

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80562 / May 1, 2017**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32618 / May 1, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17955**

**In the Matter of**

**DAVID F. WONG**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against David F. Wong (“Wong” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of David F. Wong (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of the Order and the Offer, the Commission makes the findings set forth below.<sup>1</sup>

#### Summary

These proceedings arise out of Wong's violations of antifraud provisions of the federal securities laws in connection with Barclays' secondary market purchases and sales of certain bonds known as non-agency residential mortgage-backed securities ("non-agency RMBS").<sup>2</sup> From June 2009 through December 2012 ("the Relevant Period"), Wong, a trader for Barclays Capital Inc. ("Barclays"), knowingly or recklessly made false or misleading statements to customers and/or charged customers undisclosed excessive mark-ups on certain intra-day purchases and sales of non-agency RMBS.<sup>3</sup> As a result of this misconduct, Wong generated more revenue for Barclays and indirectly secured greater compensation for himself. Also as a result of this misconduct, Wong willfully violated section 10(b) of the Exchange Act and Exchange Act rule 10b-5.

#### Respondent

1. From approximately September 2008 through August 2014, Wong was employed as a trader on the RMBS trading desk at Barclays. Barclays is and, during the Relevant Period, was a broker-dealer registered with the Commission. During the Relevant Period, Wong was registered with the Financial Industry Regulatory Authority ("FINRA") and held series 7 and 63 securities licenses. In January 2016, Barclays terminated Wong's employment. Wong is 35 years old and resides in New York, New York.

#### Background

2. During the Relevant Period, Barclays was a broker-dealer engaged in secondary market trading of non-agency RMBS. In trading non-agency RMBS, Barclays, through Wong and others, purchased the securities for its own account and then sold them from its own account to its customers. Barclays did not charge a commission on the trades. In many instances, the purchase and sale took place within minutes or hours and involved little or no risk to Barclays. The profit that Barclays made on any given transaction instead came from the difference between the price at which Barclays sold securities and the price at which it had purchased them.

---

<sup>1</sup> The findings herein are made pursuant to the Offer and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Non-agency RMBS are residential mortgage-backed securities that are sponsored by private entities and not government-sponsored entities.

<sup>3</sup> A mark-up is the difference between the price charged to the customer for a security and the prevailing market price for that security. *E.g.*, *Grandon v. Merrill Lynch & Co., Inc.*, 147 F. 3d 184, 189 (2d Cir. 1998). In the instant matter, the prevailing market price for the security involved in each of the transactions was Barclays' contemporaneous cost for the security. *See id.*

3. In trading non-agency RMBS, Wong frequently negotiated the purchase of the securities from one customer at the same time as he was negotiating the sale of those securities to another customer. As such, in determining Barclays' purchase and sale prices, Wong typically was aware of the negotiating positions of both the selling customer and the purchasing customer.

### **Wong's Misconduct**

4. The false or misleading statements and undisclosed excessive mark-ups that are the subject of the Order took place in the context of certain intra-day trades of non-agency RMBS. The false or misleading statements led customers to accept less, or pay more, for securities than they otherwise might have accepted or paid. The excessive mark-ups resulted in unfair prices to customers as well as unreasonable profits to Barclays.

### **False or Misleading Statements to Barclays Customers**

5. During the Relevant Period, Wong, directly and indirectly, made false or misleading statements to Barclays customers in both the purchase and the sale of non-agency RMBS.<sup>4</sup> Among other things, he made false or misleading statements about the price at which the securities could be bought or sold; the amount of profit that Barclays would be making on individual trades; and, after Barclays had agreed to purchase securities from a seller and during negotiations with a potential buyer, whether Barclays still was in active negotiations with the seller.

6. In one instance, for example, Wong was negotiating the sale of \$17,500,000 original face amount of a bond to a buyer. Wong learned that Barclays already had purchased the bond at issue for a price of 44-08. Throughout the ensuing negotiations, Wong made false or misleading statements to the buyer, including

- a. misrepresenting that the seller had given an offer of 52-16 for the bond when there was no such offer from the seller;
- b. misrepresenting that Wong was uncertain whether the buyer's 48-24 bid would induce the seller to lower its 52-16 offer;
- c. misrepresenting that the seller had rejected the buyer's 49-00 "all in" bid and had given a counter-offer of 51-16; and
- d. misrepresenting that Wong would try to "squeeze" a few ticks out of the seller.

---

<sup>4</sup> In some instances, Wong made false or misleading statements directly to customers. In other instances, he made false or misleading statements to Barclays salespersons, and the salespersons then communicated the false or misleading information to customers.

Wong ultimately sold the bond to the buyer for 50-00. Based on the then current face amount of the securities traded, Barclays made profits of approximately \$840,000 on this transaction.

7. From the transactions in which Wong, directly or indirectly, made false or misleading statements to Barclays customers, Barclays made profits of approximately \$1,832,000.

8. The information about which Wong made the false or misleading statements was important to the investment decisions of the Barclays customers. Under these circumstances, Wong willfully violated section 10(b) of the Exchange Act and Exchange Act rule 10b-5.

### **Excessive Mark-Ups Charged to Barclays Customers**

9. In addition to making false or misleading statements to Barclays customers, Wong at times charged customers mark-ups that bore no reasonable relationship to the prevailing market prices.<sup>5</sup>

10. In one instance, Wong purchased a total of \$90,000,000 face amount of a bond at a price of 10-00. On the same day, Wong sold the \$90,000,000 face amount of the bond at a price of 11-04. The 11-04 price represented an intra-day mark-up of 11.25% and profits to Barclays of approximately \$1,012,500.

11. Excluding one transaction in which Wong both charged an excessive mark-up and made false or misleading statements, Barclays made unreasonable profits of approximately \$1,477,000 from transactions in which Wong charged excessive mark-ups.

12. Wong did not disclose the excessive mark-ups to Barclays customers.<sup>6</sup> That information would have been important to the investment decisions of the customers, particularly because of the opaque nature of secondary market trading in non-agency RMBS. Under these circumstances, Wong willfully violated section 10(b) of the Exchange Act and Exchange Act rule 10b-5.

---

<sup>5</sup> Based on trade data furnished by Barclays, the average mark-up charged on Barclays intra-day non-agency RMBS transactions during the Relevant Period was less than one percent. This average is less than the average reflected in the data in the Trade Reporting and Compliance Engine (“TRACE”) for intra-day non-agency RMBS trades that the Financial Industry Regulatory Authority developed and maintained. TRACE is a system through which broker-dealers report over-the-counter secondary market transactions in eligible fixed income securities. Trading in non-agency RMBS began to be reported in TRACE in or about May 2011.

<sup>6</sup> Under the “shingle theory,” a broker-dealer “creates an implied duty to disclose excessive markups by ‘hanging out its professional shingle.’” *Grandon*, 147 F.3d at 192 (quoting *Banca Cremi, S.A. v. Alex. Brown & Sons, Inc.*, 132 F.3d 1017, 1034 (4<sup>th</sup> Cir. 1997) (quoting Commission reply brief)). When a broker-dealer, without disclosure, charges a customer a mark-up that results in a price that is not reasonably related to the prevailing market price, the broker-dealer commits fraud. *Id.* at 190 (quoting *Bank of Lexington & Trust Co. v. Vining Sparks Securities, Inc.*, 959 F. 2d 606, 613 (6<sup>th</sup> Cir. 1992)). The example of excessive mark-ups in paragraph 10 above of the Order is not meant to suggest that mark-ups below the level reflected in that example could not be excessive.

#### IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to sections 15(b) and 21C of the Exchange Act and section 9(b) of the Investment Company Act, it is hereby ORDERED that

A. Wong cease and desist from committing or causing any violations and any future violations of section 10(b) of the Exchange Act and Exchange Act rule 10b-5;

B. Wong be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve months, effective on the second Monday following the entry of the Order;

C. Wong is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, for a period of twelve months, effective on the second Monday following the entry of the Order;

D. Wong shall pay a civil money penalty in the amount of \$125,000 to the Commission for transfer to the United States Treasury, subject to section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: \$65,000 within 10 days of the entry of the Order and \$60,000 within 365 days of the entry of the Order. If any payment is not made by the date the payment is required by the Order, the entire outstanding balance of the civil money penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717 shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Wong as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Andrew B. Sporkin, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

E. Amounts ordered to be paid as civil money penalties pursuant to the Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in the Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields  
Secretary