

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89201 / June 30, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15982**

**In the Matter of**

**MORGAN STANLEY AND CO. LLC;**  
**MORGAN STANLEY ABS CAPITAL I INC;**  
**and**  
**MORGAN STANLEY MORTGAGE CAPITAL**  
**HOLDINGS LLC,**

**Respondents.**

**ORDER APPROVING PLAN**  
**OF DISTRIBUTION**

On July 24, 2014, the Commission issued an Order Instituting Cease and Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”) against Morgan Stanley and Co. LLC (f/k/a “Morgan Stanley and Co. Incorporated”) (“MS & Co.”), Morgan Stanley ABS Capital I Inc., (“MSAC”), and Morgan Stanley Mortgage Capital Holdings LLC, (“MSMCH”) (collectively, the “Respondents”).<sup>1</sup>

As set forth in the Order, Respondents issued misleading public disclosures regarding the number of delinquent loans in two subprime residential mortgage-backed securities transactions offered in 2007 – Morgan Stanley ABS Capital I Inc. Trust 2007-NC4 (“NC4”) and Morgan Stanley ABS Capital I Inc. Trust 2007-H7 (“HE7”) (collectively the “transactions”). The Order held Respondents jointly and severally liable for disgorgement of \$160,627,852, prejudgment interest of \$17,995,437, and a civil penalty of \$96,376,711, for a total of \$275,000,000. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Pursuant to the Order, the Respondents paid the sums ordered by the Commission (the “Fair Fund”). The Fair Fund is subject to the continuing jurisdiction and control of the Commission and is currently on deposit with the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”).

By Order dated February 6, 2015, the Commission appointed Damasco and Associates LLP (“Damasco”) as the Tax Administrator for the Fair Fund. On June 30, 2017, the

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<sup>1</sup> Securities Act Rel. No. 9617 (July 24, 2014).

Commission issued a Notice of Name Change of the Tax Administrator from Damasco to Miller Kaplan Arase LLP.

By Order dated February 4, 2016, the Commission appointed Garden City Group, LLC as the fund administrator for the Fair Fund and set the administrator's bond amount at \$275,000,000.

On May 31, 2019, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice")<sup>2</sup> pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Rules").<sup>3</sup> The Notice advised interested persons that they could obtain a copy of the proposed plan of distribution (the "Plan" or "Distribution Plan") from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Adriene Mixon, Esq., Assistant Chief Litigation Counsel, United States Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, no later than thirty (30) days from the date of the Notice: (1) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (3) by sending an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

On June 28, 2019, a comment letter was received from Henry J. Ricardo, Esq., suggesting modifications to the Plan.

By Order dated July 25, 2019, the Commission extended the time to enter an Order Approving or Disapproving Plan of Distribution.

On September 5, 2019, a letter was received from Kyle A. Lonergan, Esq. responding in opposition to the comment letter received from Henry J. Ricardo, Esq.

After consideration, the Commission has determined to approve the Proposed Plan without modification.

#### **A. Public Comment on the Proposed Plan**

Henry J. Ricardo, Esq., counsel to the Financial Guaranty Insurance Company ("FGIC"), submitted a letter dated June 28, 2019, objecting to the Proposed Plan's allocation of the Fair Fund.<sup>4</sup> According to Mr. Ricardo, the Plan does not propose a fair and reasonable allocation because it: (1) fails to account for FGIC's involvement as guarantor of the Class A Certificates

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<sup>2</sup> Exchange Act Rel. No. 85998 (May 31, 2019).

<sup>3</sup> 17 C.F.R. § 201.1103.

<sup>4</sup> On September 5, 2019, after the comment period had closed, Kyle A. Lonergan, Esq. submitted a letter on behalf of the Federal Home Loan Mortgage Corporation in response and opposition to FGIC's comments. Freddie Mac makes no objections or suggested modifications to the Proposed Plan.

of the NC4 Trust by excluding guarantors of Eligible Certificates (such as FGIC) from the pool of Eligible Claimants; (2) provides insured certificate holders with a double recovery at FGIC's expense; and (3) incorrectly calculates the amount of losses incurred by the NC4 Trust, and the appropriate allocation of the Fair Fund by failing to calculate losses as reported on Morgan Stanley's institutional investor website.

The Commission has considered the comments and concluded that no modification to the Plan is necessary. First, the Plan proposes to compensate Eligible Claimants who purchased Eligible Certificates during the relevant Eligible Purchase Period. FGIC is not a purchaser of Eligible Certificates, and has not presented any documentation specifically showing that it should be considered an assignee of the Class A Certificate holders' share of the Fair Fund. Second, the Plan, at paragraph 63(c), provides for a Recovery Cap to limit the distribution amount to current certificate holders to his or her principal losses. This Recovery Cap provision of the Plan guards against a double recovery by investors. Finally, the Plan seeks to compensate for the harm that initial investors experienced at the time of purchase from the diminished value of the investment caused by Morgan Stanley's misrepresentations. Further, allocations in the Fair Fund are appropriately based on the disgorgement, prejudgment interest, and civil penalties collected from Morgan Stanley for each transaction.

The Commission concludes that the Plan proposes a fair and reasonable methodology to compensate investors in the NC4 and HE7 transactions harmed by Morgan Stanley's misrepresentations.

## **B. Approval of the Proposed Plan**

For the reasons stated above, the Commission finds that the Proposed Plan should be approved without modification.

## **II.**

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Rules,<sup>5</sup> that the Plan is approved, and it shall be posted simultaneously with this Order on the Commission's website at [www.sec.gov](http://www.sec.gov).

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>5</sup> 17 C.F.R. § 201.1104.