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Judge Allows Cities' Class Action Over Bond Rate Conspiracy to Proceed.

A federal judge has allowed to proceed a class action antitrust suit filed against eight banks for conspiracy to fix rates on tax-exempt municipal bonds.

On November 2 Judge Jesse M. Furman of the U.S. District Court for the Southern District of New York denied the banks' motions to dismiss in *City of Philadelphia v. Bank of America Corp.*

The class action complaint filed by the cities of Philadelphia and Baltimore alleges that the banks — Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, Barclays, Goldman Sachs, Morgan Stanley, and the Royal Bank of Canada — conspired not to compete against each other and to set, almost daily, artificially high interest rates on state and local municipal bonds between 2008 and 2016. The artificially high rates were estimated to be around 75 percent above what the plaintiffs would have otherwise paid, costing governments, schools, hospitals, and charities potentially billions of dollars, according to the complaint.

The alleged conspiracy surrounds the issuance of variable rate demand obligations (VRDOs), which are tax-exempt bonds with interest rates reset periodically, typically weekly. Bond issuers contract with banks as remarketing agents (RMAs) that are required to seek the lowest possible rates when selling bonds on behalf of the borrowers when the rates are reset or when an investor redeems a bond. If a rate is too high above the market, a bond issuer may find a new RMA to secure lower rates, and the bank loses a client. If the rate was set too low, bondholders would redeem their bonds and the RMAs would incur the costs of remarketing the bonds or holding them on their books.

The cities cite testimony from a former managing director at Citigroup, former senior RMA personnel at JPMorgan, and a former RMA at Wells Fargo who claim that communications between the banks happened regularly by telephone, in-person meetings, and Bloomberg messaging technology.

"A former senior RMA official at JPMorgan confirmed that it was a 'dirty little secret' that RMAs would talk to each other about rates and would ask other RMAs questions like, 'Are you placing this paper' — referring to a particular VRDO — 'and if so, what will be the rate?'," Furman wrote in his opinion.

The cities also cite statistical evidence supporting their argument. The issue was first raised by a whistleblower, which prompted an investigation and subpoenas from the SEC and the Department of Justice in 2015 and 2016.

The cities analyzed the bond interest rates between 2008 and 2016 and found that the rates set by different banks clustered around each other during those years and diverged following the SEC and Justice Department subpoenas. The results of a regression model showed that the rates were nearly 75 percent higher than they would have been otherwise, according to the cities.

The class action suit states that there are thousands of members of the class throughout the country

that were affected by the coordination between the banks.

The lawsuit was initially set in motion by Minneapolis-based municipal adviser Johan Rosenberg, who filed false claims act lawsuits in Illinois, Massachusetts, and California and was first identified by The Bond Buyer.

A pretrial conference is set for December 17.

In *City of Philadelphia v. Bank of America Corp.* (No. 19-01608), Philadelphia is represented by attorneys from Wollmuth Maher & Deutsch LLP; Quinn Emanuel Urquhart & Sullivan LLP; and Susman Godfrey LLP. Baltimore is represented by Susman Godfrey LLP. Bank of America Corp. and Merrill Lynch are represented by Wilmer Cutler Pickering Hale and Dorr LLP. Barclays Bank is represented by Skadden, Arps, Slate, Meagher & Flom LLP. Citigroup is represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP. Goldman Sachs is represented by Winston & Strawn LLP. JPMorgan Chase is represented by Covington & Burling LLP. The Royal Bank of Canada is represented by O'Melveny & Myers LLP. Wells Fargo is represented by Jones Day. BMO Financial Group is represented by Katten Muchin Rosenman LLP.

TAX ANALYSTS

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