

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86848 / September 3, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5335 / September 3, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33614 / September 3, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19408

In the Matter of

THOMAS C. MULDOON

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 15(b), 15B(c), AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, 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), 15B(c), and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Thomas C. Muldoon (“Muldoon” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, 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 this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of a fraudulent scheme carried out by Muldoon, a former Wells Fargo Clearing Services, LLC (“Wells Fargo”) trader, to evade the retail order period restrictions in municipal bond offerings. Municipal issuers hold retail order periods to prioritize the sale of bonds to retail investors, typically providing retail investors the first chance to obtain bonds in a primary offering. This retail priority is important because municipal offerings are often over-subscribed, meaning not all orders will be filled. Broker-dealers such as Wells Fargo who want bonds for their own dealer inventory do not qualify for retail priority. Broker-dealer orders for inventory typically receive the lowest priority in municipal offerings and are therefore unlikely to be filled.

2. Muldoon knew and exploited these priority rules by submitting fraudulent retail orders in primary offerings in order to obtain bonds for Wells Fargo’s inventory. Muldoon submitted these fraudulent orders through “friendly” sales representatives at underwriting firms, who submitted his fraudulent retail orders on behalf of Wells Fargo to the senior managing underwriter and/or the issuer.

3. Between January and October 2017 (the “relevant period”), Muldoon placed fraudulent retail orders in at least sixteen primary offerings and received bonds for Wells Fargo’s inventory in fifteen of those offerings. Submitting orders for Wells Fargo’s inventory as retail orders operated as a fraud on issuers and senior managing underwriters, who were deceived into allocating bonds to Wells Fargo instead of to legitimate retail investors.

Respondent

4. **Thomas C. Muldoon**, age 69, resides in Philadelphia, Pennsylvania. From 2004 to December 2017, Muldoon served as a trader and in various other roles at Wells Fargo, primarily

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

trading municipal bonds with other broker-dealers as well as with registered representatives servicing retail customers of Wells Fargo. Muldoon is unemployed.

Other Relevant Entities

5. **Wells Fargo Clearing Services, LLC**, incorporated in Delaware and headquartered in St. Louis, Missouri, is registered with the Commission as a broker-dealer and investment adviser.

Background on Negotiated Offerings of Municipal Bonds

6. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a “negotiated” offering, the municipal issuer chooses a broker-dealer to act either as the sole underwriter or as the senior manager of an underwriting syndicate. An underwriting syndicate is a group of broker-dealers that join together to purchase new issue bonds from the issuer and distribute those bonds to the public. The lead firm in the syndicate, who is responsible for maintaining the order book and presenting orders to the issuer, is designated as the “senior manager,” while the other firms that receive orders and relay them to the senior manager are designated as “co-managers.”

7. Bonds in negotiated offerings are offered for sale during designated “order periods,” which are windows of time during which the underwriters solicit orders from potential investors. Underwriters market offerings by distributing electronic “pricing wires” to their own customers as well as to other broker-dealers, who may be interested in purchasing bonds for their inventory. The pricing wires describe the bonds being offered as well as applicable rules for the offering, including the “priority of orders,” which establishes the sequence in which bonds will be allocated to specific order types. The priority of orders is important to potential purchasers because orders for bonds in a primary offering often exceed the amount of bonds available. Typically, orders from individual retail investors have the highest priority. Issuers prioritize retail orders to maximize the volume of bonds placed with individuals who will buy and hold the bonds rather than quickly re-trade their bonds. Retail investors may also reside in the issuer’s jurisdiction and therefore benefit from state- or locality-specific tax advantages.

8. An issuer may specify separate order periods for different categories of customers, typically by holding an initial retail order period for retail customers and a subsequent institutional order period for institutional customers. Retail order period pricing wires typically contain issuer-approved rules stating who is eligible to participate in the retail order period. Retail order period pricing wires also commonly state that “stock orders are not permitted to be entered during the retail order period.” “Stock orders” refers to orders from broker-dealers attempting to purchase bonds for their own inventory. Stock orders are permitted during subsequent institutional order periods, but issuer priority rules generally require underwriters to give stock orders lower priority than retail or institutional customer orders. Because stock orders generally have lower priority than customer orders, orders from broker-dealers (or traders acting on their behalf) often go unfilled.

9. Once the order period(s) are closed, the senior manager and the issuer decide which orders will be filled. When making allocation decisions for retail orders submitted by co-managers,

senior managers and issuers rely on the information submitted by co-managers. During this period, senior managers typically have no way to independently verify retail eligibility for such orders because co-managers usually submit retail orders to the senior manager without customer names in order to protect privacy and prevent client poaching.

Muldoon Placed Fraudulent Retail Orders in Primary Offerings of Municipal Bonds

10. Muldoon began working as a municipal bond trader in 1975. From 2004 to 2017, he worked as a retail municipal bond trader out of Wells Fargo's New York office. When Muldoon purchased bonds, he was purchasing them for Wells Fargo's own inventory and the bonds were taken in to an inventory account. Muldoon could sell bonds from Wells Fargo's inventory to the firm's retail customers through Wells Fargo registered representatives who managed those retail customers' accounts. Alternatively, Muldoon could sell the bonds held in Wells Fargo's inventory to other broker-dealers.

11. Part of Muldoon's trading involved purchasing new issue municipal bonds in primary offerings from other dealers serving as underwriters. Because Muldoon was trying to buy bonds for Wells Fargo inventory, the proper way to place his order was as a stock order. But, as discussed above, dealer stock orders generally receive the lowest priority and so are unlikely to be filled. Knowing this, Muldoon did not submit his orders properly as stock orders. Instead, Muldoon reached out to sales representatives at other dealers serving as underwriters to ask if they would accept retail customer orders from Muldoon. Muldoon knew that retail orders would get the highest priority and likely be filled. Finding sales representatives at underwriting firms who would enter his orders as retail was therefore critical to Muldoon's scheme. During the relevant period, Muldoon found three sales representatives willing to place his orders for Wells Fargo's inventory as retail orders ("Representative A," "Representative B," and "Representative C").

12. Muldoon submitted at least sixteen retail orders on behalf of Wells Fargo to Representatives A, B, and C during the relevant period. In all but one instance, Muldoon was allotted bonds and purchased the bonds for Wells Fargo's inventory from the underwriter at the initial offering price. After taking the bonds he improperly obtained as retail allotments into Wells Fargo inventory, Muldoon then sold the bonds to Wells Fargo retail customers or to other brokers or dealers, at a higher price.

13. Muldoon earned a salary from Wells Fargo and did not receive additional compensation for his trading of new issue municipal bonds.

14. Muldoon's submission of his dealer stock orders as retail violated the issuer rules stated on the pricing wires for these offerings. All of these pricing wires contained at least one of the following rules regarding retail eligibility:

- "Stock orders are not permitted to be entered during the retail order period."
- "The Authority's intention is to have the bonds placed, without further sale, with retail buyers."

- Retail orders are defined as “‘going away’ orders placed for individuals, bank trusts and investment advisors for which an individual customer is already conditionally committed.”
- “‘Individual retail order’ is defined as an order placed for the account of an individual ... [and] ‘professional retail order’ is defined as an order placed by a bank trust department, investment advisor, or money manager acting on behalf of an individual.”

Muldoon’s orders were not placed by or on behalf of an individual; they were placed on behalf of Wells Fargo. By entering Wells Fargo’s orders as retail, Muldoon was intentionally creating the false appearance that the orders were submitted on behalf of an individual rather than a dealer.

15. Beyond submitting his orders as retail, Muldoon took additional steps to further the deception that the orders were coming from legitimate retail customers. One method was to instruct his sales representatives to delay placing his orders. For example, on two occasions in September 2017, Muldoon placed orders with Representatives A and B but told the representatives to wait to submit the orders to the senior manager because the retail order period pricing wire had been released only a few minutes earlier. He did this because retail customers would be unlikely to submit orders immediately after the pricing wire is released – it takes some time for a registered representative to receive the pricing wire, pass it along to the customer, and for the customer to make a decision and get back to the registered representative with an order. Muldoon wanted the representatives to wait so that the timing of his fraudulent retail order would not stand out as suspiciously early.

16. Muldoon also took steps to hide his re-sale of bonds he obtained on a retail basis to avoid detection. For example, when Representative C informed Muldoon that Muldoon had been allocated bonds in a May 2017 offering, Muldoon agreed to be “discreet” when offering the bonds for sale on an electronic trading platform by de-selecting the senior manager’s firm as an entity that could “see” the offer on the platform. This would prevent the senior manager from discovering that bonds allotted to Representative C’s firm on a retail basis were immediately re-trading among broker-dealers, which would make it obvious that the bonds had not actually gone to a retail customer. If the senior manager learned or suspected that the bonds had been improperly allocated to a non-retail account, this could jeopardize Representative C’s firm’s ability to get bonds on a retail basis from that senior manager in future offerings.

17. Because Muldoon fraudulently submitted his orders as retail, he was able to get bonds for Wells Fargo’s inventory in oversubscribed offerings that should have gone to legitimate retail and institutional customers.

Violations

18. Section 10(b) and Rule 10b-5 thereunder prohibit any person, in connection with the purchase or sale of any security, from directly or indirectly: employing any device, scheme, or artifice to defraud (subpart (a)); or engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person (subpart (c)). 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. Establishing a primary violation of Section 10(b) and Rule 10b-5 requires proof of scienter. See Aaron v. SEC, 446 U.S. 680, 695-97 (1980).

19. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker-dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.² Negligence is sufficient to establish a violation of MSRB Rule G-17.

20. As a result of the conduct described above, Muldoon willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, as well as MSRB Rule G-17.

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), 15B(c), and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Muldoon cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Muldoon be, and hereby is:

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

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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

² Subject to certain exceptions not relevant here, MSRB Rule D-11 includes "associated persons" within the definitions of brokers, dealers, and municipal securities dealers for purposes of all other MSRB rules.

C. Any reapplication for association by the Respondent 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: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Muldoon shall pay a civil money penalty in the amount of \$25,000.00 to the Securities and Exchange Commission, of which \$6,250.00 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$18,750.00 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: \$6,250 shall be paid within 10 days of the entry of this Order; \$6,250 shall be paid within 90 days of the entry of this Order; \$6,250 shall be paid within 180 days of the entry of this Order; and \$6,250 shall be paid within 270 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. §3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. 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 Thomas C. Muldoon as a 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 Ivonia K. Slade, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this 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 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.

Vanessa A. Countryman
Secretary