UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA : Criminal No. 11 CRIM 293

v. : Filed:

BRIAN SCOTT ZWERNER, : Violations: 18 U.S.C. § 371
Defendant.
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USDC SDNY
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INFORMATION

The United States of America, acting through its attorneys, charges:

1. BRIAN SCOTT ZWERNER ("ZWERNER") is hereby made a defendant on the charge stated below:

COUNT ONE - CONSPIRACY TO MAKE FALSE ENTRIES IN BANK RECORDS
(18 U.S.C. § 371)

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant ZWERNER, a resident of Atlanta, Georgia, was an employee of Bank A, which was headquartered in Charlotte, North Carolina. Bank A marketed financial products and services, including services as a provider of investment and other municipal contracts to various municipalities located throughout the United States.

3. Defendant ZWERNER was the Manager of the Municipal Derivatives Trading Desk at Bank A from approximately July 1998 to approximately October 2002. During that period, defendant ZWERNER worked at Bank A's offices located in

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Chicago, Illinois. Defendant ZWERNER'S duties included calculating profitability and hedging interest rate risk for investment agreements and other municipal finance contracts sold by Head Marketer A and individuals under Head Marketer A's direction, including Marketers A-1 and A-2, also employees of Bank A.

4. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business affairs.

5. Various other persons and entities, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They include Head Marketer A, Marketer A-1 and Marketer A-2.

II. BACKGROUND

6. Municipal bonds are issued by government entities, such as states, counties, and cities, or quasi-government entities, such as public authorities and school, utility or water districts, to raise money for operating funds or for specific projects, such as the construction of public facilities, and to refinance outstanding municipal debt. In some instances, the entity that issued the bond turns the money over to a not-for-profit entity, such as a school or hospital, or an entity that will spend the money for a specific public purpose, such as the construction of low-cost housing or waste treatment facilities. Both

the entities that issue municipal bonds and the entities that receive and spend the money are, unless otherwise stated, collectively referred to herein as "issuers," "municipal issuers," or "municipalities."

7. The money an issuer raises from a municipal bond offering ("bond proceeds") is typically spent over a period of time rather than immediately, in one lump sum. The issuer frequently invests some or all of bond proceeds in an investment product (sometimes referred to as an "investment agreement"), that is designed for its specific needs. Investment agreements vary in size from a few hundred thousand to several hundred million dollars and in duration from as short as one month to as long as thirty years.

8. Major financial institutions, including banks, investment banks, insurance companies, and financial services companies (collectively "providers") sell investment agreements through their employees or agents. Bank A is such a provider, and sold investment agreements and other municipal finance contracts through its employees or agents, including Head Marketer A, Marketer A-1 and Marketer A-2.

9. Issuers usually select providers of investment agreements through bona fide competitive bidding procedures that are designed to comply with federal tax law and United States Department of the Treasury regulations relating to the tax-exempt status of municipal bonds. Compliance with these regulations is monitored by the Internal Revenue Service ("IRS"), which is entitled to receive a portion of the earnings from a

municipality's investment agreement under certain circumstances. Among other things, each provider submitting a bid typically certifies that specific Treasury regulations have been followed, including that the provider did not consult with any other potential provider about its bid, and that all providers had an equal opportunity to bid, commonly referred to as the no "last looks" provision.

10. Issuers often hire third parties ("brokers") to act as their agents in conducting a bona fide competitive bidding process and complying with the relevant Treasury regulations. Rubin/Chambers Dunhill Insurance Services, Inc. ("CDR") was such a broker. CDR, located in Beverly Hills, California, marketed financial products and services, including services as a broker or advisor, to various municipal issuers located throughout the United States. Brokers owed a fiduciary duty to issuers that hired them and were required to act for the benefit of the issuer when conducting the competitive bidding process. The broker's fee for conducting a bona fide competitive bidding process is generally paid by the winning provider, which takes account of the cost of the broker's fee when calculating its bid and discloses the fee to the issuer.

11. A provider usually becomes aware of an upcoming bid from a broker. In some cases, the broker decides which providers will be solicited to bid without consulting with the issuer or any of the other professional representatives advising the issuer. A provider typically receives a bid package (specifications and bid forms) from the broker, usually via e-mail. A typical bid package contains, among other things, the bid

specifications, which detail the type of investment agreement or other municipal finance contract for which bids are being solicited, the date and time of the bid, and under what circumstances the bid will take place. A typical package also requires each provider that submits a bid to make certain representations, including that a bona fide bid was conducted and that the bidding process conformed to the relevant Treasury regulations. A provider usually submits its bid to the broker orally over the telephone at a time identified in the bid specifications, and then sends a conforming copy of the bid via facsimile to the broker.

12. After reviewing the bids to ensure conformity with the specifications, the broker informs the issuer of the outcome of the bid, including the identity of the winning, qualified bidder and, if appropriate, any conditions that deviated from the specifications. Brokers are often required by issuers to provide written certification that the bidding procedures complied with the relevant Treasury regulations.

13. Depending on the structure of the bid, providers may be asked to quote only the interest rate to be paid on funds on deposit for the duration of the agreement or they may be asked to submit a bid in the form of a dollar amount or date (sometimes referred to as the "price" or "price level" of a bid). In a typical investment agreement, providers are asked to quote only an interest rate and, generally, the agreement is awarded to the provider quoting the highest rate.

14. Many brokers that conduct bona fide competitive bidding for the purpose of complying with the safe harbor regulations are also hired by municipalities and other quasi-government entities to conduct bona fide competitive bidding in connection with the award of other contracts involving public funds, even though those contracts are not subject to the Treasury regulations related to competitive bidding. These contracts (collectively, "other municipal finance contracts") include, but are not limited to, investment agreements for taxable municipal bonds; investment agreements for funds borrowed by entities in which the federal government or any municipal entity is a participant; and derivative contracts, which are contracts between a municipal issuer and a financial institution that are designed to manage or transfer some or all of the interest rate risk associated with a municipal bond issue. They do not include underwriting contracts.

15. Trade tickets are a report of Bank A, and track pertinent details of investment agreements and other municipal finance contracts entered into by Bank A.

16. Trade tickets are hard copy documents completed by hand by individuals on the marketing or trading desks at or near the time of the award of a particular investment agreement or other municipal finance contract to Bank A.

17. Among the entries on a trade ticket is one labeled "Trade NPV," which corresponds to the net present value of the anticipated marketing profit for a particular investment agreement or other municipal finance contract. Individuals on the marketing or trading desks of Bank A inserted a marketing profit amount into the Trade NPV blank on

the trade ticket for investment agreements and other municipal finance contracts won by Bank A.

18. Bank A kept trade tickets in transaction files along with other documents pertinent to particular investment agreements and other municipal finance contracts in its offices in Chicago, Illinois. Copies of trade tickets for particular investment agreements and other municipal finance contracts were often kept in marketers' files in Bank A's offices in New York, New York and Charlotte, North Carolina.

19. Bank A utilized a computerized sales tracking and reporting database, known as STARS, to report results of the municipal derivatives marketing desk to its officers. Information for STARS, including marketing profit data, came directly from trade tickets. Bank A's officers reviewed the information in STARS on a regular basis for purposes of assessing the results of its municipal derivatives marketing desk.

III. DESCRIPTION OF THE OFFENSE

20. From at least as early as January 1999 until at least May 2002, the exact dates being unknown to the United States, BRIAN SCOTT ZWERNER, the defendant, and co-conspirators, including Head Marketer A, Marketer A-1 and Marketer A-2, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Section 1005 in violation of Title 18, United States Code, Section 371.

21. It was a part and an object of the conspiracy that BRIAN SCOTT ZWERNER, the defendant, and co-conspirators, including Head Marketer A, Marketer A-1 and Marketer A-2, being officers, directors, agents or employees of Bank A, a financial institution that is a national banking association, chartered and examined by the Comptroller of the Currency and whose deposits are insured by the Federal Deposit Insurance Corporation, would and did cause to be made, false entries in the books, reports, and statements of such bank, company, branch, agency, or organization for the purpose of deceiving and with the intent to deceive officers of such bank, while knowing that the entry or entries were false, in violation of Title 18, United States Code, Section 1005.

IV. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

22. For the purposes of effectuating the aforesaid conspiracy, defendant ZWERNER and co-conspirators, including Head Marketer A, Marketer A-1 and Marketer A-2, and other persons known and unknown, did those things which they conspired to do, including, among other things:

(a) agreeing to misstate marketing profits on trade tickets for certain investment agreements or other municipal finance contracts;

(b) understating marketing profits on trade tickets for certain investment agreements or other municipal finance contracts so that money could be held back and accumulated in an off-the-books account known as the "kitty";

(c) understating marketing profits on trade tickets for certain investment agreements or other municipal finance contracts so that money could be held back and accumulated in the kitty in order to pay kickbacks, disguised as fees to compensate brokers, including CDR, for purportedly brokering financial transactions between Bank A and other entities. In reality, Bank A paid these kickbacks to brokers, including CDR, for controlling and manipulating the competitive bidding process for investment agreements and other municipal finance contracts to ensure that Bank A won certain of these bids;

(d) overstating marketing profits on trade tickets for certain investment agreements and other municipal finance contracts to make those agreements and contracts appear to Bank A's officers to be more profitable than they actually were;

(e) allowing misstated marketing profits to be incorporated in STARS;

(f) deceiving certain of Bank A's officers as to the true results of the municipal derivatives marketing desk.

V. OVERT ACTS

23. In furtherance of the conspiracy and to effect the illegal objects thereof,

BRIAN SCOTT ZWERNER, the defendant, and co-conspirators, including Head Marketer A, Marketer A-1 and Marketer A-2, and other persons known and unknown, committed the following overt acts, among others:

(a) on numerous occasions, defendant ZWERNER and co-conspirators misstated marketing profits on trade tickets related to investment agreements and other municipal finance contracts;

(b) on numerous occasions, defendant ZWERNER and co-conspirators, allowed misstated marketing profit amounts to be incorporated in STARS;

(c) on numerous occasions, defendant ZWERNER, created an Excel spreadsheet in order to track the misstated profits for certain investment agreements and other municipal finance contracts. Defendant ZWERNER and co-conspirators referred to this spreadsheet as "the kitty;"

(d) on numerous occasions, Head Marketer A received from defendant ZWERNER the kitty spreadsheet in order for Head Marketer A to track the transactions with misstated profits;

(e) on numerous occasions, defendant ZWERNER and co-conspirators misstated the marketing profits on swap transactions;

(f) with respect to the trade tickets related to an investment agreement for a transit authority, defendant ZWERNER and co-conspirators committed the following overt acts, among others:

(i) on or about June 19, 2000, misstated the marketing profit on the trade ticket for the investment agreement;

(ii) on or about July 24, 2000, stated that there was a marketing profit on the trade ticket for a cap when, in fact, the cap lost money as a result of a kickback paid to CDR;

(g) on or about March 2, 2001, defendant ZWERNER sent an email to Head Marketer A stating that defendant ZWERNER deleted the kitty spreadsheet from the monthly report package, so Head Marketer A could forward the monthly report package to his superiors.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

Dated: 3/30/2011

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