

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of

MORGAN STANLEY  
New York, New York

Docket No. 17-048-CMP-HC

Order of Assessment of a Civil Money  
Penalty Issued Upon Consent Pursuant  
to the Federal Deposit Insurance Act,  
as Amended

WHEREAS, Morgan Stanley, New York, New York (“MS”), a registered bank holding company, prior to July 1, 2012, indirectly engaged in the business of servicing residential mortgage loans through its indirect subsidiary, Saxon Mortgage Services, Inc., Fort Worth, Texas (“Saxon”);

WHEREAS, MS, through Saxon, indirectly serviced residential mortgage loans held in the portfolios of (a) certain subsidiaries of MS; (b) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association; and (c) various investors, including securitization trusts pursuant to Pooling and Servicing Agreements and similar agreements (collectively, the “Servicing Portfolio”). MS, indirectly through Saxon, had substantial responsibilities with respect to the Servicing Portfolio for the initiation and handling of foreclosure proceedings, and loss mitigation activities (“Loss Mitigation” or “Loss Mitigation Activities” include activities related to special forbearances, repayment plans, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure);

WHEREAS, by virtue of its indirect ownership of Saxon, MS was the 34th largest servicer of residential mortgages in the United States and serviced a portfolio of more than 225,000 residential mortgage loans. During the recent financial crisis, a substantially larger number of residential mortgage loans became past due than in earlier years. Many of the past due mortgages have resulted in foreclosure actions. From January 1, 2009, to December 31, 2010, Saxon initiated at least 60,313 foreclosure actions;

WHEREAS, beginning in April 2012, MS began terminating the servicing business of Saxon;

WHEREAS, on April 2, 2012, the Board of Governors and MS entered into a Consent Order relating to foreclosure practices, as amended on February 28, 2013 (the "Consent Order");

WHEREAS, paragraph 3 of the Consent Order required MS to submit to the Federal Reserve Bank of New York acceptable policies and procedures for the outsourcing of any residential mortgage loan servicing, Loss Mitigation, or foreclosure functions, by MS (including any subsidiary or affiliate of MS) to any independent contractor, consulting firm, law firm, property manager, or other third party (including any subsidiary or affiliate of MS);

WHEREAS, the Consent Order stated that the conduct which was the subject of the Consent Order allegedly constitutes unsafe or unsound practices in conducting the affairs of MS and Saxon within the meaning of section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. § 1818) (the "FDI Act");

WHEREAS, in connection with the process leading to certain foreclosures involving the Servicing Portfolio, the Consent Order stated that MS, indirectly through Saxon, allegedly:

- (a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of Saxon or

employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review;

(b) Filed or caused to be filed in courts in various states and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party;

(d) Failed to respond in a sufficient and timely manner to the increased level of foreclosures by increasing financial, staffing, and managerial resources to ensure that Saxon adequately handled the foreclosure process; and failed to respond in a sufficient and timely manner to the increased level of Loss Mitigation Activities by increasing management and staffing levels to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities and foreclosure activities and full exploration of Loss Mitigation options or programs prior to completion of foreclosure activities; and

(e) Failed to have adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process, including sufficient oversight of outside counsel and other third-party providers handling foreclosure-related services with respect to the Servicing Portfolio;

WHEREAS, as evidenced by these alleged deficiencies at Saxon, MS allegedly failed to provide effective oversight with respect to the residential mortgage loan servicing, Loss Mitigation, foreclosure activities, and related functions of Saxon, including Saxon's risk management, audit, and compliance programs, vendor management, document execution practices, and staffing and managerial resources as they pertain to those activities and related functions;

WHEREAS, MS has taken steps to address the risks associated with the conduct that was the subject of the Consent Order;

WHEREAS, the Board of Governors issues this Order of Assessment of a Civil Money Penalty Issued Upon Consent (the "Consent Assessment Order") against MS in connection with the conduct that is the subject of the Consent Order;

WHEREAS, MS has consented to the assessment of a civil money penalty in the amount of \$8,000,000 by the Board of Governors (the "CMP") pursuant to sections 8(b)(3) and (i)(2)(B) of the FDI Act, as amended (12 U.S.C. §§ 1818(b)(3) and 1818(i)(2)(B));

WHEREAS, the board of directors of MS, through a unanimous consent, authorized Scott Tucker, Managing Director and Global Head of Litigation, to enter into this Consent Assessment Order on behalf of MS, and consent to compliance with each and every applicable provision of this Consent Assessment Order by MS and its institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), and waive any and all

rights that MS may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of assessment of civil money penalty; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Consent Assessment Order; (iii) judicial review of this Consent Assessment Order; (iv) contest the issuance of this Consent Assessment Order by the Board of Governors; and (v) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Consent Assessment Order or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ORDERED by the Board of Governors, pursuant to sections 8(b)(3) and (i)(2)(B) of the FDI Act (12 U.S.C. §§ 1818(b)(3) and 1818(i)(2)(B)), that:

1. The Board of Governors hereby assesses MS a civil money penalty in the amount of \$8,000,000 to be paid upon the execution of this Consent Assessment Order by Fedwire transfer of immediately available funds to the Federal Reserve Bank of Richmond, ABA No. 051000033, beneficiary, Board of Governors of the Federal Reserve System. This penalty is deemed to be a penalty paid to a government agency for a violation of law for purposes of 26 U.S.C. § 162(f) and 26 C.F.R. § 1.162-21. The Federal Reserve Bank of Richmond, on behalf of the Board of Governors, shall distribute this sum to the U.S. Department of the Treasury, pursuant to section 8(i) of the FDI Act (12 U.S.C. § 1818(i)).

## **Notices**

2. All communications regarding this Order shall be sent to:
  - (a) Richard M. Ashton, Esq.  
Deputy General Counsel  
Patrick M. Bryan, Esq.  
Assistant General Counsel  
Board of Governors of the Federal Reserve System  
20th and C Streets N.W.  
Washington, D.C. 20551
  - (b) Scott Tucker, Esq.  
Managing Director and Global Head of Litigation  
Morgan Stanley  
1633 Broadway, 26th Floor  
New York, New York 10019

## **Miscellaneous**

3. The provisions of this Consent Assessment Order shall be binding on MS and its institution-affiliated parties in their capacities as such, and their successors and assigns.

4. Each provision of this Consent Assessment Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Board of Governors.

5. Notwithstanding any provision in the Consent Order, the Board of Governors hereby releases and discharges MS and its affiliates, successors, and assigns from all potential liability that has been or might have been asserted by the Board of Governors based on the conduct that is the subject of this Consent Assessment Order or the Consent Order, to the extent known to the Board of Governors as of the effective date of this Consent Assessment Order. The foregoing release and discharge shall not preclude or affect any right of the Board of Governors to determine and ensure compliance with this Consent Assessment Order, or any proceedings brought by the Board of Governors to enforce the terms of this Consent Assessment Order.

6. Nothing in this Consent Assessment Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any legal or equitable right, remedy or claim under this Consent Assessment Order.

By Order of the Board of Governors effective this 12th day of January, 2018.

MORGAN STANLEY

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ Scott Tucker  
Scott Tucker  
Managing Director and  
Global Head of Litigation

By: /s/ Ann E. Misback  
Ann E. Misback  
Secretary of the Board