

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

In the Matter of:)	
Phillip D. Murphy)	
Former Managing Director)	AA-EC-08-57
of the Municipal Derivatives Products Desk)	
Bank of America, N.A.)	
Charlotte, NC)	

CONSENT ORDER

WHEREAS, on August 29, 2008, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) filed a Notice of Charges (Notice) initiating this administrative proceeding for a prohibition order and assessment of a civil money penalty against Phillip D. Murphy (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i), on the basis of his activities while serving as Managing Director of the Municipal Derivatives Products Desk of Bank of America, N.A., Charlotte, North Carolina (“Bank”) during June 1998 through September 3, 2002; and

WHEREAS, on September 18, 2008, Respondent filed an Answer to the Notice declining to answer any of the allegations of the Notice pursuant to his Fifth Amendment rights;

WHEREAS, on March 20, 2009, the Comptroller partially stayed discovery herein until resolution of a parallel criminal investigation and action against Respondent by the U.S. Department of Justice; and

WHEREAS, in the interest of cooperation and to avoid the costs associated with further administrative and judicial proceedings with respect to the above matter, Respondent, without

Initials: PDM
Date: 1-15-15

admitting or denying any wrongdoing, desires to consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(e) and (i);

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq.

(2) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c) (2).

(3) Respondent is a former Managing Director of the Municipal Derivatives Products Desk of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the filing of the Notice initiating this proceeding. *See* 12 U.S.C. § 1818(i) (3).

(4) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a prohibition and civil money penalty action against him pursuant to 12 U.S.C. § 1818(e) and (i).

Article II

COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) During June 1998 through September 3, 2002, Respondent held the position of Managing Director of the Municipal Derivatives Products Desk of the Bank ("Desk").

(2) The Bank recruited and employed Respondent to build and lead the Bank's municipal derivatives business. Respondent developed the Desk's business plan, recruited and trained the marketers, and managed and supervised the day-to-day activities and personnel of the municipal derivatives products group. In addition to supervising Bank employees assigned to work on the Desk, Respondent also personally marketed, negotiated, bid on, and closed transactions involving municipal derivatives.

(3) During his tenure as Managing Director of the Desk, Bank employees under Respondent's supervision engaged in various illegal activities designed to rig competitive bids for the sale of municipal derivatives products. Such activities by Desk employees constituted violations of IRS regulations and federal antitrust laws, as well as reckless unsafe or unsound banking practices. Respondent knew or should have known that employees under his supervision were engaged in unlawful and reckless unsafe or unsound practices, and by his failure of supervision, Respondent facilitated those violations of law and reckless unsafe or unsound practices.

(4) During Respondent's employment with the Bank, he directly and actively engaged in conduct to rig bids related to approximately twelve municipal derivatives

transactions. His activities included conspiring with brokers and Bank employees to rig bids and falsify bank records related to the sale of certain municipal derivatives products to certain municipalities. Respondent personally profited from and caused the Bank to suffer substantial risk of loss and actual loss from these transactions.

(6) By reason of the foregoing conduct, Respondent violated the law, including U.S. antitrust laws and IRS Regulations, and falsified bank records. By such conduct, he engaged in reckless unsafe or unsound banking practices and breached his fiduciary duty to the Bank. His violations, practices and/or breaches were part of a pattern of misconduct that caused or were likely to cause more than minimal loss to the Bank, resulted in pecuniary gain to Respondent, and demonstrated personal dishonesty and willful or continuing disregard for the safety or soundness of the Bank.

Article III

ORDER OF PROHIBITION

Respondent consents to, and it is Ordered that:

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q); or

(d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Agency and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D).

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

Article IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of fifteen thousand dollars (\$ 15,000), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-08-57) shall be entered on the submitted payment.

(3) Respondent shall deliver a copy of the check to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219 together with this Order.

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

Article V

CLOSING

(1) By executing this Order, Respondent waives:

(a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(e) and (i) and 12 C.F.R. Part 19;

(b) all rights to seek judicial review of this Order;

(c) all rights in any way to contest the validity of this Order; and

(d) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the Bank) with respect to such amounts except as permitted by 12 CFR § 7.2014 and Part 359; provided, however, Respondent may not accept indemnification with respect to payment of the civil money penalty.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, or his agents or employees, to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of the prohibition and civil money penalty proceedings arising out of the specific facts, omissions, and violations alleged in the Notice initiating this action. The Comptroller agrees not to institute proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations alleged in the

Notice, unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in the Notice may be used by the Comptroller in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) of this Article, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Nothing in this Order shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and nothing in this Order constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Respondent expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of those entities, to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(8) This Order is “issued with the consent of . . . the institution-affiliated party concerned,” pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the Comptroller through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller, through his authorized representative.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

s/Phillip D. Murphy

Phillip D. Murphy

1-15-15

Date

IT IS SO ORDERED:

s/Ron U. Pasch

Ronald Pasch
Deputy Comptroller
Large Bank Supervision

1-20-2015

Date