

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Morgan Stanley

Docket No. EC07-45-000

ORDER GRANTING INTERIM EXTENSION OF CURRENT AUTHORIZATION

(Issued February 6, 2007)

1. On December 29, 2006, Morgan Stanley filed an application seeking renewed Federal Power Act (FPA)<sup>1</sup> section 203(a)(2) blanket authorization for the acquisition, directly or indirectly, of securities<sup>2</sup> of electric utility companies, transmitting utilities or of any holding company over any electric utility company or transmitting utility, subject to certain proposed limitations. Morgan Stanley seeks renewal, for three years, of those aspects of the temporary blanket authorization granted by the Commission (Current Authorization)<sup>3</sup> that have not been superseded by the Order No. 669 series.<sup>4</sup> Morgan Stanley is also requesting section 203(a)(1) authorization for the first time for any “electric utility company,” “transmitting utility,” or holder of securities to sell securities to Morgan Stanley without prior Commission approval, subject to the certain limitations.

2. As discussed below, the Commission needs additional information to comprehensively analyze Morgan Stanley’s request for a three-year blanket authorization under FPA sections 203(a)(1) and 203(a)(2). Accordingly, Commission Staff will send a deficiency letter to Morgan Stanley under section 33.10 of the Commission’s Rules of

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<sup>1</sup> 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>2</sup> For purposes of this order, the term “securities” is used consistent with the meanings and limitations given it in EPAAct 2005.

<sup>3</sup> *Morgan Stanley*, 114 FERC ¶ 61,119 (2006), *reh’g denied*, 115 FERC ¶ 61,302 (2006).

<sup>4</sup> *Transactions Subject to FPA Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh’g*, Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006); *order on reh’g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006) (collectively, Order No. 669).

Practice and Procedure<sup>5</sup> requesting additional information. Morgan Stanley must file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter. The Commission will grant an interim extension of Morgan Stanley's Current Authorization pending Commission review of the additional information and a further order of the Commission. However, if Morgan Stanley fails to file the additional information by the required date, the interim authorization may be revoked.

### **Background**

3. Morgan Stanley is a financial services firm with subsidiaries and both utility and non-utility affiliates. Morgan Stanley states that it operates in four segments: (1) Institutional Securities; (2) Global Wealth Management; (3) Asset Management; and (4) Discover. Morgan Stanley states that its Institutional Securities segment provides investment banking services, including securities underwriting and distribution, and financial advisory services, which include advice on mergers and acquisitions, restructurings, real estate and project finance. It engages in selling, trading, financing and market-making activities in equity and debt securities, and related products. These products include broad-based index futures, fixed income futures, and securities futures. Morgan Stanley also provides real estate investment management, equipment financing, benchmark indices and risk management analytics, and research.

4. Morgan Stanley is a holding company under FPA section 203(a)(2) because of its indirect interests, through its wholly-owned subsidiary, in three exempt wholesale generators. Its utility subsidiary, Morgan Stanley Capital Group Inc. (Capital Group), and four subsidiaries of Capital Group have Commission authorization to sell at market-based rates. These subsidiaries, however, do not own or control generation or transmission facilities, or a public utility with a franchised service territory. Morgan Stanley also has certain "Nonutility Affiliates" that take non-controlling positions in, and trade with, unaffiliated companies that directly or indirectly own electric generation or transmission, have franchised service territories, or provide inputs to generation in the United States. Morgan Stanley states that such interests are transitory and fluctuate hourly or daily and that the Nonutility Affiliates do not have control over the daily operations of the utilities. Nonutility Affiliates also regularly acquire and hold securities for customers as asset manager or for their own account.

5. Under the Current Authorization, Morgan Stanley may acquire and own not more than 10 percent of the outstanding voting securities of any one utility or holding company

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<sup>5</sup> 18 C.F.R. § 33.10 (2006).

as principal for its own account (the “10 percent limitation”).<sup>6</sup> Excluded from the 10 percent limitation are voting securities acquired and held in connection with dealer/trader activities, fiduciary holdings, voting securities acquired in connection with underwriting activities (subject to certain limitations), and securities acquired for hedging purposes (subject to a commitment not to vote in excess of 10 percent of such shares). Morgan Stanley reports to the Commission, on a quarterly basis, its holdings of voting securities acquired under the Current Authorization that serve as a principal for its own account and total holdings of voting securities in the same entities, irrespective of the capacity in which such securities are held, subject to a 1 percent *de minimis* threshold. Morgan Stanley’s acquisition of the securities of any utility operating outside the United States, securities of any existing subsidiary of Morgan Stanley, and securities of any entity formed to engage in passive leasing activities are exempted from the 10 percent limitation and the quarterly reporting requirement.

### **Morgan Stanley’s Request for Continued and New Authorization**

6. Morgan Stanley states that the blanket authorizations granted in Order No. 669 supplant many aspects of the Current Authorization. Specifically, under Order No. 669-A, a holding company may, without obtaining separate authorization under section 203(a)(2), acquire not more than 10 percent of the outstanding voting securities of any one utility or holding company,<sup>7</sup> subject to conditions set forth in sections 33.1(c)(3) and (4) of the Commission regulations.<sup>8</sup> Order No. 669-A also grants blanket authorization under FPA section 203(a)(2) for a holding company to acquire any securities in connection with underwriting activities, subject to certain conditions,<sup>9</sup> and to acquire securities for purposes of engaging in hedging activities, subject to certain limitations.<sup>10</sup> Further, Order No. 669-A grants a blanket authorization under section 203(a)(2) for a holding company, whose only electric utility company subsidiaries are exempt wholesale generators, foreign utility companies or qualifying facilities to acquire

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<sup>6</sup> Specifically, Morgan Stanley may acquire, directly or indirectly, debt or equity securities of any electric utility company, transmitting utility or holding company over any electric utility company or transmitting utility in a fiduciary capacity in connection with its asset management business; in the ordinary course of its business as an underwriter and dealer; in connection with trading activities; in connection with its lending and lease financing activities; and in the course of the routine dealing and trading as principal for its own account, provided that Morgan Stanley does not obtain control of the operation or management of the issuer.

<sup>7</sup> 18 C.F.R. §33.1(c)(2)(ii) (2006).

<sup>8</sup> 18 C.F.R. §33.1(c)(3)-(4) (2006).

<sup>9</sup> 18 C.F.R. §33.1(c)(10)(i) (2006).

<sup>10</sup> 18 C.F.R. §33.1(c)(10)(ii) (2006).

any amount of securities of any additional companies falling in those same categories.<sup>11</sup> Hence, Morgan Stanley states that because it may rely on the blanket authorizations granted under Order No. 669-A for such acquisitions, the application in this proceeding does not cover those kinds of transactions.

7. Morgan Stanley states, however, that Order No. 669-A does not grant blanket authorization for a company to acquire securities in the ordinary course of business as a fiduciary in connection with its asset management business or as collateral for a loan. As a result, fiduciary acquisitions of securities and acquisitions of such securities for collateral purposes have to be counted against the 10 percent limit under § 33.1(c)(2)(ii), absent a separate authorization. Likewise, since there is no blanket authorization under Order No. 669-A for acquisitions in connection with routine dealer/trader activities, securities acquired and held in such capacities for the account of, or for delivery to, customers also have to be counted against the 10 percent limit under § 33.1(c)(2)(ii), absent a separate authorization. Morgan Stanley states that it engages in these types of transactions, and therefore seeks a renewal of those aspects of the Current Authorization.

8. Specifically, Morgan Stanley requests that the Commission renew, for a term of three years, the Current Authorization so that Morgan Stanley may: (1) acquire and hold an unlimited amount of securities on behalf of individual, corporate and institutional customers as a fiduciary; (2) acquire and hold an unlimited amount of securities as collateral for a loan or for purposes of liquidation in connection with an antecedent debt; and (3) acquire and hold an unlimited amount of securities in connection with trading activities such as dealer/trader activities, including market making/specialist activities and other trade execution services for customers. Morgan Stanley also requests that the Commission grant authorization under section 203(a)(1) for any “electric utility company,” “transmitting utility,” or holder of securities to sell securities to Morgan Stanley without prior Commission approval. This grant of blanket authority would be subject, in each case, to the requirement that Morgan Stanley acquire and hold the securities in the ordinary course of business and not to gain control of the issuer. Further, Morgan Stanley requests that, consistent with the Current Authorization (as well as Order No. 669-A), any securities acquired and held in accordance with the authorization requested in this application shall be excluded from the amount of voting securities that Morgan Stanley may acquire under § 33.1(c)(2)(ii) of the Commission’s regulations.

### **Notice of Filing, Interventions and Protests**

9. Notice of Morgan Stanley’s filing was published in *Federal Register*, 72 Fed. Reg. 1,717 (2007), with interventions and protests due on or before January 19, 2007. None was filed.

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<sup>11</sup> 18 C.F.R. §33.1(c)(8) (2006).

### **Commission Determination**

10. As noted in the Current Authorization, at the time the authorization was granted, the Commission was in the early stages of implementing EAct 2005. An important part of the Commission's rationale for the Current Authorization was maintaining the status quo of Morgan Stanley's activities, which Morgan Stanley claimed were permitted by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, as amended.<sup>12</sup> Therefore, the Commission granted the Current Authorization on a temporary and conditional basis.<sup>13</sup> Morgan Stanley now seeks to extend the Current Authorization for an additional three-year period and requests additional authorization under FPA section 203(a)(1) to acquire securities. The Commission needs additional information to comprehensively evaluate Morgan Stanley's request. Therefore, Commission Staff will issue a deficiency letter to Morgan Stanley requiring additional information. Morgan Stanley must file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter. Pending evaluation of that information and further order of the Commission,<sup>14</sup> we will grant an interim extension of Morgan Stanley's Current Authorization. However, if Morgan Stanley fails to file the additional information by the required date, the interim authorization may be revoked.

#### **The Commission orders:**

(A) Commission staff is hereby directed to request additional information from Morgan Stanley by means of a deficiency letter under section 33.10 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 33.10 (2006).

(B) Morgan Stanley is hereby ordered to file with the Commission the additional information requested in the Staff deficiency letter within 60 days of the date of issuance of the deficiency letter.

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<sup>12</sup> 15 U.S.C. §§ 79a *et seq.* (2000)(repealed 2005).

<sup>13</sup> Current Authorization at P 11.

<sup>14</sup> Section 203 requires the Commission to grant or deny an application for approval of a transaction within 180 days after the application is filed. The statutory 180-day period for Commission action will start on the date on which the Commission receives the additional information. 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 § 1289 (a)(5), Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005).

(C) Morgan Stanley's Current Authorization is hereby extended pending Commission review of the additional information and further order of the Commission, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.