UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 65909 / December 8, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3331 / December 8, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14655

In the Matter of

DEAN ZENON PINARD

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 203(f) OF THE INVESTMENT ADVISERS 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 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Dean Zenon Pinard ("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, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers 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 finds that:

Summary

1. This matter involves Respondent's role, beginning in 1999, in certain improper bidding practices that occurred at Banc of America Securities LLC, now known as Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger ("BAS")[1], from at least 1998 through 2002 (the "relevant time period"), involving the temporary investment of proceeds of tax-exempt municipal securities in reinvestment products, such as guaranteed investment contracts ("GICs"), repurchase agreements ("Repos"), and forward purchase agreements ("FPAs"). As described below, these practices affected the prices of the reinvestment products and jeopardized the tax-exempt status of the underlying municipal securities.

Respondent

2. **Pinard**, age 42, is a resident of Charlotte, North Carolina. From April 1999 through December 2003, Pinard served as a dual officer of BAS and Bank of America, N.A. ("BANA"), a federally-chartered bank and a provider of municipal reinvestment instruments. He remained an officer of BANA through April 2007. During the relevant time period, Pinard worked in BAS's and BANA's Municipal Reinvestment and Risk Management Group (the "Desk") -- initially as a marketer of investment agreements and other municipal finance contracts and, beginning in January 2003, as the head of the Desk. In those roles, Pinard focused on selling derivative products associated with the issuance of municipal debt. In January 2007, the Antitrust Division of the Department of Justice ("DOJ") conditionally granted Bank of America Corporation ("BAC"), a public company that serves as the ultimate parent corporation of both BAS and BANA, amnesty from criminal prosecution because, among other things, it voluntarily self-reported possible anticompetitive bidding practices involving municipal reinvestment products to DOJ before DOJ had begun an investigation into the matter and because of its continuing cooperation. Pinard is also a beneficiary of that grant of amnesty.

Other Relevant Entity

3. **BAS** was a Delaware limited liability corporation with its principal place of business in New York, New York. During the relevant time period, BAS was the investment banking subsidiary of BAC, a financial holding company organized and existing under the laws of the State of Delaware with its principal place of business in Charlotte, North Carolina. BAS 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. On December 7, 2010, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings and

[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.

Imposing Remedial Sanctions and a Cease-and-Desist Order against BAS for its role in certain improper bidding practices. Without admitting or denying the Commission's findings, BAS consented to the entry of an order censuring it, requiring it to cease-and-desist from committing or causing any violations and any future violations of Section 15(c)(1)(A) of the Exchange Act, and requiring it to pay disgorgement plus prejudgment interest totaling $36,096,442 to 88 specific payees.

Background

4. State and local governmental entities in the United States from time to time issue tax-exempt bonds and notes, the proceeds of which are temporarily invested pending their use for the original purpose of the offering. A significant portion (over $100 billion a year) of such proceeds is invested in financial instruments tailored to meet specific collateral and spend-down needs. Under the relevant IRS regulations, proceeds of tax-exempt municipal securities must generally be invested at fair market value. The most common way of establishing fair market value is through a competitive bidding process, which generally occurs contemporaneously with the offer and sale of the municipal securities. Moreover, compliance with the IRS's detailed regulations concerning the competitive bidding process for certain types of investments of bond proceeds creates a conclusive safe harbor for establishing the fair market value of the reinvestment instruments. These detailed regulations require the issuer to make a bona fide solicitation for the purchase of the reinvestment instruments. A bona fide solicitation requires, among other things, that the issuer:

a. Forward in a timely manner written bid specifications containing all material terms of the bid to potential providers;

b. Include in the bid specifications a statement notifying potential providers that the submission of a bid is a representation that:

i. the potential provider did not consult with any other potential provider about its bid;

ii. the bid was determined without regard to any other formal or informal agreement that the potential provider has with the issuer or any other person (whether or not in connection with the bond issue); and

iii. the bid was not being submitted solely as a courtesy to the issuer or any other person for purposes of satisfying the requirements of the receipt of three bids from disinterested providers or the receipt of at least one bid from a reasonably competitive provider;[2]

[2] More specifically, IRS regulations require the issuer to receive bids from at least three potential providers that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction (or a provider related to the lead underwriter) is deemed to have a material financial interest in the issue until 15 days after the issue date for the underlying security. Furthermore, one of the three disinterested bids received must be from a reasonably competitive provider.

c. Solicit bids from at least three reasonably competitive providers; and

d. Afford all potential providers an equal opportunity to bid; for example, no potential provider is to be given the opportunity to review other bids (i.e., a last look) before providing a bid.

5. To obtain the benefit of the safe harbor provisions, the issuer must also select the highest yielding bona fide bid or the lowest cost bona fide bid, whichever is appropriate under the circumstances.

6. The IRS regulations also contemplate that an issuer may use an agent to conduct the bidding process as long as the agent does not bid to provide the reinvestment product.

7. In this matter, bidding agents at times steered business to favored providers through a variety of mechanisms, including giving them information on competing bids ("last looks") and deliberately obtaining off-market courtesy bids or purposefully non-winning bids so that the favored providers could win the transaction ("set-ups"). In return, the bidding agents were at times rewarded with, among other things, undisclosed, gratuitous payments and kickbacks. This misconduct primarily affected the bond issuers and purchasers, which relied on inaccurate certifications executed by the providers (and on most occasions also the bidding agents) to the effect that the bids were competitive, i.e., not tainted by undisclosed consultations, agreements, or payments and reflected fair market value for the purchase of the reinvestment instrument.

Improper Bidding Practices

8. From the inception of the Desk in 1998 through at least 2002, Respondent, beginning in April 1999, as well as many other members of the Desk, participated in and condoned improper practices in connection with the bidding of reinvestment instruments. During the relevant time period, the Desk was a marketing group comprised of 4 to 9 members that focused on selling derivative products associated with the issuance of municipal debt. The Desk generated business through, among other things, client relationships in commercial lending and securities underwriting performed by BAS. The Desk also generated business through independent advisors, bidding agents, and brokers. During the relevant time period, Respondent and the Desk were based in Charlotte, North Carolina, with one Desk member in New York, New York for a portion of that time. During the relevant time period, Respondent was a dual officer of both BAS and BANA.

9. As part of the conduct described herein, bidding agents at times steered business to the Respondent and other Desk members, through last looks and set-ups. As a result, the Desk won the bids for 88 affected reinvestment instruments.

10. In return, Respondent and other Desk members, among other things, at times steered business to bidding agents and submitted courtesy and purposefully non-winning bids upon request.

11. On occasion, Respondent and other Desk members also paid bidding agents that favored the Desk monies in addition to the fees disclosed as brokerage fees. These additional monies were sometimes mischaracterized as payments for services rendered in connection with swaps and marketing pricing letters.

12. In certain transactions, Respondent and other Desk members misstated in BAS's bid submissions and/or provider's certificates that, among other things: its bids were arms-length bids; the Desk did not consult with any other potential provider about its bids; its bids were determined without regard to any other formal or informal agreement that the Desk had with the issuer or any other person (whether or not in connection with the bond issue); and that its bids were not submitted solely as a courtesy to the issuer or any other person for purposes of satisfying the requirements that (a) the issuer receive at least three bids from providers that the issuer solicited under a bona fide solicitation and (b) at least one of the three bids received was from a reasonably competitive provider.

Representative Transaction

13. BAS underwrote a $65,225,000 offering of special assessment bonds and, in March and April of 2002, the Respondent, along with the then head of the Desk, helped the Desk win the bids for two distinct instruments in which the offering proceeds would be invested. The head of the Desk, Respondent's supervisor, recommended the hiring of a certain bidding agent to bid the reinvestment instruments for this deal. During the relevant time period, certain bidding agents would favor the firm that had both underwritten the bonds and arranged for the bidding agent's hiring. Such favoritism generally took the form of either a last look or a set-up. Here, the two bids associated with this transaction – with the help of Respondent and the head of the Desk – were set-up for the Desk to win. This transaction included a refunding escrow that was bid in March 2002 and a debt service reserve fund that was bid in April 2002. Respondent provided the bidding agent with the Desk's pricing indications for the instruments that were the subject of the bids, which allowed the bidding agent to advise other prospective bidders where they should not bid. In addition to the brokerage fees that were paid to the bidding agent, the Desk, at the direction of the head of the Desk, paid the bidding agent an additional $50,000 as purported fees for a market pricing letter in another transaction. In reality, the additional $50,000 was payment for the favored treatment that the bidding agent showed the Desk in steering these bids in favor of the Desk. The Desk misstated collectively in bid submissions and provider's certificates for these instruments that, among other things, its bids were arms-length bids; based on market prices; and/or were determined without regard to any other formal or informal agreement that the potential provider had with the issuer or any other person.

Legal Discussion

14. Section 15(c)(1)(A) of the Exchange Act prohibits any broker or dealer from using the mails or other means of interstate commerce "to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security . . . by means of any manipulative, deceptive, or other fraudulent device or contrivance." Exchange Act Rule 15c1-2 defines such means to include "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person," and "any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading."

15. As described above, BAS, using the mails or any means or instrumentality of interstate commerce, engaged in improper bidding practices such as set-ups, last looks, the submission of courtesy and purposefully non-winning bids, and other conduct that it knew or had reasonable grounds to believe was misleading. As a result of such conduct, BAS willfully violated Exchange Act Section 15(c)(1)(A).

16. As a result of the conduct described above, Pinard willfully aided and abetted and caused BAS's violation of Exchange Act Section 15(c)(1)(A).

Cooperation

17. In determining to accept Respondent's Offer, the Commission considered the cooperation of Respondent in connection with the Commission's investigation and investigations conducted by other law enforcement agencies, including DOJ.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that**:**

A. Respondent Pinard cease and desist from committing or causing any violations and any future violations of Section 15(c)(1)(A) of the Exchange Act.

B. Respondent Pinard be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, or municipal advisor.

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 shall, within 30 days of the entry of this Order, pay disgorgement of $32,489 and prejudgment interest of $9,294 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Dean Zenon Pinard as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Elaine C. Greenberg, Chief, Municipal Securities and Public Pensions Unit and Associate Regional Director, Securities and Exchange Commission, Philadelphia Regional Office, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

By the Commission.

Elizabeth M. Murphy
Secretary