

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73724 / December 3, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3974 / December 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16294

In the Matter of

PHILLIP DENNIS MURPHY,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Phillip Dennis Murphy (“Murphy” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges:

A. RESPONDENT

1. From approximately June 1998 until approximately September 2002, Murphy was employed as a dual officer of Banc of America Securities LLC (“BAS”) and Bank of America, N.A. (“BANA”) (collectively referred to as “BofA”). BAS, now known as Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger, was a Delaware limited liability corporation with its principal place of business in New York, New York, and was registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act

and as an investment adviser pursuant to Section 203(c) of the Advisers Act.¹ BANA is a federally-chartered commercial bank with its principal place of business in Charlotte, North Carolina. During the relevant time period, Murphy worked in BofA's Municipal Reinvestment and Risk Management Group as a Managing Director of Municipal Derivative Products and as a marketer of investment agreements and other municipal finance contracts. For a portion of the time in which he engaged in the conduct underlying the indictment described below, Murphy was a registered representative associated with the dual registrant, BAS. Murphy, age 56, is a resident of Columbia, New Jersey.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On February 10, 2014, Murphy pled guilty to two counts of conspiracy in violation of Title 18, United States Code, Section 371 and to one count of wire fraud in violation of Title 18, United States Code, Section 1343 before the United States District Court for the Western District of North Carolina, in United States v. Phillip Dennis Murphy, Criminal No. 3:12-CR-235-MOC.

3. The counts of the indictment to which Murphy pled guilty charged, among other things, that from at least as early as August 1998 until at least November 2006, Murphy and others unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, namely, to violate Title 18, United States Code, Section 1343, and to defraud the United States of America and an agency thereof, namely, the Internal Revenue Service of the United States Department of the Treasury, all in violation of Title 18, United States Code, Section 371. The indictment also charged that from at least as early as August 1998 until at least November 2006, Murphy and others unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud municipal issuers and to obtain money and property from these municipal issuers by means of false and fraudulent pretenses, representations, and promises, which scheme affected at least three financial institutions, namely, a scheme to defraud municipal issuers, by causing municipal issuers to award investment agreements and other municipal finance contracts at artificially determined or suppressed levels, and further to deprive municipal issuers of the property right to control their assets by causing them to make economic decisions based on false and misleading information, and for the purpose of executing such scheme and artifice, and attempting to do so, did transmit and cause to be transmitted by means of wire, radio or television communication in interstate commerce, writings, signs, signals, pictures, or sounds, in violation of Title 18, United States Code, Section 1343. Further, the indictment charged that from at least as early as January 1999 until at least May 2002, Murphy and others, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States of America, namely, to violate Title 18, United States Code, Section 1005, in violation of Title 18, United States Code, Section 371. It was a part and an object of the conspiracy that Murphy and others, being officers, directors, agents and employees of a certain financial institution, did make and cause to be made entries in the books, reports, and the

¹ On November 1, 2010, BAS was merged into Merrill Lynch, Pierce, Fenner & Smith Incorporated, an indirect wholly-owned subsidiary of Bank of America Corporation, which is registered with the Commission as a broker-dealer.

statements of such bank, for the purpose of deceiving and with the intent to deceive officers of such bank while knowing the entry or entries were false, in violation of Title 18, United States Code, Section 1005. In connection with his guilty plea on February 10, 2014, Murphy admitted that he was, in fact, guilty of the counts set forth in the Bill of Indictment and that he had committed the acts described in the counts in the Bill of Indictment. This criminal case parallels the Commission's settled order in In the Matter of Banc of America Securities, LLC, Exchange Act Release No. 63451 (Dec. 7, 2010).

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

- A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and
- C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary