Department of Justice

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FORMER EMPLOYEE OF A FINANCIAL INSTITUTION SUBSIDIARY PLEADS GUILTY FOR ROLE IN BID-RIGGING AND FRAUD CONSPIRACIES INVOLVING MUNICIPAL BONDS

WASHINGTON A former employee of a subsidiary of a financial institution pleaded guilty today for his participation in bid-rigging and fraud conspiracies related to contracts for the investment of municipal bond proceeds and other municipal finance contracts, the Department of Justice announced.

According to the plea proceeding held today in U.S. District Court in New York City, James L. Hertz, a resident of Cranford, N.J., engaged in separate bid-rigging and fraud conspiracies related to the provision of a type of contract, known as an investment agreement, and other municipal finance contracts, including derivatives contracts, to public entities throughout the United States, such as state, county and local governments and agencies. Hertz also pleaded guilty to one count of wire fraud. According to the plea agreement, Hertz has agreed to cooperate with the ongoing investigation.

According to the court document, from approximately 1994 through approximately December 2007, Hertz worked in the municipal derivatives group of the financial institution's subsidiary as a vice president and a marketer of investment agreements and other municipal finance contracts. The Manhattan, N.Y.-based financial institution was a provider of investment agreements and other municipal finance contracts, such as swaps, to public entities. Public entities seek to invest money from a variety of sources, primarily the proceeds of municipal bonds that they issued, to raise money for, among other things, public projects. Public entities typically hire a broker to conduct a competitive bidding process for the award of the investment agreements to invest such money. Competitive bidding for these agreements is the subject of regulations issued by the U.S. Department of the Treasury and is related to the tax-exempt status of the bonds.

The department said in court documents that Hertz was authorized to act as an agent of the financial institution in marketing investment agreements and other municipal finance contracts.

According to the court document, Hertz and co-conspirators engaged in a bid-rigging conspiracy from at least as early as October 2001 until at least November 2006. As a part of the bid-rigging conspiracy, Hertz and co-conspirators designated in advance which co-conspirator provider, either his employer or another financial institution, would be the winning bidder for certain investment agreements or other municipal finance contracts. Hertz and co-conspirators also agreed to submit intentionally losing bids for investment agreements or other municipal finance contracts that were steered to other financial institutions, giving the false appearance that these deals had been bid competitively in accordance with relevant U.S. Treasury regulations, or the requirements of the municipality.

According to the court documents, Hertz also participated in a fraud conspiracy with a broker located in Minnesota from as early as 1998 until at least November 2006. As part of this conspiracy, the broker gave Hertz information about the prices, price levels or conditions in competitors' bids, a practice known as a "last look," which is explicitly prohibited by U.S. Treasury regulations. On some occasions, the broker signaled Hertz to change his bids to specific numbers so that his employer could make more money. Hertz and co-conspirators also submitted intentionally losing bids to the broker for certain investment agreements to make it appear that his employer had competed for those agreement or contracts, when in fact, it had not. As a result of the bid manipulation, Hertz's employer won investment agreements and other municipal finance contracts at artificially determined price levels, which deprived municipal issuers of money and property.

The court documents also charge that Hertz and co-conspirators misrepresented to municipal issuers or their bond counsel that the bidding process was in compliance with U.S. Treasury regulations. This caused the municipal issuers to award investment agreements and other municipal finance contracts to providers that otherwise would not have been awarded the contracts if the issuers had true and accurate information regarding the bidding process. Such conduct caused municipal issuers to file inaccurate reports with the Internal Revenue Service (IRS) and placed the tax-exempt status of the underlying bonds in jeopardy.

The bid-rigging conspiracy with which Hertz is charged carries a maximum penalty of 10 years in prison and a $1 million fine. The fraud conspiracy with which Hertz is charged carries a maximum penalty of five years in prison and a $250,000 fine. The wire fraud charge carries a maximum penalty of 20 years in prison and a $250,000 fine. The maximum fines for each of these offenses may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

This is the eighth guilty plea to arise from an ongoing investigation into the municipal bonds industry, which is being conducted by the Antitrust Division's New York Field Office, the FBI and IRS Criminal Investigation. The department is coordinating its investigation with the Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Federal Reserve Bank of New York.

Three former employees of Beverly Hills, Calif.-based Rubin/Chambers, Dunhill Insurance Services Inc. (CDR) have pleaded guilty to bid-rigging and fraud conspiracies in relation to the ongoing investigation. Four other individuals have pleaded guilty to charges related to the ongoing investigation. In addition, three former financial services executives were indicted on July 27, 2010, for participating in fraud schemes and conspiracies related to the bidding for investment agreements. In October 2009, CDR, two of its employees and one former employee were charged for participating in bid-rigging and fraud conspiracies and related crimes. The CDR trial is scheduled to begin on Sept. 12, 2011.

Today's guilty plea is part of efforts underway by President Barack Obama's Financial Fraud Enforcement Task Force. President Obama established the interagency Financial Fraud Enforcement Task Force to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The task force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information on the task force, visit www.StopFraud.gov.

Anyone with information concerning bid rigging and related offenses in any financial markets should contact the Antitrust Division's New York Field Office at 212-264-0390 or visit www.justice.gov/atr/contact/newcase.htm, or the FBI at 212-384-5000.

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