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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

May 20, 2026

The Honorable Michelle W. Bowman
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

The Honorable Jonathan Gould
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Travis Hill
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Vice Chair Bowman, Comptroller Gould, and Chairman Hill:

I write regarding your agencies' decision to provide a special exemption to Morgan Stanley that enables the bank to use American taxpayer deposits to subsidize risky financial activities in Europe. This exemption violates federal law, diverts deposits away from domestic lending for businesses and households in the United States, and needlessly exposes our country's banking system to risks in European financial markets. The exemption should be immediately revoked. In addition, I am requesting information from your agencies to better understand this decision.

In 1933, Congress amended the *Federal Reserve Act* to place guardrails on transactions between taxpayer insured banks and their nonbank affiliates.¹ Section 23A of the *Federal Reserve Act* limits the amount of covered transactions that can occur between a bank and any single affiliate, as well as the amount of covered transactions between a bank and all of its affiliates.² In establishing this restriction, Congress sought to prevent banks from using their access to the

¹ The Banking Act of 1933, Public Law 73-66.

² 12 U.S.C. 371c restricts the aggregate amount of covered transactions between a bank and a single affiliate to no more than 10 percent of the bank's capital stock and surplus and restricts the amount of covered transactions between a bank and all its affiliates to no more than 20 percent of the bank's capital stock and surplus.

federal safety net to subsidize the nonbank activities of affiliates and, relatedly, to ensure that risky nonbank activities of affiliates did not threaten the safety and soundness of the bank.³

In recent months, Morgan Stanley decided to restructure its operations by having its taxpayer insured bank acquire a European trading affiliate in an \$85 billion transaction that vastly exceeds the statutory limitations of Section 23A of the *Federal Reserve Act*.⁴ Specifically, the bank planned to “acquire Morgan Stanley Europe SE” and a “wholly owned subsidiary German bank, Morgan Stanley Bank AG,” in a “one-time internal corporate reorganization.”⁵ This foreign affiliate is primarily engaged in “sales and trading of fixed income and equity products, investment banking, capital markets, and research,” activities and Morgan Stanley cited “profitability” as a key reason for the transaction.⁶

Because the acquisition would have violated Section 23A requirements, Morgan Stanley filed an application with regulators for an exemption.⁷ The statute sets a high bar for granting exemptions. The Board of Governors of the Federal Reserve System (Fed) and Office of the Comptroller of the Currency (OCC) must jointly find that an exemption is in the public interest and is consistent with the purposes of Section 23A.⁸ In addition, the Federal Deposit Insurance Corporation (FDIC) must not object based on a “determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.”⁹ An exemption of the magnitude requested by Morgan Stanley is, notably, unprecedented outside of a financial crisis.¹⁰

Yet on March 26, 2026, the Fed and OCC announced that the agencies had granted the exemption and that the FDIC had communicated a formal nonobjection.¹¹ The agencies provided no analysis or evidence to support the conclusion that the exemption is in the public interest and

³ North Carolina Law Review, University of North Carolina School of Law, “From Gramm-Leach-Bliley to Dodd-Frank: The Unfulfilled Promise of Section 23A of the Federal Reserve Act,” Saule T. Omarova, June 1, 2011, p. 1692, <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4513&context=nclr>.

⁴ Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller of the Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>; Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Governor Michael S. Barr,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20260326.htm>.

⁵ Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller of the Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>

⁶ *Id.*

⁷ *Id.*

⁸ 12 U.S.C. 371c(f)(2)(B).

⁹ *Id.*

¹⁰ Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Governor Michael S. Barr,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20260326.htm>.

¹¹ Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller of the Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>; Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Vice Chair for Supervision Michelle W. Bowman,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260326.htm>.

is consistent with the purposes of Section 23A.¹² Instead, the agencies repeatedly cited Morgan Stanley’s assertions that the transaction would “increase [its] profitability . . . through improved efficiencies and cost savings”¹³ and “facilitat[e] the provision of products and services to European customers.”¹⁴ As noted above, “profitability,” “efficiency,” and “cost savings” are not statutorily permitted justifications for a Section 23A exemption; nor is “the provision of products and services to European customers.”¹⁵

A closer look at Morgan Stanley’s proposal only confirms that the bank’s proposed transaction fails both prongs of the 23A exemption test. First, the transaction does not appear to be in the public interest. The banking agencies have previously defined the public interest as “assuring the safety and soundness of the banks, protecting the deposit insurance fund, and limiting the extension of the federal safety net.”¹⁶ Yet Morgan Stanley’s foreign affiliate nonbank activities, such as trading and investment banking, are highly risky. Bringing them into the insured bank could threaten the safety and soundness of the banking system and increase risks to the Deposit Insurance Fund. These practices have, in fact, contributed to significant losses: in 2012, JPMorgan Chase Bank, N.A. lost more than \$6 billion on credit derivatives trades booked in a London subsidiary, JPMorgan Whitefriars U.K.¹⁷ The scandal was dubbed the “London Whale” and resulted in more than \$1 billion in fines from the Fed, OCC, U.K. Financial Conduct Authority, and Commodity Futures Trading Commission.¹⁸ In addition, the U.S. government’s big bank bailouts during the 2008 financial crisis, including certain Federal Reserve emergency liquidity facilities, were used to backstop losses generated by U.S. banks’ foreign activities.¹⁹ Confusingly, in her voting statement to justify the exemption, Vice Chair Bowman asserted that “for as long as these foreign activities have been permitted, no U.S. bank has suffered material financial losses arising out of these overseas activities”²⁰ – a statement directly and obviously contradicted by recent history.

¹² Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller of the Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>.

¹³ *Id.*

¹⁴ Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Vice Chair for Supervision Michelle W. Bowman,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260326.htm>.

¹⁵ *Id.*

¹⁶ Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Governor Michael S. Barr,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20260326.htm>.

¹⁷ The New York Times, “Convictions Prove Elusive in ‘London Whale’ Trading Case,” James B. Stewart, July 16, 2015, <https://www.nytimes.com/2015/07/17/business/figures-in-london-whale-trading-case-escape-the-authorities-nets.html>; The University of Chicago Business Law Review, The University of Chicago The Law School, “Banking on the Edge,” Graham S. Steele, January 1, 2023, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1024&context=ucblr>.

¹⁸ Yale Journal of Financial Crises, “JPMorgan Chase London Whale A: Risky Business,” Arwin G. Zeissler, Daisuke Ikeda, and Andrew Metrick, August 30, 2019, p. 54, <https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1013&context=journal-of-financial-crises>.

¹⁹ The University of Chicago Business Law Review, The University of Chicago The Law School, “Banking on the Edge,” Graham Steele, January 1, 2023, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1024&context=ucblr>.

²⁰ Federal Reserve System, “Statement on Request from Morgan Stanley by Vice Chair for Supervision Michelle W. Bowman,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260326.htm>.

Second, the exemption is plainly inconsistent with the purposes of Section 23A. Morgan Stanley has not been shy about the intent of the transaction. It is engaging in this restructuring to fund the affiliate's existing business with cheaper federally insured deposits, thereby "cost saving" and improving "profitability."²¹ By definition, Morgan Stanley wants to extend the subsidy afforded by the federal safety net to a nonbank affiliate. The purpose of Section 23A is to limit the extension of the federal safety net to affiliates. In other words, the transaction is diametrically opposed to the purpose of Section 23A.

Concerningly, regulators also seem to have overlooked the record of the Section 23A waivers granted in the lead up to the 2008 financial crisis. For example, in 2006, Citigroup received a Section 23A waiver to move subprime mortgages assets from an affiliate into its insured bank.²² Comptroller of the Currency John Dugan later admitted that this corporate restructuring increased Citibank's losses during the financial crisis.²³ It is also unclear why regulators would find it in the public interest of the United States to divert American taxpayer deposits away from domestic lending to subsidize European customers. Vice Chair Bowman explicitly agreed with Morgan Stanley that the public interest is served "by facilitating the provision of products and services to European customers."²⁴

Granting the exemption violated Section 23A of the *Federal Reserve Act*. The agencies should revoke it immediately. If the agencies refuse to reverse this unlawful exemption, future regulators would be responsible for correcting this error and requiring divestiture of the transferred assets and liabilities out of the bank.

To help me better understand your decision to grant this exemption, please answer the following questions by June 3, 2026:

Questions for Vice Chair Bowman and Comptroller Gould

1. Morgan Stanley claimed the transaction would "increase [its] profitability and improve [its] ability to provide products and services to [European] customers at a lower cost through improved efficiencies and cost savings."²⁵
 - a. Why do the Fed and OCC believe that increasing Morgan Stanley's profitability, while increasing risk to the U.S. banking system, is in the public interest?
 - b. Why do the Fed and OCC believe that subsidizing financial products for

²¹ Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>.

²² Letter from Federal Reserve Board Deputy Secretary Robert deV. Frierson to Citigroup Inc. General Counsel Carl Howard, June 30, 2006, <https://www.federalreserve.gov/supervisionreg/legalinterpretations/20060630.pdf>.

²³ Financial Crisis Inquiry Commission, "Statement of John C. Dugan, Comptroller of the Currency," April 8, 2010, p. 16, https://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0408-Dugan.pdf.

²⁴ Board of Governors of the Federal Reserve System, "Statement on Request from Morgan Stanley by Vice Chair for Supervision Michelle W. Bowman," press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260326.htm>.

²⁵ Letter from Federal Reserve Board Deputy Secretary Benjamin W. McDonough to Office of the Comptroller of the Currency Comptroller Jonathan V. Gould, March 5, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20260326a1.pdf>.

European customers is in the public interest?

2. Does this exemption facilitate better products and services for U.S. customers? If so, why was that information excluded from the application and exemption notice? If not, do the agencies believe that the statutory public interest standard under Section 23A refers to the public interest of foreign countries?
3. Morgan Stanley asserted that the transaction would “strengthen [the] Bank and balance its risk profile.”²⁶ Did the agencies analyze and validate that assertion? If so, please provide the analysis. If not, why not?
4. Morgan Stanley executed this transaction to fund its European trading activities with cheaper insured deposits. How is extending the subsidy afforded by the federal safety net to an affiliate consistent with the purposes of Section 23A, which was enacted by Congress to limit the ability of banks to extend the subsidy afforded by the federal safety net to affiliates?
5. Vice Chair Bowman stated that “For as long as these foreign activities have been permitted, no U.S. bank has suffered material financial losses arising out of these overseas activities.”²⁷
 - a. How does the existence of the 2012 “London Whale” scandal, as well as the losses generated by U.S. banks’ foreign activities during the 2008 financial crisis, affect the accuracy of this statement?
 - b. Comptroller Gould, do you agree with Vice Chair Bowman’s statement? If so, why?
6. Did the Fed and OCC consider the record of Citibank’s October 2006 Section 23A exemption, which increased Citibank’s losses during the 2008 financial crisis? If so, why did the agencies proceed with Morgan Stanley’s waiver anyway. If not, why not?
7. Please provide copies of all Section 23A waiver applications submitted to the Fed and OCC since January 20, 2025.

Questions for Chairman Hill

1. Vice Chair Bowman stated that “the FDIC has determined that granting the exemption will not pose an unacceptable risk to the Deposit Insurance Fund.”²⁸ The FDIC confirmed to my office that it had indeed provided a nonobjection. Please provide a copy of the nonobjection and any supporting analysis of the risk posed by the transaction to the Deposit Insurance Fund.

²⁶ *Id.*

²⁷ Board of Governors of the Federal Reserve System, “Statement on Request from Morgan Stanley by Vice Chair for Supervision Michelle W. Bowman,” press release, March 26, 2026, <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20260326.htm>.

²⁸ *Id.*

Sincerely,



Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs