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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11
12 In the Matter of:) AGENCY FILE NO.: 26064
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 MORGAN STANLEY SMITH BARNEY FA)
NOTES HOLDING LLC,)
18 Respondent.)
19)
20)
21)

22 This Consent Order is entered into by and between the Commissioner of Financial Protection
23 and Innovation (Commissioner) and Morgan Stanley Smith Barney FA Notes Holdings LLC
24 (MSSBFA) (Consent Order).

25 **I.**
26 **RECITALS**

27 This Consent Order is made with reference to the following facts:

28 ///

1 A. MSSBFA is a Delaware corporation organized in 2009 with its principal place of
2 business at 1585 Broadway, New York, New York 10036. MSSBFA is a subsidiary of Morgan
3 Stanley.

4 B. Matthew McAndrew is the Chief Executive Officer and President of MSSBFA and is
5 authorized to enter into this Consent Order on behalf of MSSBFA.

6 C. The Department of Financial Protection and Innovation (Department), through the
7 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in
8 the business of lending and brokering pursuant to the California Financing Law (Fin. Code, § 22000,
9 et seq.) (CFL).

10 D. On or about May 27, 2020, Morgan Stanley Smith Barney Financing LLC (MSSBF),
11 another subsidiary of Morgan Stanley, filed with the Commissioner an application for licensure as a
12 lender and a broker under the CFL (CFL File No. 60DBO-115408) (MSSBF Application). During
13 the application process, MSSBFA voluntarily provided to the Commissioner information relating to
14 the making of loans as part of a compensation plan and employee benefit program administered by
15 MSSBFA prior to the filing of the MSSBF Application (MSSBFA Information).

16 E. From the Commissioner’s review of the MSSBFA Information, the Commissioner
17 made the following factual findings (Findings):

18 i. From at least 2014 through October 23, 2019, MSSBFA made loans to certain
19 Morgan Stanley employees as part of a comprehensive employee benefit program primarily in order
20 to recruit and retain those employees (Loans).

21 ii. The vast majority of the Loans bore interest rates of 3% or less, and never bore
22 interest rates greater than 9.25%.

23 iii. During the time in which it made the Loans, MSSBFA did not hold a license to
24 make loans under the CFL and was not otherwise exempt from the CFL.

25 iv. MSSBFA represented to the Commissioner that the Loans were an employee
26 benefit as part of a compensation program and that it found no complaints regarding the performance
27 of the loans from the California borrower-employees. If a Loan was ultimately not repaid through an
28 employee bonus or other compensation, such dispute was treated as an employment related dispute

1 and potentially resolved via litigation rather than as a traditional credit collection effort.

2 v. MSSBFA self-reported its making of the Loans to Commissioner and
3 voluntarily ceased the activities at issue.

4 F. Based on the Findings, the Commissioner determined that MSSBFA engaged in the
5 business of a finance lender without obtaining a license from the Commissioner and without an
6 applicable exemption from the CFL in violation of Financial Code section 22100, subdivision (a).

7 G. By this Consent Order, MSSBFA and the Commissioner intend to resolve this matter
8 amicably without the necessity of a hearing or other litigation. MSSBFA, by entering into this
9 Consent Order, does not admit or deny the Commissioner’s conclusions of law.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
11 contained herein, the Commissioner and MSSBFA (the Parties) agree as follows:

12 **II.**

13 **TERMS AND CONDITIONS**

14 1. Purpose. This Consent Order resolves the Findings in a manner that avoids the
15 expense of a hearing and other possible court proceedings, protects consumers, is in the public
16 interest, and is consistent with the purposes, policies, and provisions of the CFL.

17 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, MSSBFA is
18 hereby ordered to desist and refrain from violating Financial Code section 22100, subdivision (a), by
19 engaging in the business of a finance lender without obtaining a license from the Commissioner or
20 without an applicable exemption from the CFL.

21 3. Penalty. MSSBFA shall pay a penalty totaling \$1,000,000.00 (Penalty) to the
22 Commissioner. Payment of the Penalty shall be made no more than five business days after the
23 Effective Date, as defined in Paragraph 24 below (Effective Date), and should be made in the form of
24 a cashier’s check or Automated Clearing House deposit payable to the “Department of Financial
25 Protection and Innovation” and transmitted to the attention of “Accounting – Litigation” at
26 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
27 95834-2036. Notice of such payment shall be forwarded to Adam Wright, Senior Counsel,
28 Department of Financial Protection and Innovation, Enforcement Division, 320 West 4th Street, Suite

1 750, Los Angeles, California 90013.

2 4. Consideration. In consideration of MSSBFA’s agreement to the issuance of this
3 Consent Order, MSSBFA’s payment of the Penalty, and the MSSBFA Information, the
4 Commissioner hereby agrees to continue reviewing the MSSBF Application in accordance with
5 Financial Code section 22109, subdivision (c).

6 5. Waiver of Hearing Rights. MSSBFA acknowledges the Commissioner is ready,
7 willing, and able to proceed with the filing of an enforcement action upon the Findings. MSSBFA
8 hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review
9 which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the
10 California Code of Civil Procedure, or any other provision of law. MSSBFA further expressly
11 waives any requirement for the filing of an Accusation pursuant to Government Code section
12 11415.60, subdivision (b). By waiving such rights, MSSBFA effectively consents to this Consent
13 Order, and the Desist and Refrains Order contained herein, becoming final.

14 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
15 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and that
16 no further proceedings or actions will be brought by the Commissioner in connection with the
17 Findings under the CFL or any other provision of law, excepting therefrom any proceeding to enforce
18 compliance with the terms of this Consent Order.

19 7. Failure to Comply with Consent Order. MSSBFA agrees that, if MSSBFA fails to
20 comply with the terms of this Consent Order, the Commissioner may, following 10 business days
21 from MSSBFA’s receipt of notice from the Commissioner of MSSBFA’s failure to comply with
22 the terms of this Consent Order, invoke all other available remedies under the CFL. In such case,
23 MSSBFA waives any notice and hearing rights to contest such remedies which may be afforded
24 under the CFL, the California Administrative Procedure Act, the California Code of Civil
25 Procedure, or any other provision of law in connection therewith.

26 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
27 revoked, and the Commissioner may pursue any and all remedies available under the law against
28 MSSBFA if the Commissioner discovers that MSSBFA knowingly or willfully withheld or

1 misrepresented information used for and relied upon in this Consent Order.

2 9. Future Actions by Commissioner. If MSSBFA fails to comply with any terms of the
3 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
4 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
5 against MSSBFA, or any of its partners, owners, officers, shareholders, directors, employees or
6 successors for any and all unknown violations of the CFL.

7 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
8 ability to assist a government agency (whether city, county, state, or federal) with any administrative,
9 civil or criminal prosecutions brought by that agency against MSSBFA or any other person based
10 upon any of the activities alleged in this matter or otherwise.

11 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
13 the provisions hereof.

14 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
15 interest.

16 13. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
17 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.
18 Each of the Parties further represents, warrants, and agrees that in executing this Consent Order it has
19 placed no reliance on any statement, representation, or promise of any other party, or any other
20 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
21 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
22 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
23 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
24 supplement, or contradict the terms of this Consent Order.

25 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
26 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
27 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
28 provision. No waiver by either party of any breach of, or of compliance with, any condition or

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

3 15. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the Parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions between
7 and among the Parties, their respective representatives, and any other person or entity, with respect to
8 the subject matter covered hereby.

9 16. Governing Law. This Consent Order will be governed by and construed in accordance
10 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby
11 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
12 maintenance of such action or proceeding in such court.

13 17. Counterparts. This Consent Order may be executed in one or more separate
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
15 together constitute a single document.

16 18. Effect Upon Future Proceedings. If MSSBFA applies for any license, permit or
17 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
18 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
19 admitted for the purpose of such application(s) or proceeding(s).

20 19. Third Parties. This Consent Order does not create or give rise to any private rights or
21 remedies against MSSBFA, or any of its past, present, and future predecessors, successors, parents,
22 subsidiaries, affiliates, and related entities, and each of their respective partners, employees, agents,
23 attorneys, officers, directors, shareholders, members, partners, joint venturers, representatives and
24 assigns (MSSBFA Parties), create any liability on the part of MSSBFA or the MSSBFA Parties, or
25 limit the defenses of MSSBFA or the MSSBFA Parties for any person or entity not a party to this
26 Consent Order.

27 20. Voluntary Agreement. MSSBFA enters into this Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
2 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
3 without any duress or undue influence of any kind from any source.

4 21. Notice. Any notice required under this Consent Order shall be provided to each party
5 at the following addresses.

6 i. To MSSBFA:

7 Kathleen Salvaty
8 Executive Director, Legal and Compliance Division
9 Morgan Stanley
444 S. Flower Street
10 Los Angeles, California 90071
kathleen.salvaty@morganstanley.com

11 ii. To the Commissioner:

12 Adam Wright
13 Senior Counsel, Enforcement Division
14 Department of Financial Protection and Innovation
3240 West 4th Street, Suite 750
15 Los Angeles, California 90013-2344
adam.wright@dfpi.ca.gov

16 22. Signatures. A fax or electronic mail signature shall be deemed the same as an original
17 signature.

18 23. Public Record. MSSBFA hereby acknowledges that this Consent Order is and will be
19 a matter of public record.

20 24. Effective Date. This Consent Order shall become final and effective when signed by
21 all Parties and delivered by the Commissioner's agent via e-mail to MSSBFA's counsel, Buckley
22 LLP at crockwell@buckleyfirm.com.

23 25. Authority to Sign. Each signatory hereto covenants that he or she possesses all
24 necessary capacity and authority to sign and enter into this Consent Order and undertake the
25 obligations set forth herein.

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Dated: October 20, 2020

MANUEL ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
Mary Ann Smith
Deputy Commissioner

Dated: October 19, 2020

MORGAN STANLEY SMITH BARNEY FA NOTES
HOLDING LLC

By _____
Matthew McAndrew
Chief Executive Officer and President

APPROVED AS TO FORM:

DATED: October 19, 2020

BUCKLEY LLP

By: _____
Clinton Rockwell
Attorneys for MORGAN STANLEY SMITH
BARNEY FA NOTES HOLDINGS LLC