

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86210 / June 27, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19220

<p>In the Matter of</p> <p style="text-align:center">IFS Securities</p> <p>Respondent.</p>

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTIONS 15(b) and
15B(c) OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 (“Exchange Act”) against IFS Securities (“Respondent” or “IFS”).

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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings involve a violation of the Municipal Securities Rulemaking Board's ("MSRB") "fair dealing" rule by Respondent in connection with a municipal bond offering. In 2014, Respondent was engaged by the Harvey, Illinois Public Library District (the "District") to underwrite the issuance of a \$6,000,000 offering of municipal bonds. The issuance of the bonds was intended to finance the expansion and renovation of the District's library building. As the sole underwriter of the bond offering, Respondent was responsible for marketing and selling the District's bonds to investors. Respondent acted negligently in selling the bonds and sold the bonds at a price which was below market price for comparable bonds and which was not fair to the District. Respondent thereby violated MSRB Rule G-17 and, by reason of that violation, Section 15B(c)(1) of the Exchange Act.

Respondent

2. Respondent is a broker-dealer registered with the Commission and is headquartered in Atlanta, Georgia.

Facts

The District's Engagement of IFS as Underwriter

3. In 2014, Respondent was engaged by the District to underwrite a \$6,000,000 offering of municipal bonds. The District had never issued bonds before and its Director (a librarian) and Board of Trustees, as a whole, had little to no experience with the bond offering process.

4. The District is coterminous with the City of Harvey, Illinois, located in Cook County, Illinois, but is a sovereign unit of government that is separate from the City. Although it shares essentially the same geographical area and tax base with the City, the District has separate taxing authority and finances and is governed by its own elected Board of Trustees. In June 2014, the Commission filed a civil enforcement action against the City of Harvey alleging fraudulent misuse of the proceeds of one of its bond issues and sought an injunction against a pending bond issue. See SEC v. City of Harvey, Ill., No. 14-cv-04744 (N.D. Ill.) (filed June 24, 2014). During the rest of 2014, the City of Harvey's SEC case and its fiscal and corruption problems were reported in the media, including *The Bond Buyer*, the *Chicago Tribune*, and *The New York Times*.

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.

5. In 2011, the District announced its plans to issue \$16,000,000 in bonds for the library project. In 2014, a registered representative of a broker-dealer (not Respondent) was approached by the District regarding the bonds. Thereafter, the registered representative resigned from his then broker-dealer and was hired by Respondent. The District then selected Respondent to underwrite \$6,000,000 in bonds. In selecting Respondent, the District did not conduct a competitive selection process and did not consider other underwriters. The District also selected Respondent as its underwriter without the benefit of advice from a municipal advisor.²

6. Prior to serving as the underwriter of the District's bond offering, Respondent had been the sole or co-lead underwriter for five municipal underwritings, none of which involved long-term credit-rated bonds.

IFS Failed to Act with Reasonable Care in Underwriting the Bonds

7. The District's bonds had features which are typically appealing to certain investors. First, the District's bonds were insured. Bond insurance is a guarantee by an insurer of the payment of the principal of and interest on municipal bonds as they become due should the issuer fail to make required payments. Bond insurance increases the likelihood that bondholders will timely receive their principal and interest payments. Second, they had an investment-grade rating. Standard and Poors Rating Services – which grades bonds on a letter scale from AAA to D, indicating credit worthiness and risk – assigned the District's bonds a rating of "AA," as insured, with an underlying rating of "BBB" and a stable outlook. Finally, the District's bonds were what is known as "bank qualified."³ In general, bonds that are bank qualified increase the pool of potential purchasers by attracting community and regional banks, which may purchase the bonds to obtain the benefit of a tax deduction, and also because potential purchasers understand the bonds are attractive in the secondary market. The District's bonds did have one feature that may have made them less attractive to some buyers. Under Illinois law, the costs of issuing the bonds (here, more than \$900,000) could not be included in the \$6 million par amount of the bonds. Accordingly, the bonds needed to be sold upon initial issuance at a price above their value at maturity. This difference between the initial offering price and the value of the bonds at maturity is known in the market as "premium."

² A municipal advisor is a person or entity that provides advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. A municipal advisor owes a fiduciary duty to the municipal entity. It is generally considered a best practice for a municipal entity (particularly an unsophisticated entity) to retain a municipal advisor before retaining an underwriter, in order to have the benefit of professional advice in the selection of the underwriter. See GFOA Best Practice on Selecting and Managing Municipal Advisors, <http://www.gfoa.org/selecting-and-managing-municipal-advisors>. After the District hired Respondent, it decided to retain a municipal advisor. Respondent recommended a municipal advisor to the District and the District hired that municipal advisor, again without a competitive process. Respondent also helped to negotiate the municipal advisor's fee for the offering.

³ An offering is "bank qualified" under the Internal Revenue Code if the issuer reasonably expects to issue in the calendar year of such offering no more than \$10 million of tax-exempt bonds.

8. Despite the fact that the bonds were insured and rated investment grade, Respondent had difficulty finding buyers. In attempting to market the bonds, Respondent encountered unexpected investor confusion about the relationship between the District and the City of Harvey, which had been the subject of a Commission enforcement action.

9. Respondent did not act reasonably in conducting investor outreach of the bonds. For example, although the bonds were “bank qualified,” Respondent made an insufficient attempt to market the bonds to regional or community banks. Respondent also did not reasonably manage the marketing of the bonds. For first-time issuers, it is customary for an underwriter to reach out to potential investors at the very start of an engagement, to make a preliminary determination as to whether it will be able to sell the issuer’s bonds. After initial pricing efforts in December 2014, Respondent did not contact potential investors until Thursday January 8 or Friday January 9, just a few business days before the planned order period on Tuesday January 13.⁴ At that point, however, the bond insurance (and the higher, insured rating) for the bonds had not yet been confirmed by the bond insurance company. The bond insurance was only confirmed on the evening of January 13. This marketing effort was unreasonable under the circumstances, particularly given that the District was a first-time issuer. The short marketing period also made it more difficult for Respondent to convince potential investors that because the issuers were not related and the District’s balance sheet and credit were stronger than the City’s, they need not be concerned about the City’s separate issues.

10. Because Respondent was unable to identify any interested investors before or during the order period, Respondent postponed the order period to Wednesday, January 14, 2015, at which point Respondent continued contacting those institutions that it believed might be interested in the bonds.

Respondent Sold the Bonds at a Price that Was Not Fair and Reasonable

11. Respondent was able to locate only one buyer, another broker-dealer (“Company A”), which eventually offered to buy the bonds at a price of \$115.73 and a 5.05% yield.⁵ In consultation with Respondent and its independent registered municipal advisor, the District agreed to accept this offer. The yield was higher than that for other comparable bonds sold in the same period.

12. On January 16, 2015, the same day that Company A’s purchase was accepted by the District, Company A sold the bonds to a client, a private fund (“Company B”), at a price of

⁴ For municipal bond offerings, the “order period” is a short period, often only two or three hours, during which underwriter’s sales desk contacts the investors which it had previously identified as interested in buying the bonds, confirms that they will purchase the bonds on the proposed terms, and accepts preliminary orders, also known as “indications of interest,” for the bonds. The order period is typically very short because the underwriter has already identified interested investors, and therefore only requires a short time to contact them and take their preliminary orders for the bonds at the terms previously discussed.

⁵ A bond’s yield is inverse to its price. The higher the yield of a bond, the lower the bond’s price, and vice versa. A high yield/low price means the issuer will pay more interest over the life of the bond.

\$116.15 and a 5% yield. Company A made a profit of \$25,260. On February 19, 2015, Company B sold the bonds to an investment bank (“Company C”) at a price of \$122.35 and a 4.3% yield. Company C then immediately sold the bonds to six of its customers, all small regional banks, at a price of \$124.86 and a 4.0% yield.

Violations

13. MSRB Rule G-17 provides that “in the conduct of its municipal securities activities, each broker, dealer, municipal securities dealer and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.” Negligence is sufficient to establish a violation of MSRB Rule G-17. See In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., Exchange Act Release No. 40352, 1998 WL 518489, at *13 (Aug. 24, 1998). Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer, or municipal securities dealer from using the mails or any instrumentality of interstate commerce “to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security . . . in contravention of any” MSRB rule.

14. The MSRB has interpreted Rule G-17 to not only prohibit deceptive conduct by an underwriter, but also to establish a general duty of an underwriter to deal fairly with issuers of municipal securities, “even in the absence of fraud.” Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities, MSRB (August 2, 2012). The duty of fair dealing under Rule G-17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced. In a negotiated underwriting, the underwriter has a duty to negotiate in good faith with the issuer. Id. As the MSRB stated in a 1997 interpretation of Rule G-17, and reiterated in the 2012 guidance, “[w]hether or not an underwriter has dealt fairly with an issuer is dependent upon the facts and circumstances of an underwriting and cannot be addressed simply by virtue of the price of the issue.”

15. As a result of the conduct described above, Respondent willfully⁶ violated MSRB Rule G-17 and Section 15(B)(c)(1) of the Exchange Act.

Undertakings

16. Respondent has undertaken to:

- a. Retain an independent consultant (the “Independent Consultant”), not unacceptable to the Commission staff, to conduct a review of Respondent’s policies and

⁶ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

procedures as they relate to municipal securities underwriting. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the institution of these proceedings. Respondent shall cooperate fully with the Independent Consultant and the Independent Consultant's compensation and expenses shall be borne by Respondent.

b. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to Respondent, which shall include the Independent Consultant's recommendations for changes in or improvements to Respondent's policies and procedures.

c. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, Respondent shall advise in writing the Independent Consultant and the Commission staff of any recommendations that Respondent considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which Respondent and the Independent Consultant do not agree, Respondent and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall not be required to abide by, adopt, or implement those recommendations.

d. Certify, in writing, compliance with the undertakings set forth above in paragraphs 16(a)-(c). The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Brian Fagel, Assistant Director, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE, Washington, DC 20549, no later than the one-year anniversary of the institution of these proceedings.

e. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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) and 15B(c) of the Exchange Act, it is hereby ORDERED that:

A. Respondent IFS is censured.

B. Respondent IFS shall, within ten (10) days of the entry of this Order, pay a civil penalty in the amount of \$50,000 to the Securities and Exchange Commission, of which \$12,500 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

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 IFS 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 Brian Fagel, Assistant Director, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph B. above. 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, it shall not argue that it is entitled to, nor shall it 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 it 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.

D. Respondent IFS shall comply with the undertakings enumerated in paragraph 16 above.

By the Commission.

Vanessa A. Countryman
Secretary