

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82634 / February 6, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33001 / February 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17902

In the Matter of

JOHN T. LYNCH, JR.,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTIONS 15(b) AND
15B(c) OF THE SECURITIES
EXCHANGE ACT OF 1934, AND
SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions pursuant to Sections 15(b) and 15B(c) of the Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against John T. Lynch, Jr. (“Lynch” or “Respondent”).

On April 5, 2017, the Commission issued an order instituting proceedings pursuant to Section 8A of the Securities Act of 1933, Sections 4C, 15(b), 15B(c)(4), and 21C of the Exchange Act, Section 9(b) of Investment Company Act of 1940, and Rule 102(e) of the Commission’s Rules of Practice (the “OIP”). The OIP was instituted following Respondent’s submission and the Commission’s acceptance of an offer of settlement, pursuant to which Respondent was found to have violated certain provisions of the federal securities laws and ordered to cease and desist from committing or causing these violations. The OIP further denied Respondent the privilege of appearing or practicing before the Commission as an attorney and ordered him to pay disgorgement, prejudgment interest, and civil penalties. Respondent agreed to additional proceedings to determine whether, pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 9(b) of the Investment Company Act, it is appropriate in the public interest to bar Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibit Respondent 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.

II.

Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept to resolve these additional proceedings. 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 additional proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Sections 15(b) and 15B(c) of the Exchange Act, and Section 9(b) of the Investment Company Act (“Order”), as set forth below.¹

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

Summary

1. From at least June 2010 to December 2013 (the “Relevant Period”), Lynch served as an investment banker and underwriter’s counsel for Lawson Financial Corporation (“LFC”) in connection with underwriting of 12 fraudulent conduit municipal bond offerings for the benefit of Christopher Brogdon (“Brogdon”), which raised millions of dollars for Brogdon’s healthcare-related projects throughout the Southeastern and Midwestern United States (collectively, the “Brogdon Bond Offerings”).

2. In the Brogdon Bond Offerings, which were unrated, the proceeds from the sale of the bonds were to be used to undertake a particular project—the construction, acquisition, or renovation of a facility—for the benefit of a borrower controlled by Brogdon, and the borrower would undertake to provide certain continuing disclosures.

3. In connection with the Brogdon Bond Offerings, Brogdon rarely caused the borrower to provide to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system (“EMMA”) the annual financial information for the borrower required by the related continuing disclosure undertaking. Nevertheless, Brogdon, through Brogdon-controlled borrowers, represented in bond offering documents that the Brogdon-controlled borrower for such bond offering had not failed to comply with any prior municipal securities continuing disclosure undertaking. These representations were false and misleading because they did not provide any information to investors regarding the

¹ Other than as set forth herein, this Order in no way amends or modifies the findings, terms, or relief ordered by the OIP.

² The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

history of persistent and material breaches by Brogdon-controlled borrowers to comply with municipal securities continuing disclosure requirements and failed to provide investors with material facts they would need to know in order to evaluate the likelihood that a particular Brogdon-controlled borrower would comply with its continuing disclosure undertaking.

4. Lynch conducted only a cursory inquiry into the information provided by Brogdon, his representatives, and other parties to the financing despite being aware of numerous red flags. This lack of due diligence deprived both initial purchasers and buyers and sellers in secondary market transactions of material information related to the offerings and allowed Brogdon to perpetuate his fraud.

5. Lynch also failed to obtain a written continuing disclosure undertaking from Brogdon for an April 2013 offering as required under Exchange Act Rule 15c2-12(b)(5)(i), despite the representation that one exists in that offering's official statement.

6. Lynch was listed as underwriter's counsel in the official statements of the Brogdon Bond Offerings and received compensation for his work as underwriter's counsel from bond offering proceeds in addition to a salary from LFC. Lynch, however, was not permitted or qualified to serve as LFC's underwriter's counsel because he was an inactive member of the Pennsylvania bar and was not authorized to practice law in any state.

Respondent

7. **Lynch**, age 69, resides in Scottsdale, Arizona. Lynch served as a managing director and head of investment banking as well as underwriter's counsel for LFC from May 2009 to August 2014. Lynch holds Series 7, 31, 66 and 79 licenses. Lynch is a graduate of the St. Louis University School of Law and an inactive member of the Pennsylvania state bar; he has not been an active member of any state bar since 1983.

Other Relevant Individual and Entities

8. **LFC** is a broker-dealer headquartered in Phoenix, Arizona. LFC has been registered with the Commission as a broker-dealer since 1984. LFC was also a member of the Financial Industry Regulatory Authority ("FINRA") until it was expelled on February 2, 2017. LFC remains registered with the Commission and the Municipal Securities Rulemaking Board ("MSRB") as a municipal adviser, though it no longer registered as a municipal securities dealer and is no longer operating. LFC conducted a general securities business with an emphasis on the underwriting and sale of municipal securities. During the Relevant Period, LFC served as the primary underwriter for the Brogdon Bond Offerings.

9. **Brogdon**, age 69, resides in Atlanta, Georgia. Brogdon has been in the nursing home, assisted living, and retirement community business for more than 25 years. In 1986, Brogdon was censured, fined, and barred from association by the National Association of Securities Dealers after he was found to have effected transactions in securities while failing to maintain adequate net capital and, while in net capital deficiency,

withdrawing cash and securities investments from the broker-dealer's accounts. Prior to 1986, Brogdon held Series 1, 24, and 53 licenses. Pursuant to his settlement with the Commission and the judgment entered in *SEC v. Christopher Freeman Brogdon, et al.*, No. 15 Civ. 8173 (KM) (D.N.J.), Brogdon is in the process of repaying more than \$86 million to investors, including the investors in the Brogdon Bond Offerings that remain outstanding.

10. **BOKF, NA** ("BOKF"), doing business as Bank of Oklahoma, N.A., is a national banking association established in 1910 with its principal place of business in Tulsa, Oklahoma. BOKF is a registered municipal securities dealer and was a registered municipal advisor until September 2015. BOKF served as indenture trustee for all 12 of the Brogdon Bond Offerings. On September 9, 2016, the Commission instituted settled cease-and-desist proceedings against BOKF related to the Brogdon Bond Offerings. *See In re BOKF, NA*, Securities Act Release No. 10204, Exchange Act Release No. 78794, A.P. File No. 3-17533 (Sept. 9, 2016).

Lynch Failed to Conduct Reasonable Due Diligence and Ignored Red Flags Related to the Brogdon Bond Offerings

11. Lynch and LFC's CEO were responsible for underwriting due diligence at LFC for the Brogdon Bond Offerings. Lynch served as an LFC investment banker and as underwriter's counsel for the Brogdon Bond Offerings.

12. Even though Brogdon set up several different entities to act as borrowers in the Brogdon Bond Offerings, Lynch knew that Brogdon was behind each borrowing entity and was the borrower-in-fact for each offering. During the Relevant Period, Brogdon and his representatives served as the primary point of contact for Lynch on behalf of the Brogdon-controlled borrowers, and Lynch regularly corresponded with Brogdon and his representatives regarding the Brogdon Bond Offerings.

13. In 2010, LFC underwrote two Brogdon Bond Offerings. As required by Exchange Act Rule 15c2-12, Brogdon signed continuing disclosure agreements ("CDAs") on behalf of the Brogdon-controlled borrowers in each offering.³ Lynch assisted in preparing the draft official statements and CDAs, conducted due diligence, and reviewed drafts of both the preliminary and final official statements. The final official statements included a summary description of the provisions of the CDAs for each offering. After the closing of each offering, LFC sold the bonds and disseminated the official statements to its customers.

³ Exchange Act Rule 15c2-12(b)(5)(i) requires that an underwriter, prior to purchasing or selling bonds in connection with a covered offering, reasonably determine that the obligated persons have undertaken in writing to provide certain required materials to the MSRB on an ongoing basis.

14. In the CDAs for the two 2010 Brogdon Bond Offerings, the Brogdon-controlled borrower covenanted and agreed to, among other things, provide to on EMMA: (a) annual financial information; (b) audited financial statements, if any; and (c) event notices.⁴

15. The Brogdon-controlled borrowers failed to comply with their respective undertakings in the CDAs for the 2010 Brogdon Bond Offerings in all material respects. For example, for 2010, no annual financial information was filed on EMMA for one of the offerings and only partial information was filed late for the other offering. For 2011, only partial annual financial information was filed late for both offerings.

16. In 2012, LFC underwrote an additional five Brogdon Bond Offerings. Lynch assisted in compiling the draft official statements, conducted due diligence, and reviewed drafts of both the preliminary and final official statements. For each of these offerings, Brogdon or his representatives were Lynch's principal point of contact on behalf of the borrower, and Brogdon signed each of the CDAs on behalf of the Brogdon-controlled borrower.

17. Each of the final official statements for the 2012 Brogdon Bond Offerings includes a section titled, "Continuing Disclosure Obligation." In each "Continuing Disclosure Obligation" section, there is a representation that: "The [Brogdon-controlled borrower] has not failed to comply with any prior Undertaking under [Exchange Act Rule 15c2-12]."⁵

18. Brogdon's assertion of the Brogdon-controlled borrower's compliance with previous undertakings in CDAs in the official statements for the five 2012 Brogdon Bond

⁴ These CDAs define "annual financial information" to include: (a) annual financial statements of the borrower, including a statement of revenues and expenses, a balance sheet and a statement of cash flows, all in reasonable detail; (b) data as to the census and payor mix during the preceding year of the Facility; and (c) a certificate of the Chief Operating Officer of the borrower stating whether, to the best knowledge of such Officer, the borrower, during the preceding year, complied, in all material respects, with all of its obligations set forth in the offering's loan agreement. Though the CDAs for the 2010 Brogdon Bond Offerings only provided that audited financial information had to be filed on EMMA if available, under the loan or lease agreements the Brogdon-controlled borrower was required to provide audited annual financial statements, as well as monthly unaudited financial statements, an operating budget for the project, and evidence of continued state licensing directly to BOKF, the indenture trustee, with a copy to LFC.

⁵ Exchange Act Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous undertakings in CDAs. The official statement for each of the Brogdon Bond Offerings represent that the Brogdon-controlled borrower has not failed to comply with *any* prior undertaking under Exchange Act Rule 15c2-12.

Offerings was materially misleading. Specifically, Brogdon's representations omitted material facts investors would need to know in order to evaluate the likelihood that a particular Brogdon-controlled entity would comply with its CDA. At the time of each of the offerings, Brogdon had not filed on EMMA all of the required annual financial information pursuant to the CDAs for the two 2010 Brogdon Bond Offerings, both of which were underwritten by LFC and for which Lynch served as an investment banker and underwriter's counsel.

19. On numerous occasions throughout 2013, Lynch was made aware that Brogdon was causing certain Brogdon-controlled entities to fail to comply with respect to their CDA undertakings. For example:

- a. In July 2013, issuer's counsel for a 2012 Brogdon Bond Offering underwritten by LFC emailed Lynch, Brogdon, and others regarding the failure of the Brogdon-controlled borrower to file required annual financial information on EMMA.
- b. In October 2013, the head of the LFC Trading Department emailed Lynch and others to request that they obtain "the updated financials from Brogdon on [a Brogdon Bond Offering] we did in 2010," and "[t]he only Financials on record are from 2010 and I cannot bid this without updated financials."
- c. Also in October 2013, the head of the LFC Trading Department emailed Lynch and others: "Please have the financials for [two 2012 Brogdon Bond Offerings underwritten by LFC] posted to EMMA. According to EMMA, they were due in June [2013]."

20. Nevertheless, in 2013, LFC underwrote an additional five Brogdon Bond Offerings. Lynch again served as an investment banker and underwriter's counsel and in that capacity assisted in preparing the draft official statements, conducted due diligence, and reviewed drafts of both the preliminary and final official statements. For each of the 2013 Brogdon Bond Offerings, Brogdon or his representatives were Lynch's principal point of contact on behalf of the Brogdon-controlled borrower.

21. Each of the final official statements for the 2013 Brogdon Bond Offerings includes a section titled "Continuing Disclosure Obligation." In each "Continuing Disclosure Obligation" section, there is a representation that: "The [Brogdon-controlled borrower] has not failed to comply with any prior Undertaking under [Exchange Act Rule 15c2-12]."

22. As with the 2012 Brogdon Bond Offerings, Brogdon's assertion of the Brogdon-controlled borrower's compliance with prior continuing disclosure undertakings in the official statements for the 2013 Brogdon Bond Offerings was materially misleading. At the time of each of the 2013 Brogdon Bond Offerings, certain Brogdon-controlled borrowers had failed to provide to EMMA the required annual financial information for

certain of the 2010 and 2012 Brogdon Bond Offerings that LFC had underwritten and for which Lynch served as an investment banker and underwriter's counsel.

23. LFC's written supervisory procedures required that the LFC's Underwriting Department "[r]eview the public record of filings with EMMA."

24. Lynch did not conduct or cause to be conducted a review of EMMA of any of the Brogdon-controlled borrowers in connection with these underwritings, despite the numerous red flags associated with the Brogdon Bond Offerings. Instead, Lynch relied solely on the representations of Brogdon, his representatives, BOKF, and other parties to the transactions.

25. Where Brogdon did cause the Brogdon-controlled borrower to provide required annual financial information to EMMA for the Brogdon Bond Offerings, he typically failed to provide audited financial statements and the information was provided after the dates required by the related CDA. Brogdon also did not include other required annual financial information, including the census and payor mix for the Facilities or the certificate from the Chief Operating Officer regarding compliance with the lease agreement.

**Lynch Willfully Aided and Abetted and Caused LFC's
Violation of Section 15(c) of the Exchange Act and Rule 15c2-12
in Connection with Underwriting the Clayton V Offering**

26. In April 2013, LFC underwrote a Brogdon Bond Offering for \$2,750,000.00 of certificates of participation in previously issued revenue bonds by Clayton County, Georgia, and the Savannah Economic Development Authority (the "Clayton V Offering"). The Clayton V Offering was structured as certificates of participation in previously-issued conduit municipal revenue bonds that were owned by a Brogdon-controlled entity.

27. Lynch served as an investment banker and as underwriter's counsel on the Clayton V Offering. During the drafting process of the official statement for the Clayton V Offering, the parties to the transaction provided written comments and the draft was discussed with Brogdon and other members of the financing team on numerous conference calls in which Lynch participated.

28. Though the official statement for the Clayton V Offering represents that "[c]ertain legal matters will be passed upon" for LFC by Lynch in his capacity as underwriter's counsel, Lynch did not prepare or deliver an underwriter's counsel legal opinion letter for the Clayton V Offering.

29. According to the official statement, the debt service payments for the certificate of participation bonds were to be paid, in part, from revenues generated by Facilities owned by two additional Brogdon-controlled entities. The official statement lists each of these Brogdon-controlled entities as an "obligated party" for the Clayton V Offering.

30. In the “Continuing Disclosure Obligation” section of the official statement for the Clayton V Offering, it is represented that these Brogdon-controlled entities “covenanted in the Continuing Disclosure Agreement to provide certain financial information and other operating data” to EMMA. Among other things, the official statement represents: (a) the obligors agreed to file annual financial information and other operating data to EMMA not more than 180 days after the end of each fiscal year; (b) if a “material event” occurs while the bonds were outstanding, the obligors agreed to file a material event notice on EMMA; and (c) neither obligor had failed to comply with any prior undertaking under the Exchange Act Rule 15c2-12.

31. The representation that a CDA had been executed for the Clayton V Offering was false. In fact, no CDA was executed. Neither Brogdon-controlled entity had covenanted to file annual financial information and other operating data on EMMA or to file material event notices on EMMA upon the occurrence of a material event in connection with the Clayton V Offering.

32. The official statement also contains sections that describe the obligated parties for the Clayton V Offering, including the Brogdon-controlled National Assistance Bureau, Inc. (“NAB”).⁶ The official statement provides information about NAB’s corporate structure, statement of purpose, prior bankruptcies and existing judgments, and officers and board of directors. In the statement of purpose section, the official statement represents that NAB “currently owns nursing homes of 82 beds and 68 beds in Sumner, Illinois.”

33. This statement was false. In fact, the 82-bed and 68-bed Facilities in Sumner, Illinois, had served as collateral for another fraudulent Brogdon bond offering. Though originally owned by NAB, these Facilities had closed and were no longer generating revenue to pay bondholders by 2006, and were sold at a tax sale in December 2008.

34. Had Lynch actually conducted due diligence on the material representations contained in the official statement, including conducting EMMA checks, Lynch would have detected that no required annual financial information had been filed for the 82-bed and 68-bed Facilities in Sumner, Illinois, since the inception of EMMA in 2009.

Lynch Misrepresented to Investors, LFC, and Other Members of the Financing Team that He Was Qualified and Permitted to Serve as LFC’s Underwriter’s Counsel

35. For the 12 Brogdon Bond Offerings where Lynch served as underwriter’s counsel, Lynch received a total of \$290,000.00 in underwriter’s counsel fees in addition to his salary from LFC. Lynch did not disclose in the official statements for the Brogdon

⁶ NAB is named as a relief defendant in *SEC v. Christopher Freeman Brogdon, et al.*, No. 15 Civ. 8173 (KM) (D.N.J.).

Bond Offerings that he was serving as both LFC's investment banker and as LFC's underwriter's counsel.

36. As LFC's underwriter's counsel, Lynch was responsible for helping to draft the official statements for the offerings, among other documents, and for preparing an underwriter's counsel legal opinion letter or a Blue Sky survey letter.⁷ These letters represented that Lynch was an "Attorney at Law" based in Phoenix, Arizona, and that Lynch was acting as counsel to LFC in connection with these offerings.⁸ LFC and other members of the financing team relied on Lynch's expertise as underwriter's counsel and the conclusions contained in his underwriter's counsel legal opinion letters.

37. The official statements for all of the Brogdon Bond Offerings list "John T. Lynch, Jr., Esquire, Phoenix, Arizona," as underwriter's counsel for LFC. They further represent that "[c]ertain legal matters will be passed upon . . . [for LFC] by its counsel, John T. Lynch, Jr., Esquire, Phoenix, Arizona." The official statements for the Brogdon Bond Offerings were posted on EMMA and provided to investors in connection with their purchase in the primary offerings.

38. Lynch was not authorized to practice law in the State of Arizona or elsewhere during the time he served as LFC's underwriter's counsel. Lynch has been an inactive member of the Pennsylvania state bar since approximately 1980, when he left the practice of law. In the intervening period before serving as underwriter's counsel to LFC, Lynch did not practice as an attorney in any capacity.

39. Lynch is currently listed as an inactive member on the website of the Disciplinary Board of the Supreme Court of Pennsylvania. Lynch elected voluntary inactive status on April 18, 1983, and remains voluntarily inactive as of November 2016.

40. According to the Pennsylvania Rules of Disciplinary Enforcement, Rule 217, an inactive attorney is prohibited from, among other things, "representing himself or herself as a lawyer or person of similar status." Rule 217(j)(4)(iv).

⁷ Lynch prepared and delivered an underwriter's counsel opinion letter or a Blue Sky survey letter for 11 of the 12 Brogdon Bond Offerings, however, no underwriter's counsel opinion letter or Blue Sky letter was prepared or delivered by Lynch for the April 2013 Clayton V Offering.

⁸ Lynch's underwriter's counsel legal opinion letters state that Lynch, "rendered certain legal advice and assistance to [LFC] in connection with the preparation of the Official Statement." Further, the letters represent: "I have no reason to believe that the Official Statement (except for the financial statements, forecasts, estimates, assumptions and expressions of opinion, as to which I express no opinion) contains any untrue statement of a material fact, or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading."

Violations

41. As a result of the conduct described above, Lynch willfully violated Sections 17(a)(2) and (3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities, and Lynch willfully aided and abetted and caused LFC's violation of Section 15(c) of the Exchange Act and Rule 15c2-12 thereunder related to the failure to obtain a CDA for the Clayton V Offering.

IV.

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

Accordingly, pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Lynch be, and hereby is:

- i. barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- ii. 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;

with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

B. Any reapplication for association by Lynch will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (i) any disgorgement ordered against Lynch, whether or not the Commission has fully or partially waived payment of such disgorgement; (ii) any arbitration award related to the conduct that served as the basis for the Commission order; (iii) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (iv) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

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 this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this 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