

# Morgan Stanley, Investors Settle Dispute Over 'Rigged' Notes

By **Cara Salvatore**

Law360, New York (November 12, 2014, 6:47 PM EST) -- Morgan Stanley & Co. LLC has reached a settlement with a putative class of investors suing over \$139 million in allegedly defective mortgage-backed securities, it told a New York federal judge, and expects to hand in the deal on Friday.

Attorneys for the bank and Pinnacle Performance Ltd. wrote to U.S. District Judge Jesse Furman asking for a two-day extension on the previous deadline because they expected to have a deal in hand, and the judge approved that extension Wednesday.

"The parties intend to submit the final class settlement to the court for preliminary approval no later than Nov. 14," wrote Bruce Angiolillo of Simpson Thacher & Bartlett LLP, a lawyer for Morgan Stanley and Pinnacle.

"Application granted," Judge Furman wrote on the letter.

The parties had thought in September that they would have something to present by Nov. 12, according to court filings.

The second amended complaint was filed in January, claiming that Morgan Stanley stood on both sides of a transaction that was marketed as extremely safe but was actually not.

"Plaintiffs and the class did not know, and had no way of knowing, that Morgan Stanley built the synthetic CDOs to fail, and in failing to transfer their \$138.7 million investment to Morgan Stanley," the second amended complaint said.

"Several Morgan Stanley entities conspired and engaged in a coordinated and concerted scheme conceived, masterminded and executed (in part) in New York — to create a deceptive, rigged investment: the Pinnacle notes," it said.

According to that document, Pinnacle was a special-purpose vehicle created for the purpose of selling the notes, without staff or day-to-day management.

The plaintiffs originally filed suit in October 2010, alleging that Morgan Stanley **knew that the value of Pinnacle's notes would fall** but promoted the investments, positioning itself to profit when investors lost their investment.

In August 2013, Judge Furman rejected an attempt by Morgan Stanley to shake the suit, finding that the bank didn't offer any "cogent" reasons to toss allegations that it knowingly marketed doomed-to-fail mortgage-backed investments. Judge Furman said the bank's renewed attempt to dismiss the proposed class action fell short, failing to demonstrate why another federal judge's earlier rejection shouldn't stick.

The case has volleyed between district and appeals courts over the past few years, mostly focusing on a 2011 injunction preventing Morgan Stanley from pursuing an anti-suit injunction in Singapore that would bar plaintiffs from litigating outside that jurisdiction.

The Second Circuit and another federal judge have largely sided with plaintiffs, a proposed class of 18 Singapore investors. Thursday's win centered on an amended complaint filed by plaintiffs, which Judge Furman said survives a flimsy attempt by the bank to discount a previous ruling by Judge Leonard Sand on the fraud charges.

Judge Furman had also tossed a bid to dismiss claims against Pinnacle Performance Ltd., whose notes are allegedly at the center of the fraud. Pinnacle had argued that the New York federal court lacked personal jurisdiction, since the company is incorporated in the Cayman Islands.

But Judge Furman rejected this argument, since Pinnacle opened several bank accounts in New York. The accounts were used to deposit money from investors to purchase subsidiary investments that were allegedly used to "defraud the Pinnacle investors," the order states.

In a "classic bait-and-switch" scheme, the plaintiffs allege, Morgan Stanley promoted Pinnacle notes as a conservative investment but reinvested the principal into synthetic collateralized debt obligations that were designed to fail, transferring the principal to the bank.

The plaintiffs are represented by Daniel Hume, Ira M. Press, Christopher Studebaker, Meghan Summers, Edward Michael Varga, and Andrew McNeela of Kirby McInerney LLP.

Morgan Stanley is represented by Bruce D. Angiolillo, Jonathan K. Youngwood and Andrew D.W. Cattell of Simpson Thacher & Bartlett LLP.

The case is Dandong et al. v. Pinnacle Performance Ltd. et al., case number 1:10-cv-08086, in the U.S. District Court for the Southern District of New York.

--Editing by Rebecca Flanagan.