medical and surgical hospitals. The top employers in the area are Wal-Mart Stores, Inc., Banner Health System, Intel Corporation, US Airways, Boeing Company and American Express. The area has a number of national, regional, and local financial institutions. However, Arizona lost a substantial number of financial institutions during the recession.

Outreach meetings conducted by this Office identified community development needs as follows: home loans; affordable housing including rental housing; financing for affordable housing for individuals and families; mortgage assistant grants for low- and moderate-income families to purchase a home; financing for mixed-use properties; small business financing and technical assistance; small business loans to help revitalize distressed areas; more neighborhood stabilization-type financing for nonprofit organizations to enable them to purchase properties for rehabilitation and eventual sale to low- and moderate-income families; and better handling of foreclosure properties by the larger banks and servicers as their inattention has resulted in blight in many neighborhoods. Another need is financial literacy for students.

Nonprofit organizations are in financial distress and are in need of grants to meet general operating expenses. Given the housing crisis, there is a need for financial support of housing counseling agencies.

There are multiple opportunities for banks to lend and provide services in the area, especially

through partnerships with community development-related organizations with a presence in the assessment area. Opportunities also exist for investments in loan pools.

Qualified Investments

The bank has few qualified investments. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 4a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 4b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	5%
Total Investments/Allocated Total Income	41%

Community Development Services

Five employees facilitated a workshop on investments as part of a stock market game program at a Phoenix high school offered by the Arizona Council on Economic Education. The majority of the students at the school are from low- and moderate-income families.

STATE OF CALIFORNIA

STATE OF CALIFORNIA RATING: Satisfactory

Summary Conclusions About Performance

- The bank has an overall high level of qualified investments given the short nine-month evaluation period. There are seven current and prior period investments in the state of California totaling \$10.7 million. The volume of investments represents 12 percent of allocated Tier 1 Capital, and 100 percent of allocated Total Income. There is stronger performance by level of qualified investments in the San Francisco-Redwood City-South San Francisco, Los Angeles-Long Beach-Glendale and Sacramento-Roseville-Arden-Arcade assessment areas. Weaker performance is noted in the remaining assessment areas. There is a poor level of community development services given the bank's operations in the state of California.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of California.
- Community development activities are not innovative or complex.
- Community development activities overall exhibit adequate responsiveness to the needs of affordable housing, support for small businesses, and financial literacy. Prior period investments make up 82 percent of total investments in the state of California. While there is continuing impact from those investments, current period investments receive more weighting and emphasis in formulating our conclusions.

Description of Institution's Operations in the State of California

ETSB operated eight branches within this state in the following metropolitan areas: two branches in Los Angeles-Long Beach-Glendale metropolitan division; one branch in Sacramento-Roseville-Arden-Arcade metropolitan statistical area; one branch in San Francisco-Redwood City-South San Francisco metropolitan division; two branches in San Jose-Sunnyvale-Santa Clara metropolitan statistical area; one branch in San Diego-Carlsbad metropolitan statistical area; and one branch in Anaheim-Santa Ana-Irvine metropolitan division.

As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's California branches. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. Fifty percent of ETB's deposits were allocated to the state of California to assess community development performance based on where deposits were derived. Fifty percent consists of the following: San Francisco-Redwood City-South San Francisco metropolitan division 13 percent; San Jose-Sunnyvale-Santa Clara metropolitan statistical area 18 percent; Anaheim-Santa Ana-Irvine metropolitan division less than 1/2 percent; Los Angeles-Long Beach-Glendale metropolitan division 5 percent; Sacramento-Roseville-Arden metropolitan statistical area 1 percent; and San Diego-Carlsbad metropolitan statistical area 13 percent. See

Table 2a - Allocation of Deposits by State and Table 2b - Allocation of Deposits by Assessment Area to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, all branch offices in California closed for banking purposes.

Description of Assessment Area

There are six assessment areas within the state of California: Los Angeles-Long Beach-Glendale metropolitan division (#31084); Sacramento-Roseville-Arden-Arcade metropolitan statistical area (#40900); San Francisco-Redwood City-South San Francisco metropolitan division (#41884); San Jose-Sunnyvale-Santa Clara metropolitan statistical area (#41940); San Diego-Carlsbad metropolitan statistical area (#41740); and the Anaheim-Santa Ana-Irving metropolitan division (#11244). The areas are primarily urban with suburban and limited rural areas. The assessment areas meet the regulatory requirements and do not arbitrarily exclude low- and moderate-income geographies. The assessment areas existed through September 30, 2013. For analysis purposes, we completed full-scope reviews for the San Francisco-Redwood City-South San Francisco metropolitan division and the San Jose-Sunnyvale-Santa Clara metropolitan statistical area. These two assessment areas were reviewed due to the vast opportunities available for financial institutions to help meet community development needs of those areas. All other assessment areas received a limited-scope review.

San Francisco-Redwood City-South San Francisco, CA - Full-Scope Assessment Area

The bank’s assessment area includes the San Francisco-Redwood City-South San Francisco metropolitan division, which is part of the greater San Francisco-Oakland Haywood metropolitan statistical area. The assessment area includes the counties of San Francisco and San Mateo. Principal cities include San Francisco, Redwood City, and South San Francisco, which are primarily urban. The assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area’s 411 geographies of families and business by income level:

Table 5: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	411	11%	18%	35%	33%
Families	385,087	24%*	16%*	19%*	41%*
Businesses	210,494	16%**	13%**	31%**	40%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. Seven (7) Census Tracts are not income categorized.

The assessment area has a population of 1,776,095 according to 2010 census data. The HUD adjusted median family income in 2013 is \$101,200 and households living below the poverty level stood at 9 percent. As of December 31, 2013, the unemployment rate is 4 percent.

According to Moody’s Analytics, the San Francisco Bay area’s labor and housing costs are

growing strongly. Housing shortages are driving prices higher, and single-family house prices are up 70 percent since 2012, compared with 30 percent nationwide. The unemployment rate is lower, the labor participation rate has risen, and San Francisco's economy is among the strongest large metropolitan areas in the country.¹

After state and local government, the area's leading industries are travel services and restaurants, computer systems design and related services, and general medical and surgical hospitals. Major employers include the University of California-San Francisco, Stanford University, University of San Francisco, California Pacific Medical School, PG&E Corporation, Wells Fargo Bank, N.A., and Kaiser Permanente.

Outreach meetings conducted by this Office identified the following community development needs in the San Francisco area: affordable housing; small business loans; financial counseling; financial educations for students; support of nonprofit organizations addressing homeownership preservation; support for foreclosure prevention and mitigation; financing and other support for the disposition of foreclosed properties; support for programs that help create jobs; technical assistance to small businesses; small business access to credit including funding for start-up businesses; business loans less than \$250,000; and, bank financing under \$1,000,000 without Small Business Administration support. Outreach activities also identified that financial institutions are not consistently involved in community development activities.

Opportunities exist for financial institutions to provide grants to nonprofit organizations for operational challenges, low- or no-cost banking products to low-income persons, more consistent and timely activities regarding home loan application refinancing and loan modification requests, and to refinance or provide funding to rehabilitate two- to fifty-unit multifamily projects.

There are numerous opportunities for financial institutions to become involved in activities given the numerous community development-related entities and philanthropic entities that provide assistance to organizations throughout northern California including the San Francisco area. Twenty-two community development financial institutions (CDFI) serve the area, including several federally regulated and insured depositories, and several accomplished nonprofit housing-related CDFIs. Many nonprofit organizations develop commercial real estate and affordable housing, provide financial education, prepare low- and moderate-income persons to become homebuyers, provide assistance to small business owners and provide many social services targeted to low- and moderate-income populations. Among the community development organizations in San Francisco are a community land trust, two affiliates of NeighborWorks America, an affiliate of the Local Initiatives Support Corporation, and several organizations that promote micro business development. In addition, federal, state, and local governments have identified multiple areas for redevelopment with designations such as empowerment and enterprise zones and brownfield redevelopment sites.

San Jose-Sunnyvale-Santa Clara, CA – Full-Scope Assessment Area

The assessment area includes the San Jose-Sunnyvale-Santa Clara metropolitan statistical area. It

¹ Source: Moody's Analytics

includes the counties of San Benito and Santa Clara. Principal cities included Cupertino, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara, and Sunnyvale, which are primarily suburban areas. The assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area’s 383 geographies of families and business by income level:

Table 6: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	383	9%	23%	37%	29%
Families	434,720	24%*	16%*	19%*	41%*
Businesses	171,057	6%**	22%**	35%**	37%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. One (1) census tract is not income categorized.

The assessment area has a population of 1,836,911 according to 2010 census data. The HUD adjusted median family income for 2013 is \$101,300, and households living below the poverty level stood at 8 percent. As of December 31, 2013, the unemployment rate was 5 percent.

According to Moody’s Analytics, the area is among the fastest growing metropolitan areas in the country. The health care and technology sectors sustain the area’s economy. The unemployment rate has declined from prior years from a high of 11 percent in 2010 to 6 percent at year-end 2013. Wage growth is above the national average. The local technology industry is supporting many high and mid-wage jobs, of which wages are increasing more than twice the national average. Home prices have doubled over the past several years because of increasing demand. Major employers include Apple, Inc., Cisco Systems, Inc., Kaiser Permanente, and Stanford University.²

Outreach meetings conducted by this Office during the evaluation period identified affordable housing as the greatest need. Other needs include: small business loans; financial counseling; support of nonprofit organizations addressing homeownership preservation; support for foreclosure prevention and mitigation; financing and other support for the disposition of foreclosed properties; support for programs that help create jobs; technical assistance to small businesses; funding for start-up small businesses; business loans less than \$250,000; and, bank financing under \$1,000,000 without Small Business Administration support.

Opportunities for financial institutions include collaborating with several active CDFIs and community development-related corporations in the area. The primary focus of the organizations are economic development with an emphasis on micro-lending, technical assistance for small businesses, building the capacity of community organizations, supplying grants and technical assistance to nonprofit organizations seeking permanent facilities, and building public awareness of community investment opportunities. There are also affordable housing-related organizations

² Source: Moody’s Analytics

with which financial institutions can partner to help meet community development needs.

Qualified Investments

The bank has an overall high level of qualified investments in the state of California. Performance was especially strong in the San Francisco-Redwood City-South San Francisco and the Sacramento-Roseville-Arden-Arcade assessment areas. This strong performance supported the overall rating and conclusion even as the remaining assessment areas displayed weaker performance. There are seven current and prior period investments in the state of California totaling \$10.5 million. The overall level of investments represents 12 percent of allocated Tier 1 Capital, and 100 percent of allocated Total Income. All qualified investments, including prior period, in the state of California are responsive to the need of affordable rental housing and small business capital.

San Francisco-Redwood City-South San Francisco, CA – Full-Scope Assessment Area

In a prior period, the bank invested in a statewide municipal finance authority bond series, which funded affordable housing projects to serve very low and low- and moderate-income residents in six projects in San Francisco or surrounding cities. Two other prior period investments served parts of California including the assessment area. One investment is in a fund that provides venture capital, and supports job creation and retention to small businesses in the assessment area. In the table below, the amount outside the assessment area represents a 50 percent allocated amount in the same fund targeted to the near-by Oakland-Haywood-Berkeley metropolitan division, which is part of the greater San Francisco-Oakland-Hayward metropolitan statistical area. The prior period investment remains responsive as the fund makes ongoing investments in mid- to late-stage small businesses, which provides job creation and retention. The remaining investment is in a small business investment company (SBIC) which finances small businesses. The investment continues to address the identified need of providing small business loans.

Table 7a: Qualified Investment Activity \$(000s)

	Benefits AA	Outside AA	Totals
Originated Investments			
Originated Grants			
Prior-Period Investments that Remain Outstanding	\$7,613	\$148	\$7,761
Total Qualified Investments	\$7,613	\$148	\$7,761
Unfunded Commitments*			

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 7b: Qualified Investment Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total Investments/Allocated Tier 1 Capital	31%	1%	32%
Total Investments/Allocated Total Income	272%	5%	277%

San Jose-Sunnyvale-Santa Clara, CA - Full-Scope Assessment Area

One prior period investment is a fund that provides venture capital, and supports job creation and retention to small businesses in the assessment area. The amount outside the assessment area represents a 50 percent allocated amount in the same fund targeted to the near-by Oakland-Haywood-Berkeley metropolitan division. The prior period investment remains responsive as the fund makes ongoing investments in mid- to late-stage small businesses, which provides job creation and retention.

Table 8a: Qualified Investment Activity \$(000s)

	Benefits AA	Outside AA	Totals
Originated Investments			
Originated Grants			
Prior-Period Investments that Remain Outstanding	\$297	\$148	\$445
Total Qualified Investments	\$297	\$148	\$445
Unfunded Commitments*			

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 8b: Qualified Investment Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total Investments/Allocated Tier 1 Capital	1%	0%	1%
Total Investments/Allocated Total Income	8%	4%	12%

Anaheim-Santa Ana-Irvine, CA - Limited-Scope Assessment Area

Performance in the Anaheim-Santa Ana-Irvine assessment area is weaker than the overall performance due to no qualified investments in the area. This did not adversely affect the overall state of California conclusion and rating as the bank’s presence in the assessment area is very small when compared to other assessment areas in the state of California.

Table 9a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	0
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	0
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 9b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	0%
Total Investments/Allocated Total Income	0%

Los Angeles-Long Beach-Glendale, CA - Limited-Scope Assessment Area

Performance in the Los Angeles-Long Beach-Glendale assessment area is weaker than the overall performance given the proportion of qualified investments. While weaker, this performance did not adversely affect the overall state of California conclusion and rating as there is a high level of investments in proportion to the bank’s presence in the assessment area, and considering the nine-month evaluation period.

Table 10a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	
Originated Grants	
Prior-Period Investments that Remain Outstanding	\$571
Total Qualified Investments	\$571
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 10b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	6%
Total Investments/Allocated Total Income	57%

Sacramento-Roseville-Arden-Arcade, CA - Limited-Scope Assessment Area

Performance in the Sacramento-Arden-Arcade-Roseville assessment area is stronger than the overall performance due to the higher proportion of qualified investments given the nine-month evaluation period. This contributed positively to the overall state of California conclusion and rating.

Table 11a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$1,753
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$1,753
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 11b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	102%
Total Investments/Allocated Total Income	884%

San Diego-Carlsbad, CA - Limited-Scope Assessment Area

Performance in the San Diego-Carlsbad assessment area is weaker than the overall performance due to the poor level of qualified investments. While weaker, this performance did not adversely affected the overall state of California conclusion given the nine-month evaluation period and bank’s presence in the assessment area. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 12a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	\$26
Total Qualified Investments	\$206
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 12b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	1%
Total Investments/Allocated Total Income	8%

Community Development Services

The bank provided an overall poor level of community development services in the state of California based on our review of the two full scope assessment areas. Community development services addressed financial education to youth of low-income households.

San Francisco-Redwood City-South San Francisco, CA - Full-Scope Assessment Area

A branch manager taught a financial education class on budgeting and how to build credit to a group of youth in the Juma Ventures Program which, combines employment in social enterprises, college preparation, and financial education to provide a supportive community where low-income youth can achieve a college education. The service was responsive to the community’s financial literacy needs.

San Jose-Sunnyvale-Santa Clara, CA - Full-Scope Assessment Area

The bank did not provide any community development services during the evaluation period.

STATE OF COLORADO

STATE OF COLORADO RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has an adequate level of qualified investments given the short nine-month evaluation period. Qualified investments in Colorado total \$257 thousand. The volume of the investment represents 7 percent of allocated Tier 1 Capital, and 57 percent of allocated Total Income. No community development services were offered.
- Community development activities are not innovative or complex.
- Activities exhibit poor responsiveness to the community development needs in the assessment area.

Description of Institution's Operations in the State of Colorado

ETSB operated one branch in an upper-income geography in the Denver-Aurora-Lakewood metropolitan statistical area. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Colorado branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 2 percent of ETB's deposits to the state of Colorado to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Denver-Aurora-Lakewood, CO metropolitan statistical area (#19740). The assessment area includes Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, and Park counties. Principal cities include Aurora, Broomfield, Denver, and Lakewood. The assessment area met the regulatory requirements and did not arbitrarily exclude low- and moderate-income geographies. The area is primarily urban with some suburban and rural areas. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 621 geographies for families and businesses by income level:

Table 13: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	621	11%	23%	33%	32%
Families	620,203	22%*	17%*	20%*	41%*
Businesses	329,845	8%**	20%**	31%**	40%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Seven (7) census tracts are not income categorized.

Denver ranks in the top 25 largest cities in the country. The assessment area has a population of 2,543,482 according to 2010 census data. The HUD adjusted median family income for 2013 is \$77,800, and households' living below the poverty level is 11 percent. As of December 31, 2013, the unemployment rate is 5 percent.

The top employment sectors are aerospace, aviation, bioscience, broadcasting and telecommunications, and energy. Major employers include HealthONE, SCL Health System, Centura Health, Lockheed Martin Corporation, and CenturyLink.

The Denver economy is much better when compared to the years during and immediately after the housing crisis. The city is not strong in manufacturing jobs but has a strong service base. Job creation has had a revitalizing effect in the downtown area. This in turn created a strong need for affordable rental housing in the downtown area. In 2013, it was estimated the city is short at least 25,000 rental units. Housing values are still depressed but showing improvement.

The prior housing crisis had a disproportionate impact on low- and moderate-income populations within the Denver-Aurora-Broomfield MSA and the state of Colorado overall. Cuts in local, state and federal budgets deeply affected the low- and moderate-income population in the areas of home foreclosures, job loss and employment hours. These governmental budget cuts not only affect low- and moderate-income individuals and families directly but also the nonprofit sector that are mission-driven to serve them. Much of the nonprofit funding used for their low- and moderate-income programs is derived from government sources. Consequently, many nonprofit organizations scaled back programs and outreach at a time needed the most.

Outreach meetings conducted by this Office revealed that generally, bank customers are finding it more difficult to obtain foreclosure forbearance and loan modifications. Banks more often than not are claiming they have lost the paperwork. Of concern is with the bank's "dual tracking" of loss mitigation applications. Dual tracking relates to one part of the bank moving towards a foreclosure and another part of the bank is moving towards a loan modification. Financial literacy is an issue, and there is a segment of the population with no banking relationship. In terms of economic development, some banks are not very responsive to start-up financing for small businesses. While there are CDFI micro lenders with strong bank partners for referrals, there is a gap with banks that do not know about the available programs.

Identified community development needs are as follows: access to affordable and convenient basic banking services specifically tailored to low- and moderate-income families; financial

literacy particularly for the younger generation; access to affordable housing, and affordable rental housing; more low-income housing tax credits to promote affordable housing; small dollar loans for individuals; and, financing for start-up and small businesses.

There are numerous financial institutions and community development-related organizations with a presence in the assessment area. The Denver area has a large and sophisticated nonprofit sector. Opportunities remain for community development efforts in the areas of job creation or retention, affordable housing provision, home ownership counseling and financing, services tailored towards low- and moderate-income people and other targeted populations, financial literacy, and small business lending products. Specifically, some community development opportunities for financial institutions in the greater Denver area are as follows: creating affordable and convenient basic banking services specifically tailored to low- and moderate-income families; financial literacy opportunities; engaging more deeply with established Bank On programs, and with second chance account programs for low- and moderate-income families looking for a fresh start; offering small dollar loan program; investing in CDFIs; working with affordable housing providers seeking loan modifications on behalf of their clients; eliminating “dual tracking” at banks; working with nonprofit community development corporations on obtaining bank owned real estate; volunteering on nonprofit boards; and providing financial assistance or grant funding for the various programs and projects available.

Qualified Investments

During the evaluation period, ET SB made one investment in the assessment area. The investment supported the rehabilitation of an affordable housing apartment building. Tenants utilize the HUD Section 8 rental subsidy program and are low-income. Affordable rental housing is an identified need in the assessment area. The investment is excellent as it is responsive to the community development need of affordable rental housing for low- and very low-income households given the nine month evaluation period, and volume of deposits derived from the assessment area.

Table 14a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$257
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$257
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 14b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	7%
Total Investments/Allocated Total Income	57%

Community Development Services

There are no community development services in the assessment area.

STATE OF FLORIDA

STATE OF FLORIDA RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has a poor level of qualified investments and few community development services given the short nine-month evaluation period.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of Florida.
- Community development activities are not innovative or complex.
- Activities exhibit poor responsiveness to the community development needs of the assessment areas.

Description of Institution's Operations in the State of Florida

ETSB operated three branches in the state of Florida: one branch in an upper-income geography in Fort Lauderdale; one branch in a moderate-income geography in Orlando; and one branch in a moderate-income geography in Tampa. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the savings bank's Florida branches. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 4 percent of ETB's deposits to Florida to assess community development performance based on where deposits were derived. Four percent consists of the following: Fort Lauderdale-Pompano Beach-Deerfield Beach metropolitan division 1 percent; Orlando-Kissimmee-Sanford metropolitan statistical area 1 percent; and Tampa-St. Petersburg-Clearwater metropolitan statistical area 2 percent. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch offices closed for banking purposes.

Description of Assessment Area

ETSB designated three assessment areas within the state of Florida. They are the Fort Lauderdale-Pompano Beach-Deerfield Beach metropolitan division (#22744), the Orlando-Kissimmee-Sanford metropolitan statistical area (#36740), and the Tampa-St. Petersburg-Clearwater metropolitan statistical area (#45300). The assessment areas meet the regulatory requirements and do not arbitrarily exclude low- and moderate-income geographies. The assessment areas existed through September 30, 2013. For analysis purposes, we selected the Fort Lauderdale-Pompano Beach-Deerfield Beach assessment area for a full-scope review due to the opportunities for financial institutions to participate in community development initiatives, and due to the bank's smaller presence in the area. The remaining two assessment areas received limited-scope reviews as they received a full scope review during the prior CRA examination.

Fort Lauderdale-Pompano Beach-Deerfield Beach, FL - Full-Scope Assessment Area

The bank’s assessment area consists of the Fort Lauderdale-Pompano Beach-Deerfield Beach, FL metropolitan division (#22744). It is part of the greater Miami-Fort Lauderdale-West Palm Beach metropolitan statistical area (#33100). The assessment area includes Broward County. Principal cities include Deerfield Beach, Fort Lauderdale and Pompano Beach. The area is primarily suburban.

The table below shows the distribution of the assessment area’s 361 geographies for families and businesses by income level:

Table 15: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	361	5%	27%	37%	30%
Families	420,639	22%*	17%*	20%*	41%*
Businesses	322,466	3%**	25%**	34%**	38%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. One (1) census tract is not income categorized.

The Fort Lauderdale assessment area has a population of 1,748,066 according to 2010 census data. The HUD adjusted median family income for 2013 is \$61,700, and 12 percent of households live below the poverty level. As of December 31, 2013, the unemployment rate is 6 percent.

Broward County has a well-diversified economy. Key economic sectors include trade, transportation and utilities, professional and business services, government, education, and health services. Broward County’s largest employers are AutoNation, Nova Southeastern University, American Express, The Answer Group, BrandsMart USA, Precision Response Corporation, and Kaplan Higher Education. Broward County has several areas designated for economic development including The Broward County Brownfield Redevelopment Program, The Broward County Enterprise Zone, The Urban Job Tax Credit Program (UJTC), and The Broward County Historically Underutilized Business Zone (HUB Zones). There are also two foreign trade zones.

The economic situation in Broward County has stabilized the last few years. Housing prices are rising as investors acquired and leased out a foreclosed inventory, including condominium units. This has made it very difficult for low-, moderate-, and even middle-income homebuyers to compete with cash buyers. Many lenders have imposed stricter underwriting criteria. The real estate appraisal process is a major issue for minority communities, where home assessments in Broward County’s minority communities are valued “very low.”

Various outreach meetings conducted by this Office identified community development needs such as affordable housing, subsidies for affordable housing, affordable rental housing, housing rehabilitation, small business loans, more flexible underwriting standards, and a fairer real estate appraisal process. Other needs include grants for nonprofit community service organizations,

employment opportunities, career development, financial literacy, and credit repair for consumers and businesses.

Opportunities for financial institutions to participate in community development initiatives include the following: participating in affordable housing initiatives through lending and investment; providing or participating in foreclosure prevention programs and education; working with economic development organizations to provide small business lending programs; developing lending products for small businesses; supporting community service organizations with funding, grants, or technical services; and, supporting projects in the economic development zones.

Various city and local leaders specifically suggested that banks participate in the following activities to address community needs:

- Support for ongoing housing programs that address the needs of residents, whether existing homeowners or prospective first time homebuyers, including collaborating with local nonprofit organizations and for profit agencies to support homeownership opportunities.
- Partner with the Economic Development Department and Community Redevelopment Agency (CRA) utilizing CDBG funds to promote economic development incentives and projects which will attract or create new businesses in the city and create jobs.
- Support the local housing authority through their apprenticeship/job training program which assists housing authority residents to learn skills in the construction trade and allows the opportunity for the residents to move to self-sufficiency.
- Support nonprofit agencies that provide greater access to community services (childcare subsidies, after school programs, homeless prevention) for residents of the area.
- As a long-term take-out strategy, provide financing to renters who are currently leasing units from investors, who will eventually sell the units.

Qualified Investments

Fort Lauderdale-Pompano Beach-Deerfield Beach, FL – Full-Scope Assessment Area

There are few qualified investments in the assessment area. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 16a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 16b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	11%
Total Investments/Allocated Total Income	95%

Orlando-Kissimmee-Sanford, FL - Limited-Scope Assessment Area

There are no qualified investments in the assessment area.

Table 17a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$0
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$0
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 17b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	0%
Total Investments/Allocated Total Income	0%

Tampa-St. Petersburg-Clearwater, FL – Limited-Scope Assessment Area

There are few qualified investments in the assessment area. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 18a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 18b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	7%
Total Investments/Allocated Total Income	59%

Community Development Services

Fort Lauderdale-Pompano Beach-Deerfield Beach, FL – Full-Scope Assessment Area

Several employees facilitated sessions of a daylong financial literacy workshop for the Moneywise Empowerment Tour in Ft. Lauderdale. They utilized the FDIC Smart Money curriculum to teach topics related to savings and investments to attendees of whom the majority were low- and moderate-income. The services met financial literacy needs in the assessment area.

STATE OF GEORGIA

STATE OF GEORGIA RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has a poor level of qualified investments and very few community development services.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of Georgia.
- Community development activities are not innovative or complex.
- Activities exhibit poor responsiveness to the community development needs of the assessment area.

Description of Institution's Operations in the State of Georgia

In Georgia, one branch was located in an upper-income geography in Atlanta. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Georgia branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 3 percent of ETB's deposits to the state of Georgia to assess community development performance. **See Table 2a - Allocation of Deposits by State and Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office was closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Atlanta-Sandy Springs-Roswell, GA metropolitan statistical area (#12060). The assessment area includes Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton counties. Principal cities are Alpharetta, Atlanta, Marietta, Roswell, and Sandy Springs. The area is primarily urban and suburban, and includes rural areas. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 946 geographies for families and businesses by income level:

Table 19: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	946	10%	25%	35%	30%
Families	1,277,286	22%*	17%*	20%*	41%*
Businesses	631,936	5%**	22%**	36%**	37%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Five (5) census tracts are not income categorized.

The assessment area has a population of 5,268,860 according to 2010 census data. The HUD adjusted median family income for 2013 is \$66,300, and households living below the poverty level stood at 11 percent. As of December 31, 2013, the unemployment rate is 6 percent.

The greater Atlanta area has a well-diversified economy. It ranks in the top twenty fastest growing areas in the country. The metropolitan area has a lower cost of living than the national average, and well below those of most major metropolitan areas. While job growth and industrial growth is rising, the area continues to feel the impact of the housing crisis. The area's low- and moderate-income and minority communities were devastated by predatory lending, foreclosure activity and unemployment, which continues to affect an individual's ability to borrow. The area has thousands of empty homes, blighted and vacant, a result of the housing crisis. These homes and abandoned properties need to be rehabilitated and repopulated to lift home values, stabilize neighborhoods, and bolster the economic recovery. Regarding rental housing, increasing demand is inflating rents somewhat, but the bigger concern is a lack of quality housing. Units suffer from deferred maintenance and in many cases, functional obsolescence and substandard construction.

The economic downturn made it difficult for small businesses to grow and create jobs due to tight credit and weak consumer demand. Many business owners are unfamiliar with small and micro-business loan products and, in addition, tightened credit has made these loan products unavailable. Low wealth, the lack of assets, and credit issues remain a significant barrier to local economic development.

The top employment sectors are state and local governments, restaurants, and employment services. Major employers include Delta Airlines, Wal-Mart Stores Inc., AT&T, Emory University, Publix Supermarkets, and The Home Depot USA, Inc.

Outreach meetings conducted by this Office during the evaluation period identified the following ongoing community needs and opportunities: financing for small-scale housing rehabilitation; financing for large multifamily housing rehabilitation; home counseling for first-time homebuyers, and legal services for foreclosures prevention; affordable homes; financing for single family home loans; working capital for nonprofit organizations such as lines of credit, grants, leveraged loans, predevelopment loans, and financial education for students. While larger banks have provided support, feedback from a few local leaders believe mid-size and smaller financial institutions could provide more support than currently provided.

Opportunities for financial institution to help address community development needs include

participation in the Piece by Piece Regional Foreclosure Response Initiative; supporting ANDP's Foreclosure Redevelopment Initiative to restore vacant property to productive use; investing in various loan funds that assist developers who are engaged in foreclosure development of single family homes; and, investing in opportunities to spur community and economic development and job creation for residents in low- and moderate-income communities surrounding the new stadium in Atlanta. Other opportunities include supporting the economic redevelopment efforts undertaken by the city of Atlanta; providing equity contribution to tax credit projects; providing financial support to community development organizations; participating on community boards and partnerships with community-based organizations; assisting to develop and maintain scattered site rental housing to create a lease purchase program.

Qualified Investments

There are few qualified investments in the assessment area. See **Institution's CRA Rating** section for information about a mortgage-backed security.

Table 20a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* "Unfunded Commitments" means legally binding investment commitments that are tracked and recorded by the bank's financial reporting system.

Table 20b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	3%
Total Investments/Allocated Total Income	26%

Community Development Services

Fifteen employees taught sessions of a financial literacy class in participation with Operation Hope at an Atlanta middle school where the majority of the students are from low- and moderate-income families. The organization provides financial literacy programs for youth and communities. This community development service is responsive to the identified need of financial literacy.

STATE OF ILLINOIS

STATE OF ILLINOIS RATING: Satisfactory

Summary Conclusions About Performance

- The bank has a high level of combined qualified investments and community development services given the short nine-month evaluation period. Total qualified investments in Illinois are \$2.4 million. The volume of investments represents 23 percent of allocated Tier 1 Capital, and 201 percent of allocated Total Income.
- Community development activities are not innovative or complex.
- Community development activities exhibit adequate responsiveness to the needs of affordable housing financial assistance and financial literacy.

Description of Institution's Operations in the State of Illinois

In Illinois, one branch was located in an upper-income geography in Chicago. As of June 30, 2013, the FDIC reported deposits totaling zero (\$) in the bank's Illinois branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 6 percent of ETB's deposits to the state of Illinois to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The assessment area consists of the Chicago-Naperville-Arlington Heights metropolitan division (#16974). It is the largest of the four metropolitan divisions in the Chicago-Naperville-Elgin IL-IN-WI metropolitan statistical area (#16980). The assessment area includes Cook, DuPage, Grundy, Kendall, McHenry and Will counties. Principal cities include Chicago, Arlington Heights, Naperville, Aurora, Morris, Joliet, McHenry and Woodstock. The area is mostly urban and suburban with some limited rural areas. The bank's assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income census tracts. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 1,861 geographies for families and businesses by income level:

Table 21: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	1,861	13%	24%	32%	31%
Families	1,885,834	23%*	17%*	20%*	41%*
Businesses	555,309	5%**	15%**	33%**	46%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. [Optional notes that can be used as needed: Do not add to 100% due to rounding. Five (5) census tracts are not income categorized.]

The assessment area has a population of 7,883,147 according to 2010 census data. The HUD adjusted median family income for 2013 is \$73,400, and households living below the poverty level is 12 percent. As of December 31, 2013, the unemployment rate is 6 percent.

The Chicago area is a major business, distribution, transportation and financial center. The economy is in the recovery stage following the housing crisis; however, the rebound continues to be slow. Professional and business services, tourism and convention, and high tech and logistics businesses drive growth. The housing and financial service sectors continue to stifle the economy. Several state and local budgetary pressures remain an obstacle. Foreclosure inventories are still more than twice as prevalent as they are nationwide.

Although the unemployment rate is progressing on a declining trajectory, it remains elevated compared to before the housing crisis, despite the economic recovery. Major employment sectors include professional and business services, educational and health services, government, retail trade, and manufacturing. Top employers are Wal-Mart Stores, Inc. Advocate Health Care System, Walgreen Company, JPMorgan Chase & Company, AT&T, United Airlines and Abbott Laboratories.

This Office contacted various community development organizations to determine if community development needs exist. Among the more significant community development needs expressed are affordable housing, homebuyer's financial assistance, consumer financial services, small business financing, foreclosure prevention related assistance, and financial literacy.

There are numerous community development opportunities with many community-based and national organizations in the area. The Chicago area presents abundant opportunities for financial institutions to serve the credit and community development needs of low- and moderate-income persons and areas. Many sophisticated, accomplished and well-capitalized community development organizations operate in the region. An extensive network of foundations, research centers and universities that provide them with funding, information and expertise, supports these organizations. In addition, local government agencies have designated many areas for redevelopment and devote a variety of resources (e.g., Tax Increment Financing districts, Empowerment Zones, HUD affordable housing programs) to increase investment in those areas.

Qualified Investments

During the evaluation period, ETSB made one investment and one grant in the assessment area. The investment is a mortgage-backed security to finance housing for low-income seniors in Barrington, Illinois. One grant supported a financial literacy program for low-income youth. An additional prior period investment consists of an allocated portion of a low-income housing tax credit supporting affordable multifamily housing for low- and moderate-income persons. The investments respond to the needs of affordable housing and financial literacy. Affordable housing and financial literacy are both identified community development needs in the assessment area

Table 22a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$ 1,857
Originated Grants	\$2
Prior-Period Investments that Remain Outstanding	\$571
Total Qualified Investments	\$2,430
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 22b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	23%
Total Investments/Allocated Total Income	201%

Community Development Services

Two ETSB employees assisted AGORA Community Services, a HUD approved National Housing Counseling Intermediary, with the development of an asset-building program that provided down payment assistance to low- and moderate-income homebuyers. This community development service is responsive to the identified need of affordable housing financial assistance in the assessment area.

STATE OF MICHIGAN

STATE OF MICHIGAN RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has a poor level of qualified investments and community development services.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of Michigan.
- Community development activities are not innovative or complex.
- The bank exhibits poor responsiveness to the community development needs in the assessment area.

Description of Institution's Operations in the State of Michigan

ETSB operated one branch in an upper-income geography in the Warren-Troy-Farmington Hills metropolitan division. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Michigan branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated less than 1 percent of ETB's deposits to this state to assess community development performance. Very few deposits are derived from the state of Michigan. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Warren-Troy-Farmington Hills, MI metropolitan division (#47664). This is the smaller of the two metropolitan divisions that make up the greater Detroit-Warren-Dearborn metropolitan statistical area (#19820). The assessment area includes the counties of Lapeer, Livingston, Macomb, Oakland, and St. Clair. Principal cities include Warren, Troy, and Farmington Hills. The area is primarily urban with some suburban and rural areas. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 689 geographies for families and businesses by income level:

Table 23: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	689	5%	21%	46%	27%
Families	660,775	20%*	18%*	21%*	40%*
Businesses	221,698	5%**	19%**	42%**	33%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.
 **Represents businesses by income level of census tract. Do not add to 100% due to rounding. Seven (7) census tracts are not income categorized.

The assessment area has a population of 2,475,666 according to 2010 census data. The HUD adjusted median family income for 2013 is \$72,400, and 9 percent of households live below the poverty level. As of December 31, 2013, the unemployment rate is 7 percent.

This suburban area outside of Detroit has grown with an emphasis in technology for the automobile industry. Manufacturing employment grew 9 percent and there is a large skilled workforce including industrial engineers. *Forbes* magazine recently characterized the metropolitan area as “automation alley.”³

The top employers in the area are General Motors, Beaumont Hospitals, U.S. Department of Defense, Chrysler Group, Ford Motor Company, Trinity Health, and Henry Ford Health System.

Outreach meetings conducted by this Office identified the following ongoing community needs: loans for home purchase, affordable housing, home refinance and home improvement; foreclosure prevention education; financial literacy training for youth; capital for small business; and grants for local community service organizations. Opportunities for bank participation exist through partnerships with agencies supporting affordable housing and small business, housing developers, community service organizations, and low-income housing and new markets tax credits projects.

Qualified Investments

There are few qualified investments in the assessment area. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

³ Source: Forbes Magazine

Table 24a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* "Unfunded Commitments" means legally binding investment commitments that are tracked and recorded by the bank's financial reporting system.

Table 24b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	131%
Total Investments/Allocated Total Income	1,125%

Community Development Services

ETSB did not provide any community development services in the assessment area during the evaluation period.

STATE OF MINNESOTA

STATE OF MINNESOTA RATING: Satisfactory

Summary Conclusions About Performance

- The bank has a high level of combined qualified investments and community development services given the short nine month evaluation period. Qualified investments in Minnesota total \$2 million. The volume of investments represents 85 percent of allocated Tier 1 Capital, and 741 percent of allocated Total Income.
- Community development activities are not innovative or complex.
- Community development activities exhibit adequate responsiveness as they address identified needs in the assessment area.

Description of Institution's Operations in the State of Minneapolis

ETSB operated one branch in an upper-income geography in the Minneapolis-St. Paul-Bloomington metropolitan statistical area. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Minnesota branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 1 percent of ETB's deposits to this state to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office was closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Minneapolis-St. Paul-Bloomington, MN-WI metropolitan statistical area (#33460) which is part of the Minneapolis-St. Paul MN-WI combined statistical area (#378). The assessment area includes Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Le Sueur, Mille Lacs, Ramsey, Scott, Sherburne, Sibley, Washington, and Wright counties in Minneapolis, and Pierce and St. Croix counties, in Wisconsin. Principal cities include Bloomington, Eagan, Eden Prairie, Minneapolis, Plymouth, and St. Paul. The area is primarily urban with some suburban and rural areas. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The assessment areas existed through September 30, 2013.

The table below shows the distribution of the assessment area's 772 geographies for families and businesses by income level:

Table 25: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	772	8%	21%	46%	24%
Families	818,942	19%*	18%*	24%*	39%*
Businesses	303,262	5%**	17%**	48%**	30%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. Four (4) census tracts are not income categorized.

The assessment area has a population of 3,279,833 according to 2010 census data. The HUD adjusted median family income for 2013 is \$82,300, and households living below the poverty level stood at 9 percent. As of December 31, 2013, the unemployment rate is 5 percent.

Top industries include management companies, insurance carriers, individual and family services and department stores. Major employers include Target Corporation, University of Minnesota, Allina Health System, Wells Fargo & Company, and Fairview Health Systems, United Health Group, 3M Corporation, HealthPartners, and U.S. Bancorp. There are about 40 financial institutions and many community development-related organizations with a presence in the area.

According to Moody’s Analytics, the area’s housing prices are now more reasonable since the housing crisis and the outlook for both private and public construction projects is better than prior years. Redevelopment projects are planned for downtown Minneapolis including renovation of the Nicollet Mall areas, and downtown east development. There is also an increased demand for apartments.⁴

Outreach meetings conducted by this Office identified community needs as affordable housing including rental housing for low-income individuals and families, financial literacy, homeownership counseling, job creation, and small business financial support, development and financing. Opportunities for participation by financial institutions include collaborating with organizations on various projects, and to provide community development services. There are many grassroots’ organizations, community developers, community service providers, private sector groups, and public agencies working throughout the metropolitan area.

Qualified Investments

During the evaluation period, ETSB made one investment and two grants in the assessment area. The investment in a mortgage-backed security financed four low-income housing tax credit (LIHTC) projects, which provide affordable rental housing for low- and very low-income households. The investment displays adequate responsiveness to the identified need of affordable housing. One of the two grants supports a nonprofit organization that provides homebuyer education and foreclosure prevention counseling to low- and moderate-income individuals. The

⁴ Source: Moody’s Analytics

second grant provides support for a community development organization that provides affordable housing and supportive services in the assessment area and surrounding communities. The grants are responsive to the identified need of homeowner counseling and community services. An additional prior period investment represents an allocated amount in a SBIC fund targeting investments to support small businesses. It remains responsive to the ongoing need to assist with small business financing needs.

Table 26a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$1,618
Originated Grants	\$85
Prior-Period Investments that Remain Outstanding	\$313
Total Qualified Investments	\$2,016
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 26b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	85%
Total Investments/Allocated Total Income	741%

Community Development Services

Several employees conducted a seminar on the homeownership process at Community Neighborhood Housing Services, which specializes in foreclosure prevention, home improvement loans, new homeowner education, and provides a number of services to low- and moderate-income individuals. This community development service is responsive to the identified need of homeownership counseling.

STATE OF NEW YORK

STATE OF NEW YORK RATING: Satisfactory

Summary Conclusions About Performance

- The bank has a high level of qualified investments and high level of community development services given the short nine-month evaluation period. The overall volume of investments in the state of New York represents 13 percent of allocated Tier 1 Capital, and 110 percent of allocated Total Income. The investments support multifamily rental housing for low- and moderate-income individuals and families, and small businesses.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of New York.
- Community development activities are not innovative or complex.
- Community development activities exhibit adequate responsiveness to the needs of affordable housing, support for small businesses, financial capacity, job readiness, and financial literacy

Description of Institution's Operations in the State of New York

The bank operated four branches in the state of New York. Three branches are located in the New York-Jersey City-White Plains metropolitan division. One of the three branches is located in a moderate-income geography and the other two branches are located in upper-income geographies. There is one branch in the Nassau-Suffolk metropolitan division located in an upper-income geography. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's New York branches. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 13 percent of ETB's deposits to the state of New York to assess community development performance based on where deposits were derived. Thirteen percent consists of the following: New York-Jersey City-White Plains metropolitan division 13 percent; and Nassau-Suffolk metropolitan division zero percent. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branches offices closed for banking purposes.

Description of Assessment Area

ETSB designated two assessment areas in the state of New York. They are the New York-Jersey City-White Plains metropolitan division (#35614), and the Nassau-Suffolk metropolitan division (#35004). The areas are primarily urban with some suburban areas. The assessment areas meet the regulatory requirements and do not arbitrarily exclude low- and moderate-income geographies. The assessment areas existed through September 30, 2013.

New York-Jersey City-White Plains, NY-NJ - Full-Scope Assessment Area

The assessment area consists of the New York-Jersey City-White Plains, NY-NJ metropolitan division, which is the largest of the four metropolitan divisions that comprise the New York-Newark-Jersey City, NY-NJ-PA metropolitan statistical area (#35620). The assessment area includes fourteen counties. In the state of New York, the counties include Bronx, Kings, New York, Orange, Queens, Richmond, Rockland, and Westchester counties. The counties in New Jersey include Bergen, Hudson, Middlesex, Monmouth, Ocean, and Passaic. Principal cities include Jersey City, Lakewood, Newark, New Brunswick, New York, White Plains, and Benton Harbor. The assessment area meets the regulatory requirements and does not arbitrarily exclude low-and moderate-income geographies. The area is primarily an urban setting. The bank's assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 2,920 geographies for families, business by income level:

Table 27: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	2,920	11%	23%	28%	34%
Families	2,675,727	26%*	15%*	16%*	43%*
Businesses	935,271	7%**	17%**	22%**	51%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Seventy-two (72) census tracts are not income categorized.

New York is the largest metropolitan area in the country. The assessment area has a population of 11,576,251, according to the 2010 census data. The HUD adjusted median family income for 2013 is \$66,000, and 16 percent of households live below the poverty level. As of December 31, 2013, the unemployment rate is 5 percent. Banking competition is very strong with over 173 financial institutions operating almost 3,097 branches in the area.

New York City is a major world financial center. It is home to a diversified mix of businesses, with many national and international corporations headquartered in the area. New York City's downtown area is dominated by the financial services industry historically, but is gaining some diversity through expansion into high-tech industries. Industries operating in the midtown area include advertising, fashion and publishing. Education and health services are major employers along with retail trade and social services. In addition, light manufacturing and wholesale trades provide a significant level of job opportunities in the Bronx.

Some of the largest employers include New York Presbyterian Healthcare Systems, Citigroup, JPMorgan Chase, Verizon, and Federated Department Stores. The five largest deposit institutions in order of deposit size are Bank of New York Mellon, Bank of America, Citibank, HSBC Bank USA, and Deutsche Bank Trust Company Americas. Competition is strong in the assessment area given the number of competing financial institutions and branch offices.

Homeownership is significantly lower than the national average of 64.7 percent. The cost of housing continues to rise with the median sales price of existing single-family homes at \$444,900 in 2012 and \$465,700 in 2013⁵. The cost of housing has resulted in an affordability problem for low- and moderate-income individuals. The severe shortage of affordable housing combined with competitive factors and stricter loan terms following the mortgage crisis significantly affected mortgage lending to low- and moderate-income borrowers and in low- and moderate-income communities.

Outreach meetings conducted by this Office identified ongoing community needs including subsidies for affordable housing to assist with closing costs and down payments; programs to assist low- and moderate-income first-time homebuyers; foreclosure prevention assistance; loan refinancing assistance; financial literacy for youth and adults; stay in school and job readiness programs; loans to small businesses; small business training regarding financing; grants and lines of credit for nonprofit organizations; commercial lending to fund various revitalization projects; financing the development of commercial, industrial, residential and multifamily properties; general social services to assist low- and moderate-income individuals and families; and additional access to financial services.

There are numerous community-based and national organizations presenting many opportunities for financial institutions to serve the credit and community development needs of small businesses, and low- and moderate-income persons and areas. The organizations' purposes vary widely, including affordable housing, financial literacy, community revitalization and job creation among many others. Many CDFIs are actively operating in the New York City area. Most are large CDFIs and offer various community development opportunities.

Qualified Investments

New York-Jersey City-White Plains, NY-NJ - Full-Scope Assessment Area

Two prior period investments consist of two funds supporting multifamily housing for low- and moderate-income families. Two additional prior period investments in small business funds support businesses based in low- and moderate-income areas. Five grants support various nonprofit organizations that address a range of community development needs, which include housing and supportive services for the homeless, affordable housing, homebuyer education for low- and moderate-income households, and, financial literacy and entrepreneurship education for low- and moderate-income youth. The investments display adequate responsiveness as the investments meet an identified need in the assessment area including affordable housing, and loans to small businesses. In addition, the grants display adequate responsiveness as they provide capacity to organizations that directly affect their communities through the delivery of community development programs and services.

⁵ Source National Association of Realtors

Table 28a: Qualified Investment Activity \$(000s)

	Benefits AA	Totals
Originated Investments		
Originated Grants	\$197	\$197
Prior-Period Investments that Remain Outstanding	\$2,612	\$2,612
Total Qualified Investments	\$2,809	\$2,809
Unfunded Commitments*		

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 28b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	12%
Total Investments/Allocated Total Income	101%

Nassau-Suffolk, NY - Limited-Scope Assessment Area

Performance is stronger than the overall performance given the bank’s small presence in the assessment area and the amount of qualified investments relative to allocated Tier 1 Capital and allocated Total Income. This positively supports the overall state of New York conclusion and rating. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 29a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	\$60
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$240
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 29b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	887%
Total Investments/Allocated Total Income	7,714%

Community Development Services

New York-Jersey City-White Plains, NY-NJ - Full-Scope Assessment Area

An Executive Vice President served 120 hours on the board of directors of GO Project, a nonprofit organization focused on low-income NYC public school children, providing academic, social, and emotional support to them and their families. Several employees served as business plan coaches at the Newark BizCamp for the Network for Teaching Entrepreneurship, a national nonprofit organization focused on low-income students to keep them in school and plan for successful futures. One employee also served as a member of the organization's board of directors and finance committee. An Executive Vice President served on the board of University Settlement Society, which provides social services to low-income individuals. Another employee provided online mentorships regarding college readiness to students from several high schools in conjunction with the i.Mentor.org, which builds mentoring relationships to empower students from low-income communities to graduate high school and succeed in college. Two employees provided online mentorships regarding education and career options in conjunction with icouldbe.org for students at schools in which the majority of students are from low- and moderate-income families. These community development services are responsive to the financial literacy, social services, and job readiness needs in the assessment area.

STATE OF OREGON

STATE OF OREGON RATING: Needs to Improve

Summary Conclusions About Performance

- The bank has a poor level of qualified investments and very few community development services.
- One unallocated qualified mortgage backed security benefited a number of assessment areas. We considered a portion of this investment in the state of Oregon.
- Community development activities are not innovative or complex.
- Community development activities exhibit poor responsiveness to community development needs in the assessment area.

Description of Institution's Operations in the State of Oregon

ETSB operated one branch in a low-income geography within the Portland-Vancouver-Hillsboro metropolitan statistical area. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the savings bank's Oregon branches. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 4 percent of ETB's deposits to the state of Oregon to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Portland-Vancouver-Hillsboro OR-WA metropolitan statistical area (#38900). The assessment area includes Clackamas, Columbia, Multnomah, Washington, and Yamhill counties in Oregon, and Clark and Skamania counties in Washington. Principal cities include Beaverton, Hillsboro, Portland and Vancouver. The bank's assessment area is urban, suburban and rural. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income census tracts. The assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 491 geographies for families and businesses by income level:

Table 30: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	491	3%	24%	47%	26%
Families	540,749	21%*	18%*	21%*	40%*
Businesses	249,649	4%**	22%**	44%**	29%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Two (2) census tracts are not income categorized.

The assessment area has a population of 2,226,009 according to 2010 census data. The HUD adjusted median family income for 2013 is \$68,300, and 11 percent of households live below the poverty level. As of December 31, 2013, the unemployment rate is 6 percent.

Technology manufacturing companies and their exports of semiconductors, and computer and electronic parts anchor Portland’s economy. The Portland area has a diversified economy with substantial employment in the professional and business services sector and in education and health services. The manufacturing sector in Portland provides 11 percent of all jobs in the area.

Large employers in the Portland area include Intel, Fred Meyer, Inc., Safeway, Oregon Health & Science University, and Providence Health Systems.

Outreach meetings conducted by this Office identified the following community needs: cash donations to support programs for needy individuals and families; affordable housing; housing loans; financial expertise; and, financial literacy geared to youth and young adults. Also needed are: debt and equity financing for permanent housing and support services for the homeless; support for job training programs; micro loans of less than \$25,000 for small businesses; and, debt and equity financing for affordable housing for several specific populations including persons with disabilities, senior citizens, low- and very low-income households, and Native Americans.

Opportunities available for financial institutions to participate in meeting identified community development needs are numerous. There are nonprofit organizations who work with financial institutions, local government, foundations and other organizations to meet the community development needs of the area. For example, there are eleven CDFIs located in Portland that serve a wide variety of needs, including providing deposit and credit services to consumers, and financing for affordable housing and to small businesses.

Qualified Investments

There are few qualified investments in the assessment area. See **Institution’s CRA Rating** section for information about a mortgage-backed security.

Table 31a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$180
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$180
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 31b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	3%
Total Investments/Allocated Total Income	24%

Community Development Services

Several employees participated in a financial education program at Financial Beginnings delivered to participants of the Springdale Job Corp that focused on banking, budgeting, credit, investing, and risk management. Financial Beginnings is a nonprofit organization that empowers youth and adults to take control of their financial futures. The Springdale Job Corps is a free education and career technical training program administered by the US Department of Labor for low-income individuals 16-24 years old. This service is responsive to the job readiness and financial literacy identified needs in the assessment area.

STATE OF PENNSYLVANIA

STATE of PENNSYLVANIA RATING: Satisfactory

Summary Conclusions About Performance

- The bank has a high level of qualified investments and an adequate level of community development services given the short nine-month evaluation period. Total qualified investments in Pennsylvania are \$2.5 million. Of this amount, 60 thousand is a current period investment. The total volume of qualified investments represents 139 percent of allocated Tier 1 Capital, and 1,213 percent of allocated Total Income.
- Community development activities are not innovative or complex.
- Community development activities exhibit adequate responsiveness to community development needs.

Description of Institution's Operations in the State of Pennsylvania

ETSB operated one branch in an upper-income geography within the Philadelphia metropolitan division. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the bank's Pennsylvania branch. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 1 percent of ETB's deposits to the state of Pennsylvania to assess community development performance. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch office closed for banking purposes.

Description of Assessment Area

The bank's assessment area consists of the Philadelphia, PA metropolitan division (#37964). It is one of four divisions in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD metropolitan statistical area (#37980). The assessment area includes Delaware and Philadelphia counties in Pennsylvania. The principal city includes Philadelphia. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The area is primarily urban and suburban. The assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area's 998 geographies for families and businesses by income level:

Table 32: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	998	16%	18%	30%	35%
Families	952,079	23%*	16%*	19%*	41%*
Businesses	386,347	9%**	13%**	29%**	49%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Sixteen (16) census tracts are not income categorized.

The assessment area has a population of 4,008,994 according to 2010 census data. The HUD adjusted median family income for 2013 is \$76,400, and 13 percent of households live below the poverty level. As of December 31, 2013, the unemployment rate is 5 percent.

Philadelphia is the fifth largest city, and the metropolitan area is the sixth largest by population in the country. Philadelphia is slowly prospering given the negative fiscal impact caused by the housing crisis. The population is growing and becoming more diverse. However, poverty remains a challenge. The city of Philadelphia has the third highest rate of poverty, and has the lowest median household income among the twenty-two most populous U.S. cities. The unemployment rate remains above the national rate but has improved since 2010. However, very recent information shows positive trends with poverty rates slightly declining. Interest in commercial development in downtown Philadelphia is growing and tourism has been rising.

Leading industries include education and health services, government, professional and business services, and leisure and hospitality services. Major employers include the University of Pennsylvania and Health System, Thomas Jefferson University and TJUH System, Comcast Corporation, Drexel University, Einstein Healthcare Network, Temple University, and Wells Fargo, N.A.

Leaders within community-based organizations revealed the following credit and community development needs: affordable housing; housing loans including purchase money, refinancing and home improvement; foreclosure prevention; financial literacy particularly for youth; start-up capital and lines of credit for small businesses; and, grants and donations to help support nonprofit organization's operations and programs. Another need for low-income households is an emergency home repair program.

There are a significant number of opportunities for financial institutions to help meet community needs through lending, services, and investment. Opportunities exist through partnerships with organizations supporting affordable housing, small business, affordable housing developers, and community service organizations. Other investment opportunities exist with low-income housing tax credits, and new markets tax credits.

Qualified Investments

ETSB provided one grant in the assessment area, and has three prior investments. The grant provided funding to a local community development corporation that provides housing counseling and neighborhood revitalization services in its community. The prior period investments provided funding to support affordable multi-family housing with low-income housing tax credits, and to support small business investments through an SBIC in the assessment area. The bank was responsive to community development needs in the assessment area. Therefore, we considered community development investments that benefit areas outside the bank's assessment area. One investment outside the assessment area but in the state of Pennsylvania represents an allocated amount in an SBIC fund targeting investments to support small businesses. These investments reflect adequate responsiveness to community development needs as they address affordable housing, financial support for small businesses, and donations to help support community organization's operations and programs.

Table 33a: Qualified Investment Activity \$(000s)

	Benefits AA	Outside AA	Totals
Originated Investments			
Originated Grants	\$20		\$20
Prior-Period Investments that Remain Outstanding	\$2,181	\$313	\$2,494
Total Qualified Investments	\$2,201	\$313	\$2,514
Unfunded Commitments*			

* "Unfunded Commitments" means legally binding investment commitments that are tracked and recorded by the bank's financial reporting system.

Table 33b: Qualified Investment Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total Investments/Allocated Tier 1 Capital	122%	17%	139%
Total Investments/Allocated Total Income	1,062%	151%	1,214%

Community Development Services

Several employees facilitated a financial education seminar at Mt. Airy Community Development Corporation using the FDIC's Money Smart Program. The seminar focused on a variety of topics including budgeting, savings, financial planning and investments. The organization is a nonprofit organization that provides housing counseling, real estate development, and commercial corridor revitalization. This community development service is responsive to the financial literacy needs in the assessment area.

STATE OF TEXAS

STATE OF TEXAS RATING: Satisfactory

Summary Conclusions About Performance

- The bank has a high level of qualified investments and an adequate level of community development services given the short nine-month evaluation period. Total overall qualified investments in Texas total \$5.9 million, which represents 26 percent of allocated Tier 1 Capital, and 226 percent of allocated Total Income.
- Community development activities are not innovative or complex.
- Community development activities exhibit adequate responsiveness to the needs of affordable rental housing and financial literacy.

Description of Institution's Operations in the State of Texas

ETSB operated one branch in an upper-income geography in the Houston-The Woodlands-Sugar Land, TX metropolitan statistical area, and one branch in an upper-income geography in the Dallas-Plano-Irving metropolitan division. As of June 30, 2013, the FDIC reported deposits totaling zero (\$0) in the savings bank's Texas branches. Deposits are accepted by E*TRADE Savings Bank on behalf of E*TRADE Bank customers. We allocated 12 percent of ETB's deposits to the state of Texas to assess community development performance based on where deposits were derived. Twelve percent consists of the following: Houston-The Woodlands-Sugar Land metropolitan statistical area 8 percent; and Dallas-Plano-Irving metropolitan division 4 percent. See **Table 2a - Allocation of Deposits by State** and **Table 2b - Allocation of Deposits by Assessment Area** to view the distributions of Tier 1 Capital and Total Income. Effective September 30, 2013, the branch offices were closed for banking purposes.

Description of Assessment Areas

ETSB designated two assessment areas within the state of Texas. They are Houston-The Woodlands-Sugar Land, TX metropolitan statistical area (#26420), and the Dallas-Plano-Irving, TX metropolitan division (#19124). The assessment areas meet the regulatory requirements and do not arbitrarily exclude low- and moderate-income geographies. The assessment areas existed through September 30, 2013. For analysis purposes, we selected the Houston-The Woodlands-Sugar Land, TX metropolitan statistical area for a full-scope review due to the bank's large presence in Texas and the high level of opportunities for financial institutions to help meet community credit needs. The other metropolitan division received a limited-scope review due to the bank's smaller presence in the state of Texas, and it received a full scope review during the prior CRA examination.

Houston-Sugar Land-Baytown, TX - Full-Scope Assessment Area

The bank’s assessment area consists of the Houston-The Woodlands-Sugar Land, TX metropolitan statistical area (#26420). The assessment area includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. Principal cities include Baytown, Conroe, Houston, Sugar Land and The Woodlands. The assessment area meets the regulatory requirements and does not arbitrarily exclude low- and moderate-income geographies. The area was primarily urban with some suburban and rural areas. The bank’s assessment area existed through September 30, 2013.

The table below shows the distribution of the assessment area’s 1,073 geographies for families and businesses by income level:

Table 34: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	1,073	13%	29%	27%	31%
Families	1,399,621	24%*	17%*	18%*	42%*
Businesses	580,232	8%**	20%**	26%**	46%**

Source: Demographic Data - 2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. Six (6) census tracts are not income categorized.

Houston is the fourth largest metropolis in the country. The assessment area has a population of 5,946,800 according to 2010 census data. The HUD adjusted median family income for 2013 is \$66,200, and households living below the poverty level is 13 percent. As of December 31, 2013, the unemployment rate is 5 percent.

Houston has among the lowest cost of living among the nation’s 20 most populous areas. Housing prices fall below the national average. However, prices are rising and have caused an increase in the number of families burdened by high housing costs.

The area’s economy continues to grow at a very fast pace and is very diverse. It includes a strong industrial base in several sectors as well as strong health care, technology and aeronautics industries. Energy is the major industry with more than 5,000 energy-related firms. Houston is a world leader in the chemical industry. The top employers in the area are Memorial Hermann Health System, the University of Texas MD Anderson Cancer Center, United Airlines, ExxonMobil Corporation, Houston Methodist (health care), and Shell Oil Company.

Outreach meetings conducted by this Office identified ongoing community needs as financial literacy, homebuyer’s education, assistance with home loan closing costs and down payment assistance, affordable housing, affordable rental housing in the inner city, rental housing, mixed use projects to provide housing and services close to public transportation, and credit repair counseling. Also needed are funding for single-family home repairs, bilingual written materials to address language barriers, programs for workforce development, and comprehensive plans for neighborhood revitalization or stabilization. There is also a need for alternative sources of credit for small businesses such as lines of credit, working capital loans, and asset-based lending for those who do not qualify for SBA-guaranteed loans. Better public transportation is needed to

connect the suburban population to jobs in the city. The previously neglected Gulfton neighborhood, which is slowly heading to become a more stable community,⁶ needs a holistic plan to provide housing, youth and adult financial education, and meet health care needs to the local population.

Opportunities for participation by financial institutions include working with nonprofit organizations to make small business loans, using mobile banking to reach the unbanked or underbanked, and accepting individual development accounts (IDA) funds as down payment and closing costs for home loans. Other opportunities include offering financial and human resources such as Board memberships, volunteers, technical assistance, grants, loans, and low cost bank products and services.

Qualified Investments

Houston-The Woodlands-Sugar Land, TX - Full-Scope Assessment Area

The bank has two investments in the assessment area. The investments are mortgage-backed securities that provide affordable multifamily rental housing for low- and moderate-income households including seniors. One of the two investments is solely for Section 8 participants. The investments display adequate responsiveness as they both meet the identified community development need of affordable rental housing.

Table 35a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$4,844
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$4,844
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 35b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Allocated Tier 1 Capital	31%
Total Investments/Allocated Total Income	266%

⁶ Source: Houston Press

Dallas-Plano-Irving, TX - Limited-Scope Assessment Area

Performance in the Dallas-Plano-Irving assessment area is weaker than the overall performance given the lower proportion of qualified investments. This did not adversely affect the overall state of Texas conclusion and rating as the proportion of investments in the Dallas-Plano-Irving assessment area is nonetheless considered high given the short nine-month evaluation period.

Table 36a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$1,020
Originated Grants	
Prior-Period Investments that Remain Outstanding	
Total Qualified Investments	\$1,020
Unfunded Commitments*	

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 36b: Qualified Investment Percentages

	Benefit AA (%)
Total Investments/Allocated Tier 1 Capital	15%
Total Investments/Allocated Total Income	133%

Community Development Services

Houston-The Woodlands-Sugar Land, TX - Full-Scope Assessment Area

There was one community development service in the Houston assessment area. Several employees facilitated sessions of a daylong financial literacy workshop for the Moneywise Empowerment Tour in a low-income neighborhood in Houston. They utilized the FDIC Smart Money curriculum to teach topics related to savings and investments. This service is responsive to the community development need of financial literacy.

DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA RATING: Outstanding

Summary Conclusions About Performance

- The bank has a high level of combined community development activities. The levels of qualified investments and community development services are each high in relation to available opportunities, the bank's financial capacity, and the two-year evaluation period. The overall volume of investments totaling \$44.1 million represents 22 percent of average Tier 1 Capital, and 177 percent of average Total Income. Community development services are high in one assessment area and poor in the other. The overall high level of community development activities supports the rating for the District of Columbia.
- Community development activities are not innovative or complex.
- Community development activities exhibit excellent responsiveness to the need of affordable rental housing. Activities were also responsive to financial literacy and job readiness needs in the assessment areas.

Description of Institution's Operations in the District of Columbia

ETSB operated one branch in an upper-income geography in Washington, D.C. As of June 30, 2014, the FDIC reported deposits totaling \$946 million. However, this total consists of sweep accounts and not actual deposits derived from the assessment area. Subsequent to the branch closings on September 20, 2013, we allocated 100 percent of ETB's deposits to the District of Columbia assessment areas to evaluate community development performance. Of this, we allocated 28 percent and 72 percent to the Silver Springs-Frederick-Rockville, MD and the Washington-Arlington-Alexandria DC-VA-MD-WV metropolitan divisions, respectively. See **Table 1 – Financial Information** to view Tier 1 Capital and Total Income and other financial information. The bank maintains its headquarters in Arlington, Virginia.

Description of Assessment Areas

ETSB designated two metropolitan divisions, collectively known as District of Columbia, as assessment areas: Silver Spring-Frederick-Rockville, MD (#43524); and, Washington-Arlington-Alexandria DC-VA-MD-WV (#47894). Both are part of the greater Washington-Arlington-Alexandria DC-VA-MD-WV metropolitan statistical area (#47900). The areas are primarily urban and suburban with some rural areas. The assessment areas meet the regulatory requirements and do not arbitrarily exclude low- and moderate-income geographies.

Silver Spring-Frederick-Rockville, MD – Full-Scope Assessment Area

The assessment area includes the counties of Frederick and Montgomery, located in central

Maryland. Principal cities include Frederick, Rockville, and Silver Spring. The area is primarily urban with some rural areas. There are no branch offices in the assessment area.

The table below shows the distribution of the assessment area’s 276 census tracts for families and businesses by income level:

Table 37: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	276	6%	29%	36%	28%
Families	303,467	21%*	17%*	22%*	40%*
Businesses	106,931	4%**	28%**	59%**	4%**

Source: Demographic Data-2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level.

**Represents businesses by income level of census tract. Do not add to 100% due to rounding. All census tracts are income categorized.

The assessment area has a population of 1,205,162 according to 2010 census data. The HUD adjusted median family income for 2013 is \$111,300, and households living below the poverty level stood at 5 percent. As of December 31, 2013, the unemployment rate was 4 percent. While financial institutions continue to recover from the financial crisis, some neighborhoods continue to experience depressed housing values.

Montgomery County contains many major U.S. government offices and research facilities. It ranks among the highest biotechnology areas in the mid-Atlantic region. Its median family income ranks among the highest in the country.

In Frederick County, the effects of the housing crisis continue as home foreclosures are still noticeably occurring. Many home values have not recovered, yet home affordability continues to be an issue. The creation of affordable housing has been difficult, and the perception of public housing has hindered future development. Many multi-generational families seek affordable housing in Frederick County.

There are many financial institutions and community development-related organizations with a presence in the assessment area. Major employers include Fort Detrick, Frederick County Public Schools, Montgomery County, Frederick Memorial Healthcare, Lockheed Martin Information Systems, Westat, Leidos Biomedical Research, and Wells Fargo Home Mortgage.

Various outreach meetings conducted by this Office during the evaluation period identified the following ongoing community needs: affordable housing; affordable rental housing; financial education to help homeowners understand the loan modification process and to prevent foreclosure; activities to stabilize certain neighborhoods; more outreach by housing counseling agencies; job creation; job training and workforce development; traditional financial products and services for the unbanked or underbanked population; micro loans to small businesses; financial intermediaries to assist small businesses; board membership and technical expertise to assist various community service organizations; increased funds for agencies not sufficiently

budgeted; funding to support growing demand for housing and home counseling services; down payment assistance for low- or moderate-income homebuyers; funding to rehabilitate public housing; and, equity partners for multifamily housing development.

There are many opportunities available for financial institutions to help address lending, investment, and service needs. The area is served by several CDFIs, nonprofit organizations, and community and economic development entities that provide community development opportunities. Local governments, foundations and other organizations can also provide opportunities for financial institutions to help address community development needs.

Washington-Arlington-Alexandria, DC-VA-MD-WV – Full-Scope Assessment Area

The assessment area includes the Virginia counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Spotsylvania, Stafford and Warren located in northeast Virginia; Calvert County, Charles County and Prince George’s County in Maryland; and Jefferson County in West Virginia. Principal cities include Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park. The assessment area also includes Washington, D.C. The area is primarily urban and suburban and includes rural areas.

The table below shows the distribution of the assessment area’s 1,082 census tracts for families and businesses by income level:

Table 38: Assessment Area Description

	Number	Low	Moderate	Middle	Upper
Tracts	1,082	10%	24%	35%	30%
Families	1,020,547	21%*	18%*	19%*	42%*
Businesses	402,981	4%**	18%**	36%**	40%**

Source: Demographic Data-2010 U.S. Census, Dun & Bradstreet Data. *Represents families by income level. **Represents businesses by income level of census tract. Do not add to 100% due to rounding. Twelve census tracts are not income categorized.

The assessment area has a population of 4,431,070 according to 2010 census data. The HUD adjusted median family income for 2013 is \$107,100, and households living below the poverty level stood at 7 percent. As of December 31, 2013, the unemployment rate is 4 percent.

The Washington D.C. area has a high per capita income, and a highly educated workforce. It is a major center for information technology, and a popular tourist destination. In addition, there is strong population growth. The area’s cost of living including housing costs are high. While home prices are beginning to rise, affordability remains an issue for low- and moderate-income individuals and families. The local banking environment is competitive. A number of credit unions as well as non-depository financial entities that provide services such as check cashing, payday lending, and bill pay services serve the greater Washington D.C. area. Business costs are high, and there is high concentration to federal government directly and from companies dependent on government contracts.

While financial institutions continue to recover from the financial crisis, some neighborhoods continue to experience depressed housing values. Prince George's County in Maryland was severely affected by foreclosure activity. Many home values are "underwater" which is affecting almost half of all homeowners.

According to the Jefferson County Development Authority in WV, there is ready access to major transportation routes, and ideally situated for business, manufacturing, and industry. As one of the fastest growing counties in West Virginia, Jefferson County is a major economic driver in a state that boasts the nation's fourth lowest cost of doing business, low utility rates and a highly skilled and loyal workforce. The average home price in the county is \$191,000.

There are over 50 financial institutions and many community development-related organizations with a presence in the assessment area. The top three employment sectors are professional scientific and technical services, government, and retail trade. Major employers include Naval Support Activity Washington, Department of Defense, Northrop Grumman, SAIC, INOVA Health System, Booz, Allen & Hamilton, MedStar Health, Federal Home Loan Mortgage Corporation, General Dynamics, George Mason University, and Lockheed Martin Corporation. Major employers in Jefferson County, WV include PNGI Charles Town Gaming Ltd, Shepherd College, Royal Vendors, Inc., and Jefferson Memorial Hospital.

Various outreach meetings conducted by this Office during the evaluation period identified the following ongoing community needs: affordable homes, rental housing across all income levels, senior housing, homeownership counseling, micro loans for small businesses, funding support for both debt and equity for nonprofit community development organizations that serve low- and moderate-income communities and households, operational support for housing-related organizations, financial education for small business owners and students, and financing of four-to-eight multifamily housing units.

There are many opportunities available for financial institutions to help address lending, investment and service needs. The area is served by many CDFIs, nonprofit organizations, and community and economic development entities that provide potential opportunities. Local governments, foundations and other organizations can also provide opportunities.

Qualified Investments

The bank provided a high level of qualified investments in the District of Columbia. The level of investments represents 22 percent of average Tier 1 Capital, and 177 percent of average Total Income. The level of qualified investments is higher in the Washington-Arlington-Alexandria, DC-VA-MD-WV metropolitan division. Qualified investments exhibit excellent responsiveness as they meet the identified need of affordable rental housing.

Silver Spring-Frederick-Rockville, MD – Full Scope Assessment Area

The bank provided qualified investments that benefit inside and outside the assessment area. Most

investments support affordable housing and small business development including mortgage-backed securities, as well as a number of investments in SBICs, CDFIs, low-income housing tax credits, and loan funds. The bank was responsive to community development needs in the assessment area. Therefore, we considered community development investments that benefit areas outside the bank’s assessment area. This investment is a SBIC fund and an equity fund targeted to areas inside and outside of the bank’s assessment area. Unfunded commitments consist of allocated portions of seven investments in the current and prior periods. Five of the seven investments are in SBICs, which invest in small businesses, one investment is a low-income housing tax credit that supports affordable housing, and one investment is in a CDFI that supports job creation and retention in low- and moderate-income areas for low- and moderate-income persons employed by small businesses.

Overall qualified investments exhibit excellent responsiveness as they meet the identified needs of affordable housing, job training, loans to small businesses, and other assistance that supports small businesses.

Table 39a: Qualified Investment Activity \$(000s)

	Benefits AA	Outside AA	Totals
Originated Investments	\$9,036	0	\$9,036
Originated Grants	0	0	0
Prior-Period Investments that Remain Outstanding	\$405	\$677	\$1,082
Total Qualified Investments	\$9,441	\$677	\$10,118
Unfunded Commitments*	\$1,612	0	\$1,612

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 39b: Qualified Investment Percentages

	Benefits AA (%)	Outside AA (%)	Total (%)
Total Investments/Average Tier 1 Capital	5%	0.3%	5%
Total Investments/Average Total Income	38%	3%	41%

Washington-Arlington-Alexandria, DC-VA-MD-WV – Full Scope Assessment Area

The bank provided many qualified investments benefiting the assessment area. Investments consisted largely of activities that support affordable housing and small business development including mortgage-backed securities, as well as a number of investments in SBICs, CDFIs, low-income housing tax credits, and loan funds. The bank also made seven grants to community development and nonprofit organizations supporting needs such as affordable housing, job training and workforce development, financial and other education programs for low- and moderate-income individuals, small business training and development, and community services to low- and moderate-income individuals and families. Unfunded commitments consist of allocated portions of seven investments in the current and prior periods. Five of the seven investments are in SBICs who invest in small businesses, one investment is a low-income housing tax credit that supports affordable housing, and one investment is

in a CDFI that supports job creation and retention in low- and moderate-income areas for low- and moderate-income persons employed by small businesses.

Qualified investments exhibit excellent responsiveness as they meet the identified needs of affordable housing, job training, loans to small businesses, other assistance that supports small businesses, financial education, and funding for community development organizations that provide services to low- and moderate-income individuals.

Table 40a: Qualified Investment Activity \$(000s)

	Benefits AA
Originated Investments	\$32,987
Originated Grants	\$650
Prior-Period Investments that Remain Outstanding	\$405
Total Qualified Investments	\$34,042
Unfunded Commitments*	\$2,400

* “Unfunded Commitments” means legally binding investment commitments that are tracked and recorded by the bank’s financial reporting system.

Table 40b: Qualified Investment Percentages

	Benefits AA (%)
Total Investments/Average Tier 1 Capital	17%
Total Investments/Average Total Income	137%

Community Development Services

The bank provided an overall high level of community development services in the District of Columbia. The level was high in the Washington-Arlington-Alexandria metropolitan division due to the bank’s location in Arlington, VA with many employees readily available to provide services. Community development services covered a wide range of activities addressing identified needs including homeless services, affordable rental housing, homeownership counseling, financial literacy to the unbanked and underbanked, workforce development and employment, and financial education to youth of low- and moderate-income households. Community development services also supported organizations that promote economic development. The level of community development services was poor in the Silver Springs-Frederick-Rockville metropolitan division.

Silver Spring-Frederick-Rockville, MD – Full Scope Assessment Area

There were no community development services provided during the evaluation period. The bank does not maintain an office in the Silver Spring-Fredrick-Rockville metropolitan division.

Washington-Arlington-Alexandria, DC-VA-MD-WV – Full Scope Assessment Area

An employee served on the board of directors for Hogar Hispano, a nonprofit organization that supports economic development programs serving low- and moderate-income Latino families in

such areas as foreclosure prevention programs and the resale of foreclosed properties. The same employee also served on the local advisory committee for the Local Initiatives Support Corporation, which is a community development intermediary and a certified CDFI. Two employees provided online mentorships regarding education and career options in conjunction with icouldbe.org for students at schools in which the majority of students are low- and moderate-income. Forty-three employees participated in events and activities with the Network for Teaching Entrepreneurship, a national organization focused on low-income students to keep them in school and plan for successful futures. The community development services display excellent responsiveness as they meet the identified ongoing needs of financial education, homeownership counseling, and providing various services to low-income individuals and families.

FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW

Pursuant to 12 C.F.R. 25.28(c), or 12 C.F.R. 195.28(c), in determining a national bank's (bank) or Federal savings association's (FSA) CRA rating, respectively, the OCC considers evidence of discriminatory or other illegal credit practices in any geography by the bank or FSA, or in any assessment area by an affiliate whose loans have been considered as part of the bank's or FSA's lending performance. As part of this evaluation process, the OCC consults with other federal agencies with responsibility for compliance with the relevant laws and regulations, including the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and the Consumer Financial Protection Bureau.

The OCC did not identify evidence of discriminatory or other illegal credit practices with respect to this institution.

The OCC will consider any evidence of discriminatory or other illegal credit practices relative to this institution that other regulators may provide to the OCC before the end of the institution's next performance evaluation in that subsequent evaluation, even if the information provided concerns activities that occurred during the evaluation period addressed in this performance evaluation.

APPENDIX A: SUMMARY OF STATE RATINGS

State/Multi-State	Ratings	E*TRADE Saving Bank Overall Bank Rating
		Satisfactory
Arizona	Needs to Improve	
California	Satisfactory	
Colorado	Needs to Improve	
Florida	Needs to Improve	
Georgia	Needs to Improve	
Illinois	Satisfactory	
Michigan	Needs to Improve	
Minnesota	Satisfactory	
New York	Satisfactory	
Oregon	Needs to Improve	
Pennsylvania	Satisfactory	
Texas	Satisfactory	
District of Columbia	Outstanding	

APPENDIX B: SCOPE OF EXAMINATION

The following table identifies the time period covered in this evaluation, affiliate activities reviewed, and loan products considered. The table also reflects the metropolitan and nonmetropolitan areas that received comprehensive examination review (designated by the term “full-scope”) and those that received a less comprehensive review (designated by the term “limited-scope”).

Time Period Reviewed:	<p>January 1, 2013 through December 31, 2014 – District of Columbia</p> <p>January 1, 2013 through September 30, 2013 - All assessment areas except the District of Columbia</p>
------------------------------	--

Financial Institution:	E*TRADE Savings Bank (ETSB) Arlington, VA	Products Reviewed: Qualified investments, grants, and community development services
Affiliates:	E*TRADE Bank (ETB), Arlington, VA	Products Reviewed: Qualified investments, grants, and community development services
	E*TRADE Community Development Corporation	Products Reviewed: Qualified investments, grants

APPENDIX B: SCOPE OF EXAMINATION (CONTINUED)

List of Assessment Area, Type of Review, Evaluation Period

Assessment Area	MD or MSA Number	Type of Review	Evaluation Period
State of Arizona:			
Phoenix-Mesa-Scottsdale, AZ	MSA 38060	Full Scope	1/1/2013 through 9/30/2013
State of California:			
Anaheim-Santa Ana-Irvine	MD 11244	Limited Scope	1/1/2013 through 9/30/2013
Los Angeles-Long Beach-Glendale	MD 31084	Limited Scope	1/1/2013 through 9/30/2013
Sacramento-Roseville-Arden Arcade	MSA 40900	Limited Scope	1/1/2013 through 9/30/2013
San Diego-Carlsbad	MSA 41740	Limited Scope	1/1/2013 through 9/30/2013
San Francisco-Redwood City-South San Francisco	MD 41884	Full Scope	1/1/2013 through 9/30/2013
San Jose-Sunnyvale-Santa Clara	MSA 41940	Full Scope	1/1/2013 through 9/30/2013
State of Colorado:			
Denver-Aurora-Lakewood	MSA 19740	Full Scope	1/1/2013 through 9/30/2013
State of Florida:			
Fort Lauderdale-Pompano Beach- Deerfield Beach	MD 22744	Full Scope	1/1/2013 through 9/30/2013
Orlando-Kissimmee-Sanford	MSA 36740	Limited Scope	1/1/2013 through 9/30/2013
Tampa-St. Petersburg-Clearwater	MSA 45300	Limited Scope	1/1/2013 through 9/30/2013
State of Georgia:			
Atlanta-Sandy Springs-Roswell	MSA 12060	Full Scope	1/1/2013 through 9/30/2013
State of Illinois:			
Chicago-Naperville-Arlington Heights	MD 16974	Full Scope	1/1/2013 through 9/30/2013
State of Michigan:			
Warren-Troy-Farmington Hills	MD 47644	Full Scope	1/1/2013 through 9/30/2013
State of Minnesota:			
Minneapolis-St. Paul-Bloomington, MN-WI	MSA 33460	Full Scope	1/1/2013 through 9/30/2013
State of New York:			
Nassau-Suffolk, NY	MD 35004	Limited Scope	1/1/2013 through 9/30/2013
New York-Jersey City-White Plains, NY-NJ	MD 35614	Full Scope	1/1/2013 through 9/30/2013
State of Oregon:			
Portland-Vancouver-Hillsboro, OR-WA	MSA 38900	Full Scope	1/1/2013 through 9/30/2013
State of Pennsylvania:			
Philadelphia	MD 37964	Full Scope	1/1/2013 through 9/30/2013
State of Texas:			
Dallas-Plano-Irving	MD 19124	Limited Scope	1/1/2013 through 9/30/2013
Houston-The Woodlands-Sugar Land	MSA 26420	Full Scope	1/1/2013 through 9/30/2013
District of Columbia:			
Washington – Arlington – Alexandria, DC-VA-MD-WV	MD 47894	Full Scope	1/1/2013 through 12/31/2014
Silver Spring – Frederick – Rockville, MD	MD 43524	Full Scope	1/1/2013 through 12/31/2014

DEFINITIONS AND COMMON ABBREVIATIONS

The following terms and abbreviations are used throughout this performance evaluation. The definitions are intended to provide the reader with a general understanding of the terms, not a strict legal definition.

Affiliate – Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if both companies are directly or indirectly controlled by the same company. A bank subsidiary is controlled by the bank and is, therefore, an affiliate.

Assessment Area (AA) – A geographic area that consists generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

Benefit to Assessment Area – A qualified Community Development activity benefits the assessment area if (i) the activity benefits areas within the assessment area, or (ii) the activity benefits a broader statewide or regional area that includes the bank's assessment area. If a bank has adequately addressed the needs of its assessment area, then the OCC also considers activities submitted by the bank that benefit areas outside of its assessment area.

Block Numbering Area (BNA) – Statistical subdivisions of counties in which census tracts have not been established. The United States Census Bureau has established BNAs in conjunction with state agencies.

Census Tract (CT) – Small, relatively permanent statistical subdivisions of a county delineated by local participants as part of the U.S. Census Bureau's Participant Statistical Areas Program. The primary purpose of CTs is to provide a stable set of geographic units for the presentation of decennial census data. CTs generally have between 1,500 and 8,000 people with an optimum size of 4,000 people.

Community Development (CD) – Affordable housing for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301)) or have gross annual revenues of \$1 million or less; or activities that revitalize or stabilize low- or moderate-income geographies.

Community Reinvestment Act (CRA) – The statute that requires the OCC to evaluate a bank's record of meeting the credit needs of its local community, consistent with the safe and sound operation of the bank, and to take this record into account when evaluating certain corporate applications filed by the bank.

Geography – A census tract or a block numbering area delineated by the United States Bureau of

the Census in the most recent decennial census.

Median Family Income (MFI) – The median income derived from the United States Census Bureau’s American Community Survey data every 5 years and used to determine the income level category of geographies. Also, it is the median income determined by the Federal Financial Institutions Examination Council (FFIEC) annually that is used to determine the income level of individuals within a geography. For any given geography, the median is the point at which half of the families have income above it and half below it. (See the four categories of median income below.)

- **Low-Income** – An income level that is less than 50% of the MFI.
- **Moderate-Income** – An income level that is at least 50% and less than 80% of the MFI.
- **Middle-Income** – An income level that is at least 80% and less than 120% of the MFI.
- **Upper-Income** – An income level that is 120% or more of the MFI.

Metropolitan Statistical Area (MSA) – Area defined by the director of the United States Office of Management and Budget. MSAs consist of one or more counties, including large population centers and nearby communities that have a high degree of interaction.

Net Operating Income – As listed in the Consolidated Report of Condition and Income: Income before income taxes and extraordinary items and other adjustments. [*Schedule RI - Income Statement, line 8 or UBPR, page 2, “PreTax Operating Income (TE)”*]

Tier 1 Capital – The total of common shareholders’ equity, perpetual preferred shareholders’ equity with noncumulative dividends, retained earnings and minority interests in the equity accounts of consolidated subsidiaries. [*Schedule RC-R - Regulatory Capital, line 3a(1) or UBPR, page 11A, “Net Tier One”*]

Total Assets – Total bank assets as listed in the Consolidated Report of Condition and Income. [*Schedule RC - Balance Sheet, line 12 or UBPR, page 4, “Total Assets”*]

Total Income – From the Consolidated Report of Condition and Income – Total Interest income plus Total Noninterest income. [*Schedule RI - Income Statement, Total Interest Income, line 1g and Total Noninterest Income, line 5g, except for banks with domestic offices only and total assets less than \$100 million, line 5c or UBPR, page 2, “Total Interest Income” and “Noninterest Income”*]

Wholesale Institution – An institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and for which a designation as a wholesale bank is in effect.

Public Exhibit 10

Pro Forma Balance Sheet and Regulatory Capital (Redacted)

Morgan Stanley
 Pro Forma Consolidated Balance Sheet and Risk-Weighted Assets (RWAs)
 December 2019 (MS and E*Trade)

Balance Sheet Category (\$ in millions)	Balance Sheet			Standard Risk Weighted Assets						
	Dec-19			Dec-19						
	Consol	MS	E*Trade	Consol	MS	E*Trade				
[Redacted Content]										
Total	964,842	895,429	61,416	404,867	394,177	10,690				

Pro Forma Balance Sheet / Morgan Stanley-E*TRADE

(\$MM)

	Standalone (12/31/2019)			Pro Forma
	MS	ETFC		
Assets				
Cash and cash equivalents	49,659	750		50,409
Restricted cash / Cash segregated under federal or other regulations	32,512	1,879		34,391
Trading assets	297,110	-		297,110
Available-for-sale securities (at fair value)	62,223	19,501		81,724
Held-to-maturity securities	43,502	21,969		65,471
Securities purchased under agreements to resell	88,224	-		88,224
Securities borrowed	106,549	-		106,549
HFI Loans (net of allowance)	118,060	1,595		119,655
HFS Loans	12,577	-		12,577
Margin receivables	31,916	9,675		41,591
Other receivables	23,730	1,395		25,125
Goodwill	7,143	2,510		15,037
Other intangibles, net	2,107	433		4,875
Other assets	20,117	1,709		21,826
Total Assets	895,429	61,416		964,842
Liabilities and Equity				
Liabilities				
Deposits	190,356	38,606		228,962
Trading Liabilities at Fair value	133,356	-		133,356
Securities sold under agreements to repurchase	54,200	-		54,200
Securities loaned	8,506	-		8,506
Other secured financings	14,698	-		14,698
Customer and other payables	197,834	13,742		211,576
Other liabilities and accrued expenses	21,155	1,115		22,953
Borrowings	192,627	1,410		194,112
Total Liabilities	812,732	54,873		868,363
Equity				
Preferred Equity	8,520	689		9,209
Common Equity	73,029	5,854		86,121
NCI	1,148	-		1,148
Total Equity	82,697	6,543		96,478
Total Liabilities and Equity	895,429	61,416		964,842

Notes:

	Standalone (12/31/2019)		Pro Forma
	MS	ETFC	
Common Equity			
	73,029	5,854	86,121
Less: Goodwill net of DTL	(7,081)	(2,087)	(14,975)
Less: Intangible assets, net of DTL	(2,012)	(380)	(4,144)
Less: DTA NOL	(1)	(70)	(71)
AOCI Adjustments ⁽¹⁾			
Less: Net unrealized gains (losses) on AFS securities	-	13	-
Less: Net unrealized gains (losses) on HTM securities included in AOCI	-	15	-
Less: Unrealized gain / loss due to change in FV of liabilities due to own credit risk	1,157	-	1,157
Less: All other deductions before threshold-based deductions	(341)	-	(341)
Less: Threshold deductions	-	-	-
Common Equity Tier 1 Capital	64,751	3,345	67,747
Additional Tier 1 Capital instruments	8,520	689	9,209
Tier 1 minority interest not included in CET1	607	-	607
Additional Tier 1 capital before deductions	9,127	689	9,816
Less: Additional Tier 1 capital deductions	(435)	-	(435)
Tier 1 Capital	73,443	4,034	77,129
Tier 1 capital instruments	8,538	-	8,538
Total capital minority interest not included in tier 1 capital	143	-	143
Allowance for loan and lease losses includable in tier 2 capital	590	25	615
Tier 2 capital before deductions	9,271	25	9,296
Less: Tier 2 capital deductions	(6)	-	(6)
Total Capital	82,708	4,060	86,419
Average total consolidated assets	899,066	60,968	960,034
Less: Deductions from CET1 and additional Tier 1	(9,870)	(2,537)	(19,689)
Total Assets for the Leverage Ratio	889,196	58,431	940,345
Total Risk-weighted assets (Standardized)	394,177	10,635	404,867
Standardized Ratios			
CET1	16.4%	31.5%	16.7%
Tier 1 Capital	18.6%	37.9%	19.1%
Total Capital	21.0%	38.2%	21.3%
Tier 1 Leverage Ratio	8.3%	6.9%	8.2%

Notes:

1. Morgan Stanley has elected not to make AOCI adjustments; combined company will continue to follow this election

Pro Forma Supplementary Leverage Ratio / Morgan Stanley-E*TRADE

as of 4Q '19

\$bn

	MS	Etrade	[REDACTED]	Combined
[REDACTED]				
Total Leverage	1,155	59		1,215
Tier 1 Capital	73	4		77
SLR Ratio	6.4%	6.8%		6.3%
[REDACTED]				

Public Exhibit 11

Overview of Morgan Stanley's Enterprise Risk Management Framework

OVERVIEW OF MORGAN STANLEY ENTERPRISE RISK MANAGEMENT FRAMEWORK

Effective risk management is vital to the success of the business activities of Morgan Stanley (“Morgan Stanley” or the “Firm”) and its consolidated subsidiaries. Therefore, Morgan Stanley has comprehensive risk management policies, such as the Global Risk Management Principles described herein, and procedures in place to identify, measure, monitor, escalate, mitigate and control the principal risks involved in the activities of its Institutional Securities, Wealth Management and Investment Management business segments (each, a “Business Unit”).

The Global Risk Management Principles establish Morgan Stanley’s Enterprise Risk Management (“ERM”) Framework, also referred to as the Risk Appetite Framework. The ERM Framework integrates the diverse roles of the Business Units, Support and Control Functions and Independent Risk Management and Validation Functions into a holistic enterprise structure that facilitates the incorporation of risk assessment into decision-making processes across the firm. Components of the ERM Framework, such as, Morgan Stanley’s Risk Management Culture, the Risk Appetite Framework, the Risk Governance Structure, the multiple lines of defense, Risk Identification, and Policy Adherence Monitoring are further discussed below.

Together, these policies and principles embody Morgan Stanley’s Risk Management Philosophy, which is *the pursuit of risk-adjusted returns through prudent risk-taking that protects Morgan Stanley’s capital base and franchise.*

Risk Management Culture

Morgan Stanley’s Risk Management Culture is rooted in five key principles:

1. **Integrity:** A strong risk culture and risk governance is critical to Morgan Stanley’s approach to ERM. Developing the Firm’s risk culture is a continuous process and builds upon the Firm’s commitment to “doing the right thing” and its values that make managing risk each employee’s responsibility;
2. **Comprehensiveness:** A well-defined, comprehensive risk governance structure maintained by employees with appropriate risk management expertise that provides for periodic assessment of the efficacy of Morgan Stanley’s risk management framework;
3. **Independence:** Independent lines of reporting for risk managers in regard to identification, measurement, monitoring, escalation and mitigation of risk;
4. **Accountability:** Well-defined roles and responsibilities that establish clear accountability for risk management and are aligned with the Firm’s disciplinary and compensation structure;
5. **Transparency:** A strong risk culture that encourages open dialogue, effective challenge, escalation and appropriate reporting of risk to senior management, the Board (or a committee thereof) and the Firm’s regulators as well as external disclosures of risk matters.

Risk Appetite Framework

The Firm's Risk Appetite Framework articulates the aggregate level and types of risk that Morgan Stanley is willing to accept to achieve its business objectives. Through the Risk Appetite Framework, risk appetite is embedded in Morgan Stanley's risk management culture and linked to its short-term and long-term strategic, capital and financial plans, as well as compensation programs. For example, the Firm's risk appetite informs the Firm's capital planning framework, which employs stress testing to assess the Firm's quantity of risk in aggregate and, where required, at the legal entity level. The Risk Appetite Framework is composed of two important components, the Risk Appetite Statement and Implementation of the Risk Appetite Statement.

Risk Appetite Statement

The centerpiece of Morgan Stanley's ERM and Risk Appetite Framework is the Risk Appetite Statement. The Risk Appetite Statement defines the principal risks involved in the Firm's business activities and includes market (including non-trading interest rate risk), credit model, compliance, operational, cybersecurity, liquidity, strategic, reputation, and conduct risk.

Additional key components of the Firm's Risk Appetite Statement include:

- *Risk Appetite:* Morgan Stanley's risk appetite defines the types and levels of risk that the Firm is will to accept in pursuit of its strategic objectives and business plan, taking into account the interest of clients and customers and the fiduciary duty to shareholders, as well as capital and other regulatory requirements. On at least an annual basis, the Board Risk Committee and the Board must review the risk appetite and risk tolerance statements set forth below, as well as the related Board-level Risk Limits.
- *Risk Limits and Risk Tolerance:* Morgan Stanley's risk tolerance represents the amount of downside risk it is prepared to accept in pursuit of its business strategy in accordance with the Risk Appetite Statement. Morgan Stanley manages risk tolerance through multiple channels, including the use of Risk Limits for quantitative risks and Risk Tolerance Statements for qualitative risks. The Board Risk Committee reviews the risk profiles for market, credit, liquidity, and model risks on, at least, a quarterly basis. The Board Audit Committee reviews the risk profiles for compliance risk. The Operations and Technology Committee reviews the risk profiles for operational and cybersecurity risks.
- *Risk Capacity:* Morgan Stanley's risk capacity is the maximum level of risk that the Firm is able to support given its capital structure, earnings, liquidity, borrowing capacity, dividend/share repurchase plans and regulatory capital requirements. The Firm incorporates these factors into its capital adequacy assessment framework and liquidity risk framework to establish the boundaries for the Firm's risk-taking activities. These boundaries are further assessed through the Firm's capital adequacy assessment process and the contingency funding plan, as well as regulatory and Firm stress tests. The boundaries are then incorporated into Morgan Stanley's risk and financial planning processes. These processes are used to define the Firm's Risk Appetite Statement.

Implementation of Risk Appetite

The Risk Appetite Statement requires a comprehensive approach to monitor, assess and report on the risk profiles of the Firm, Business Units and Significant Operating Subsidiaries on an ongoing basis, with regular reporting to the Firm Risk Committee and Board Risk Committee. To

implement the requirements of the Risk Appetite Statement, reporting includes quantitative measurements and qualitative assessments that enable a comparison of the Firm's current risk profile against risk limits and Risk Tolerance Statements. Reporting also identifies matters for escalation and decisions, as well as highlight emerging risks, mitigating actions and matters that are significant to the Firm's strategy.

Additionally to ensure implementation of risk appetite, the Firm maintains a comprehensive suite of Risk Limits and quantitative metrics to support implementation of its Risk Appetite Statements. Risk Limits and quantitative metrics provide the basis for monitoring risk-taking activity, thereby guarding against breaches of the established risk appetites and tolerances. Business Units are required to ensure that they operate within established Risk Limits and, to the extent that Risk Limits are breached, take prompt action to remediate the breach and restore compliance. To this end, comprehensive Risk Limit Frameworks have been established to cover Market Risk (including Price Risk and Interest Rate Risk), Credit Risk and Liquidity Risk. Therefore, the Risk Limits support linkages between the overall Risk Appetite, which is reviewed by the Board, and more granular risk-taking decisions and activities. Board-level and Firm Risk Committee-level Risk Limits address the most important Firmwide aggregations of risk, including, but not limited to, stressed market, credit and liquidity risks. Additional Risk Limits approved by the Firm Risk Committee address more specific types of risk and are bound by the higher-level Board Risk Limits.

Risk Governance Structure

Risk is monitored and managed on a Firm-wide, Business Unit-wide and, where appropriate, on an operating subsidiary basis, through a formalized risk governance structure. This structure incorporates independent Firm-level oversight, accountability of Morgan Stanley's Business units, and effective communication of risk matters to senior management and the Board. Additionally, financial risks, non-financial risks, and model risks that are derived from the Firm's strategy execution and business activities are managed through this formalized risk governance structure and through ongoing focus and investment in governance processes, risk management, technology, training and controls.

Please refer to Annex A of this overview for additional information about Morgan Stanley's risk governance structure.

Three Lines of Defense

Morgan Stanley incorporates the three lines of defense model into its risk governance structure.

- **Risk Owners** are organizational units or functions that have the ability to generate revenue or control expenses for the Firm, or that provide certain operations or information technology support and services to units or functions within the Firm (*e.g.* Business Units). Risk Owners are accountable for risks associated with their activities and are responsible for actively assessing and managing these risks.
- **Independent Risk Management and Validation Functions** identify, measure, monitor, and control risks, and independently validate the effectiveness and consistency of risk management processes carried out by the Risk Owners and across risk categories. Independent Risk Management includes, for example, functions performed by the Market Risk Department, Credit Risk Management, Liquidity Risk Department, Operational Risk

Department, Model Risk Management, Compliance Department, Global Financial Crimes Group (“GFC”), as well as certain functions performed by the Legal Department.

- **Internal Audit** provides independent assurance on the design quality and operating effectiveness of the Firm’s internal control, risk management and governance systems and control processes.

Risk Identification

Risk identification is a key component of risk management at Morgan Stanley. The ability to identify and quantify risks, as well as understand how those risks could manifest under normal and stress conditions, is integral to the Firm’s risk management, stress testing and capital planning processes. The Firm’s Risk Identification Framework provides a consistent and repeatable approach for identifying, quantifying and evaluating risks and is comprised of four components – risk taxonomy, risk inventory, materiality assessment and material risks aggregation – which collectively reflect the Firm’s unique risk profile.

The collection of risks identified in the Firm’s risk profile is assessed as part of the Firm’s capital adequacy assessment and integrated stress testing processes and is an integral part of the development of the risk limit structure and risk tolerance statements within the Risk Appetite Statement discussed above.

Risk Data and Control and Integrity

Morgan Stanley maintains effective risk data and risk reporting control, and governance to support the management of risk, including:

- The ability to aggregate material risk exposures and identify concentrations quickly and accurately at the Firm level, across business lines and between legal entities;
- Risk reporting capabilities that include clear and concise forward looking reporting to provide early warnings of potential breaches of established risk limits; and
- Accurate and reliable risk data to meet normal and stress and crisis reporting requirements

Morgan Stanley also maintains appropriate governance over risk data accuracy, integrity, completeness, timeliness, adaptability, availability and confidentiality, including governance over accuracy, comprehensiveness, clarity, usefulness, frequency and distribution for risk reporting. Any material limitations in risk data aggregation and reporting capabilities are escalated to senior management and the Board.

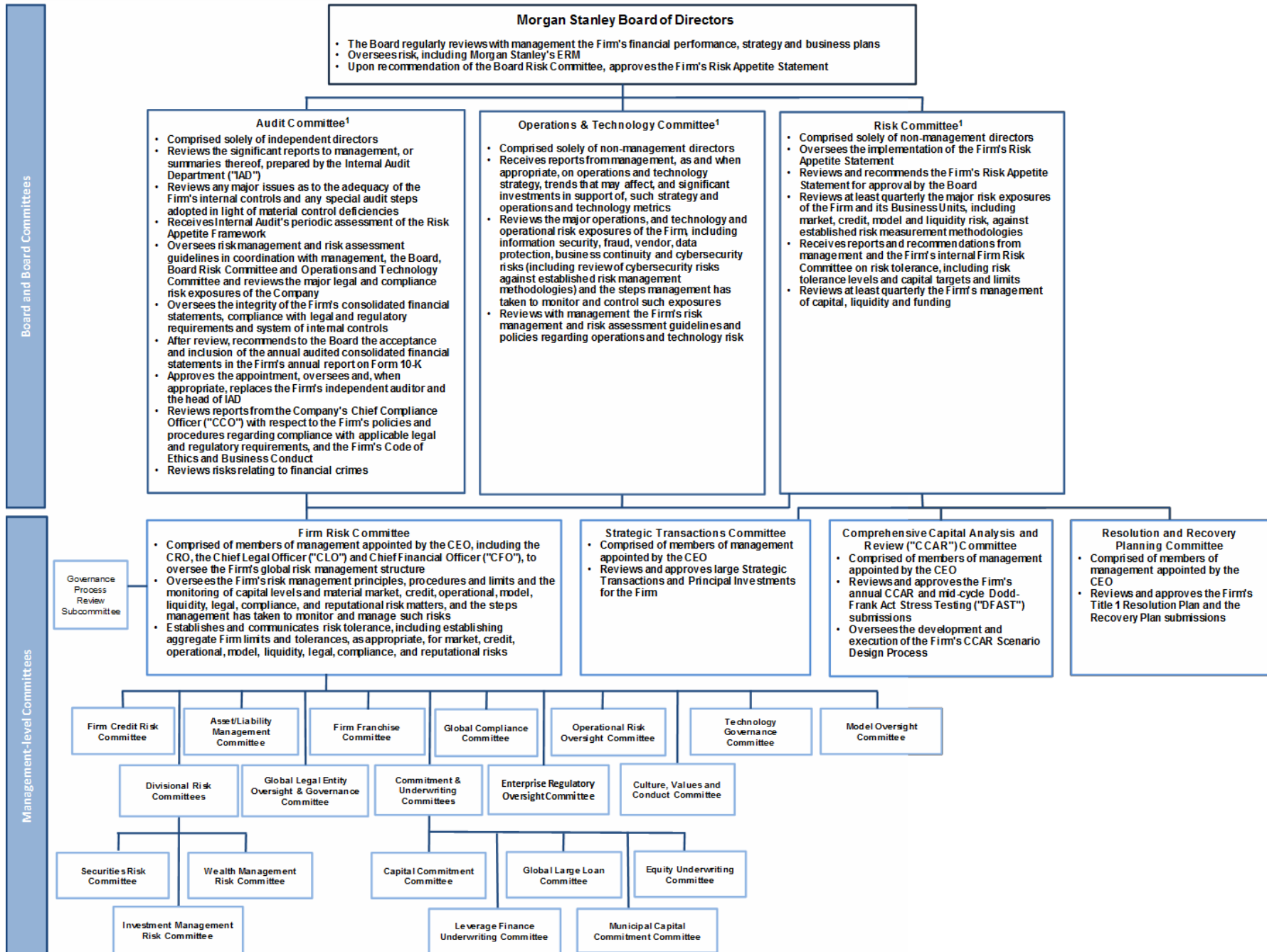
Finally, Morgan Stanley maintains risk data control and integrity through self-assessments, data quality metrics, attestations, independent validation, reconciliation, a continuous monitoring program and internal audit review and adherence to related policies.

These data control and integrity principles extend to material acquisitions and new initiatives, including the Proposed Transaction.

Policy Adherence Monitoring

Morgan Stanley's ERM program employs various methods to assess compliance with the standards set forth in this Policy. These methods include, but are not limited to, (i) an annual review of the subordinate policies to ensure that they conform to the standards established in this policy and (ii) a periodic review of the completeness of reporting as defined in the Risk Appetite Statement. Risk Management will escalate issues of noncompliance and plans for remediation to the Board Risk Committee. In addition, in accordance with the Financial Stability Board's "Principles for an Effective Risk Appetite Framework," Internal Audit performs periodic assessments of the Firm's Risk Appetite Framework.

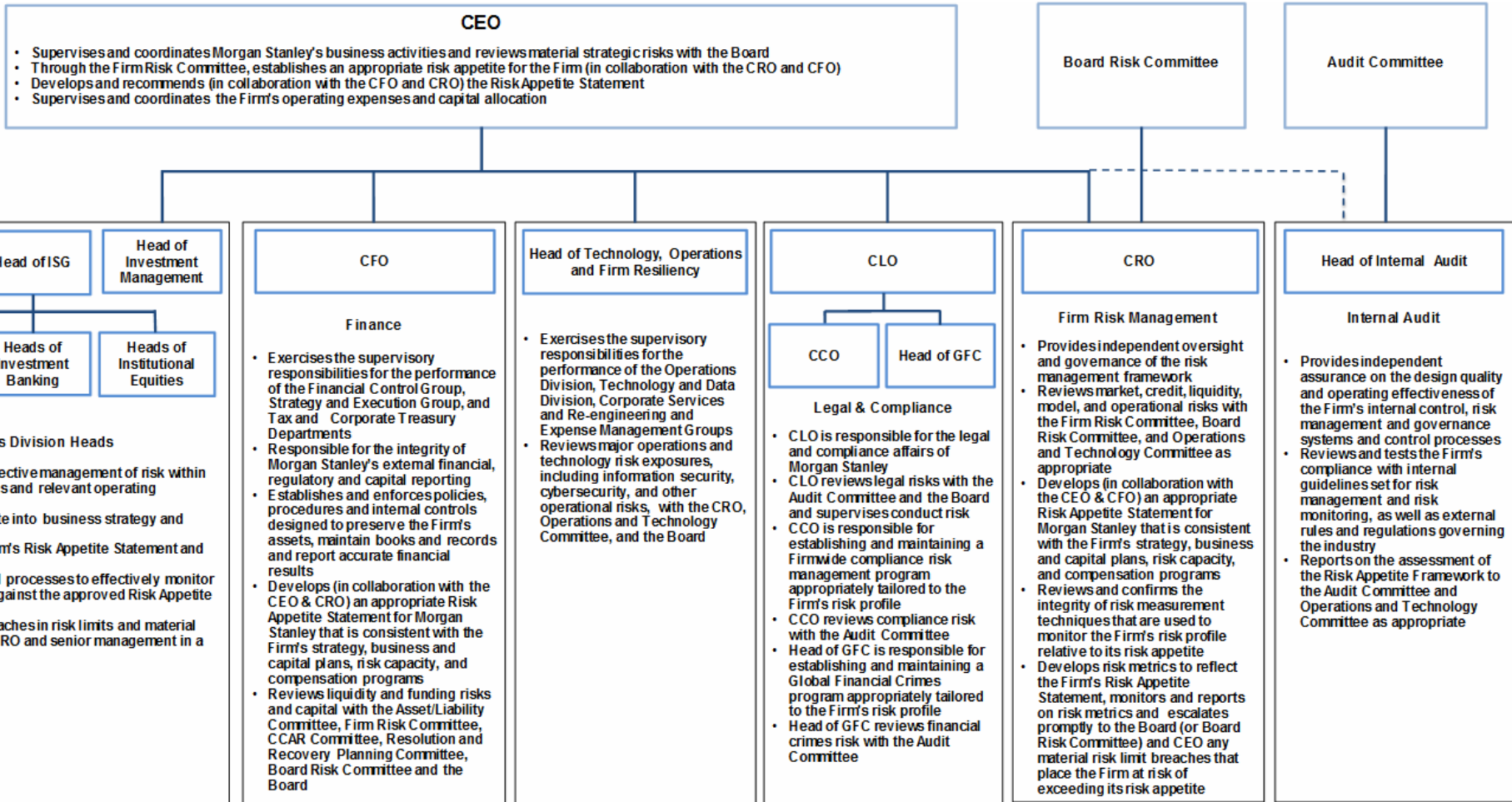
**Annex A to Overview of Morgan Stanley's Enterprise Risk
Management Framework**



¹ The Audit Committee, Operations & Technology Committee, and Risk Committee coordinate with management and each other to help ensure that the committees have received the information necessary to permit them to fulfill their duties and responsibilities with respect to oversight of risk management and risk assessment guidelines and policies.

Senior Management

- Key members of senior management are responsible for the day-to-day management of the Firm in accordance with the principles and risk appetite set forth in this document.
- The CEO and business division heads execute the strategy and manage business activities of the Firm in accordance with the Risk Appetite Statement.
- The CFO and members of senior management support strategy execution, logistics and control of the Firm's business activities.
- The CLO manages the legal and compliance risk functions of Morgan Stanley.
- The CCO reports to the CLO, manages the compliance risk function of the Firm, and reviews compliance risk with the Board Audit Committee. The Head of the Global Financial Crimes Group ("GFC") also reports to the CLO and reviews risks relating to financial crimes with the Board Audit Committee.
- The CRO reports to the Board Risk Committee; manages the market, credit, model, liquidity and operational risk functions of the Firm in support of the Firm's strategy; and provides the Board Risk Committee with an independent view of the risks related to the Firm's business activities.
- The Head of the Internal Audit Department ("IAD") manages IAD and reports to the Board Audit Committee.
- Senior management is responsible for ensuring that:
 - employees have the experience and skills to perform their duties; and
 - the sophistication and functionality of risk information and reporting systems, the scope and frequency of risk monitoring, reporting and auditing activities, and the authority and resources of the groups or persons performing the risk monitoring and management functions are adequate to manage and support Morgan Stanley's complex and diverse businesses and risks.



Public Exhibit 12

Overview of Morgan Stanley's Compliance Risk Management Program

OVERVIEW OF MORGAN STANLEY COMPLIANCE RISK MANAGEMENT PROGRAM

Morgan Stanley (“Morgan Stanley” or the “Firm”) strives to adhere to the highest standards of ethical conduct and abide by the letter and the spirit of applicable laws and regulations. This commitment to ethical conduct is a hallmark of Morgan Stanley’s culture and is reflected in its core values of Doing the Right Thing and Putting Clients First. In furtherance of this commitment, Morgan Stanley has established an independent and effective Firmwide Compliance Risk Management Program in accordance with the Firm’s established risk management principles and the three lines of defense model (which are described in detail in Public Exhibit 12. The Compliance Risk Management Program is used (in combination with other tools) to monitor and test compliance risk management across Morgan Stanley.

The Compliance Risk Management Program:

- Promotes a strong culture of compliance;
- Defines an operating model and setting standards for compliance risk management;
- Identifies, assesses, addresses and reports on compliance risks across Morgan Stanley;
- Maintains a risk-based program for monitoring and testing compliance risk management by the first line of defense across Morgan Stanley;
- Provides advice, guidance (including Compliance policies and, where appropriate, procedures), and training concerning laws, rules, regulations and policies;
- Manages the Firmwide compliance risk reporting framework; and
- Reviews new products and business initiatives to assess their Compliance risks as part of the New Product Approval (“NPA”) process.

The components of the Compliance Risk Management Program, which are supported by detailed procedures, include the following:

- **Compliance Risk Assessment** - The Compliance Risk Assessment is the Compliance Department’s annual assessment of the Firm’s compliance risk and control framework for compliance with laws, rules, regulations, standards and codes of conduct. The Compliance Risk Assessment seeks to identify, document and assess compliance risks and potential control enhancements on both business-unit and legal-entity bases. The results of the Compliance Risk Assessment contribute to an aggregated view of Morgan Stanley’s compliance risk exposure and inform Compliance Department planning and resource allocation.
- **Annual Compliance Plan** – Compliance develops a global Annual Compliance Plan that sets priorities for allocation of Global Compliance Department resources, taking into

account, among other things, the results of the annual Compliance Risk Assessment, other compliance risk identification activity, material changes in the Firm's activities and new business initiatives and products. The Annual Compliance Plan is reviewed and approved by the Global Compliance Committee and the Audit Committee of the Board of Directors.

- **Monitoring and Testing** - The Global Compliance Department is responsible for ensuring risk-based monitoring and testing of compliance risk controls implemented by the first line of defense to assess whether the controls are reasonably designed and working effectively. Compliance testing means conducting independent, risk-based, backward-looking, point-in-time assessments of the extent to which compliance procedures, processes and controls are reasonably designed and working effectively. The Chief Compliance Officer is responsible for overseeing the annual Testing Plan, which takes into account the results of the Compliance Risk Assessment, regulatory requirements and other factors, and establishes a schedule for Compliance testing across the Firm. The Testing Plan also allows for additional testing in response to unanticipated developments, such as the adoption of new rules and regulations, audit recommendations, examination findings or internal investigations and new business initiatives, as appropriate. The Chief Compliance Officer presents a summary of the Testing Plan to the Global Compliance Committee and the Audit Committee of the Board of Directors, as part of the Annual Compliance Plan, and reports on progress to plan on a quarterly basis.
 - **Compliance monitoring** means executing independent, risk-based checking and observing of each business's or function's adherence to relevant rules and/or policies and procedures (e.g., through sample-based re-performance and trends analysis of first-line compliance activities). Compliance monitoring includes activities carried out on a regular basis, generally daily, weekly, monthly or quarterly, and may be part of day-to-day operations. Business line management is responsible for the proper functioning of controls in their respective businesses, and business line staff is responsible for supervision and quality assurance activities. Compliance Department personnel conduct independent monitoring, as appropriate. The Chief Compliance Officer presents a summary of the annual Monitoring Plan to the Global Compliance Committee and the Audit Committee of the Board of Directors, as part of the Annual Compliance Plan, and reports on progress to plan on a quarterly basis.
- **Rules Management** - The Chief Compliance Officer is responsible for implementing and maintaining a cohesive, global framework for managing applicable laws, rules and regulations across in-scope jurisdictions. This rules management framework is designed to support the identification of laws, rules and regulations that relate to compliance risks; the tracking and inventorying of such laws, rules and regulations and the synthesis and communication of applicable laws, rules and regulations to parties responsible for first and second line activities.

- **Training** - The Chief Compliance Officer is responsible for overseeing an annual Firmwide Compliance Training Plan, presents a summary of the plan to the Global Compliance Committee and the Audit Committee of the Board of Directors as part of the Annual Compliance Plan and reports on progress to plan on a quarterly basis. The Training Plan defines the curriculum, identifies the frequency and appropriate audience for training and sets forth the Firmwide compliance training requirements for all employees, including new hires. The annual Training Plan is developed based on, among other things, the results of the Compliance Risk Assessment, any significant compliance monitoring and testing findings for the previous year, changes to the Firm's business, industry trends, regulatory findings or initiatives, and internal or external incidents.
- **Policy and Procedure Review** - Policies are documents establishing core principles, requirements and controls that enable the Firm to comply with applicable laws, rules and regulations, mitigate risks and adhere to the Firm's standards of conduct. Generally, policies identify the types of individuals in regions, business units and/or legal entities in scope for the requirements, have an accountable owner and are actionable and enforceable. Procedures are documents describing how to comply with the requirements of a policy or other Firm requirements, laws, rules or regulations. Procedures have specific objectives and establish accountability, frequency, steps to be taken in execution, reporting and disposition, and documentation and record-keeping requirements as appropriate. The Chief Compliance Officer is responsible for overseeing the annual plan for review of policies and procedures owned by the Compliance Department based on, among other things, the results of the annual Compliance Risk Assessment. Policies and procedures are also subject to review in response to, among other things, the adoption of new or amended laws, rules and regulations; regulatory exam findings; internal or external audit recommendations; new business strategies and internal investigations. The Chief Compliance Officer presents a summary of the annual Policies and Procedures Plan to the Global Compliance Committee and the Audit Committee of the Board of Directors, as part of the Annual Compliance Plan, and reports on progress to plan on a quarterly basis.
- **Advisory** - The Global Compliance Department aids businesses with understanding and complying with regulations and compliance policies, including supporting compliance activity, procedure and control implementation, new product approval and interacting with other functions.
- **Metrics Reporting and Escalation** – The Chief Compliance Officer is responsible for developing appropriate Compliance metrics and maintaining Firmwide compliance risk reporting, including presenting progress on the Annual Compliance Plan to the Global Compliance Committee and the Audit Committee of the Board of Directors. In addition, issues and actions (i) owned by Compliance Department personnel, (ii) resulting from Compliance Department assessments or (iii) resulting from regulatory examinations, are maintained in the Firm's approved system(s) to track such issues and actions. The Chief Compliance Officer reports at least quarterly to the Global Compliance Committee and the Audit Committee of the Board of Directors on:

- Significant compliance risks, initiatives and remediation efforts;
- Significant compliance risk and Compliance Department metrics;
- Material Conduct Risk Incidents and related Conduct Risk matters; and
- Status of significant regulatory interactions and developments.

The Chief Compliance Officer also provides a regular update to the Firm's Risk Committee.

Public Exhibit 13

Overview of Morgan Stanley's Fair Lending Compliance Program

OVERVIEW OF MORGAN STANLEY FAIR LENDING COMPLIANCE PROGRAM

Morgan Stanley employs fair and reasonable lending practices, including making credit accessible to all applicants in accordance with federal and state consumer protection laws, rules, regulations and official guidance. Likewise, Morgan Stanley is committed to complying with consumer protection laws including:

- Fair lending laws prohibiting discrimination against clients and applicants;
- Prohibitions on unfair, deceptive, or abusive acts or practices;
- Laws requiring that Morgan Stanley safeguard the privacy and confidentiality of client data, including Personally Identifiable Information

Morgan Stanley prohibits discrimination against clients and credit applicants on a prohibited basis, including discrimination on the basis of race, color, religion, national origin, gender marital status, handicap status, familial status, age (as long as the applicant is able to enter into a binding contract), receipt of public assistance, the exercise of rights under the Consumer Credit Protection Act, military or veteran status, sexual orientation, gender identity, gender characteristics as a proxy for sex, or for predisposing genetic characteristics.

In addition to the prohibition on discrimination, Morgan Stanley policies also prohibit:

- Discouraging an applicant or prospective applicant from applying for or to pursue a loan application;
- Employing predatory lending practices including product steering on a prohibited basis, redlining and reverse redlining, collateral-based financing without regard to the applicant's ability to repay, and repeated refinancing unless there is a net tangible benefit to the borrower.

MSBNA and MSPBNA Fair Lending Program Elements

Morgan Stanley's fair lending compliance program addresses compliance with fair lending laws, rules, regulations and official guidance through the development, implementation, and supervision of controls. The functional elements of Morgan Stanley's fair lending program include policies, business and compliance procedures, training, risk assessments, complaint reviews, marketing and advertising reviews, sales practice and incentive compensation, and testing.

Morgan Stanley's U.S. insured depository institution subsidiaries, MSBNA and MSPBNA (together, the "Banks"), have published a framework consisting of 11 core elements encompassed in a Fair Lending Program that represents Morgan Stanley's commitment to servicing the banking needs of Morgan Stanley clients in a fair and responsible manner. These elements include:

- **Commitment and Tone at the Top:** The Banks' Boards of Directors, Senior Management Committees, and Senior Management at Morgan Stanley communicate a culture of fair lending compliance that rewards fair lending compliance and that values the processes assuring fair lending compliance. Fair lending compliance is administered by Compliance with a designated

Fair Lending Officer and a Fair Lending Working Group. This working group includes senior management representatives from across Morgan Stanley's lines of business and is a forum to discuss fair lending compliance, emerging issues, regulatory changes, enforcement actions, and findings.

- **Expertise and Independence:** Compliance, as the second line of defense, provides sufficient resources to execute responsibilities necessary for compliance with fair lending laws and regulations and operate independently of the lines of business. Compliance officers are the subject matter experts on fair lending-related matters, including fair lending risk management processes, policies and procedures, risk assessments, training, statistical analyses and reporting.
- **Risk Identification:** Fair lending risk identification is the first step in the Banks' fair lending qualitative risk assessment process and requires the identification of fair lending compliance obligations via regulatory change management, new product approval and business initiatives oversight, and marketing and advertising strategy.
- **Risk Assessment:** Fair lending legal entity and product line qualitative risk assessments, conducted on a periodic cycle, are a critical component of the Fair Lending Program and helps establish priorities for training, testing, and monitoring. Elements of the qualitative fair lending risk assessment are: inherent risk evaluation and rating, controls effectiveness (e.g. policies, procedures, training, testing product steering, sales practice and incentive compensation) evaluations and rating, residual risk rating and a direction-of-risk rating.
- **Underwriting & Pricing:** Underwriting and pricing standards and guidelines must be based solely on risk and legitimate business factors without regard to prohibited characteristics. Exceptions to underwriting and pricing standards are permitted only in accordance with the framework set by each legal entity/product line Credit Risk Management Committee and Pricing Committee and must be premised on a legitimate business purpose. Compliance provides advice, guidance and challenge from a fair lending perspective.
- **Policies and Business Unit Procedures:** The Banks' fair lending compliance controls include the policies, procedures, and practices at the first and second lines of defense that foster compliance with fair lending regulations and to mitigate the risk of non-compliance. Morgan Stanley has a written fair lending standard which refers to applicable fair lending policies, procedures, supplements, and Morgan Stanley resources.
- **Monitoring, Testing, and Self-Assessments:** The Banks utilize various methods of measuring the effectiveness of fair lending control activities, such as reviews of HMDA-reportable loan/applications for data integrity, reviewing complaints, marketing and advertising materials, fair lending regulations testing, underwriting and pricing statistical analyses, and predictive analytics models validation and governance for marketing purposes.
 - **Complaint Review:** Fair lending-related complaints are reviewed by the Fair Lending Officer and such complaints may be escalated to the Fair Lending Working Group and other management committees.

- **Marketing and Advertising Review:** New or revised marketing, advertising, and training materials are approved through a dedicated Morgan Stanley system by Compliance personnel.
- **Fair Lending Regulations Testing (including statistical analyses and predictive analytics model validation):** The Banks' Compliance personnel perform control effectiveness and transactional tests related to consumer protection laws and regulations associated with fair lending pertaining to loan origination and loan servicing. Results of these tests are shared with senior management and management committees. Fair lending underwriting and pricing statistical analyses of product line data are a key component to Morgan Stanley's Fair Lending Program and is crucial in helping Morgan Stanley assess the effectiveness of its controls for fair lending compliance. Morgan Stanley's use of predictive analytics models for marketing purposes and market area penetration require independent fair lending analyses by Compliance. Results help to gauge and shape future new product approvals and marketing methodologies and delivery methods.
- **Reporting:** Compliance maintains a program of fair lending compliance reporting (e.g. statistical analysis reports and predictive model validation), which includes key fair lending issue indicators, such as complaints, assessments of fair lending compliance and control effectiveness, emerging fair lending compliance issues and hot topics, and the status of fair lending-related regulatory examinations.
- **Training and Awareness:** The Banks' fair lending compliance training schedule is assessed and documented on an annual basis as part of their Annual Compliance Plans. The schedule takes into account the results of the fair lending risk assessment, monitoring and testing, and fair lending expertise required for specific individuals and business areas.
- **Exceptions and Issue Escalation/Resolution:** Exceptions or issues are required to be escalated to the Legal and Compliance Department for advice, guidance, and resolution.
- **Accountability/Roles and Responsibilities:** Responsibility for fair lending compliance rests with all Morgan Stanley personnel with each product's business, credit, operations, and control groups. Senior management is responsible for overseeing these units and their compliance with all fair lending requirements.

Public Exhibit 14

Overview of Morgan Stanley's Financial Crimes Compliance Program

OVERVIEW OF MORGAN STANLEY FINANCIAL CRIMES COMPLIANCE PROGRAM

Morgan Stanley (“Morgan Stanley” or the “Firm”) has policies, procedures, and internal controls in place that are reasonably designed to comply with applicable anti-money laundering (“AML”), anti-corruption, economic sanctions, anti-tax evasion and government and political activities laws and regulations. Morgan Stanley’s Global Financial Crimes (“GFC”) Group coordinates day-to-day implementation of the Firm’s enterprise-wide financial crimes prevention efforts. GFC is comprised of both legal and compliance personnel and has responsibility for governance, oversight and execution of the Firm’s AML, economic sanctions, anti-tax evasion, anti-corruption and government and political activities compliance programs (collectively the “GFC Program”).

The GFC Program is organized into several functionally-aligned teams that provide centralized GFC Program support across the Firm as well as teams aligned to the Firm’s various lines of business and regions, which assist business units in the fulfillment of their GFC Program-related compliance responsibilities.

Additionally, the GFC Program establishes guiding principles and consistent global standards designed to protect Morgan Stanley and its personnel worldwide from being used to facilitate money laundering, terrorist financing or other illicit activities. It also includes numerous AML and sanctions controls, including, among others, a comprehensive know-your-customer program, sanctions screenings, investigations and reporting, and transaction monitoring. Specific components of, and recent enhancements to, the GFC Program are discussed below.

Primary AML and Sanctions Policies

The overall AML program at the Firm is articulated through the Global Anti-Money Laundering Policy and Compliance Program. This policy is approved annually by the Firm’s Board of Directors.

Additional policies and programs include:

- a Global Economic Sanctions/ Office of Foreign Assets Control policy that lays out the Firm’s global compliance with the regulations and economic sanctions regulations programs in jurisdictions in which the firm does business;
- a Global KYC Standards policy that establishes an enterprise-wide Know Your Customer (“KYC”) framework with standards for verifying the identity of each customer with whom the Firm establishes a relationship, assessing and managing the money laundering risks posed by those customers, and implementing additional controls to manage, to the extent reasonable and practicable, the risks associated with higher risk customers; and
- a Global Screening Standards program for screening information associated with individuals, entities, and transactions to manage the risks related to money laundering, terrorism financing, and Sanctions.

Primary Controls for AML and Sanctions

Know Your Customer: KYC begins at onboarding and continues throughout the life of the customer’s relationship. The KYC program includes:

- Customer Identification & Verification;
- Customer Due Diligence Screenings;
- U.S. Customer Due Diligence Rule Compliance; and
- Enhanced Due Diligence

Negative News & Politically Exposed Persons Screenings: Morgan Stanley conducts screening of new and existing clients and related parties for negative news and for identification of Politically Exposed Persons.

Sanctions Screenings: Morgan Stanley conducts screenings against client reference data and applicable transactions, including wires, against Sanctions lists.

Transaction Monitoring: Morgan Stanley uses a proprietary AML-Transaction Monitoring System (“TMS”) system with over 50 different scenarios to capture potentially suspicious activity.

Investigations and Reporting: Investigations teams review potentially suspicious activity based on escalations from various sources including TMS alerts, negative news alerts, and potential financial crimes-related referrals from other parts of the Firm or law enforcement agencies. Following this review, the Investigations teams determine whether the filing of a Suspicious Activity/Transaction Report is required, and what, if any, additional steps are warranted.

Risk Assessment: Morgan Stanley annually conducts AML and OFAC Sanctions Risk Assessments to assess the level of AML and Sanctions risk and adequacy of controls.

Governance: Morgan Stanley maintains a robust governance framework that includes oversight of the GFC Program by the Firm’s Board, through the Audit Committee of the Board (the “Audit Committee”) as well as by senior management-level committees.

AML and Sanctions Training: Morgan Stanley requires annual Firm-wide AML and Sanctions online training for all active, eligible employees and certain contingent workers, in addition to targeted AML and Sanctions trainings for front office employees and professional development training for GFC employees.

Quality Assurance & Testing: The first and second lines of defense review and test the work processes of the GFC Program. GFC also coordinates with Internal Audit on the annual independent audit of the Firm’s GFC program.

Periodic Review, including Customer Activity Review: Morgan Stanley conducts ongoing customer information and documentation refresh of KYC information and also conducts customer activity reviews for certain accounts, based on the risk rating assigned to those accounts.

GFC Governance and Escalation Framework

The Firm's governance framework includes oversight of the GFC Program by the Board through the Audit Committee and by senior management-level committees. *Firm Level Committees*

The Firm's GFC Program is governed by several Firm level committees.

- **Audit Committee:** Obtains, reviews and evaluates reports from the Global Head of GFC with respect to the Firm's GFC Program, including the AML and Sanctions compliance programs;
- **Risk Committee:** Oversees Risk Management, including risk related to Financial Crime;
- **Global Compliance Committee:** Serves as an escalation point for significant GFC matters; is chaired by the Chief Compliance Officer and includes the Firm's Operating Committee members;
- **Global Franchise Committee:** Convenes on an as-needed basis to consider matters that have been escalated as potential risks to the franchise, including AML, Sanctions and corruption risks;
- **Operational Risk Oversight Committee:** Reviews and confirms the Top Operational Risks and recommend these for review by the Firm Risk Committee;
- **Enterprise Regulatory Oversight Committee:** Provides ongoing oversight of significant regulatory assessments and findings and serve as an escalation path for communicating significant regulatory and supervisory issues to senior management and the Audit Committee.

GFC Level Governance Committees

In addition, GFC maintains a robust internal governance and escalation framework ensuring that significant issues and risks are escalated and reported on.

- **GFC Governance Committee:** A sub-committee of the Global Compliance Committee, chaired by the Global Head of Financial Crimes and includes senior GFC stakeholders as well as senior representatives of the Firm's Operations, Financial Crimes Technology, Operational Risk, Internal Audit and Legal and Compliance Divisions; responsibilities include:
 - reviewing significant issues and risks, including those identified through monthly metrics reporting, presented by its members or escalated by other GFC committees, working groups, and business units;
 - monitoring, reporting on, and where appropriate, disseminating the remediation and action plans as well as decisions and status updates of identified issues and risks to its supporting committees; and
 - providing regular reports and escalating significant issues and risks to the GCC, the BAC, and other Firm-level committees as necessary.

- **Business Unit (“BU”) and Regional Governance and Escalation Committees:**
Chaired by members of GFC and are composed of members from BUs, Risk, Operations and Technology; responsibilities include:
 - monitoring metrics and reports at the BU/Regional level against the appropriate level of risk and determining action plans to remediate any item which exceeds established risk tolerance thresholds as defined by this Policy and its implementing procedure;
 - reviewing issues and risks, including those identified through BU/Regional monthly metrics, presented by committee members, working groups or the GFC Governance and Escalations Officer to determine further courses of action;
 - escalating, as necessary, issues and risks to the GFC Governance Committee; and
 - reporting, as appropriate, on the status of matters to relevant regional or legal entity committees

- **GFC Functional Committees:** Support specific GFC-related topics that are critical to the execution of the GFC program. These functional committees include:
 - KYC Standards Committee
 - GFC Monitoring Committee
 - GFC Model Risk Control Committee
 - Promontory Risk Review Executive Committee

Recent Enhancements to the GFC Program

The GFC Program continues to evolve to address emerging financial crime risks, technology enhancements, data quality, and talent development, including enhancing the governance of Global First-Line Teams, preparing for the implementation of the 5th EU Anti-Money Laundering Directive, and continuing to enhance Strategic Customer Activity Review. Over the past several years, the Firm has made various enhancements to the GFC Program, including, but not limited to, in the following areas:

- Implementation of a Governance and Escalation Framework, including metrics reporting;
- Implementation of a Enterprise-wide Customer Risk Ranking Engine for Bank and Wealth Management customers;
- Centralization of the U.S. Investigations team;
- Engagement of Promontory, a managed service vendor, to create a long-term, sustainable experienced workforce;

- Expansion of GFC team into the Firm's Baltimore office;
- Validation of the governance and supervisory framework for GFC work outsourced by GFC to a managed service vendor;
- Enhancement to GFC's rules change management processes;
- Implementation of the Firm's Brexit-related strategy for GFC;
- Completion of the implementation of the Enterprise Customer Risk Ranking Engine for U.S. Mortgage business and Australia Wealth Management;
- Work related to the implementation of the Strategic Customer Activity Review Plan;
- Implementation of KYC Global Minimum Standards in remaining business units and regions;
- Work to build out the Data Aggregation Platform as the foundation for the next generation Single Client View and centralized data source for GFC Metrics and Risk Assessment processes;
- Completion of the implementation of the upgraded sanctions screening engine (C-Link);
- Completion of the implementation of fuzzy logic for OFAC sanctions screening and transactions;
- Completion of an assessment of financial crimes controls for physical precious metals transactions in U.S. Wealth Management;
- Enhancements to GFC's control frameworks for marijuana-related business;
- Development of a Tax Associated Persons System (TaxAPS) to support Anti-Tax Evasion program; and
- Development and implementation of a transaction monitoring scenario to identify potential market manipulation of low priced securities.

Public Exhibit 15

Deposits and Liabilities Concentration Limit Analyses

**Nationwide Deposits Concentration Limit
Morgan Stanley-E*TRADE**

	<i>Standalone (12/31/2019)</i>		
	MS*	ETFC**	Pro Forma
Total Consolidated Deposits	190,000,000,000	38,600,000,000	228,600,000,000
Total Deposits Held in Domestic Offices as of 12.31.19***	13,219,968,035,000	13,219,968,035,000	13,219,968,035,000
Percentage of Nationwide Deposits	1.437%	0.292%	1.729%

*This amount excludes transactions between the Morgan Stanley Banks.

**As reported in E*TRADE's 2019 Report on Form 10-K

*** Source: FDIC, Statistics on Depository Institutions

Nationwide Liabilities Concentration Limit / Morgan Stanley-E*TRADE

(\$MM)

	Morgan Stanley	E*TRADE	Pro Forma
Total Firm RWA	394,177	10,635	404,867
<u>Plus: Add-on</u>			
CET1 Deductions	9,435	2,509	19,531
Total Capital Ratio	21.0%	38.17%	21.3%
Multiplier	3.8	1.62	3.7
Add-on	35,531	4,064	71,971
Less: Total Regulatory Capital	(82,708)	(4,059)	(86,419)
Consolidated Liabilites	347,000	10,640	390,419
Nationwide Total Liabliites	20,660,000	20,660,000	20,660,000
Share of Total	1.678%	0.051%	1.889%

Public Exhibit 16

Additional Information Regarding Financial Stability (Redacted)

Morgan Stanley-E*TRADE Pro Forma FR Y-15 Information

<i>Aggregate FR Y-15 Data - Source: SNL Financial</i>												
Company Name	Total Exposures	Total Intra-Financial System Assets	Total Intra-Financial System Liabilities	Total Securities Outstanding	Total Payments	Assets Held as Custodian for Customers	Total Underwriting Transactions	Total Notional OTC Derivatives	Total Trading + AFS Securities	Total Level 3 Assets	Total Cross-Jurisdictional Claims	Total Cross-Jurisdictional Liabilities
Ally Financial Inc.	184,571,900	4,208,000	5,325,000	92,907,000	106,491,000	0	0	32,489,000	8,654,000	55,000	822,000	292,000
American Express Company												
Bank of America Corporation	3,022,537,500	222,277,000	128,203,000	643,675,000	114,115,300,000	3,141,250,000	514,564,000	28,806,431,000	171,523,000	10,331,000	427,410,000	284,557,000
Bank of New York Mellon Corporation	381,924,200	78,304,000	251,614,090	83,221,000	169,137,769,000	29,435,000,000	12,753,000	1,110,794,000	31,395,000	0	113,341,000	170,973,000
Barclays US LLC	209,395,500	30,615,000	17,249,000	13,423,000	40,647,118,000	32,346,000	130,042,000	320,739,000	5,716,000	262,000	66,490,000	42,190,145
BBVA USA Bancshares, Inc.	105,520,278	635,185	3,824,336	15,579,933	527,420,486	3,180,725	6,198,900	51,661,729	273,502	164,585	1,835,000	2,819,000
BMO Financial Corp.	203,925,393	39,341,173	26,355,257	36,151,300	5,072,707,854	297,582,237	24,762,331	58,200,946	16,075,848	425,516	5,797,000	5,345,701
BNP Paribas USA, Inc.	152,247,911	9,216,028	8,756,245	10,092,967	12,890,265,817	8,178,528	45,488,553	118,734,238	2,154,098	170,146	11,238,000	29,329,643
Capital One Financial Corporation	450,626,792	30,797,108	3,126,247	127,501,051	897,963,908	9	3,941,292	252,837,598	8,669,876	584,625	11,249,000	1,056,975
Charles Schwab Corporation	288,104,700	16,027,000	241,000	71,573,000	165,774,000	4,020,645,000	0	2,194,000	18,775,000	0	6,835,000	6,338,000
Citigroup, Inc.	2,547,470,300	197,511,000	246,342,000	586,749,000	158,500,249,000	16,079,844,000	487,657,000	35,479,796,000	490,305,000	7,937,000	959,940,000	936,361,000
Citizens Financial Group, Inc.	194,174,836	4,450,514	4,242,719	46,137,638	1,682,732,058	3,019,827	4,783,524	190,897,134	2,470,773	883,913	2,522,000	559,000
Credit Suisse Holdings (USA), Inc.	138,516,075	39,776,406	59,448,696	1,276,282	50,494,039,063	137,975,220	171,574,781	322,882,350	26,153,987	2,282,667	45,631,000	18,254,063
DB USA Corporation	152,015,900	12,945,000	30,204,000	31,000	73,487,411,000	94,296,000	94,038,000	34,012,000	4,479,000	197,000	49,547,000	10,382,000
Discover Financial Services	134,749,840	7,034,000	7,598	86,389,326	381,220,119	0	0	15,255,370	59,407	0	91,000	12,000
DWS USA Corporation	2,125,798	354,401	0	112,260	2,337,524	0	0	0	214,622	213,711	211,597	173,887
Fifth Third Bancorp	204,605,200	5,202,275	5,640,949	46,470,296	3,188,350,369	324,056,210	8,072,953	123,424,732	9,286,068	1,193,865	3,549,000	502,000
Goldman Sachs Group, Inc.	1,380,742,000	240,449,000	73,599,000	404,167,000	12,704,943,000	1,188,047,000	313,749,000	34,080,979,000	110,932,000	23,664,000	419,711,000	318,699,000
HSBC North America Holdings Inc.	334,388,527	41,495,572	44,845,658	51,914,410	42,125,237,700	377,939,535	41,230,049	6,940,398,067	73,954,566	953,670	44,153,000	227,733,880
Huntington Bancshares Incorporated	121,411,671	3,241,620	2,557,518	30,290,812	1,027,495,076	121,533,971	5,424,825	62,433,268	14,298,209	3,090,688	922,014	0
JPMorgan Chase & Co.	3,470,461,700	294,964,000	394,868,000	836,929,000	337,494,277,000	26,900,881,000	515,959,000	43,557,937,000	218,670,000	13,543,000	652,024,000	614,831,000
KeyCorp	178,783,853	4,059,530	2,809,997	43,866,599	1,161,042,525	83,556,647	11,060,006	124,538,607	2,845,198	56,590	1,626,000	7,000
M&T Bank Corporation	135,904,644	3,286,868	21,452,786	33,793,570	2,061,894,860	97,781,045	742,893	106,839,405	980,111	11,981	382,798	44,622
Morgan Stanley	1,165,048,900	206,481,000	46,282,000	323,105,000	14,270,623,000	2,103,157,000	330,687,000	31,706,441,000	157,972,000	13,856,000	333,876,000	304,020,000
MUFG Americas Holdings Corporation	197,417,101	19,513,970	12,078,998	25,526,634	2,916,907,404	151,376,882	53,944,269	235,821,908	8,583,605	1,454,989	7,408,000	5,775,827
Northern Trust Corporation	134,303,655	33,742,977	18,099,482	29,405,409	46,663,047,858	9,233,500,000	0	310,600,820	13,524,282	0	40,848,000	71,085,000
PNC Financial Services Group, Inc.	491,132,448	31,613,033	22,808,500	129,506,991	4,409,849,000	95,733,944	26,518,000	430,988,000	19,817,476	5,393,688	9,302,000	4,109,000
RBC US Group Holdings LLC	156,592,314	28,168,947	31,421,754	1,437,796	8,134,762,940	427,165,092	110,152,101	17,741,103	10,557,109	188,989	7,153,000	18,284,995
Regions Financial Corporation	152,508,978	4,518,617	2,032,436	29,639,167	721,797,302	23,608,863	4,329,317	142,767,000	4,344,000	360,000	764,000	438,000
Santander Holdings USA, Inc.	160,585,174	2,719,334	14,181,576	49,030,548	281,464,990	42,147	13,509,964	59,514,323	878,888	281,533	2,684,445	5,544,452
State Street Corporation	257,122,670	36,237,537	177,524,267	78,153,080	78,561,072,899	26,194,528,243	0	1,563,031,594	16,280,635	2,755,000	80,191,000	113,840,000
Synchrony Financial	146,885,900	1,408,000	9,848,000	84,530,000	124,396,000	0	0	0	2,581,000	46,000	192,000	49,000
TD Group US Holdings LLC	441,722,207	18,148,682	13,361,006	11,526,459	8,941,810,350	9,636,043	63,855,283	251,019,388	47,233,289	33,482	40,191,000	2,310,392
Truist Financial Corporation	556,266,200	6,028,000	7,020,000	148,979,000	1,233,367,000	117,000,000	9,191,000	279,398,000	6,021,000	3,460,000	3,108,000	2,318,000
U.S. Bancorp	606,080,500	18,128,000	10,747,000	170,203,000	9,732,671,000	1,661,826,000	31,160,000	571,820,000	18,076,000	3,736,000	11,937,000	48,232,000
UBS Americas Holding LLC	174,887,112	10,742,112	25,597,936	626,417	535,408,164	514,274,462	20,342,248	30,344,198	3,972,517	1,927,560	8,462,000	13,053
Wells Fargo & Company	2,276,274,710	191,465,309	177,565,406	549,535,388	47,279,191,305	3,535,064,266	215,516,468	12,256,737,665	128,676,734	24,296,000	171,078,000	94,501,839
TOTALS	20,911,032,387	1,895,106,198	1,899,281,457	4,893,456,333	1,251,678,408,571	126,414,025,896	3,271,247,757	199,649,699,443	1,656,403,800	123,810,198	3,542,521,854	3,340,982,474
<i>E*TRADE*</i>	61,236,275	2,357,848	1,140,140	11,530,311	113,129,025	441,135,574	0	10,072,833	3,248,784	0	447,520	2,603,688
<i>E*TRADE as percent of total</i>	0.2928%	0.1244%	0.0600%	0.2356%	0.0090%	0.3490%	0.0000%	0.0050%	0.1961%	0.0000%	0.0126%	0.0779%
<i>MS as percent of Total</i>	5.5715%	10.8955%	2.4368%	6.6028%	1.1401%	1.6637%	10.1089%	15.8810%	9.5370%	11.1913%	9.4248%	9.0997%
<i>MS+E*TRADE pro forma</i>	1,234,281,175	208,838,848	47,422,140	337,534,936	14,383,752,025	2,544,292,574	330,687,000	31,716,513,833	161,220,784	13,856,000	334,323,520	306,623,688
<i>MS + E*TRADE pro forma percent of Total</i>	5.9025%	11.0199%	2.4968%	6.8977%	1.1492%	2.0127%	10.1089%	15.8861%	9.7332%	11.1913%	9.4374%	9.1777%
<i>Change</i>	0.33%	0.12%	0.06%	0.29%	0.01%	0.35%	0.00%	0.01%	0.20%	0.00%	0.01%	0.08%

*Because as of 12/31/19 E*TRADE is not subject to FR Y-15 reporting requirements, Morgan Stanley has relied upon an FR Y-15 prepared by E*TRADE using E*TRADE's reasonable estimates, a copy of which is included as Confidential Exhibit E.

Morgan Stanley-E*TRADE Pro Forma FR Y-15 Information (cont'd)

MS Ranking (Standalone)	6	4	9	6	12	9	4	4	4	3	5	4
MS Ranking (Pro-Forma)	6	4	9	6	12	9	4	4	4	3	5	4

Morgan Stanley Pro Forma GSIB Scores / Morgan Stanley-E*TRADE

as of 4Q '19

\$bn

Method 2 Score

	MS	Weight	Score	Etrade		Combined	Score	Change
Size Average	1,165	4.423%	52	61		1,234	55	3
Intra-Financial Assets	206	12.007%	25	2		209	25	0
Intra-Financial Liabilities	46	12.490%	6	1		47	6	0
Securities Outstanding	323	9.056%	29	12		338	31	1
Notional of OTC Derivatives	31,706	0.155%	49	10		31,717	49	0
Trading and AFS	158	30.169%	48	3		161	49	1
Level 3 Assets	14	161.177%	22	0		14	22	0
Cross-Jurisdictional Claims	334	9.277%	31	0		334	31	0
Cross-Jurisdictional Liabilities	304	9.926%	30	3		307	30	0
Short Term Wholesale Funding	321			11		332	290	1
Average Risk Weighted Assets	390	350	288	11		401		
Score			580				588	7.5

E*Trade STWF and RWA estimate assumed to be full year average impact to align w/ MS averages and score.

Method 1 Score

	MS	Weight	Global Indicator	Score	Etrade		Combined	Score	Change
Size Average	1,165	20%	86,930	27	61		1,234	28	2
Intra-Financial Assets	206	6.67%	8,379	16	2		209	17	0
Intra-Financial Liabilities	46	6.67%	9,423	3	1		47	3	0
Securities Outstanding	323	6.67%	14,981	14	12		338	15	1
Notional of OTC Derivatives	31,706	6.67%	606,649	35	10		31,717	35	0
Trading and AFS	158	6.67%	3,573	29	3		161	30	1
Level 3 Assets	14	6.67%	531	17	0		14	17	0
Cross-Jurisdictional Claims	334	10%	21,901	15	0		334	15	0
Cross-Jurisdictional Liabilities	304	10%	18,341	17	3		307	17	0
Payments	14,271	6.67%	2,451,527	4	113		14,384	4	0
Assets Under Custody	2,103	6.67%	162,965	9	441		2,544	10	2
Underwriting	331	6.67%	6,509	34	0		331	34	0
Score				221				226	5

MS totals as of 12/31/2019

Global Indicator as of 12/31/2018

FX rate as of 12/31/2018

Public Exhibit 17

Form of Newspaper Notice

**NOTICE OF ACQUISITION OF A SAVINGS AND LOAN HOLDING
COMPANY BY A BANK HOLDING COMPANY**

Morgan Stanley, New York, New York intends to apply to the Federal Reserve Board for permission to acquire by merger E*TRADE Financial Corporation, Arlington, Virginia. Through this merger, Morgan Stanley intends to indirectly acquire control of E*TRADE Bank, Arlington, Virginia and E*TRADE Savings Bank, Arlington, Virginia. The Federal Reserve considers a number of factors in deciding whether to approve the application, including the record of performance of banks we own in helping to meet local credit needs.

You are invited to submit comments in writing on this application/notice to the Federal Reserve Bank of New York, Attention: Bank Applications Officer, 33 Liberty Street, New York, NY 10045, or via email: comments.applications@ny.frb.org. The comment period will not end before April 24, 2020. The Board's procedures for processing applications/notices may be found at 12 C.F.R. Part 262. Procedures for processing protested applications/notices may be found at 12 C.F.R. 262.25. If you need more information about how to submit your comments on community affairs aspects of the application/notice or to obtain copies of relevant procedures contact Ms. Claire Kramer, Community Affairs, (212) 720-5371; other questions, including those relating to general procedures, should be directed to Mr. Ivan J. Hurwitz, Vice President, Bank Applications Function, (212) 720-5885. The Federal Reserve will consider your comments and any request for a public meeting or formal hearing on the application/notice if they are received in writing by the Reserve Bank on or before the last day of the comment period.

Publication Date: No later than seven days after the filing of the Application

Newspapers: *New York Daily News, Salt Lake Tribune and Washington Post*

Public Exhibit 18

E*TRADE Financial Statements

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF INCOME
(In millions, except share data and per share amounts)

	Year Ended December 31,		
	2019	2018	2017
Revenue:			
Interest income	\$ 2,111	\$ 2,009	\$ 1,571
Interest expense	(259)	(163)	(86)
Net interest income	1,852	1,846	1,485
Commissions	421	498	441
Fees and service charges	588	431	369
Gains (losses) on securities and other, net	(23)	53	28
Other revenue	48	45	43
Total non-interest income	1,034	1,027	881
Total net revenue	2,886	2,873	2,366
Provision (benefit) for loan losses	(51)	(86)	(168)
Non-interest expense:			
Compensation and benefits	670	621	546
Advertising and market development	196	200	166
Clearing and servicing	133	126	124
Professional services	105	96	99
Occupancy and equipment	135	124	116
Communications	99	116	121
Depreciation and amortization	88	92	82
FDIC insurance premiums	14	30	31
Amortization of other intangibles	61	48	36
Restructuring and acquisition-related activities	23	7	15
Losses on early extinguishment of debt	—	4	58
Other non-interest expenses	94	77	76
Total non-interest expense	1,618	1,541	1,470
Income before income tax expense	1,319	1,418	1,064
Income tax expense	364	366	450
Net income	\$ 955	\$ 1,052	\$ 614
Preferred stock dividends	40	36	25
Net income available to common shareholders	\$ 915	\$ 1,016	\$ 589
Basic earnings per common share	\$ 3.86	\$ 3.90	\$ 2.16
Diluted earnings per common share	\$ 3.85	\$ 3.88	\$ 2.15
Weighted average common shares outstanding:			
Basic (in thousands)	237,396	260,600	273,190
Diluted (in thousands)	237,931	261,669	274,352

See accompanying notes to the consolidated financial statements

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In millions)

	Year Ended December 31,		
	2019	2018	2017
Net income	\$ 955	\$ 1,052	\$ 614
Other comprehensive income (loss), net of tax			
Available-for-sale securities:			
Unrealized gains (losses), net	224	(203)	137
Reclassification into earnings, net	23	(31)	(24)
Transfer of held-to-maturity securities to available-for-sale securities ⁽¹⁾	—	6	—
Net change from available-for-sale securities	247	(228)	113
Reclassification of foreign currency translation into earnings, net	—	—	(2)
Other comprehensive income (loss)	247	(228)	111
Comprehensive income	\$ 1,202	\$ 824	\$ 725

(1) During the year ended December 31, 2018, securities with a carrying value of \$4.7 billion and related unrealized pre-tax gain of \$7 million, or \$6 million net of tax, were transferred from held-to-maturity securities to available-for-sale securities as part of a one-time transition election for early adopting the new derivatives and hedge accounting guidance.

See accompanying notes to the consolidated financial statements

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED BALANCE SHEETS
(In millions, except share data)

	December 31,	
	2019	2018
ASSETS		
Cash and equivalents	\$ 750	\$ 2,333
Cash segregated under federal or other regulations	1,879	1,011
Available-for-sale securities	19,501	23,153
Held-to-maturity securities (fair value of \$22,246 and \$21,491 at December 31, 2019 and 2018, respectively)	21,969	21,884
Margin receivables	9,675	9,560
Loans receivable, net (net of allowance for loan losses of \$17 and \$37 at December 31, 2019 and 2018, respectively)	1,595	2,103
Receivables from brokers, dealers and clearing organizations	1,395	760
Property and equipment, net	339	281
Goodwill	2,510	2,485
Other intangibles, net	433	491
Other assets	1,370	942
Total assets	\$ 61,416	\$ 65,003
LIABILITIES AND SHAREHOLDERS' EQUITY		
Liabilities:		
Deposits	\$ 38,606	\$ 45,313
Customer payables	12,849	10,117
Payables to brokers, dealers and clearing organizations	893	948
Corporate debt	1,410	1,409
Other liabilities	1,115	654
Total liabilities	54,873	58,441
Commitments and contingencies (see Note 20)		
Shareholders' equity:		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, 403,000 shares issued and outstanding at both December 31, 2019 and 2018, respectively; aggregate liquidation preference of \$700 at both December 31, 2019 and 2018, respectively	689	689
Common stock, \$0.01 par value, 400,000,000 shares authorized, 222,622,333 and 246,495,174 shares issued and outstanding at December 31, 2019 and 2018, respectively	2	2
Additional paid-in-capital	4,416	5,462
Retained earnings	1,464	684
Accumulated other comprehensive loss	(28)	(275)
Total shareholders' equity	6,543	6,562
Total liabilities and shareholders' equity	\$ 61,416	\$ 65,003

See accompanying notes to the consolidated financial statements

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(In millions)

	Preferred Stock	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Amount	Shares	Amount				
Balance at December 31, 2016	\$ 394	274	\$ 3	\$ 6,921	\$ (909)	\$ (137)	\$ 6,272
Cumulative effect of accounting change	—	—	—	—	3	—	3
Net income	—	—	—	—	614	—	614
Other comprehensive income	—	—	—	—	—	111	111
Issuance of preferred stock - Series B	295	—	—	—	—	—	295
Preferred stock dividends - Series A (\$62.02 per share)	—	—	—	—	(25)	—	(25)
Repurchases of common stock	—	(9)	—	(362)	—	—	(362)
Share-based compensation	—	—	—	41	—	—	41
Other common stock activity	—	2	—	(18)	—	—	(18)
Balance at December 31, 2017	\$ 689	267	\$ 3	\$ 6,582	\$ (317)	\$ (26)	\$ 6,931
Cumulative effect of hedge accounting adoption	—	—	—	—	7	(7)	—
Reclassification of tax effects due to federal tax reform	—	—	—	—	14	(14)	—
Net income	—	—	—	—	1,052	—	1,052
Other comprehensive loss	—	—	—	—	—	(228)	(228)
Common stock dividends (\$0.14 per share)	—	—	—	—	(36)	—	(36)
Preferred stock dividends - Series A (\$58.76 per share)	—	—	—	—	(24)	—	(24)
Preferred stock dividends - Series B (\$4,107.50 per share)	—	—	—	—	(12)	—	(12)
Repurchases of common stock	—	(22)	(1)	(1,139)	—	—	(1,140)
Share-based compensation	—	—	—	46	—	—	46
Other common stock activity	—	1	—	(27)	—	—	(27)
Balance at December 31, 2018	\$ 689	246	\$ 2	\$ 5,462	\$ 684	\$ (275)	\$ 6,562
Net income	—	—	—	—	955	—	955
Other comprehensive income	—	—	—	—	—	247	247
Common stock dividends (\$0.56 per share)	—	—	—	—	(135)	—	(135)
Preferred stock dividends - Series A (\$58.76 per share)	—	—	—	—	(24)	—	(24)
Preferred stock dividends - Series B (\$5,300.00 per share)	—	—	—	—	(16)	—	(16)
Repurchases of common stock	—	(25)	—	(1,085)	—	—	(1,085)
Share-based compensation	—	—	—	53	—	—	53
Other common stock activity	—	2	—	(14)	—	—	(14)
Balance at December 31, 2019	\$ 689	223	\$ 2	\$ 4,416	\$ 1,464	\$ (28)	\$ 6,543

See accompanying notes to the consolidated financial statements

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)

	Year Ended December 31,		
	2019	2018	2017
Cash flows from operating activities:			
Net income	\$ 955	\$ 1,052	\$ 614
Adjustments to reconcile net income to net cash provided by operating activities:			
Provision (benefit) for loan losses	(51)	(86)	(168)
Depreciation and amortization (including amortization and accretion on investment securities)	225	244	262
(Gains) losses on securities and other, net	23	(53)	(28)
Losses on early extinguishment of debt	—	4	58
Share-based compensation	53	46	41
Deferred tax expense	245	339	450
Other	15	18	(7)
Net effect of changes in assets and liabilities:			
(Increase) decrease in receivables from brokers, dealers and clearing organizations	(635)	418	(134)
Increase in margin receivables	(115)	(489)	(2,340)
(Increase) decrease in other assets	(204)	159	(49)
(Decrease) increase in payables to brokers, dealers and clearing organizations	(55)	(594)	559
Increase in customer payables	2,732	668	1,290
(Decrease) increase in other liabilities	(341)	(40)	34
Net cash provided by operating activities	2,847	1,686	582
Cash flows from investing activities:			
Purchases of available-for-sale securities	(8,382)	(8,386)	(9,819)
Proceeds from sales of available-for-sale securities	10,735	7,423	1,645
Proceeds from maturities of and principal payments on available-for-sale securities	1,588	1,944	1,588
Purchases of held-to-maturity securities	(4,688)	(4,163)	(10,519)
Proceeds from maturities of and principal payments on held-to-maturity securities	5,307	2,395	2,556
Proceeds from sales of loans	80	30	40
Decrease in loans receivable	463	609	983
Capital expenditures for property and equipment	(149)	(112)	(102)
Net increase in securities purchased under agreements to resell	(200)	—	—
Proceeds from sale of real estate owned and repossessed assets	14	24	29
Acquisitions, net of cash acquired	(29)	(150)	—
Net cash flow from derivative contracts	(277)	221	66
Other	(34)	(25)	(43)
Net cash provided by (used in) investing activities	4,428	(190)	(13,576)

E*TRADE FINANCIAL CORPORATION
CONSOLIDATED STATEMENT OF CASH FLOWS
(In millions)

	Year Ended December 31,		
	2019	2018	2017
Cash flows from financing activities:			
(Decrease) increase in deposits	\$ (6,707)	\$ 1,781	\$ 11,060
Common stock dividends	(135)	(36)	—
Preferred stock dividends	(40)	(36)	(25)
Net (decrease) increase in advances from FHLB	—	(500)	500
Proceeds from issuance of senior notes	—	420	999
Payments on senior notes	—	—	(1,049)
Payments on trust preferred securities	—	(413)	—
Proceeds from issuance of preferred stock	—	—	300
Repurchases of common stock	(1,085)	(1,139)	(362)
Other	(23)	(32)	(36)
Net cash (used in) provided by financing activities	(7,990)	45	11,387
(Decrease) increase in cash, cash equivalents and segregated cash	(715)	1,541	(1,607)
Cash, cash equivalents and segregated cash, beginning of period	3,344	1,803	3,410
Cash, cash equivalents and segregated cash, end of period	\$ 2,629	\$ 3,344	\$ 1,803
Cash and equivalents, end of period	\$ 750	\$ 2,333	\$ 931
Segregated cash, end of period	1,879	1,011	872
Cash, cash equivalents and segregated cash, end of period	\$ 2,629	\$ 3,344	\$ 1,803
Supplemental disclosures:			
Cash paid for interest	\$ 255	\$ 157	\$ 126
Cash paid for income taxes, net of refunds	\$ 112	\$ 11	\$ 8
Right-of-use assets recognized upon adoption of new lease standard	\$ 193	\$ —	\$ —
Right-of-use assets obtained during the period	\$ 43	\$ —	\$ —
Non-cash investing and financing activities:			
Transfers of loans held-for-investment to loans held-for-sale	\$ 78	\$ —	\$ 57
Transfers from loans to other real estate owned and repossessed assets	\$ 17	\$ 15	\$ 27
Conversion of convertible debentures to common stock	\$ —	\$ —	\$ 3
Transfer of available-for-sale securities to held-to-maturity securities	\$ 744	\$ 1,161	\$ —
Transfer of held-to-maturity securities to available-for-sale securities	\$ —	\$ 4,672	\$ —

See accompanying notes to the consolidated financial statements

FOR IMMEDIATE RELEASE**E*TRADE Media Relations**

646-521-4418

mediainq@etrade.com**E*TRADE Investor Relations**

646-521-4406

ir@etrade.com**E*TRADE FINANCIAL CORPORATION ANNOUNCES
FOURTH QUARTER AND FULL YEAR 2019 RESULTS*****Fourth Quarter Results***

- *Net income and net income available to common shareholders of \$172 million*
- *Diluted earnings per common share of \$0.76, which includes net losses of \$18 million, or \$0.08 per diluted share, related to restructuring costs, the benefit to provision for loan losses, and other items⁽¹⁾*
- *Total net revenue of \$679 million*
- *Average interest-earning assets of \$55.2 billion; net interest margin of 301 basis points*
- *Daily Average Revenue Trades (DARTs) of 331,000 and derivative DARTs of 111,000, both Company records⁽²⁾*
- *Average and end-of-period margin receivables of \$9.7 billion*
- *Net new accounts of 52,000*
- *Net new retail and advisor services assets of \$5.7 billion*
- *Capital return to shareholders⁽³⁾ of \$208 million, including share repurchases of \$176 million and dividends of \$32 million*

Full Year 2019 Results

- *Net income of \$955 million; net income available to common shareholders of \$915 million*
- *Diluted earnings per common share of \$3.85, which includes net losses of \$44 million, or \$0.18 per diluted share, related to losses from balance sheet repositioning, the benefit to provision for loan losses, and other items⁽¹⁾*
- *Total net revenue of \$2.9 billion, a Company record⁽²⁾*
- *Average interest-earning assets of \$58.2 billion; net interest margin of 318 basis points*
- *DARTs of 291,000 and derivative DARTs of 98,000, both Company records⁽²⁾*
- *Net new accounts of 304,000*
- *Net new retail and advisor services assets of \$14.8 billion*
- *Capital return to shareholders⁽³⁾ of \$1.2 billion, including share repurchases of \$1.1 billion and dividends of \$135 million*

ARLINGTON, VA, January 23, 2020 — E*TRADE Financial Corporation (NASDAQ: ETFC) today announced results for its fourth quarter ended December 31, 2019, reporting net income of \$172 million, diluted earnings per common share of \$0.76, and total net revenue of \$679 million. Operating margin for the quarter was 37 percent and adjusted operating margin was 34 percent.⁽⁴⁾

“This was another year marked by solid results, remarkable customer engagement, and significant achievements amid a dynamic and evolving operating environment,” said Mike Pizzi, Chief Executive Officer. “We enhanced our award-winning retail platform and #1-rated Corporate Services solution, expanded our Advisor Services offering, and generated our best year ever for customer trading, growth in customer cash, and stock plan implementations. We balanced robust underlying growth with our strongest year ever of capital return to shareholders. As we turn our focus to 2020 and a transformed industry landscape, we will continue to stand out from the crowd through the quality of our digital and customer service experience—areas where E*TRADE truly shines. We will continue to be unyielding in our commitment to delivering for our customers and shareholders, as we solidify E*TRADE as the premiere destination and platform of choice for the digitally inclined investor and trader.”

The Company also declared a quarterly cash dividend of \$0.14 per share on the Company's outstanding shares of common stock. The dividend is payable on March 2, 2020, to shareholders of record as of the close of business on February 25, 2020.

The Company will host a conference call beginning at 5 p.m. ET today to discuss the quarterly results. This conference call will be available to domestic participants by dialing 800-768-2107 while international participants should dial +1 212 231 2915. A live audio webcast and replay of this conference call will also be available at about.etrade.com.

Historical metrics and financials can be found on the E*TRADE Financial corporate website at about.etrade.com.

About E*TRADE Financial

E*TRADE Financial and its subsidiaries provide financial services including brokerage and banking products and services to traders, investors, stock plan administrators and participants, and registered investment advisers (RIAs). Securities products and services are offered by E*TRADE Securities LLC (Member FINRA/SIPC). Commodity futures and options on futures products and services are offered by E*TRADE Futures LLC (Member NFA). Managed Account Solutions are offered through E*TRADE Capital Management, LLC, a Registered Investment Adviser. Bank products and services are offered by E*TRADE Bank, and RIA custody solutions are offered by E*TRADE Savings Bank, both of which are federal savings banks (Members FDIC). Employee stock and student loan benefit plan solutions are offered by E*TRADE Financial Corporate Services, Inc. More information is available at www.etrade.com. ETFC-E

###

Important Notices

E*TRADE, E*TRADE Financial, E*TRADE Bank, E*TRADE Savings Bank, and the E*TRADE logo are trademarks or registered trademarks of E*TRADE Financial Corporation.

Forward-Looking Statements

The statements contained in this press release that are forward looking, including statements regarding the Company's future plans and its ability to differentiate itself through the quality of customer experiences, deliver value for its customers and shareholders, and pay additional dividends in the future, are "forward-looking statements" within the meaning of the federal securities laws, and are subject to a number of uncertainties and risks. Actual results may differ materially from those indicated in the forward-looking statements. The uncertainties and risks include, but are not limited to: risks related to macro trends of the economy in general; market volatility and its impact on trading volumes; fluctuations in interest rates; potential system disruptions and security breaches; our ability to attract and retain customers and develop new products and services; increased competition; increased restrictions resulting from financial regulatory reform or changes in the policies of our regulators, including with respect to approval of any future dividend or share repurchase; our ability to participate in consolidation opportunities in our industry, to complete consolidation transactions and to realize synergies or implement integration plans; adverse developments in litigation or regulatory matters; the timing and duration of, and the amount of shares repurchased and amount of cash expended in connection with, the share repurchase program and dividend payments; and the other factors set forth in our annual and quarterly reports on Form 10-K, as amended, and Form 10-Q previously filed with the Securities and Exchange Commission (including information in these reports under the caption "Risk Factors"). Any forward-looking statement included in this release speaks only as of the date of this communication; the Company disclaims any obligation to update any information, except as required by law.

© 2020 E*TRADE Financial Corporation. All rights reserved.

E*TRADE FINANCIAL CORPORATION
Consolidated Statement of Income
(In millions, except share data and per share amounts)
(Unaudited)

	Three Months Ended			Twelve Months Ended	
	December 31,	September 30,	December 31,	December 31,	
	2019	2019	2018	2019	2018
Revenue:					
Interest income	\$ 475	\$ 521	\$ 538	\$ 2,111	\$ 2,009
Interest expense	(60)	(66)	(56)	(259)	(163)
Net interest income	415	455	482	1,852	1,846
Commissions	56	122	123	421	498
Fees and service charges	181	163	108	588	431
Gains (losses) on securities and other, net	14	16	11	(23)	53
Other revenue	13	11	11	48	45
Total non-interest income	264	312	253	1,034	1,027
Total net revenue	679	767	735	2,886	2,873
Provision (benefit) for loan losses	(19)	(12)	(12)	(51)	(86)
Non-interest expense:					
Compensation and benefits	171	167	152	670	621
Advertising and market development	53	41	48	196	200
Clearing and servicing	35	36	32	133	126
Professional services	30	27	26	105	96
Occupancy and equipment	37	34	35	135	124
Communications	29	26	27	99	116
Depreciation and amortization	23	23	22	88	92
FDIC insurance premiums	3	3	4	14	30
Amortization of other intangibles	15	16	14	61	48
Restructuring and acquisition-related activities	21	2	1	23	7
Losses on early extinguishment of debt	—	—	—	—	4
Other non-interest expenses	29	24	21	94	77
Total non-interest expense	446	399	382	1,618	1,541
Income before income tax expense	252	380	365	1,319	1,418
Income tax expense	80	106	95	364	366
Net income	\$ 172	\$ 274	\$ 270	\$ 955	\$ 1,052
Preferred stock dividends	—	20	—	40	36
Net income available to common shareholders	\$ 172	\$ 254	\$ 270	\$ 915	\$ 1,016
Basic earnings per common share	\$ 0.76	\$ 1.08	\$ 1.07	\$ 3.86	\$ 3.90
Diluted earnings per common share	\$ 0.76	\$ 1.08	\$ 1.06	\$ 3.85	\$ 3.88
Weighted average common shares outstanding:					
Basic (in thousands)	224,712	235,829	252,610	237,396	260,600
Diluted (in thousands)	225,211	236,313	253,463	237,931	261,669
Dividends declared per common share	\$ 0.14	\$ 0.14	\$ 0.14	\$ 0.56	\$ 0.14

E*TRADE FINANCIAL CORPORATION
Consolidated Balance Sheet
(In millions, except share data)
(Unaudited)

	December 31, 2019	December 31, 2018
ASSETS		
Cash and equivalents	\$ 750	\$ 2,333
Cash segregated under federal or other regulations	1,879	1,011
Available-for-sale securities	19,501	23,153
Held-to-maturity securities	21,969	21,884
Margin receivables	9,675	9,560
Loans receivable, net ⁽⁵⁾	1,595	2,103
Receivables from brokers, dealers and clearing organizations	1,395	760
Property and equipment, net	339	281
Goodwill	2,510	2,485
Other intangibles, net	433	491
Other assets	1,370	942
Total assets	\$ 61,416	\$ 65,003
LIABILITIES AND SHAREHOLDERS' EQUITY		
Liabilities:		
Deposits	\$ 38,606	\$ 45,313
Customer payables	12,849	10,117
Payables to brokers, dealers and clearing organizations	893	948
Corporate debt	1,410	1,409
Other liabilities	1,115	654
Total liabilities	54,873	58,441
Shareholders' equity:		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, 403,000 shares issued and outstanding at both December 31, 2019 and 2018, respectively; aggregate liquidation preference of \$700 at both December 31, 2019 and 2018, respectively	689	689
Common stock, \$0.01 par value, 400,000,000 shares authorized, 222,622,333 and 246,495,174 shares issued and outstanding at December 31, 2019 and 2018, respectively	2	2
Additional paid-in-capital	4,416	5,462
Retained earnings	1,464	684
Accumulated other comprehensive loss	(28)	(275)
Total shareholders' equity	6,543	6,562
Total liabilities and shareholders' equity	\$ 61,416	\$ 65,003

Key Performance Metrics⁽⁶⁾

Corporate (dollars in millions)	Qtr ended 12/31/19	Qtr ended 9/30/19	Qtr ended 12/31/19 vs. 9/30/19	Qtr ended 12/31/18	Qtr ended 12/31/19 vs. 12/31/18
Operating margin % ⁽⁴⁾	37%	50%	(13)%	50%	(13)%
Adjusted operating margin % ⁽⁴⁾	34%	48%	(14)%	48%	(14)%
Employees	4,122	4,297	(4)%	4,035	2 %
Return on common equity ⁽⁷⁾	12%	17%	(5)%	19%	(7)%
Adjusted return on common equity ⁽⁷⁾	11%	16%	(5)%	18%	(7)%
Common equity book value per share ⁽⁸⁾	\$ 26.30	\$ 25.92	1 %	\$ 23.83	10 %
Tangible common equity book value per share ⁽⁸⁾	\$ 15.22	\$ 15.01	1 %	\$ 13.52	13 %
Cash and equivalents	\$ 750	\$ 493	52 %	\$ 2,333	(68)%
Corporate cash ⁽⁹⁾	\$ 645	\$ 380	70 %	\$ 391	65 %
Average interest-earning assets	\$ 55,201	\$ 55,438	— %	\$ 60,128	(8)%
Net interest margin (basis points)	301	328	(27)	320	(19)
Customer Activity (dollars in billions)	Qtr ended 12/31/19	Qtr ended 9/30/19	Qtr ended 12/31/19 vs. 9/30/19	Qtr ended 12/31/18	Qtr ended 12/31/19 vs. 12/31/18
Customer directed trades (MM) ⁽¹⁰⁾	20.8	17.4	20 %	17.7	18 %
Trading days	63.0	63.5	N.M.	62.0	N.M.
DARTs ⁽¹⁰⁾	330,821	273,380	21 %	286,116	16 %
Derivative DARTs ⁽¹⁰⁾	111,326	96,844	15 %	93,664	19 %
Derivative DARTs % ⁽¹⁰⁾	34%	35%	(1)%	33%	1 %
Margin receivables	\$ 9.7	\$ 9.9	(2)%	\$ 9.6	1 %

Key Performance Metrics⁽⁶⁾

Customer Activity (dollars in billions)	Qtr ended 12/31/19	Qtr ended 9/30/19	Qtr ended 12/31/19 vs. 9/30/19	Qtr ended 12/31/18	Qtr ended 12/31/19 vs. 12/31/18
Gross new retail accounts	147,575	121,754	21 %	1,052,383	(86)%
Gross new advisor services accounts ⁽¹¹⁾	6,702	6,785	(1)%	8,381	(20)%
Gross new corporate services accounts	76,877	86,870	(12)%	72,186	6 %
Gross new accounts	231,154	215,409	7 %	1,132,950	(80)%
Net new retail accounts	39,619	7,469	430 %	951,351	(96)%
Net new advisor services accounts ⁽¹¹⁾	(2,203)	(874)	(152)%	1,178	N.M.
Net new corporate services accounts	14,955	40,006	(63)%	28,154	(47)%
Net new accounts	52,371	46,601	12 %	980,683	(95)%
End of period retail accounts	5,169,757	5,130,138	1 %	5,007,767	3 %
End of period advisor services accounts ⁽¹¹⁾	148,198	150,401	(1)%	151,241	(2)%
End of period corporate services accounts	1,908,836	1,893,881	1 %	1,763,829	8 %
End of period accounts	7,226,791	7,174,420	1 %	6,922,837	4 %
Net new retail account growth rate	3.1 %	0.6 %	2.5 %	93.8%	(90.7)%
Net new advisor services account growth rate ⁽¹¹⁾	(5.9)%	(2.3)%	(3.6)%	3.1%	(9.0)%
Net new corporate services account growth rate	3.2 %	8.6 %	(5.4)%	6.5%	(3.3)%
Net new total account growth rate	2.9 %	2.6 %	0.3 %	66.0%	(63.1)%
Net new retail assets ⁽¹²⁾	\$ 5.8	\$ 2.8	107 %	\$ 19.8	(71)%
Net new advisor services assets ⁽¹¹⁾⁽¹²⁾	(0.1)	—	(100)%	0.2	(150)%
Net new retail and advisor services assets	\$ 5.7	\$ 2.8	104 %	\$ 20.0	(72)%
Net new retail assets growth rate	7.0 %	3.4 %	3.6 %	25.2%	(18.2)%
Net new advisor services assets growth rate ⁽¹¹⁾	(2.3)%	0.8 %	(3.1)%	3.9%	(6.2)%
Net new retail and advisor services assets growth rate	6.5 %	3.2 %	3.3 %	24.0%	(17.5)%
Retail Assets					
Security holdings	\$ 291.7	\$ 266.3	10 %	\$ 225.6	29 %
Cash and deposits	70.0	64.0	9 %	58.5	20 %
Retail assets	\$ 361.7	\$ 330.3	10 %	\$ 284.1	27 %
Advisor Services Assets					
Security holdings	\$ 19.0	\$ 18.4	3 %	\$ 16.4	16 %
Cash and deposits	1.0	1.0	— %	1.7	(41)%
Advisor services assets ⁽¹¹⁾	\$ 20.0	\$ 19.4	3 %	\$ 18.1	10 %
Corporate Services Assets					
Vested equity holdings	\$ 110.9	\$ 95.6	16 %	\$ 75.5	47 %
Vested options holdings	48.2	43.3	11 %	36.4	32 %
Corporate services vested assets	\$ 159.1	\$ 138.9	15 %	\$ 111.9	42 %
Unvested holdings	136.7	115.4	18 %	94.4	45 %
Corporate services assets	\$ 295.8	\$ 254.3	16 %	\$ 206.3	43 %

Key Performance Metrics⁽⁶⁾

Customer Activity (dollars in billions)	Qtr ended 12/31/19	Qtr ended 9/30/19	Qtr ended 12/31/19 vs. 9/30/19	Qtr ended 12/31/18	Qtr ended 12/31/19 vs. 12/31/18
Total Customer Assets					
Security holdings	\$ 310.7	\$ 284.7	9 %	\$ 242.0	28 %
Cash and deposits ⁽¹³⁾	71.0	65.0	9 %	60.2	18 %
Retail and advisor services assets	\$ 381.7	\$ 349.7	9 %	\$ 302.2	26 %
Corporate services vested assets	159.1	138.9	15 %	111.9	42 %
Retail, advisor services, and corporate services vested assets	\$ 540.8	\$ 488.6	11 %	\$ 414.1	31 %
Corporate services unvested holdings	136.7	115.4	18 %	94.4	45 %
Total customer assets	\$ 677.5	\$ 604.0	12 %	\$ 508.5	33 %
Net (buy) / sell activity					
Retail net (buy) / sell activity	\$ 2.0	\$ 0.2	N.M.	\$ (2.0)	N.M.
Advisor services net (buy) / sell activity	—	—	N.M.	0.4	N.M.
Net (buy) / sell activity	\$ 2.0	\$ 0.2	N.M.	\$ (1.6)	N.M.
Market Indices					
Dow Jones Industrial Average	28,538	26,917	6 %	23,327	22 %
Nasdaq Composite	8,973	7,999	12 %	6,635	35 %
Standard & Poor's 500	3,231	2,977	9 %	2,507	29 %

Capital	Qtr ended 12/31/19	Qtr ended 9/30/19	Qtr ended 12/31/19 vs. 9/30/19	Qtr ended 12/31/18	Qtr ended 12/31/19 vs. 12/31/18
<u>E*TRADE Financial</u>					
Tier 1 leverage ratio ⁽¹⁴⁾	6.9%	6.9%	— %	6.6%	0.3%
Common Equity Tier 1 capital ratio ⁽¹⁴⁾	31.5%	31.4%	0.1 %	31.1%	0.4%
Tier 1 risk-based capital ratio ⁽¹⁴⁾	37.9%	37.8%	0.1 %	37.3%	0.6%
Total risk-based capital ratio ⁽¹⁴⁾	38.2%	38.2%	— %	37.8%	0.4%
<u>E*TRADE Bank</u>					
Tier 1 leverage ratio ⁽¹⁴⁾	7.2%	7.4%	(0.2)%	7.1%	0.1%
Common Equity Tier 1 capital ratio ⁽¹⁴⁾	36.5%	37.2%	(0.7)%	34.9%	1.6%
Tier 1 risk-based capital ratio ⁽¹⁴⁾	36.5%	37.2%	(0.7)%	34.9%	1.6%
Total risk-based capital ratio ⁽¹⁴⁾	36.7%	37.5%	(0.8)%	35.2%	1.5%

Average Balance Sheet Data

(dollars in millions)

	Three Months Ended					
	December 31, 2019			September 30, 2019		
	Average Balance	Interest Inc./Exp.	Average Yield/Cost	Average Balance	Interest Inc./Exp.	Average Yield/Cost
Cash and equivalents	\$ 369	\$ 2	1.66 %	\$ 429	\$ 2	2.11 %
Cash segregated under federal or other regulations	1,453	7	1.94 %	1,073	7	2.41 %
Investment securities	40,862	303	2.97 %	41,326	324	3.13 %
Margin receivables	9,670	106	4.33 %	9,880	120	4.83 %
Loans	1,707	23	5.50 %	1,812	25	5.58 %
Broker-related receivables and other	1,140	5	1.66 %	918	5	2.02 %
Total interest-earning assets	55,201	446	3.22 %	55,438	483	3.47 %
Other interest revenue ^(a)	—	29		—	38	
Total interest-earning assets	55,201	475	3.43 %	55,438	521	3.74 %
Total non-interest earning assets	5,673			5,859		
Total assets	\$ 60,874			\$ 61,297		
Sweep deposits:						
Brokerage sweep deposits	\$ 28,661	\$ 5	0.08 %	\$ 30,559	\$ 11	0.14 %
Bank sweep deposits ^(b)	2,397	11	1.77 %	—	—	— %
Savings deposits	5,991	20	1.26 %	7,533	27	1.44 %
Other deposits	1,601	—	0.03 %	1,614	—	0.03 %
Customer payables	11,940	6	0.18 %	10,915	7	0.27 %
Broker-related payables and other	957	—	0.14 %	1,241	2	0.51 %
Other borrowings	299	2	2.63 %	102	1	4.77 %
Corporate debt	1,410	13	3.87 %	1,410	14	3.86 %
Total interest-bearing liabilities	53,256	57	0.42 %	53,374	62	0.46 %
Other interest expense ^(c)	—	3		—	4	
Total interest-bearing liabilities	53,256	60	0.45 %	53,374	66	0.49 %
Total non-interest-bearing liabilities	1,255			1,251		
Total liabilities	54,511			54,625		
Total shareholders' equity	6,363			6,672		
Total liabilities and shareholders' equity	\$ 60,874			\$ 61,297		
Excess interest earning assets over interest bearing liabilities/ net interest income/ net interest margin	\$ 1,945	\$ 415	3.01 %	\$ 2,064	\$ 455	3.28 %

- (a) Other interest revenue is earned on certain securities loaned balances. Interest expense incurred on other securities loaned balances is presented on the broker-related payables and other line item above.
- (b) Beginning November 2019, bank sweep deposits include Premium Savings Accounts participating in a sweep deposit account program.
- (c) Other interest expense is incurred on certain securities borrowed balances. Interest income earned on other securities borrowed balances is presented on the broker-related receivables and other line item above.

Average Balance Sheet Data
(dollars in millions)

	Three Months Ended		
	December 31, 2018		
	Average Balance	Interest Inc./Exp.	Average Yield/Cost
Cash and equivalents	\$ 663	\$ 4	2.17%
Cash segregated under federal or other regulations	588	4	2.44%
Investment securities	45,036	333	2.95%
Margin receivables	11,065	140	5.03%
Loans	2,196	30	5.50%
Broker-related receivables and other	580	2	1.95%
Total interest-earning assets	60,128	513	3.41%
Other interest revenue ^(a)	—	25	
Total interest-earning assets	60,128	538	3.57%
Total non-interest-earning assets	4,276		
Total assets	\$ 64,404		
Sweep deposits:			
Brokerage sweep deposits	\$ 38,119	\$ 19	0.20%
Bank sweep deposits	—	—	—%
Savings deposits	3,617	6	0.72%
Other deposits	1,839	—	0.03%
Customer payables	10,070	9	0.34%
Broker-related payables and other	1,597	3	0.86%
Other borrowings	474	4	3.10%
Corporate debt	1,409	14	3.91%
Total interest-bearing liabilities	57,125	55	0.38%
Other interest expense ^(b)	—	1	
Total interest-bearing liabilities	57,125	56	0.40%
Total non-interest-bearing liabilities	768		
Total liabilities	57,893		
Total shareholders' equity	6,511		
Total liabilities and shareholders' equity	\$ 64,404		
Excess interest earning assets over interest bearing liabilities/ net interest income/ net interest margin	\$ 3,003	\$ 482	3.20%

(a) Other interest revenue is earned on certain securities loaned balances. Interest expense incurred on other securities loaned balances is presented on the broker-related payables and other line item above.

(b) Other interest expense is incurred on certain securities borrowed balances. Interest income earned on other securities borrowed balances is presented on the broker-related receivables and other line item above.

Fees and Service Charges
(dollars in millions)

	Three Months Ended		
	December 31, 2019	September 30, 2019	December 31, 2018
Money market funds and sweep deposits revenue ^(a)	\$ 69	\$ 62	\$ 18
Order flow revenue	54	46	44
Advisor management and custody fees	21	19	18
Mutual fund service fees	13	13	12
Foreign exchange revenue	9	8	4
Reorganization fees	6	5	4
Other fees and service charges	9	10	8
Total fees and service charges	\$ 181	\$ 163	\$ 108

(a) Includes revenue earned on average customer cash held by third parties based on the federal funds rate or LIBOR plus a negotiated spread or other contractual arrangements with the third-party institutions.

Explanation of Non-GAAP Measures

Management believes that adjusting GAAP measures by excluding or including certain items is helpful to investors and analysts who may wish to use some or all of this information to analyze the Company's current performance, prospects, and valuation. Management uses this non-GAAP information internally to evaluate operating performance and in formulating the budget for future periods. Management believes that the non-GAAP measures discussed below are appropriate for evaluating the operating and liquidity performance of the Company.

Adjusted Operating Margin

Adjusted operating margin is calculated by dividing adjusted income before income taxes by net revenue. Adjusted income before income taxes excludes the provision (benefit) for loan losses and losses on early extinguishment of debt. Management believes that excluding the provision (benefit) for loan losses and losses on early extinguishment of debt from operating margin provides a useful measure of the Company's ongoing operating performance because management excludes these when evaluating operating margin performance. See endnote (4) for a reconciliation of this non-GAAP measure to the most directly comparable GAAP measure.

Adjusted Return on Common Equity

Adjusted return on common equity is calculated by dividing annualized adjusted net income available to common shareholders by average common shareholders' equity, which excludes preferred stock. Adjusted net income available to common shareholders excludes the after-tax impact of the provision (benefit) for loan losses and losses on early extinguishment of debt. Management believes that excluding the provision (benefit) for loan losses and losses on early extinguishment of debt from net income available to common shareholders provides a useful measure of the Company's ongoing operating performance because management excludes these when evaluating return on common equity performance. See endnote (7) for a reconciliation of this non-GAAP measure to the most directly comparable GAAP measure.

Tangible Common Equity Book Value per Share

Tangible common equity book value per share represents common shareholders' equity, which excludes preferred stock, less goodwill and other intangible assets (net of related deferred tax liabilities) divided by common stock outstanding. The Company believes that tangible common equity book value per share is a measure of the Company's capital strength. See endnote (8) for a reconciliation of this non-GAAP measure to the most directly comparable GAAP measure.

Corporate Cash

Corporate cash represents cash held at the parent company as well as cash held in certain subsidiaries, not including bank and brokerage subsidiaries, that can distribute cash to the parent company without any regulatory approval or notification. The Company believes that corporate cash is a useful measure of the parent company's liquidity as it is the primary source of capital above and beyond the capital deployed in regulated subsidiaries. See endnote (9) for a reconciliation of this non-GAAP measure to the most directly comparable GAAP measure.

It is important to note that these non-GAAP measures may involve judgment by management and should be considered in addition to, not as substitutes for, or superior to, measures prepared in accordance with GAAP. For additional information on the adjustments to these non-GAAP measures, please see the Company's financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" that will be included in the periodic report the Company expects to file with the SEC with respect to the financial periods discussed herein.

ENDNOTES

(1) Net income available to common shareholders of \$172 million or \$0.76 per diluted share for the three months ended December 31, 2019 includes a net loss of \$18 million, or \$0.08 per diluted share related to the following items (dollars in millions, except per share amounts):

	Pre-Tax Amount	After-Tax Amount	Per Share Amount
Provision (benefit) for loan losses	\$ 19	\$ 14	\$ 0.06
Restructuring and acquisition-related activities ^(a)	(21)	(15)	(0.07)
Other non-interest expense ^(b)	(8)	(6)	(0.02)
Income tax expense ^(c)	—	(11)	(0.05)
Total	\$ (10)	\$ (18)	\$ (0.08)

(a) Primarily related to restructuring costs associated with the exit of our New York headquarters and severance resulting from organizational changes driven by an enterprise-wide cost containment initiative.

(b) Impairment of certain technology assets.

(c) Primarily related to revaluation of state deferred taxes.

Net income available to common shareholders of \$915 million or \$3.85 per diluted share for the year ended December 31, 2019 includes a net loss of \$44 million, or \$0.18 per diluted share related to the following items (dollars in millions, except per share amounts):

	Pre-Tax Amount	After-Tax Amount	Per Share Amount
Gains (losses) on securities and other, net ^(a)	\$ (80)	\$ (58)	\$ (0.25)
Provision (benefit) for loan losses	51	38	0.16
Communications ^(b)	14	10	0.04
Restructuring and acquisition-related activities ^(c)	(23)	(17)	(0.07)
Other non-interest expense ^(d)	(8)	(6)	(0.02)
Income tax expense ^(e)	—	(11)	(0.04)
Total	\$ (46)	\$ (44)	\$ (0.18)

(a) Losses from balance sheet repositioning recognized from the sale of \$4.5 billion of lower-yielding investment securities in the second quarter of 2019.

(b) Change in estimate for previous market data usage in the first quarter of 2019.

(c) Primarily related to restructuring costs associated with the exit of our New York headquarters and severance resulting from organizational changes driven by an enterprise-wide cost containment initiative.

(d) Impairment of certain technology assets.

(e) Primarily related to revaluation of state deferred taxes.

(2) Records based on the period during which metric has been reported by the Company.

(3) Capital return to shareholders represents the amount returned to shareholders through share repurchases and common stock dividends.

(4) Operating margin is the percentage of net revenue that results in income before income taxes. The percentage is calculated by dividing income before income taxes by total net revenue. As noted above, adjusted operating margin is a non-GAAP measure. The following table provides a reconciliation of GAAP operating margin percentage to non-GAAP adjusted operating margin (dollars in millions):

	Q4 2019		Q3 2019		Q4 2018	
	Amount	Operating Margin %	Amount	Operating Margin %	Amount	Operating Margin %
Income before income tax expense and operating margin	\$ 252	37%	\$ 380	50%	\$ 365	50%
Add back impact of pre-tax items:						
Provision (benefit) for loan losses	(19)		(12)		(12)	
Subtotal	(19)		(12)		(12)	
Adjusted income before income tax expense and adjusted operating margin	\$ 233	34%	\$ 368	48%	\$ 353	48%

(5) The following table presents the allowance for loan losses (dollars in millions):

	Q4 2019		Q4 2018	
Allowance for loan losses, beginning	\$	27	\$	41
Provision (benefit) for loan losses		(19)		(12)
(Charge-offs) recoveries, net		9		8
Allowance for loan losses, ending	\$	17	\$	37

Loan servicing expense was \$3 million, \$3 million, and \$3 million for the three months ended December 31, 2019, September 30, 2019, and December 31, 2018, respectively. Loan servicing expense was \$12 million and \$18 million for the years ended December 31, 2019 and 2018, respectively.

(6) Amounts and percentages may not recalculate due to rounding. For percentage-based metrics, the variance represents the current period less the prior period. Net new account and asset growth rates have been annualized.

(7) Return on common equity is calculated by dividing annualized net income available to common shareholders by average common shareholders' equity, which excludes preferred stock. As noted above, adjusted return on common equity is a non-GAAP measure. The following table provides a reconciliation of GAAP return on common equity percentage to non-GAAP adjusted return on common equity percentage (dollars in millions):

	Q4 2019		Q3 2019		Q4 2018	
	Amount	Return on Common Equity %	Amount	Return on Common Equity %	Amount	Return on Common Equity %
Net income available to common shareholders and return on common equity	\$ 172	12%	\$ 254	17%	\$ 270	19%
Add back impact of the following items:						
Provision (benefit) for loan losses	(19)		(12)		(12)	
Subtotal	(19)		(12)		(12)	
Income tax impact	5		3		3	
Net of tax	(14)		(9)		(9)	
Adjusted net income available to common shareholders and return on common equity	\$ 158	11%	\$ 245	16%	\$ 261	18%

(8) As noted above, tangible common equity book value and tangible common equity book value per share are non-GAAP measures. The following table provides a reconciliation of GAAP common equity book value and common equity book value per share to non-GAAP tangible common equity book value and tangible common equity book value per share at period end (dollars in millions, except per share amounts):

	Q4 2019		Q3 2019		Q4 2018	
	Amount	Per Share	Amount	Per Share	Amount	Per Share
Common equity book value	\$ 5,854	\$ 26.30	\$ 5,880	\$ 25.92	\$ 5,873	\$ 23.83
Less: Goodwill and other intangibles, net	(2,943)		(2,931)		(2,976)	
Add: Deferred tax liabilities related to goodwill and other intangibles, net	477		456		436	
Tangible common equity book value	\$ 3,388	\$ 15.22	\$ 3,405	\$ 15.01	\$ 3,333	\$ 13.52

(9) As noted above, corporate cash is a non-GAAP measure. The following table provides a reconciliation of GAAP consolidated cash and equivalents to non-GAAP corporate cash at period end (dollars in millions):

	Q4 2019	Q3 2019	Q4 2018
Consolidated cash and equivalents	\$ 750	\$ 493	\$ 2,333
Less: Cash at regulated subsidiaries	(716)	(465)	(2,347)
Add: Cash on deposit at E*TRADE Bank ^(a)	611	352	405
Corporate cash	\$ 645	\$ 380	\$ 391

(a) Corporate cash includes the parent company's deposits placed with E*TRADE Bank. E*TRADE Bank may use these deposits for investment purposes; however, these investments are not included in consolidated cash and equivalents.

(10) Beginning in November 2019, the definition of DARTs was updated to reflect all customer-directed trades. This includes trades associated with no-transaction-fee mutual funds, options trades through the Dime Buyback Program, and all exchange-traded funds transactions (including those formerly classified as commission-free). DARTs is calculated by dividing these customer-directed trades by the number of trading days during the period. This update did not result in a significant impact to the presentation of DARTs, derivative DARTs, and derivative DARTs %. Prior periods have been updated to conform with the current period presentation.

(11) November 2019 advisor services accounts and assets include a net reduction of 2,000 accounts and \$390 million in assets from the sale of the self-directed IRA custodial business, consisted primarily of alternative assets that were not core to E*TRADE Advisor Services' offering.

(12) Net new retail and advisor services assets exclude the effects of market movements in the value of retail and advisor services assets.

(13) The following table provides the components of total cash and deposits (dollars in billions):

	Q4 2019	Q3 2019	Q4 2018
Brokerage sweep deposits	\$ 27.9	\$ 30.8	\$ 39.3
Bank sweep deposits ^(a)	6.4	—	—
Customer payables	12.8	11.2	10.1
Savings, checking, and other banking assets ^(a)	4.3	9.6	6.0
Total on-balance sheet cash	51.4	51.6	55.4
Brokerage sweep deposits at unaffiliated financial institutions ^(b)	16.9	11.7	3.0
Bank sweep deposits at unaffiliated financial institutions ^(c)	0.8	—	—
Money market funds and other	1.9	1.7	1.8
Total cash held by third parties^(d)	19.6	13.4	4.8
Total customer cash and deposits	\$ 71.0	\$ 65.0	\$ 60.2

- (a) Beginning November 2019, bank sweep deposits include Premium Savings Accounts participating in a sweep deposit account program. Savings, checking, and other banking assets include \$1.0 billion, \$6.3 billion and \$2.0 billion of deposits at December 31, 2019, September 30, 2019 and December 31, 2018, respectively, in our Premium Savings Account product. We plan to convert the remaining Premium Savings Account balances to the sweep deposit account program.
- (b) Average brokerage sweep deposit balances at unaffiliated financial institutions were \$14.7 billion, \$11.0 billion and \$3.0 billion for the three months ended December 31, 2019, September 30, 2019 and December 31, 2018, respectively. The Company received 179 bps, 218 bps, and 203 bps, net of interest paid, on these balances for the same periods.
- (c) Average bank sweep deposits at unaffiliated institutions were \$317 million for the three months ended December 31, 2019. The Company received 6 bps, net of interest paid, on these balances for the same period. Bank sweep deposits at unaffiliated financial institutions include customer cash related to Premium Savings Accounts held outside E*TRADE Financial presented net of deposit balances from unaffiliated financial institutions held on-balance sheet.
- (d) Customer cash held by third parties is held outside E*TRADE Financial and includes money market funds and sweep deposit accounts at unaffiliated financial institutions, net of deposit balances from unaffiliated financial institutions held on-balance sheet. Customer cash held by third parties is not reflected in the Company's consolidated balance sheet and is not immediately available for liquidity purposes.

(14) E*TRADE Financial and E*TRADE Bank's capital ratios are calculated as follows and are preliminary for the current period (dollars in millions):

	E*TRADE Financial		E*TRADE Bank	
	Q4 2019	Q4 2018	Q4 2019	Q4 2018
Shareholders' equity	\$ 6,543	\$ 6,562	\$ 3,488	\$ 3,557
Deduct:				
Preferred stock	(689)	(689)	—	—
Common Equity Tier 1 capital before regulatory adjustments	\$ 5,854	\$ 5,873	\$ 3,488	\$ 3,557
Add:				
Losses in other comprehensive income on available-for-sale debt securities, net of tax	28	275	28	275
Deduct:				
Goodwill and other intangible assets, net of deferred tax liabilities	(2,466)	(2,540)	(276)	(287)
Disallowed deferred tax assets	(70)	(200)	—	(61)
Common Equity Tier 1 capital	\$ 3,346	\$ 3,408	\$ 3,240	\$ 3,484
Add:				
Preferred stock	689	689	—	—
Tier 1 capital	\$ 4,035	\$ 4,097	\$ 3,240	\$ 3,484
Add:				
Other	25	46	17	37
Total capital	\$ 4,060	\$ 4,143	\$ 3,257	\$ 3,521
Average assets for leverage capital purposes	\$ 60,968	\$ 64,767	\$ 45,320	\$ 49,568
Deduct:				
Goodwill and other intangible assets, net of deferred tax liabilities	(2,466)	(2,540)	(276)	(287)
Disallowed deferred tax assets	(70)	(200)	—	(61)
Adjusted average assets for leverage capital purposes	\$ 58,432	\$ 62,027	\$ 45,044	\$ 49,220
Total risk-weighted assets ^(a)	\$ 10,635	\$ 10,970	\$ 8,872	\$ 9,994
Tier 1 leverage ratio (Tier 1 capital / Adjusted average assets for leverage capital purposes)	6.9%	6.6%	7.2%	7.1%
Common Equity Tier 1 capital / Total risk-weighted assets ^(a)	31.5%	31.1%	36.5%	34.9%
Tier 1 capital / Total risk-weighted assets	37.9%	37.3%	36.5%	34.9%
Total capital / Total risk-weighted assets	38.2%	37.8%	36.7%	35.2%

(a) Under the regulatory guidelines for risk-based capital, on-balance sheet assets, and credit-equivalent amounts of derivatives and off-balance sheet items are assigned to one of several broad risk categories according to the obligor or, if relevant, the guarantor or the nature of any collateral. The aggregate dollar amount in each risk category is then multiplied by the risk weight associated with that category. The resulting weighted values from each of the risk categories are aggregated for determining total risk-weighted assets.

Public Exhibit 19

Morgan Stanley Financial Statements

Consolidated Income Statements

Morgan Stanley

<i>in millions, except per share data</i>	2019	2018	2017
Revenues			
Investment banking	\$ 6,163	\$ 6,482	\$ 6,003
Trading	11,095	11,551	11,116
Investments	1,540	437	820
Commissions and fees	3,919	4,190	4,061
Asset management	13,083	12,898	11,797
Other	925	743	848
Total non-interest revenues	36,725	36,301	34,645
Interest income	17,098	13,892	8,997
Interest expense	12,404	10,086	5,697
Net interest	4,694	3,806	3,300
Net revenues	41,419	40,107	37,945
Non-interest expenses			
Compensation and benefits	18,837	17,632	17,166
Occupancy and equipment	1,428	1,391	1,329
Brokerage, clearing and exchange fees	2,493	2,393	2,093
Information processing and communications	2,194	2,016	1,791
Marketing and business development	660	691	609
Professional services	2,137	2,265	2,169
Other	2,369	2,482	2,385
Total non-interest expenses	30,118	28,870	27,542
Income from continuing operations before income taxes	11,301	11,237	10,403
Provision for income taxes	2,064	2,350	4,168
Income from continuing operations	9,237	8,887	6,235
Income (loss) from discontinued operations, net of income taxes	—	(4)	(19)
Net income	\$ 9,237	\$ 8,883	\$ 6,216
Net income applicable to noncontrolling interests	195	135	105
Net income applicable to Morgan Stanley	\$ 9,042	\$ 8,748	\$ 6,111
Preferred stock dividends and other	530	526	523
Earnings applicable to Morgan Stanley common shareholders	\$ 8,512	\$ 8,222	\$ 5,588
Earnings per basic common share			
Income from continuing operations	\$ 5.26	\$ 4.81	\$ 3.15
Income (loss) from discontinued operations	—	—	(0.01)
Earnings per basic common share	\$ 5.26	\$ 4.81	\$ 3.14
Earnings per diluted common share			
Income from continuing operations	\$ 5.19	\$ 4.73	\$ 3.08
Income (loss) from discontinued operations	—	—	(0.01)
Earnings per diluted common share	\$ 5.19	\$ 4.73	\$ 3.07
Average common shares outstanding			
Basic	1,617	1,708	1,780
Diluted	1,640	1,738	1,821

Consolidated Comprehensive Income Statements

Morgan Stanley

<i>\$ in millions</i>	2019	2018	2017
Net income	\$ 9,237	\$ 8,883	\$ 6,216
Other comprehensive income (loss), net of tax:			
Foreign currency translation adjustments	\$ 3	\$ (90)	\$ 251
Change in net unrealized gains (losses) on available-for-sale securities	1,137	(272)	41
Pension, postretirement and other	(66)	137	(117)
Change in net debt valuation adjustment	(1,639)	1,517	(588)
Total other comprehensive income (loss)	\$ (565)	\$ 1,292	\$ (413)
Comprehensive income	\$ 8,672	\$ 10,175	\$ 5,803
Net income applicable to noncontrolling interests	195	135	105
Other comprehensive income (loss) applicable to noncontrolling interests	(69)	87	4
Comprehensive income applicable to Morgan Stanley	\$ 8,546	\$ 9,953	\$ 5,694

Consolidated Balance Sheets

Morgan Stanley

	At December 31, 2019	At December 31, 2018
<i>\$ in millions, except share data</i>		
Assets		
Cash and cash equivalents:		
Cash and due from banks	\$ 4,293	\$ 30,541
Interest bearing deposits with banks	45,366	21,299
Restricted cash	32,512	35,356
Trading assets at fair value (\$128,386 and \$120,437 were pledged to various parties)	297,110	266,299
Investment securities (includes \$62,223 and \$61,061 at fair value)	105,725	91,832
Securities purchased under agreements to resell (includes \$4 and \$— at fair value)	88,224	98,522
Securities borrowed	106,549	116,313
Customer and other receivables	55,646	53,298
Loans:		
Held for investment (net of allowance of \$349 and \$238)	118,060	99,815
Held for sale	12,577	15,764
Goodwill	7,143	6,688
Intangible assets (net of accumulated amortization of \$3,204 and \$2,877)	2,107	2,163
Other assets	20,117	15,641
Total assets	\$ 895,429	\$ 853,531
Liabilities		
Deposits (includes \$2,099 and \$442 at fair value)	\$ 190,356	\$ 187,820
Trading liabilities at fair value	133,356	126,747
Securities sold under agreements to repurchase (includes \$733 and \$812 at fair value)	54,200	49,759
Securities loaned	8,506	11,908
Other secured financings (includes \$7,809 and \$5,245 at fair value)	14,698	9,466
Customer and other payables	197,834	179,559
Other liabilities and accrued expenses	21,155	17,204
Borrowings (includes \$64,461 and \$51,184 at fair value)	192,627	189,662
Total liabilities	812,732	772,125
Commitments and contingent liabilities (see Note 13)		
Equity		
Morgan Stanley shareholders' equity:		
Preferred stock	8,520	8,520
Common stock, \$0.01 par value:		
Shares authorized: 3,500,000,000 ; Shares issued: 2,038,893,979 ; Shares outstanding: 1,593,973,680 and 1,699,828,943	20	20
Additional paid-in capital	23,935	23,794
Retained earnings	70,589	64,175
Employee stock trusts	2,918	2,836
Accumulated other comprehensive income (loss)	(2,788)	(2,292)
Common stock held in treasury at cost, \$0.01 par value (444,920,299 and 339,065,036 shares)	(18,727)	(13,971)
Common stock issued to employee stock trusts	(2,918)	(2,836)
Total Morgan Stanley shareholders' equity	81,549	80,246
Noncontrolling interests	1,148	1,160
Total equity	82,697	81,406
Total liabilities and equity	\$ 895,429	\$ 853,531

Consolidated Statements of Changes in Total Equity

Morgan Stanley

<i>\$ in millions</i>	2019	2018	2017
Preferred Stock			
Beginning Balance	\$ 8,520	\$ 8,520	\$ 7,520
Issuance of preferred stock	500	—	1,000
Redemption of preferred stock ¹	(500)	—	—
Ending balance	8,520	8,520	8,520
Common Stock			
Beginning and ending balance	20	20	20
Additional Paid-in Capital			
Beginning balance	23,794	23,545	23,271
Cumulative adjustments for accounting changes ²	—	—	45
Share-based award activity	131	249	306
Issuance of preferred stock	(3)	—	(6)
Other net increases (decreases)	13	—	(71)
Ending balance	23,935	23,794	23,545
Retained Earnings			
Beginning balance	64,175	57,577	53,679
Cumulative adjustments for accounting changes ²	63	306	(35)
Net income applicable to Morgan Stanley	9,042	8,748	6,111
Preferred stock dividends ³	(524)	(526)	(523)
Common stock dividends ³	(2,161)	(1,930)	(1,655)
Other net increases (decreases)	(6)	—	—
Ending balance	70,589	64,175	57,577
Employee Stock Trusts			
Beginning balance	2,836	2,907	2,851
Share-based award activity	82	(71)	56
Ending balance	2,918	2,836	2,907
Accumulated Other Comprehensive Income (Loss)			
Beginning balance	(2,292)	(3,060)	(2,643)
Cumulative adjustments for accounting changes ²	—	(437)	—
Net change in Accumulated other comprehensive income (loss)	(496)	1,205	(417)
Ending balance	(2,788)	(2,292)	(3,060)
Common Stock Held In Treasury at Cost			
Beginning balance	(13,971)	(9,211)	(5,797)
Share-based award activity	1,198	806	878
Repurchases of common stock and employee tax withholdings	(5,954)	(5,566)	(4,292)
Ending balance	(18,727)	(13,971)	(9,211)
Common Stock Issued to Employee Stock Trusts			
Beginning balance	(2,836)	(2,907)	(2,851)
Share-based award activity	(82)	71	(56)
Ending balance	(2,918)	(2,836)	(2,907)
Noncontrolling Interests			
Beginning balance	1,160	1,075	1,127
Net income applicable to noncontrolling interests	195	135	105
Net change in Accumulated other comprehensive income (loss)	(69)	87	4
Other net increases (decreases)	(138)	(137)	(161)
Ending balance	1,148	1,160	1,075
Total Equity	\$ 82,697	\$ 81,406	\$ 78,466

1. See Note 16 for information regarding the notice of redemption and reclassification of Series G Preferred Stock.

2. See Notes 2 and 16 for further information regarding cumulative adjustments for accounting changes.

3. See Note 16 for information regarding dividends per share for each class of stock.

Consolidated Cash Flow Statements

Morgan Stanley

<i>\$ in millions</i>	2019	2018	2017
Cash flows from operating activities			
Net income	\$ 9,237	\$ 8,883	\$ 6,216
Adjustments to reconcile net income to net cash provided by (used for) operating activities:			
Deferred income taxes	165	449	2,747
Stock-based compensation expense	1,153	920	1,026
Depreciation and amortization	2,643	1,844	1,753
Provision for (Release of) credit losses on lending activities	162	(15)	29
Other operating adjustments	(195)	199	153
Changes in assets and liabilities:			
Trading assets, net of Trading liabilities	(13,668)	23,732	(27,588)
Securities borrowed	9,764	7,697	1,226
Securities loaned	(3,402)	(1,684)	(2,252)
Customer and other receivables and other assets	233	(728)	(9,315)
Customer and other payables and other liabilities	19,942	(13,063)	2,007
Securities purchased under agreements to resell	10,298	(14,264)	17,697
Securities sold under agreements to repurchase	4,441	(6,665)	1,796
Net cash provided by (used for) operating activities	40,773	7,305	(4,505)
Cash flows from investing activities			
Proceeds from (payments for):			
Other assets—Premises, equipment and software, net	(1,826)	(1,865)	(1,629)
Changes in loans, net	(17,359)	(8,794)	(12,125)
Investment securities:			
Purchases	(42,586)	(27,800)	(23,962)
Proceeds from sales	17,151	3,208	18,131
Proceeds from paydowns and maturities	12,012	12,668	7,445
Other investing activities	(953)	(298)	(251)
Net cash provided by (used for) investing activities	(33,561)	(22,881)	(12,391)
Cash flows from financing activities			
Net proceeds from (payments for):			
Other secured financings	3,695	(1,226)	(1,573)
Deposits	2,513	28,384	3,573
Proceeds from:			
Issuance of preferred stock, net of issuance costs	497	—	994
Issuance of Borrowings	30,605	40,059	55,416
Payments for:			
Borrowings	(40,548)	(34,781)	(35,825)
Repurchases of common stock and employee tax withholdings	(5,954)	(5,566)	(4,292)
Cash dividends	(2,627)	(2,375)	(2,085)
Other financing activities	(147)	(290)	53
Net cash provided by (used for) financing activities	(11,966)	24,205	16,261
Effect of exchange rate changes on cash and cash equivalents	(271)	(1,828)	3,670
Net increase (decrease) in cash and cash equivalents	(5,025)	6,801	3,035
Cash and cash equivalents, at beginning of period	87,196	80,395	77,360
Cash and cash equivalents, at end of period	\$ 82,171	\$ 87,196	\$ 80,395
Cash and cash equivalents:			
Cash and due from banks	\$ 4,293	\$ 30,541	\$ 24,816
Interest bearing deposits with banks	45,366	21,299	21,348
Restricted cash	32,512	35,356	34,231
Cash and cash equivalents, at end of period	\$ 82,171	\$ 87,196	\$ 80,395
Supplemental Disclosure of Cash Flow Information			
Cash payments for:			
Interest	\$ 12,511	\$ 9,977	\$ 5,377
Income taxes, net of refunds	1,908	1,377	1,390

Fourth Quarter 2019 Earnings Results

Quarterly Financial Supplement

	Page
Consolidated Financial Summary	1
Consolidated Financial Metrics, Ratios and Statistical Data	2
Consolidated Financial Information	3
Consolidated Average Common Equity and Regulatory Capital Information	4
Institutional Securities Income Statement Information, Financial Metrics and Ratios	5
Wealth Management Income Statement Information, Financial Metrics and Ratios	6
Wealth Management Financial Information and Statistical Data	7
Investment Management Income Statement Information, Financial Metrics and Ratios	8
Investment Management Financial Information and Statistical Data	9
Consolidated Loans and Lending Commitments	10
U.S. Bank Supplemental Financial Information	11
Definition of U.S. GAAP to Non-GAAP Measures	12
Definition of Performance Metrics and Terms	13 - 14
Supplemental Quantitative Details and Calculations	15 - 16
Legal Notice	17

Consolidated Financial Summary

(unaudited, dollars in millions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Net revenues								
Institutional Securities	\$ 5,054	\$ 5,023	\$ 3,839	1%	32%	\$ 20,386	\$ 20,582	(1%)
Wealth Management	4,582	4,358	4,144	5%	11%	17,737	17,242	3%
Investment Management	1,356	764	684	77%	98%	3,763	2,746	37%
Intersegment Eliminations	(135)	(113)	(119)	(19%)	(13%)	(467)	(463)	(1%)
Net revenues	\$ 10,857	\$ 10,032	\$ 8,548	8%	27%	\$ 41,419	\$ 40,107	3%
Non-interest expenses								
Institutional Securities	\$ 3,929	\$ 3,716	\$ 3,059	6%	28%	\$ 14,896	\$ 14,322	4%
Wealth Management	3,419	3,120	3,134	10%	9%	12,905	12,721	1%
Investment Management	909	599	610	52%	49%	2,778	2,282	22%
Intersegment Eliminations	(133)	(113)	(112)	(18%)	(19%)	(461)	(455)	(1%)
Non-interest expenses⁽¹⁾	\$ 8,124	\$ 7,322	\$ 6,691	11%	21%	\$ 30,118	\$ 28,870	4%
Income (loss) before taxes								
Institutional Securities	\$ 1,125	\$ 1,307	\$ 780	(14%)	44%	\$ 5,490	\$ 6,260	(12%)
Wealth Management	1,163	1,238	1,010	(6%)	15%	4,832	4,521	7%
Investment Management	447	165	74	171%	*	985	464	112%
Intersegment Eliminations	(2)	0	(7)	*	71%	(6)	(8)	25%
Income (loss) before taxes	\$ 2,733	\$ 2,710	\$ 1,857	1%	47%	\$ 11,301	\$ 11,237	1%
Net Income (loss) applicable to Morgan Stanley								
Institutional Securities	\$ 1,034	\$ 1,073	\$ 702	(4%)	47%	\$ 4,599	\$ 4,906	(6%)
Wealth Management	889	962	769	(8%)	16%	3,728	3,472	7%
Investment Management	317	138	65	130%	*	719	376	91%
Intersegment Eliminations	(1)	0	(5)	*	80%	(4)	(6)	33%
Net Income (loss) applicable to Morgan Stanley	\$ 2,239	\$ 2,173	\$ 1,531	3%	46%	\$ 9,042	\$ 8,748	3%
Earnings (loss) applicable to Morgan Stanley common shareholders	\$ 2,085	\$ 2,060	\$ 1,361	1%	53%	\$ 8,512	\$ 8,222	4%

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Consolidated Financial Metrics, Ratios and Statistical Data

(unaudited)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Financial Metrics:								
Earnings per basic share	\$ 1.33	\$ 1.28	\$ 0.81	4%	64%	\$ 5.26	\$ 4.81	9%
Earnings per diluted share	\$ 1.30	\$ 1.27	\$ 0.80	2%	63%	\$ 5.19	\$ 4.73	10%
Return on average common equity	11.3%	11.2%	7.7%			11.7%	11.8%	
Return on average tangible common equity	13.0%	12.9%	8.8%			13.4%	13.5%	
Book value per common share	\$ 45.82	\$ 45.49	\$ 42.20			\$ 45.82	\$ 42.20	
Tangible book value per common share	\$ 40.01	\$ 39.73	\$ 36.99			\$ 40.01	\$ 36.99	
Excluding intermittent net discrete tax provision / benefit ⁽¹⁾⁽²⁾								
Adjusted earnings per diluted share	\$ 1.20	\$ 1.21	\$ 0.73	(1%)	64%	\$ 4.98	\$ 4.61	8%
Adjusted return on average common equity	10.5%	10.7%	7.1%			11.2%	11.5%	
Adjusted return on average tangible common equity	12.0%	12.3%	8.1%			12.9%	13.2%	

Financial Ratios:

Pre-tax profit margin	25%	27%	22%			27%	28%	
Compensation and benefits as a % of net revenues	48%	44%	44%			45%	44%	
Non-compensation expenses as a % of net revenues	27%	29%	34%			27%	28%	
Firm expense efficiency ratio	75%	73%	78%			73%	72%	
Effective tax rate from continuing operations ⁽¹⁾⁽²⁾	15.7%	18.2%	16.2%			18.3%	20.9%	

Statistical Data:

Period end common shares outstanding (millions)	1,594	1,624	1,700	(2%)	(6%)			
Average common shares outstanding (millions)								
Basic	1,573	1,604	1,674	(2%)	(6%)	1,617	1,708	(5%)
Diluted	1,602	1,627	1,705	(2%)	(6%)	1,640	1,738	(6%)
Worldwide employees	60,431	60,532	60,348	--	--			

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Consolidated Financial Information

(unaudited, dollars in millions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Regional revenues								
Americas	\$ 7,890	\$ 7,489	\$ 6,312	5%	25%	\$ 30,226	\$ 29,301	3%
EMEA (Europe, Middle East, Africa)	1,374	1,409	1,200	(2%)	15%	6,061	6,092	(1%)
Asia	1,593	1,134	1,036	40%	54%	5,132	4,714	9%
Consolidated net revenues	\$ 10,857	\$ 10,032	\$ 8,548	8%	27%	\$ 41,419	\$ 40,107	3%

Balance sheet

Deposits	\$ 190,356	\$ 180,738	\$ 187,820	5%	1%
Total assets	\$ 895,429	\$ 902,604	\$ 853,531	(1%)	5%
Global liquidity reserve	\$ 217,457	\$ 226,923	\$ 249,735	(4%)	(13%)
Long-term debt outstanding	\$ 190,060	\$ 192,362	\$ 188,117	(1%)	1%
Maturities of long-term debt outstanding (next 12 months)	\$ 20,402	\$ 23,498	\$ 24,694	(13%)	(17%)
Common equity	\$ 73,029	\$ 73,862	\$ 71,726	(1%)	2%
Less: Goodwill and intangible assets	(9,249)	(9,350)	(8,847)	(1%)	5%
Tangible common equity	\$ 63,780	\$ 64,512	\$ 62,879	(1%)	1%
Preferred equity	\$ 8,520	\$ 8,520	\$ 8,520	--	--

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Consolidated Average Common Equity and Regulatory Capital Information

(unaudited, dollars in billions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Average Common Equity								
Institutional Securities	\$ 40.4	\$ 40.4	\$ 40.8	--	(1%)	\$ 40.4	\$ 40.8	(1%)
Wealth Management	18.2	18.2	16.8	--	8%	18.2	16.8	8%
Investment Management	2.5	2.5	2.6	--	(4%)	2.5	2.6	(4%)
Parent	12.4	12.3	10.7	1%	16%	11.6	9.8	18%
Firm	\$ 73.5	\$ 73.4	\$ 70.9	--	4%	\$ 72.7	\$ 70.0	4%

Regulatory Capital

Common Equity Tier 1 capital	\$ 64.7	\$ 64.3	\$ 62.1	1%	4%
Tier 1 capital	\$ 73.3	\$ 72.9	\$ 70.6	1%	4%

Standardized Approach

Risk-weighted assets	\$ 394.3	\$ 394.9	\$ 367.3	--	7%
Common Equity Tier 1 capital ratio	16.4%	16.3%	16.9%		
Tier 1 capital ratio	18.6%	18.5%	19.2%		

Advanced Approach

Risk-weighted assets	\$ 381.5	\$ 387.4	\$ 363.1	(2%)	5%
Common Equity Tier 1 capital ratio	17.0%	16.6%	17.1%		
Tier 1 capital ratio	19.2%	18.8%	19.5%		

Leverage-based capital

Tier 1 leverage ratio	8.2%	8.2%	8.4%		
Supplementary Leverage Ratio	6.3%	6.3%	6.5%		

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Institutional Securities

Income Statement Information, Financial Metrics and Ratios

(unaudited, dollars in millions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Revenues:								
Advisory	\$ 654	\$ 550	\$ 734	19%	(11%)	\$ 2,116	\$ 2,436	(13%)
Equity	422	401	323	5%	31%	1,708	1,726	(1%)
Fixed income	500	584	360	(14%)	39%	1,910	1,926	(1%)
Underwriting	922	985	683	(6%)	35%	3,618	3,652	(1%)
Investment Banking	1,576	1,535	1,417	3%	11%	5,734	6,088	(6%)
Equity	1,920	1,991	1,929	(4%)	--	8,056	8,976	(10%)
Fixed Income	1,273	1,430	564	(11%)	126%	5,546	5,005	11%
Other	1	34	(6)	(97%)	*	93	(204)	*
Sales & Trading	3,194	3,455	2,487	(8%)	28%	13,695	13,777	(1%)
Investments	68	(18)	(52)	*	*	325	182	79%
Other	216	51	(13)	*	*	632	535	18%
Net revenues	5,054	5,023	3,839	1%	32%	20,386	20,582	(1%)
Compensation and benefits	2,057	1,768	1,179	16%	74%	7,433	6,958	7%
Non-compensation expenses	1,872	1,948	1,880	(4%)	--	7,463	7,364	1%
Total non-interest expenses	3,929	3,716	3,059	6%	28%	14,896	14,322	4%
Income (loss) before taxes	1,125	1,307	780	(14%)	44%	5,490	6,260	(12%)
Net income (loss) applicable to Morgan Stanley ⁽¹⁾	\$ 1,034	\$ 1,073	\$ 702	(4%)	47%	\$ 4,599	\$ 4,906	(6%)
Pre-tax profit margin	22%	26%	20%			27%	30%	
Compensation and benefits as a % of net revenues	41%	35%	31%			36%	34%	
Non-compensation expenses as a % of net revenues	37%	39%	49%			37%	36%	
Return on Average Common Equity	9%	10%	6%			10%	11%	
Return on Average Tangible Common Equity ⁽²⁾	9%	10%	6%			10%	11%	
Trading VaR (Average Daily 95% / One-Day VaR) ⁽³⁾	\$ 39	\$ 42	\$ 49					

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Wealth Management

Income Statement Information, Financial Metrics and Ratios

(unaudited, dollars in millions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Revenues:								
Asset management	2,655	2,639	2,576	1%	3%	10,199	10,158	--
Transactional	829	595	422	39%	96%	2,969	2,558	16%
Net interest income	1,033	1,043	1,095	(1%)	(6%)	4,222	4,277	(1%)
Other	65	81	51	(20%)	27%	347	249	39%
Net revenues	4,582	4,358	4,144	5%	11%	17,737	17,242	3%
Compensation and benefits	2,590	2,340	2,286	11%	13%	9,774	9,507	3%
Non-compensation expenses	829	780	848	6%	(2%)	3,131	3,214	(3%)
Total non-interest expenses	3,419	3,120	3,134	10%	9%	12,905	12,721	1%
Income (loss) before taxes	1,163	1,238	1,010	(6%)	15%	4,832	4,521	7%
Net income (loss) applicable to Morgan Stanley ⁽¹⁾	\$ 889	\$ 962	\$ 769	(8%)	16%	\$ 3,728	\$ 3,472	7%
Pre-tax profit margin	25%	28%	24%			27%	26%	
Compensation and benefits as a % of net revenues	57%	54%	55%			55%	55%	
Non-compensation expenses as a % of net revenues	18%	18%	20%			18%	19%	
Return on Average Common Equity	19%	21%	17%			20%	20%	
Return on Average Tangible Common Equity ⁽²⁾	34%	37%	32%			36%	37%	

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Wealth Management

Financial Information and Statistical Data

(unaudited)

	Quarter Ended			Percentage Change From:	
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018
Wealth Management Metrics					
Wealth Management representatives	15,468	15,553	15,694	(1%)	(1%)
Annualized revenue per representative (000's)	\$ 1,182	\$ 1,118	\$ 1,058	6%	12%
Client assets (billions)	\$ 2,700	\$ 2,565	\$ 2,303	5%	17%
Client assets per representative (millions)	\$ 175	\$ 165	\$ 147	6%	19%
Client liabilities (billions)	\$ 90	\$ 86	\$ 83	5%	8%
Fee-based client assets (billions)	\$ 1,267	\$ 1,186	\$ 1,046	7%	21%
Fee-based asset flows (billions)	\$ 24.9	\$ 15.5	\$ 16.2	61%	54%
Fee-based assets as a % of client assets	47%	46%	45%		
Retail locations	592	590	591	--	--

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Investment Management

Income Statement Information, Financial Metrics and Ratios

(unaudited, dollars in millions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Revenues:								
Asset management	\$ 736	\$ 664	\$ 628	11%	17%	\$ 2,629	\$ 2,468	7%
Investments ⁽¹⁾	670	105	82	*	*	1,213	254	*
Other	(50)	(5)	(26)	*	(92%)	(79)	24	*
Net revenues	1,356	764	684	77%	98%	3,763	2,746	37%
Compensation and benefits	581	319	322	82%	80%	1,630	1,167	40%
Non-compensation expenses	328	280	288	17%	14%	1,148	1,115	3%
Total non-interest expenses	909	599	610	52%	49%	2,778	2,282	22%
Income (loss) before taxes	447	165	74	171%	*	985	464	112%
Net income (loss) applicable to Morgan Stanley ⁽²⁾	\$ 317	\$ 138	\$ 65	130%	*	\$ 719	\$ 376	91%
Pre-tax profit margin	33%	22%	11%			26%	17%	
Compensation and benefits as a % of net revenues	43%	42%	47%			43%	42%	
Non-compensation expenses as a % of net revenues	24%	37%	42%			31%	41%	
Return on Average Common Equity	51%	22%	10%			29%	14%	
Return on Average Tangible Common Equity ⁽³⁾	82%	36%	15%			47%	22%	

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Investment Management

Financial Information and Statistical Data

(unaudited, dollars in billions)

	Quarter Ended			Percentage Change From:		Twelve Months Ended		Percentage Change
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018	Dec 31, 2019	Dec 31, 2018	
Assets under management or supervision (AUM)								
Net flows by asset class ⁽¹⁾								
Equity	\$ 2.4	\$ 2.1	\$ (0.9)	14%	*	\$ 7.3	\$ 6.0	22%
Fixed Income	3.4	2.3	(2.7)	48%	*	5.8	(2.6)	*
Alternative / Other	0.9	(0.2)	0.4	*	125%	2.3	1.4	64%
Long-Term Net Flows	6.7	4.2	(3.2)	60%	*	15.4	4.8	*
Liquidity	22.4	9.1	13.9	146%	61%	28.7	(13.8)	*
Total net flows	<u>\$ 29.1</u>	<u>\$ 13.3</u>	<u>\$ 10.7</u>	119%	172%	<u>\$ 44.1</u>	<u>\$ (9.0)</u>	*
Assets under management or supervision by asset class ⁽²⁾								
Equity	\$ 138	\$ 126	\$ 103	10%	34%			
Fixed Income	79	74	68	7%	16%			
Alternative / Other	139	135	128	3%	9%			
Long-Term Assets Under Management or Supervision	356	335	299	6%	19%			
Liquidity	196	172	164	14%	20%			
Total Assets Under Management or Supervision	<u>\$ 552</u>	<u>\$ 507</u>	<u>\$ 463</u>	9%	19%			
Share of minority stake assets	\$ 6	\$ 6	\$ 7	--	(14%)			

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Consolidated Loans and Lending Commitments

(unaudited, dollars in billions)

	Quarter Ended			Percentage Change From:	
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018
Institutional Securities					
Loans:					
Corporate ⁽¹⁾	\$ 11.5	\$ 13.3	\$ 13.3	(14%)	(14%)
Secured lending facilities	29.6	27.7	21.3	7%	39%
Commercial & residential real estate	13.1	10.5	11.4	25%	15%
Securities-based lending and other	7.4	7.4	8.3	--	(11%)
Total Loans	<u>61.6</u>	<u>58.9</u>	<u>54.3</u>	5%	13%
Lending Commitments	106.9	108.6	95.0	(2%)	13%
Institutional Securities Loans and Lending Commitments ⁽²⁾	<u>\$ 168.5</u>	<u>\$ 167.5</u>	<u>\$ 149.3</u>	1%	13%
Wealth Management					
Loans:					
Securities-based lending and other	\$ 49.9	\$ 47.4	\$ 44.7	5%	12%
Residential real estate	30.2	29.2	27.5	3%	10%
Total Loans	<u>80.1</u>	<u>76.6</u>	<u>72.2</u>	5%	11%
Lending Commitments	13.1	11.7	10.7	12%	22%
Wealth Management Loans and Lending Commitments ⁽³⁾	<u>\$ 93.2</u>	<u>\$ 88.3</u>	<u>\$ 82.9</u>	6%	12%
Consolidated Loans and Lending Commitments ⁽⁴⁾	<u>\$ 261.7</u>	<u>\$ 255.8</u>	<u>\$ 232.2</u>	2%	13%

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

U.S. Bank Supplemental Financial Information

(unaudited, dollars in billions)

	Quarter Ended			Percentage Change From:	
	Dec 31, 2019	Sep 30, 2019	Dec 31, 2018	Sep 30, 2019	Dec 31, 2018
U.S. Bank assets	\$ 219.6	\$ 211.0	\$ 216.9	4%	1%
Institutional Securities U.S. Bank loans					
Corporate ⁽¹⁾	\$ 5.6	\$ 6.9	\$ 7.4	(19%)	(24%)
Secured lending facilities	26.8	25.0	17.5	7%	53%
Commercial & residential real estate	12.0	9.8	10.5	22%	14%
Securities-based lending and other	5.4	5.7	6.0	(5%)	(10%)
Total loans	\$ 49.8	\$ 47.4	\$ 41.4	5%	20%
Wealth Management U.S. Bank loans					
Securities-based lending and other	\$ 49.9	\$ 47.4	\$ 44.7	5%	12%
Residential real estate	30.2	29.2	27.5	3%	10%
Total loans	\$ 80.1	\$ 76.6	\$ 72.2	5%	11%
U.S. Bank loans	\$ 129.9	\$ 124.0	\$ 113.6	5%	14%
U.S. Bank investment securities portfolio ⁽²⁾	\$ 68.5	\$ 70.7	\$ 69.2	(3%)	(1%)
U.S. Bank deposits	\$ 189.3	\$ 179.6	\$ 187.1	5%	1%

The End Notes are an integral part of this presentation. See pages 12 - 17 for Definition of U.S. GAAP to Non-GAAP Measures, Definition of Performance Metrics and Terms, Supplemental Quantitative Details and Calculations, and Legal Notice.

Definition of U.S. GAAP to Non-GAAP Measures

- (a) The Firm prepares its Consolidated Financial Statements using accounting principles generally accepted in the United States (U.S. GAAP). From time to time, Morgan Stanley may disclose certain “non-GAAP financial measures” in the course of its earnings releases, earnings conference calls, financial presentations and otherwise. The Securities and Exchange Commission defines a “non-GAAP financial measure” as a numerical measure of historical or future financial performance, financial positions, or cash flows that is subject to adjustments that effectively exclude, or include amounts from the most directly comparable measure calculated and presented in accordance with U.S. GAAP. Non-GAAP financial measures disclosed by Morgan Stanley are provided as additional information to analysts, investors and other stakeholders in order to provide them with greater transparency about, or an alternative method for assessing, our financial condition, operating results, or prospective regulatory capital requirements. These measures are not in accordance with, or a substitute for U.S. GAAP, and may be different from or inconsistent with non-GAAP financial measures used by other companies. Whenever we refer to a non-GAAP financial measure, we will also generally define it or present the most directly comparable financial measure calculated and presented in accordance with U.S. GAAP, along with a reconciliation of the differences between the non-GAAP financial measure we reference and such comparable U.S. GAAP financial measure. In addition to the following notes, please also refer to the Firm's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019.
- (b) The following are considered non-GAAP financial measures that the Firm considers useful for analysts, investors and other stakeholders to allow better comparability of operating performance and capital adequacy. These measures are calculated as follows:
- Earnings per diluted share, excluding intermittent net discrete tax provision / benefit represents net income (loss) applicable to Morgan Stanley, adjusted for the impact of the intermittent net discrete tax provision / benefit, less preferred dividends divided by the average number of diluted shares outstanding.
 - The return on average common equity and return on average tangible common equity represents full year net income or annualized net income for the quarter applicable to Morgan Stanley less preferred dividends as a percentage of average common equity and average tangible common equity, respectively.
 - The return on average common equity and the return on average tangible common equity excluding intermittent net discrete tax provision / benefit are adjusted in both the numerator and the denominator to exclude the intermittent net discrete tax provision / benefit.
 - Segment return on average common equity and return on average tangible common equity represents full year net income or annualized net income for the quarter applicable to Morgan Stanley for each segment, less preferred dividend segment allocation, divided by average common equity and average tangible common equity for each respective segment. The segment adjustments to common equity to derive segment average tangible common equity are generally set at the beginning of the year, and will remain fixed throughout the year until the next annual reset unless a significant business change occurs (e.g., acquisition or disposition).
 - Tangible common equity represents common equity less goodwill and intangible assets net of allowable mortgage servicing rights deduction.
 - Tangible book value per common share represents tangible common equity divided by period end common shares outstanding.
 - Pre-tax profit margin percentages represent income before income taxes as percentages of net revenues.

Definition of Performance Metrics and Terms

Page 1:

- (a) Net income (loss) applicable to Morgan Stanley represents net income, less net income applicable to nonredeemable noncontrolling interests.
- (b) Earnings (loss) applicable to Morgan Stanley common shareholders represents net income (loss) applicable to Morgan Stanley, less preferred dividends.

Page 2:

- (a) Book value per common share represents common equity divided by period end common shares outstanding.
- (b) The Firm expense efficiency ratio represents total non-interest expenses as a percentage of net revenues.

Page 3:

- (a) Firmwide regional revenues reflect the Firm's consolidated net revenues on a managed basis. Further discussion regarding the geographic methodology for net revenues is disclosed in Note 21 to the consolidated financial statements included in the Firm's Annual Report on Form 10-K for the year ended December 31, 2018 (2018 Form 10-K).
- (b) The global liquidity reserve, which is held within the bank and non-bank operating subsidiaries, is comprised of highly liquid and diversified cash and cash equivalents and unencumbered securities. Eligible unencumbered securities include U.S. government securities, U.S. agency securities, U.S. agency mortgage-backed securities, non-U.S. government securities and other highly liquid investment grade securities.
- (c) The Firm's goodwill and intangible balances utilized in the calculation of tangible common equity are net of allowable mortgage servicing rights deduction.

Page 4:

- (a) The Firm's attribution of average common equity to the business segments is based on the Required Capital framework, an internal capital adequacy measure. This framework is a risk-based and leverage use-of-capital measure, which is compared with the Firm's regulatory capital to ensure that the Firm maintains an amount of going concern capital after absorbing potential losses from stress events, where applicable, at a point in time. The Required Capital framework is based on the Firm's regulatory capital requirements. The Firm defines the difference between its total average common equity and the sum of the average common equity amounts allocated to its business segments as Parent common equity. The amount of capital allocated to the business segments is generally set at the beginning of the year, and will remain fixed throughout the year until the next annual reset unless a significant business change occurs (e.g., acquisition or disposition). The Required Capital framework is expected to evolve over time in response to changes in the business and regulatory environment, for example, to incorporate changes in stress testing or enhancements to modeling techniques. For further discussion of the framework, refer to Part II, Item 7 "Liquidity and Capital Resources—Regulatory Requirements" in the Firm's Annual Report on Form 10-K for the year ended December 31, 2018 and Part I, Item 2 "Liquidity and Capital Resources—Regulatory Requirements" in the Firm's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019.
- (b) The Firm's risk-based capital ratios for purposes of determining regulatory compliance are the lower of the capital ratios computed under the (i) standardized approaches for calculating credit risk and market risk risk-weighted assets (RWAs) (the "Standardized Approach"); and (ii) applicable advanced approaches for calculating credit risk, market risk and operational risk RWAs (the "Advanced Approach"). At December 31, 2019 and December 31, 2018, the Firm's ratios are based on the Standardized Approach. For information on the calculation of regulatory capital and ratios for prior periods, please refer to Part II, Item 7 "Liquidity and Capital Resources—Regulatory Requirements" in the Firm's 2018 Form 10-K and Part I, Item 2 "Liquidity and Capital Resources—Regulatory Requirements" in the Firm's 10-Q for the quarter ended September 30, 2019.
- (c) Supplementary leverage ratio represents Tier 1 capital divided by the total supplementary leverage exposure.

Page 5:

- (a) Institutional Securities Sales & Trading net revenues includes trading, net interest income (interest income less interest expense), asset management, commissions and fees revenues.
- (b) VaR represents the loss amount that one would not expect to exceed, on average, more than five times every one hundred trading days in the Firm's trading positions if the portfolio were held constant for a one-day period. Effective for the quarter ended September 30, 2019, the Firm changed its VaR model primarily in preparation for updates to regulatory rules and we believe the resulting VaR continues to accurately measure our market risk. The previous model used four years of historical data with a volatility adjustment to reflect current market conditions, the new model uses one year of unadjusted historical data. Prior periods VaR amounts have not been recast to reflect the new model. Further discussion of the calculation of VaR and the limitations of the Firm's VaR methodology, is disclosed in Part II, Item 7A "Quantitative and Qualitative Disclosures about Risk" included in the Firm's 2018 Form 10-K.

Definition of Performance Metrics and Terms

Page 6:

- (a) Transactional revenues for the Wealth Management segment includes investment banking, trading, and commissions and fee revenues.
- (b) Net interest income represents interest income less interest expense.
- (c) Other revenues for the Wealth Management segment includes investments and other revenues.

Page 7:

- (a) The average annualized revenue per representative metric represents annualized net revenues divided by average representative headcount.
- (b) Client assets per representative represents total client assets divided by period end representative headcount.
- (c) Client liabilities reflect U.S. Bank lending and broker dealer margin activity.
- (d) Fee-based client assets represent the amount of assets in client accounts where the basis of payment for services is a fee calculated on those assets.
- (e) Fee-based asset flows include net new fee-based assets, net account transfers, dividends, interest, and client fees and exclude institutional cash management related activity.

Page 8:

- (a) Other revenues for the Investment Management segment includes investment banking, trading, net interest and other revenues.

Page 9:

- (a) Investment Management Alternative/Other asset class includes products in Fund of Funds, Real Estate, Private Equity and Credit strategies, as well as Multi-Asset portfolios.
- (b) Investment Management net flows include new commitments, investments or reinvestments, net of client redemptions, returns of capital post-fund investment period and dividends not reinvested and excludes the impact of the transition of funds from their commitment period to the invested capital period.
- (c) The share of minority stake assets represents Investment Management's proportional share of assets managed by entities in which it owns a minority stake.

Page 10:

- (a) Corporate loans include relationship and event-driven loans and typically consist of revolving lines of credit, term loans and bridge loans.
- (b) Secured lending facilities include loans provided to clients to warehouse loans secured by underlying real estate or other assets.
- (c) The Institutional Securities business segment engages in securities-based and other lending activity, which includes corporate loans purchased in the secondary market, financing extended to commodities customers, and loans to municipalities.
- (d) Institutional Securities Lending Commitments principally include Corporate lending activity.

Page 11:

- (a) U.S. Bank refers to the Firm's U.S. Bank operating subsidiaries Morgan Stanley Bank, N.A. and Morgan Stanley Private Bank, National Association and excludes balances between Bank subsidiaries, as well as deposits from the Parent and affiliates.
- (b) Corporate loans include relationship and event-driven loans and typically consist of revolving lines of credit, term loans and bridge loans.
- (c) Secured lending facilities include loans provided to clients to warehouse loans secured by underlying real estate or other assets.
- (d) The Institutional Securities business segment engages in securities-based and other lending activity, which includes corporate loans purchased in the secondary market, financing extended to commodities customers, and loans to municipalities.

Page 1:

(1) The Firm non-interest expenses by category are as follows:

	<u>4Q19</u>	<u>3Q19</u>	<u>4Q18</u>	<u>4Q19 YTD</u>	<u>4Q18 YTD</u>
Compensation and benefits ^(a)	\$ 5,228	\$ 4,427	\$ 3,787	\$ 18,837	\$ 17,632
Non-compensation expenses:					
Occupancy and equipment	375	353	358	1,428	1,391
Brokerage, clearing and exchange fees	633	637	598	2,493	2,393
Information processing and communications	567	557	529	2,194	2,016
Marketing and business development	200	157	220	660	691
Professional services	555	531	605	2,137	2,265
Other	566	660	594	2,369	2,482
Total non-compensation expenses	2,896	2,895	2,904	11,281	11,238
Total non-interest expenses	\$ 8,124	\$ 7,322	\$ 6,691	\$ 30,118	\$ 28,870

(a) The Firm recorded severance costs of \$172 million in the fourth quarter of 2019, associated with a business unit and infrastructure December employee action, which were reported in the business segments' results as follows: Institutional Securities \$124 million, Wealth Management \$37 million and Investment Management \$11 million.

Page 2:

(1) The fourth quarter and full year ended December 31, 2019 included intermittent net discrete tax benefits of \$158 million and \$348 million, respectively, primarily associated with remeasurement of reserves as a result of new information pertaining to the resolution of multi-jurisdiction tax examinations and other tax matters. The third quarter ended September 30, 2019 included intermittent net discrete tax benefits of \$89 million primarily associated with the filing of the 2018 federal tax return and remeasurement of reserves as a result of new information pertaining to multi-jurisdiction tax examinations. The fourth quarter and full year ended December 31, 2018 included intermittent net discrete tax benefits of \$111 million and \$203 million, respectively, primarily associated with remeasurement of reserves as a result of new information pertaining to the resolution of multi-jurisdiction tax examinations.

The following sets forth the impact of the intermittent net discrete tax items to earnings per diluted share, return on average common equity and return on average tangible common equity (which are excluded):

	<u>4Q19</u>	<u>3Q19</u>	<u>4Q18</u>	<u>4Q19 YTD</u>	<u>4Q18 YTD</u>
Earnings per diluted share impact	\$ 0.10	\$ 0.06	\$ 0.07	\$ 0.21	\$ 0.12
Return on average common equity impact	0.8 %	0.5 %	0.6 %	0.5 %	0.3 %
Return on average tangible common equity impact	1.0 %	0.6 %	0.7 %	0.5 %	0.3 %

(2) The income tax consequences related to employee share-based payments, which are recurring-type tax items, are recognized in Provision for income taxes in the consolidated income statement, and may be either a benefit or a provision. Conversion of employee share-based awards to Firm shares will primarily occur in the first quarter of each year. The impacts of recognizing excess tax benefits upon conversion of awards, in the applicable quarter and year-to-date amounts, are as follows: 4Q18: \$1 million, 4Q19 YTD: \$127 million and 4Q18 YTD: \$165 million. The impact of intermittent net discrete tax provisions and benefits reflected above do not include the recurring-type discrete tax benefits related to employee share-based payments as we anticipate conversion activity each year.

Page 5:

(1) For the fourth quarter and full year ended December 31, 2019, the Institutional Securities segment net income applicable to Morgan Stanley included intermittent net discrete tax benefits of \$149 million and \$317 million, respectively, primarily associated with remeasurement of reserves as a result of new information pertaining to the resolution of multi-jurisdiction tax examinations and other tax matters. The third quarter ended September 30, 2019 included intermittent net discrete tax benefits of \$67 million primarily associated with the filing of the 2018 federal tax return and remeasurement of reserves as a result of new information pertaining to the resolution of multi-jurisdiction tax examinations. The fourth quarter and full year ended December 31, 2018 included intermittent net discrete tax benefits of \$94 million and \$182 million, respectively, primarily associated with the remeasurement of reserves as result of new information pertaining to the resolution of multi-jurisdiction tax examinations and tax other matters.

(2) Institutional Securities average tangible common equity represents average common equity adjusted to exclude goodwill and intangible assets net of allowable mortgage servicing rights deduction. The adjustments are as follows: 4Q19: \$536mm; 3Q19: \$536mm; 4Q19 YTD: \$536mm; 4Q18: \$641mm; 4Q18 YTD: \$641mm

(3) Effective for the quarter ended September 30, 2019, the Firm changed its VaR model primarily in preparation for updates to regulatory rules and we believe the resulting VaR continues to accurately measure our market risk. The previous model used four years of historical data with a volatility adjustment to reflect current market conditions, the new model uses one year of unadjusted historical data. Prior periods VaR amounts have not been recast to reflect the new model. The difference in Trading VaR for 3Q19 between the new model (\$42 million) and old model (\$43 million) was not significant.

Page 6:

- (1) For the full year ended December 31, 2019, the Wealth Management segment net income applicable to Morgan Stanley included intermittent net discrete tax benefits of \$13 million. Additionally, the quarter ended September 30, 2019 included intermittent net discrete tax benefits of \$13 million.
- (2) Wealth Management average tangible common equity represents average common equity adjusted to exclude goodwill and intangible assets net of allowable mortgage servicing rights deduction. The adjustments are as follows: 4Q19: \$8,088mm; 3Q19: \$8,088mm; 4Q19 YTD: \$8,088mm; 4Q18: \$7,604mm; 4Q18 YTD: \$7,604mm

Page 8:

- (1) Includes investment gains or losses for certain funds included in the Firm's consolidated financial statements for which the limited partnership interests in these gains or losses were reported in net income (loss) applicable to nonredeemable noncontrolling interests.
- (2) For the fourth quarter and full year ended December 31, 2019, the Investment Management segment net income applicable to Morgan Stanley included intermittent net discrete tax benefits of \$9 million and \$18 million, respectively. The fourth quarter and full year ended December 31, 2018 included intermittent discrete tax benefits of \$20 million and \$21 million, respectively.
- (3) Investment Management average tangible common equity represents average common equity adjusted to exclude goodwill and intangible assets net of allowable mortgage servicing rights deduction. The adjustments are as follows: 4Q19: \$940mm; 3Q19: \$940mm; 4Q19 YTD: \$940mm; 4Q18: \$950mm; 4Q18 YTD: \$950mm

Page 9:

- (1) Net Flows by region for the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018 were:
North America: \$19.4 billion, \$6.4 billion and \$3.1 billion
International: \$9.7 billion, \$6.9 billion and \$7.6 billion
- (2) Assets under management or supervision by region for the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018 were:
North America: \$307 billion, \$282 billion and \$260 billion
International: \$245 billion, \$225 billion and \$203 billion

Page 10:

- (1) Corporate loans in the Institutional Securities segment represents relationship and event lending.
- (2) For the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018, Institutional Securities recorded a provision for credit losses of \$47 million, \$31 million and \$7 million, respectively, related to loans, and a provision for credit losses of \$5 million, \$18 million and \$3 million, respectively, related to lending commitments.
- (3) For the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018, Wealth Management recorded a provision for credit losses of \$4 million, \$3 million and \$2 million, respectively, related to loans. For the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018, there was no material provision recorded by Wealth Management related to lending commitments.
- (4) For the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018, Investment Management reflected loan balances of \$256 million, \$43 million and \$26 million, respectively, and lending commitments of \$21 million for the quarter ended December 31, 2019, which are not included in the Consolidated Loans and Lending Commitments balance.

Page 11:

- (1) Corporate loans in the Institutional Securities segment represents relationship and event lending.
- (2) For the quarters ended December 31, 2019, September 30, 2019 and December 31, 2018, the U.S. Bank investment securities portfolio included held to maturity investment securities of \$26.1 billion, \$26.7 billion and \$23.7 billion, respectively.

This Financial Supplement contains financial, statistical and business-related information, as well as business and segment trends. The information should be read in conjunction with the Firm's fourth quarter earnings press release issued January 16, 2020.

Public Exhibit 20

Information Regarding Litigation Matters

Morgan Stanley Litigation Matters – Current as of February 29, 2020

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
1	Alpha Bank Investigation by Greek Criminal Authorities and Hellenic Capital Markets Commission	1/13/2011	7/1/2020	A Greek criminal court judge issued a summons to answer preliminary charges to a former employee of the Firm and issued an arrest warrant in relation to another former employee of the Firm related to his investigation of the Firm's trading in the context of an aborted take-over of Alpha Bank by the National Bank of Greece in 2011. In January 2020, the court closed the file, with no action being taken against the individuals, and annulled the arrest warrant. Separately, there have been three Hellenic Capital Market Commission ("HCMC") investigations with respect to the Firm's disclosure of its aggregate holdings in Alpha Bank. HCMC closed the first two investigations without taking any action. As for the third, HCMC summarily fined Morgan Stanley the parent €50,000 in connection with allegations that the Firm committed market manipulation by disclosing that the Firm, through various subsidiaries, had acquired more than 5% of Alpha Bank. The decision was rendered on January 21, 2016 and it became effective on March 6, 2017. The Firm appealed the decision, but the appeal was rejected and the summary fine became final on April 24, 2019.	Morgan Stanley
2	Criminal investigations by Swiss Federal Prosecutor	5/1/2011		Criminal investigations by the Swiss Federal Prosecutor against two former clients of Morgan Stanley (Switzerland) GmbH (MSSG) and the client's investment advisor (Head of the Firm's EMEA Wealth Management business until 2012) in connection with alleged money laundering offences. In October 2019, the investment advisor was convicted of aggravated money laundering by the Swiss Federal Criminal Court. A full judgment is awaited. The Firm is not aware of MSSG being named as a target in the Swiss Federal Prosecutor's investigations.	MSSG
3	People of the State of California v. Morgan Stanley & Co. LLC et al.	9/29/2011	5/24/2019	This matter began on September 29, 2011 as a regulatory investigation by the California Attorney General (CAAG) into the Firm's pre-financial crisis residential-mortgage backed securities-, collateralized debt obligations-, and structured investment vehicles-related activities. On April 1, 2016, the CAAG filed a lawsuit against the Firm on behalf of two California pension funds alleging that that Firm made material misstatements and omissions about certain residential mortgage backed securities and the Cheyne SIV, a structured investment vehicle that held RMBS. On April 24, 2019, the Firm reached an agreement with CAAG to settle the matter for \$150 million. The Firm disputed the allegations and did not make any admissions in connection with the settlement. The	Morgan Stanley & Co. LLC; Morgan Stanley ABS Capital I Inc.; Morgan Stanley Capital I Inc.; Morgan Stanley Mortgage Capital Holdings LLC; Saxon Asset Securities Company; Saxon Funding Management

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
				settlement payment was made on May 23, 2019, and the case was formally dismissed on May 24, 2019.	LLC
4	In the Matter of Morgan Stanley & Co. LLC - FINRA STAR No. 20130354628 et al. - Market Access	1/16/2014	12/21/2018	On August 23, 2018, the Firm finalized coordinated settlements with FINRA, NYSE, NYSE Arca, NASDAQ, MIAX, CBOE EDGX, CBOE EDGA, CBOE BYX, and CBOE BZX and agreed to pay a total of \$1.1 million in fines in connection with allegations that the Firm violated SEC Rule 15c3-5 (Market Access Rule) and other SRO rules related to client limits for high touch orders, controls regarding the entry of various erroneous orders, procedures related to messaging alerts, and specific instances of post-trade surveillance. The Firm also agreed to implement controls and procedures reasonably designed to achieve compliance with the applicable rules and regulations. The settlements resolved numerous SRO inquiries and investigations commenced during 2014.	Morgan Stanley & Co. LLC
5	FINRA Enforcement Investigation Nos. 20140399911 and 20150470915; and Member Regulation Examination Nos. 20130375405 and 20140411966	8/1/2014	12/12/2018	On December 12, 2018, the Firm entered into an AWC with FINRA to resolve a consolidated FINRA investigation relating to the Firm's AML surveillance program to monitor, detect and cause the reporting of potentially suspicious activity in compliance with the BSA, the oversight of the receipt and sale of low priced securities, including failure to implement a reasonable supervisory system to prevent violations of Section 5 of the Securities Act and conduct periodic reviews of FFIs. The Firm consented to a censure and fine of \$10 million to resolve the matter. FINRA commended the Firm for the extraordinary steps taken to enhance The Firm's AML-related programs in the AWC.	Morgan Stanley Smith Barney LLC
6	In the Matter of Morgan Stanley Smith Barney LLC	9/26/2014	1/31/2020	SEC investigation into MSSB's advisory client fee billing, its response to custody examinations, and its advisory client books and records. On January 13, 2017, without MSSB admitting or denying the findings, the SEC entered an Order, finding that MSSB had willfully violated Sections 204(a), 206(2) and 206(4) of the Advisers Act of 1940 and Rules 204-2(a)(10), 204-2(e)(1), 206(4)-2, and 206(4)-7, ordering MSSB to cease and desist from committing or causing future violations of those Sections and Rules, censuring MSSB, ordering MSSB to pay a penalty of \$13 million, and ordering MSSB to comply with certain undertakings. MSSB completed the undertakings in January 2020.	Morgan Stanley Smith Barney LLC
7	FINRA OCC Position Adjustment Inquiry - July 2015 Swing Trade	1/1/2015	10/1/2019	NYSE American investigation relating to adjustments to the open interest computation published by the Option Clearing Corporation. The matter arose from the Firm's reporting of "swing trades", which were internal risk transfers that were not associated with a transaction on the exchange. Because the Firm incorrectly treated these internal risk transfers as	Morgan Stanley & Co. LLC

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
				involving the movement of actual positions, NYSE American found that the Firm mistakenly submitted adjustments to its options positions to the OCC, and failed to supervise the process adequately. Morgan Stanley reached a settlement in which it neither admitted nor denied the findings, but agreed to a total penalty of \$200,000.	
8	Division File CI15-024; State of Nevada Exam of Morgan Stanley Smith Barney LLC Branch Offices	2/25/2015	4/16/2019	In February 2015, the Securities Division of the Office of the Secretary of State, State of Nevada (the "Division"), initiated an examination of certain work locations in Nevada for certain representatives registered with Morgan Stanley Smith Barney LLC (the "Firm"). The Division determined that the Firm should have registered certain of its registered representatives' work locations as branch offices. The Firm entered into an Administrative Consent Order with the Division, which became effective in April 2019, in which the Division ordered the Firm to "cease from violating the [Nevada Uniform Securities] Act, and the regulations adopted thereunder, and [to] comply with said Act and regulations in the future;" to "obtain a branch office license for all places of business in the State of Nevada from which one or more sales representatives transact business in accordance with NRS 90.360(2) and NAC 90.392;" and to pay "a civil penalty in the amount of Twelve Thousand Dollars and No Cents (\$12,000.00)."	Morgan Stanley Smith Barney LLC
9	Securities and Futures Commission investigation in respect of Tianhe Chemicals Group Ltd.	3/18/2015	3/13/2019	This matter involves an investigation by the Hong Kong Securities and Futures Commission of the sponsors in Tianhe Chemicals Group Ltd's 2014 IPO, including the Firm. On March 13, 2019, the Firm entered into an agreement to pay HK\$224 million to resolve the investigation.	Morgan Stanley Asia Limited
10	Investigation Court no. 21 of Barcelona - Diligencias Previas n. 3532/2007-K	4/24/2015		There are ongoing criminal proceedings in Investigation Court no. 21 of Barcelona in which several directors of a Spanish company Mutua Universal Mugenat ("Mutua") are accused of committing, inter alia, the crimes of misappropriation of public funds, falsification of accounts and forgery of commercial documents. The public prosecutor claims that Morgan Stanley S.V., S.A. ("MSSV") and other companies allegedly concluded agreements with Mutua to refund them in kind part of the contributions that the latter had paid to the Spanish Social Security. This return was carried out by means of a system of allegedly illicit rebates (in Spanish "extornos"), which had as beneficiaries the client companies of Mutua. MSSV has been qualified as profit-seeking participant (in Spanish, "partícipe a título lucrativo"), according to Article 122 of the Criminal Code, and Investigation Court No. 21 of Barcelona claimed on	MSSV

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
				27 October 2015 €10,528.00 from MSSV as civil liability (plus interest and costs, if any). MSSV filed its defence to this claim on 29 January 2020.	
11	In the Matter of Morgan Stanley Smith Barney LLC Mutual Funds	6/1/2015	7/7/2019	SEC investigation into the Firm's systems used to identify the best mutual fund share class available for certain retirement plan and charitable organization brokerage clients. On November 7, 2019, without MSSB admitting or denying the findings, the SEC entered an Order, finding that MSSB had willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, ordering MSSB to cease and desist from committing or causing future violations of those Sections, censuring MSSB, and ordering MSSB to pay disgorgement of \$42,389.41, pre-judgment interest of \$3,369.58, and a civil money penalty of \$1.5 million.	Morgan Stanley Smith Barney LLC
12	FX CADE - Brazil	6/29/2015	9/6/2018	The Brazilian anti-competition authority (CADE) initiated an action against the Firm relating to its Brazilian FX business. A former employee and a number of other financial institutions and individuals were also named. In 2018, the Firm resolved the matter with CADE for approximately \$8.8M.	Banco Morgan Stanley SA
13	Case numbers 18/00318 and 18/00319 (previously 15/3637 and 15/4353) - Withholding tax dispute with the Dutch Tax Authority	8/10/2015		The Dutch Tax Authority is challenging in the Dutch courts the prior set-off by the Firm of approximately €124 million (plus accrued interest) of Dutch withholding tax - which the Firm paid on dividends received on Dutch stock - against Dutch corporation tax that was payable for the tax years 2007/8 to 2012/13. The Dutch Tax Authority's claims were dismissed at first instance. The Dutch Tax Authority's appeal was heard in June and July 2019, and a decision is expected in Q1 2020.	Morgan Stanley Derivative Products Netherlands
14	Swiss Competition Commission investigation regarding Precious Metals	9/25/2015	06/04/2019	On September 25, 2015, the Swiss Competition Commission (WEKO) notified the Firm and six other banks that it had opened an investigation concerning alleged anti-competitive conduct in respect of the trading of precious metals (namely, gold, silver, platinum and palladium). On June 4, 2019, WEKO issued a decision formally discontinuing its investigation into the Firm and other banks.	Morgan Stanley; Morgan Stanley Commodities Group Inc.
15	In the Matter Of Morgan Stanley, LLC - CRD # 149777	10/28/2015	11/27/2018	State of NH inquiry relating to activity in client accounts of former FA Justin Amaral. On 11/27/2018, the Firm reached a settlement and agreed to a fine of \$500,000, and restitution to clients of \$483,285.	Morgan Stanley Smith Barney LLC
16	In the Matter of Morgan Stanley Smith Barney, Case # C-2015-000021	11/6/2015	11/20/2018	State of New Hampshire review of churning and unauthorized trading by former FA Justin Amaral.	Morgan Stanley Smith Barney LLC
17	In the Matter Of Morgan	11/17/2015	10/24/2019	State of Massachusetts investigation relating unsuitability, unauthorized	Morgan Stanley Smith

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
	Stanley Smith Barney (Docket No. E-2016-0041)			trading and churning in the accounts of former FA Justin Amaral. On 10/24/19, the Firm settled this matter by agreeing to a censure, a fine of \$200,000, and restitution to clients of \$182,500.	Barney LLC
18	AMF investigation regarding trading in French government bonds and related instruments	12/5/2015		Since December 2015, the Autorité des Marchés Financiers (AMF), the French regulator, has been investigating certain trading in French government bonds and related instruments by the Firm on June, 16 2015. This investigation resulted in the AMF bringing enforcement proceedings against the Firm in February 2018. On December 10, 2019, the AMF handed down a decision in which it held that certain aspects of the Firm's trading on June 16, 2015 constituted market manipulation, and imposed a €20 million administrative penalty on the Firm. On February 11, 2020, the Firm has appealed this decision before the Paris Court of Appeal, which appeal is pending.	Morgan Stanley & Co. International plc
19	State of IL ex rel Hayes, et al. v. Bank of America	1/14/2016	9/15/2017	Two relators (Roger Hayes & C. Talbot Heppenstall), on behalf of the State of IL, have filed a qui tam action that alleges that the Firm (along with the majority of its peers) failed to obtain the lowest cost of capital for municipal and non-profit issuers in connection with various municipal security issuances and inappropriately allocated portions of each issuance to desks within the Firm as opposed to the third party investors. The plaintiffs filed the case in Cook County in state court. The plaintiffs voluntarily dismissed the action against all defendants.	Morgan Stanley & Co. LLC
20	State of NJ, ex rel Hayes, et al. v. Bank of America	4/30/2016		Two relators (Roger Hayes & C. Talbot Heppenstall), on behalf of the State of New Jersey, have filed a qui tam action that alleges that the Firm (along with the majority of its peers) failed to obtain the lowest cost of capital for municipal and non-profit issuers in connection with various municipal security issuances and inappropriately allocated portions of each issuance to desks within the Firm as opposed to the third party investors. The plaintiffs filed the case in Mercer County state court. The Court dismissed the Firm's co-defendants. The action is currently in discovery.	Morgan Stanley & Co. LLC
21	In re Morgan Stanley & Co. LLC (FINRA Matter Nos. 20140430991 and 20150468009) - FINRA/Reg NMS Trade-Through Matters	9/16/2016	10/18/2018	FINRA inquiry into the Firm's compliance with Regulation NMS during the periods between April 2014 and April 2015 (Matter No. 20140430991) and between January 2015 and May 2017 (Matter No. 20150468009). On October 17, 2018, the Firm's offers of settlement were accepted, pursuant to which the Firm consented to sanctions in the amount of \$62,300, and the entry of findings, without admitting or denying, that it failed (1) to take reasonable steps to prevent the intermarket sweep orders it had routed from potentially trading through	Morgan Stanley & Co. LLC

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
				protected quotations in violation of Regulation NMS Rule 600(b)(3); and (2) to establish, maintain and enforce supervisory systems and written procedures designed to prevent trade-throughs in violation of FINRA Rule 3110 (and its predecessor NASD Rule) and FINRA Rule 2010 (and the corresponding Exchange rules). The \$62,300 penalty was allocated among FINRA and the impacted exchanges as follows: (1) \$8,000 to FINRA; (2) \$8,900 each to NYSE LLC, Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe BZX Exchange, Inc., BYX Exchange, Inc., NYSE Arca, Inc.; and (3) \$900 to IEX, were accepted. The Firm received a cautionary action letter from NYSE American LLC.	
22	In the Matter Of Morgan Stanley Smith Barney	11/14/2016	8/29/2018	Review by Rhode Island Securities Commissioner of incentives given to employees of Wellesley, Massachusetts branch to market securities based loans. Settled by consent agreement and payment of \$175,000 fine.	Morgan Stanley Smith Barney LLC
23	Voluntary Disclosure - Forms 1099-B (IRS) Review of Cost Basis Reporting Issue - 1099 Reporting (FINRA) Morgan Stanley (NY-9655) (SEC)	12/1/2016	9/24/2018	The IRS, FINRA and SEC reviewed errors in cost basis reported to the IRS and clients on Form 1099-B for tax years 2011 to 2016. The Firm self-reported the underlying issues to the IRS, FINRA and the SEC during 2017. The Firm entered into a closing agreement during February 2018 to resolve the IRS exposure and paid costs to resolve the IRS exposure and to cover the cost of client remediation. The Firm fully responded to requests from both the SEC and FINRA, both of which informed the Firm that their respective investigations had been closed without further action.	Morgan Stanley Smith Barney LLC
24	State of CA, ex rel Hayes, et al v. UBS Securities, et al.	5/17/2017	4/15/2019	Two relators (Roger Hayes & C. Talbot Heppenstall), on behalf of the State of CA, have filed a qui tam action that alleges that the Firm (along with the majority of its peers) failed to obtain the lowest cost of capital for municipal and non-profit issuers in connection with various municipal security issuances and inappropriately allocated portions of each issuance to desks within the Firm as opposed to the third party investors. The plaintiffs filed the case in San Francisco in state court. The court dismissed the action against all defendants.	Morgan Stanley & Co. LLC
25	City of Greensboro v. McAlister Place Homeowners Association, Inc. et al	5/30/2017		This is a condemnation proceeding naming the Firm as a result of a residential mortgage.	Morgan Stanley & Co. LLC
26	Case No. 2012/00406/MNV - Claim by the Public Prosecutor from the	6/22/2017		In June 22, 2017, the Public Prosecutor for the Court of Accounts for the Republic of Italy filed a claim against the Firm seeking damages of €2.76 billion. The claim relates to certain derivative transactions between the Republic of Italy and the Firm originally entered into between 1999 and	Morgan Stanley & Co. International plc

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
	Italian Court of Accounts			2005, which were restructured (and certain of the transactions were terminated) in Decemener 2011 and January 2012. The claim alleges that the Firm effectively acted as an agent of the state in connection with these transactions and asserts claims related to, among other things, whether the Ministry of Finance was authorised to enter into these transactions, whether the transactions were appropriate and whether the Firm’s conduct relating to the termination of the transactions was proper. On June 15, 2018, the Court of Accounts issued a decision declining jurisdiction and dismissing the claim against the Firm. This decision was affirmed on March 7, 2019 by the Appellate Division of the Court of Accounts. The public prosecutor has appealed this decision before the Italian Supreme Court. The appeal is pending.	
27	Fixed Income Sales Practices Review - Korea	9/1/2017	12/13/2019	In 2017, the Firm conducted a review to determine whether certain employees engaged in unlicensed marketing of fixed income securities and/or improperly shared information between the Firm’s Korean broker-dealer and its local bank. The Firm notified appropriate regulators and disciplined employees in Korea and Hong Kong. On December 13, 2019, the Korean securities regulator, the FSS, concluded its investigation into the unlicensed marketing of securities by certain employees of MS Bank Korea (“MSBK”) and violations of information barriers between the MS Korea broker-dealer (“MSK”) and MSBK. MSBK received a warning and MSK received a caution. The FSS did not impose a monetary penalty. In accordance with Korean practice, the matter has been referred by the FSS to the public prosecutor office, which will conduct its own assessment of whether to investigate or pursue charges.	Morgan Stanley International Bank limited; Morgan Stanley & Co. International plc
28	CFTC Manipulative Transactions relating to Precious Metals and Precious Metals Benchmarks Investigation	2/2/2018		The Department of Justice indicted the Firm's Head of Precious Metals Trading, John Pacilio, for wire fraud, commodities fraud, and spoofing violations related to alleged spoofing while at his previous employer and while at Morgan Stanley. The activity took place from 2007 through October 2014. The CFTC conducted a parallel investigation of Pacilio and the Firm's Precious Metals Trading Desk. On September 30, 2019, the Firm entered into a settlement agreement with the CFTC, requiring the Firm to pay a fine of \$1.5 million, in which the Firm neither admitted nor denied the findings. The Firm made that payment on October 11, 2019.	Morgan Stanley Capital Group Inc.
29	State of Illinois ex rel. Edelweiss Fund LLC v. JPMorgan Chase & Co.,	4/9/2018		False claims act action brought in the name of the State of Illinois in Illinois state court. The complaint alleges that MS and others engaged in fraud in the fees charged and interest rates set for Variable Rate Demand	Morgan Stanley; Morgan Stanley & Co. LLC; Morgan Stanley

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
	et al.			Obligations (VRDO) both in its role as a remarketing agent and its role as a letter of credit provider for the relevant bonds. The matter is currently on appeal per direction of the Illinois Supreme Court.	Smith Barney LLC; Morgan Stanley Capital Group Inc.
30	ICE Futures U.S. – Investigation 2017-059	4/10/2018	5/7/2018	Referral by Ice Futures US ("IFUS") Compliance Department to the Exchange's BCC for possible disciplinary action relating to the overstatement of open interest reported by the Firm in several FX futures contracts in September 2017. On 4/26/2018, the Firm's offer of settlement pursuant to which the Firm agreed to a penalty of \$15,000, without admitting or denying the violation, was approved by the BCC. The Firm paid the fine by wire transfer on 5/7/2018.	Morgan Stanley & Co. LLC
31	BaFin administrative fine proceedings concerning alleged violations of German shareholding disclosure rules	5/24/2018	12/11/2018	On May 24, 2018, the German Regulator, BaFin, notified the Firm that it had initiated administrative fine proceedings against it for alleged violations of shareholding disclosure rules in February 2018. The Firm's disclosures were made as a result of a transaction in which the Firm assisted a client in acquiring a 9.69% stake in Daimler AG. On December 3, 2018, BaFin issued an order imposing a €2.4 million administrative fine order against the Firm (which the Firm paid in full on December 11, 2018).	Morgan Stanley & Co. International plc
32	US ex rel Hayes, et al v. Bank of America, et al	6/26/2018	7/12/2018	Two relators (Roger Hayes & C. Talbot Heppenstall), on behalf of the United States, have filed a qui tam action that alleges that the Firm (along with the majority of its peers) failed to obtain the lowest cost of capital for municipal and non-profit issuers in connection with various municipal security issuances and inappropriately allocated portions of each issuance to desks within the Firm as opposed to the third party investors. The plaintiffs filed the case in the EDNY. The plaintiffs voluntarily dismissed their case shortly after the case was unsealed.	Morgan Stanley & Co. LLC
33	Hingham	6/29/2018		Massachusetts Department of Environmental Protection issued a Notice of Enforcement with a proposed Administrative Consent Order on MS Rialto Hingham MA, LLC for purported violations of law and regulations relating to the release of volatile organic compounds. All potential financial obligations have been and will be borne by Lennar, the majority owner of the entity in question.	MS Rialto Hingham MA, LLC
34	State of NY, ex rel Hayes, et al. v. Bear Stearns, et al	9/19/2018	7/9/2019	Two relators (Roger Hayes & C. Talbot Heppenstall), on behalf of the State of NY, have filed a qui tam action that alleges that the Firm (along with the majority of its peers) failed to obtain the lowest cost of capital for municipal and non-profit issuers in connection with various municipal security issuances and inappropriately allocated portions of each issuance to desks within the Firm as opposed to the third party investors. The	Morgan Stanley & Co. LLC

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
				plaintiffs filed the case in San Francisco in state court. The court dismissed the action against all defendants.	
35	Commonwealth of Massachusetts, ex rel., Johan Rosenberg v. JPMorgan Chase & Co., et al.	9/28/2018		False claims act action brought in the name of the Commonwealth of Massachusetts in Massachusetts state court. The complaint alleges that MS and others engaged in fraud in the fees charged and interest rates set for Variable Rate Demand Obligations (VRDO) both in its role as a remarketing agent and its role as a letter of credit provider for the relevant bonds. Defendants won their motion to dismiss, which is currently on appeal.	Morgan Stanley; Morgan Stanley Smith Barney LLC, Morgan Stanley & Co. LLC; Morgan Stanley Bank, N.A.; Morgan Stanley Capital Services Inc.; Morgan Stanley Capital Group Inc.
36	FINRA 2018 MSSB Sales Practice Cycle Exam - UGMA/UTMA accounts; Matter # 20180600387 -Morgan Stanley	10/1/2018	12/26/2019	This matter arose out of FINRA's 2018 Sales Practice Cycle Exam of MSSB. The inquiry focused on the Firm's administration of UGMA/UTMA accounts, and specifically, the Firm's controls relating to the custodians timely transfer of custodial property to UTMA and UGMA account beneficiaries. The Firm settled the matter with FINRA for \$300,000 in December 2019 and the settlement was paid in January	Morgan Stanley Smith Barney LLC
37	Morgan Stanley & Co. LLC - NYSE Regulation Matter No. 2018-12-00030 - Trading at the Close	12/7/2018	8/27/2019	On August 13, 2019, the Firm entered into a settlement with New York Stock Exchange LLC and agreed to a censure and fine of \$75,000 in connection with allegations that the Firm violated NYSE Rule 52 by seeking to have orders in five securities (ARES, BJ, BRK-B, VICI and YUMC) included in the closing auction on November 30, 2018 without expressing verbal interest in the five securities in the manner required by NYSE rules prior to the close of trading.	Morgan Stanley & Co. LLC
38	Notice of Specified Penalty	12/17/2018	1/15/2019	The Alberta Electric System Operator (AESO) issued eight notices of specified penalty in the amounts of \$10,000 each (\$80,000.00 total) against Morgan Stanley Capital Group, Inc. The penalties were issued because AESO found that in connection with several energy trades between March and April, 2018, E-Tags were not restated and/or submitted prior to the settlement deadline, in violation of ISO rule 203.6 (requiring that e-tags must be submitted two hours prior to the start of trade settlement).	Morgan Stanley Capital Group, Inc.
39	State of California ex rel. Edelweiss Fund LLC v. JPMorgan Chase & Co., et al.	12/26/2018		False claims act action brought in the name of the State of California in California state court. The complaint alleges that MS and others engaged in fraud in the fees charged and interest rates set for Variable Rate Demand Obligations (VRDO) both in its role as a remarketing agent and its role as a letter of credit provider for the relevant bonds. Defendants are currently moving to dismiss the fourth amended complaint.	Morgan Stanley & Co. LLC; Morgan Stanley Bank, N.A.; MS Capital Services Inc.; MS Capital Group Inc.

	Matter Name	Start Date	Resolution Date	Matter Description	Impacted Firm Entity(s)
40	In re GSE Bonds Antitrust Litigation	3/25/2019		Consolidated putative class action complaints, which allege that Defendants, including Morgan Stanley & Co. LLC, acted as primary dealers of certain GSE bonds and, during the period from January 1, 2009 - January 1, 2016, conspired to limit competition regarding price and terms of sale in an effort to manipulate the bid-price spread of GSE bonds in violation of Section 1 of the Sherman Antitrust Act.	Morgan Stanley & Co. LLC
41	The City of Philadelphia, et al. v. Bank of America Corp., et al. (No. 19-cv-1608)	3/25/2019		Consolidated class action filed in the SDNY alleging collusion in the market for VRDOs in violation of federal antitrust laws and breach of contract. Plaintiff alleges that remarketing agents violated obligations to issuers by setting artificially high rates, that letter of credit liquidity providers benefit from these rates because liquidity services less likely needed, and that defendants, who allegedly own and manage money market funds holding the VRDOs with artificially high interest rates earn profits from the higher rates.	Morgan Stanley & Co. LLC
42	Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico, et al. v. BNY Mellon/POP Sec, et al. (Adv. Pro. No. 19-00282)	5/2/2019		The Fiscal Oversight and Management Board and others filed suit seeking to recover payments of principal and interest that were made to holders of certain General Obligation, Public Buildings Association, and Employees Retirement System bonds on the grounds that the bonds were invalid and that they payments thus should not have been made. Currently subject to stay. MSSB dropped as a party defendant 6/21/2019.	Morgan Stanley & Co. LLC; Morgan Stanley Smith Barney LLC
43	Special Claims Committee of the Financial Oversight and Management Board for Puerto Rico, et al. v. Barclays Capital et al. (Adv. Pro. No. 19-00280)	5/2/2019	N/A	The Fiscal Oversight and Management Board and others filed suit relating to Puerto Rico General Obligation Bonds, Public Building Association Bonds, and Employee Retirement System bonds under a number of theories, including aiding and abetting breach of fiduciary duty, unjust enrichment, and equitable claims under Puerto Rico law. Currently subject to stay.	Morgan Stanley & Co. LLC
44	State of New York ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Co.	5/10/2019		False claims act action brought in the name of the State of New York in New York state court. The complaint alleges that MS and others engaged in fraud in the fees charged and interest rates set for Variable Rate Demand Obligations (VRDO) both in its role as a remarketing agent and its role as a letter of credit provider for the relevant bonds. Defendants' motion to dismiss has been argued and a decision is expected in the near term.	Morgan Stanley; Morgan Stanley Smith Barney LLC; Morgan Stanley & Co. LLC; Morgan Stanley Bank, N.A.; Morgan Stanley Capital Services Inc.; Morgan Stanley