

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9472 / November 5, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70804 / November 5, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15603

In the Matter of

Piper Jaffray & Co.
and Jane Towery

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 15(B)(c) OF THE SECURITIES
EXCHANGE ACT OF 1934, 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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 15(B)(c)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) against Piper Jaffray & Co. (“Piper”), and that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act and Sections 15(b) and 15(B)(c)(4) of the Exchange Act against Jane Towery (“Towery”).

II.

In anticipation of the institution of these proceedings, Piper and Towery have 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 them and the subject matter of these proceedings, which are admitted, Piper and Towery consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 15(B)(c) of the Securities Exchange Act of 1934, 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 Piper and Towery's Offer, the Commission finds¹ that:

Summary

1. In 2011, the Greater Wenatchee Regional Events Center Public Facilities District ("District") defaulted on \$41.77 million in Bond Anticipation Notes ("BANs") it had issued in November 2008 to finance a multi-use arena and ice hockey rink (the "Regional Center") located in the City of Wenatchee, Washington (the "City"). Piper Jaffray & Co. ("Piper") served as the sole underwriter for the BANs and Jane Towery was the lead investment banker. The Official Statement for the BANs was materially false and misleading.

2. Piper was hired by the District as underwriter as a last minute replacement for a predecessor underwriting firm. The predecessor firm had been working with the District for over a year and had completed a Preliminary Official Statement for long-term bonds which had received an investment grade rating. That predecessor firm withdrew in September 2008 after the global financial crisis prevented access to the bond market and the firm was unable to complete the financing. Piper's engagement with the District started on October 27, 2008. By the time Piper became the underwriter on the deal, the City and the District were desperate to find financing for the Regional Center within a month because of onerous lease payments being demanded by the construction lender. Piper and Towery suggested several financing options, although only one, short-term BANs, was considered viable. The District determined to issue three year BANs that would mature in 2011, with the principal of the BANs to be repaid solely through the issuance of long-term bonds.

3. In this compressed time frame, Piper and Towery conducted inadequate due diligence and, as a result, failed to form a reasonable basis for believing the truthfulness and completeness of material statements in the Official Statement. The Official Statement for the BANs was a lightly revised version of the Preliminary Official Statement prepared by Piper's predecessor and the District's bond counsel that included similar disclosures and relied on the same projections for the Regional Center provided by Global Entertainment Corporation ("Global"), the company hired to develop and manage the Regional Center. Piper and Towery conducted a cursory inquiry into the projections provided by Global, did not inquire about prior projections or revisions, and did not ask to see an independent consultant's review of the projections despite being made aware of its existence, depriving BAN purchasers of material information relating to the revenue projections, the first source of payment for the majority of the BANs.

4. In fact, an independent consultant had been asked to review Global's earlier projections and had raised questions about the Regional Center's economic viability. Despite two

¹ The findings herein are made pursuant to Piper and Towery's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

separate reviews of prior Global projections by the independent consultant, the Official Statement presented the most recent version of Global's projections along with a false and misleading statement to the effect that no financial advisor, accounting or other firm had examined those projections to verify the reasonableness of Global's assumptions or its conclusions.

5. Moreover, Piper and Towery were unaware that the projections in the Official Statement had been revised upward from projections generated a few months earlier after a claim by the City's former Mayor and the District's Contract Manager Allison Williams that Global's projections were inconsistent with its prior projections and not sufficiently optimistic. During a conference call with Global's President Richard Kozuback and Global's financial consultant (with Williams' participation), the City's former Mayor made an impassioned argument that they knew the local citizens better than Global, and those citizens would ultimately support the Regional Center even though Global was experiencing weak ticket sales and other troubling indicators regarding anticipated revenue. Global revised its projections upward and those more optimistic revised projections were included in the Official Statement, without disclosing that the City's former Mayor or Williams had questioned the assumptions underlying the prior set of projections, or that Global had relied on the former Mayor's verbal assertions of future community support.

6. Piper and Towery stated that they focused their due diligence efforts on a contingent loan agreement entered into by the City that operated as a backstop for the payment of the interest (but not the principal) on the BANs and, in particular, the City's ability to make payments if necessary. Under that contingent loan agreement, the City was obligated to loan to the District funds to pay interest on the BANs in the event the District's revenues were insufficient. Nonetheless, a paragraph in the body of the predecessor's Preliminary Official Statement that highlighted how the City's low remaining debt capacity constrained its obligations under that contingent loan agreement was deleted from the body of the Official Statement for the BANs, thereby misleading BAN purchasers concerning the likelihood of permanent financing.

7. The Regional Center's financial results for 2008 through 2011 were worse than Global's most pessimistic projections, with the Regional Center operating at a significant net operating loss. Moreover, after the City filed a validation proceeding, the Chelan County, Washington, Superior Court ruled in 2011 that obligations under a contingent loan agreement constituted "indebtedness" within the meaning of the State constitution and therefore would be limited to the City's remaining debt capacity of \$19.3 million, as the deleted disclosure language had warned. Consequently, the District was unable to issue long-term bonds, and the District defaulted on the payment of principal on the BANs in December 2011.

8. The Washington State Legislature subsequently passed legislation to help the District cure its default by allowing the City to impose an additional sales tax without voter approval and further allowing the District to submit to voters a proposition to impose an additional sales tax. The voters of the District later approved an additional sales tax. On September 28, 2012, the District sold long-term bonds secured solely by sales tax revenues to refinance the BANs.

9. As a result of the negligent conduct described herein Piper and Towery willfully violated Sections 17(a)(2) and (3) of the Securities Act.²

Respondents

10. Piper Jaffray & Co. is a Delaware corporation formed on July 28, 1969 that is headquartered in Minneapolis, Minnesota. It has been registered with the Commission as a broker-dealer since 1969. Piper served as the sole underwriter for the BANs.

11. Jane Towery, age 60, of Seattle, Washington, has been a public finance investment banker and Managing Director at Piper since joining the firm in 2006, and had previously worked in a similar capacity at another firm for over twenty years. Towery received an M.B.A. from the University of Washington in 1981. She possesses Series 7 and 63 FINRA licenses.

Other Relevant Entities

12. The Greater Wenatchee Regional Events Center Public Facilities District is a municipal corporation formed in 2006 pursuant to Washington state law by nine Washington cities and counties in order to fund the Regional Center. The District issued \$41.77 million of BANs in November 2008 to finance the purchase of the Regional Center. The District defaulted on the BANs in 2011.

13. Allison Williams, age 48, of Wenatchee, Washington, has served as the Executive Services Director of the City of Wenatchee, Washington since 2005. From 1998 to 2005, Williams worked for the City as a community planner in the Department of Community Development. Pursuant to an agreement between the City and the District, and at the direction of the City's former Mayor, Williams served as a senior staff member for the District, with the title "Contracts Manager," from its formation through September 2009.

14. Global Entertainment Corporation is a Nevada corporation headquartered in Arizona. Global served as the developer and initial operator of the Regional Center. At the time the Regional Center was under construction, Global had developed and was managing facilities in Rio Rancho, New Mexico and Prescott Valley, Arizona. Global had also completed development of, but did not manage, facilities in Broomfield, Colorado; Youngstown, Ohio; Larimer County, Colorado; and Hidalgo, Texas. Global engaged a financial consultant to assist it in preparing financial projections for the Regional Center project.

15. Richard Kozuback, age 60, of Chelan, Washington, has been the President and CEO of Global since 2001.

² 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)).

Background on the District

16. In 2006, the City and eight neighboring municipalities and counties formed the District and the District in turn entered into a contract with Global to develop the Regional Center.

17. Within the District, the City took on primary responsibility for managing the development and the construction of the Regional Center. The City Council requested that an independent consultant be brought in to review the Regional Center project and the financial projections provided by Global in August 2006 and compare it to other facilities, so as to get an understanding of whether the project could work in the City.

18. On August 23, 2006, the independent consultant submitted its first report. According to the 2006 report, the scope of the independent consultant's work was "to prepare an impartial third party review of the reasonableness of [Global's] financial projections to ensure the financial pro-forma presented to the City is realistic and attainable." In the 2006 report, the independent consultant indicated there could be an operating deficit at the Regional Center. Among other things, the independent consultant concluded Global's projection regarding one key metric, annual net operating income, was possibly overstated by \$200,000 to \$300,000 or by 16% to 25% in the first year.

19. In September 2006, the City Council approved the execution of an interlocal agreement with the newly formed District pursuant to which the City agreed to provide financial support for all or a portion of the bonds to be issued by the District to finance the Regional Center. The financial support was documented by a contingent loan agreement. Construction on the Regional Center began shortly thereafter.

20. As construction work on the Regional Center progressed, unexpected building costs in late 2006 and early 2007 led to both cost overruns and a redesign to a smaller facility than originally planned. Global changed its projections in March 2007 to take into account that under the redesign the facility was to be smaller with fewer seats, but more luxury suites.

21. The City Council requested that the independent consultant perform a review of the new March 2007 projections for the downsized facility in comparison with the independent consultant's 2006 report. In its resulting May 17, 2007 report, the independent consultant identified areas where it saw issues with Global's new projections and posed questions about the projections. Among other items, the independent consultant questioned the unexpected increases in operations and maintenance costs and management fees and the unexplained "substantial" increase in food and beverage revenue projections. The independent consultant concluded that "[w]hile the [Regional] Center may very well still be economically viable even in a somewhat smaller configuration, the aforementioned anomalies in the new financial projections pose too many questions to be certain. . . . However, further review of the explanations for the referenced expense items and some of the revenue reductions may well still support the reduced size facility." The City provided the independent consultant's revised report to Global for Global's response. However, the independent consultant was never asked to and did not do any further review of any work product by Global.

22. The City Council reviewed the independent consultant's 2007 report and the Global response when it considered entering into a lease agreement required by the construction lender secured by Global. The lease agreement imposed onerous obligations on the District upon completion of the Regional Center. In particular, the District was obligated to purchase the Regional Center once construction was substantially complete, and if it was unable to do so, make substantial lease payments to the lender. The lease agreement obligated the City to back the lease payments in the event the District was unable to make them.

23. On May 24, 2007, the City Council voted to proceed with the Regional Center in a split vote with the City's former Mayor breaking the tie. Shortly thereafter, on May 29, 2007, the Board of the District also authorized the lease agreement. Construction, which had temporarily halted pending finalization of Global's construction loan after the prior contractor was unable to arrange financing, resumed in September 2007.

The Financing of the Regional Center

24. Contemporaneous with the design and construction of the Regional Center, Global, as the future operator of the Regional Center, worked to sell luxury suites and various other forms of premium seating, naming rights, and advertising that together constituted contractually obligated income ("COI"), an important component of the Regional Center's future revenue stream. In addition, Global worked to secure team tenants for the Regional Center.

25. As early as April 2008, Kozuback became concerned because COI sales were not as high as Global had anticipated, and in May 2008, Global began preparing new projections. On June 13, 2008, Global provided these new projections for use in preparing both the official statement for the bonds that the District intended to sell to finance the purchase of the Regional Center and for the budget for the Regional Center. In the June 2008 projections, Global significantly decreased the COI line item primarily due to the lack of sales to date. Global also reduced the projected cumulative net cash flow before taxes line item – the amount projected to be available to the District for debt service – by nearly 70% from the projections presented in 2007.

26. At the time Global presented its June 2008 projections, the District, with the assistance of its bond counsel and its initial underwriter, was working toward issuing bonds to purchase the Regional Center in the fall of 2008. The bond issue needed to be timed so as to have the funds to purchase the Regional Center available by the time the Regional Center was substantially completed, which was anticipated for September 2008.

27. The District's underwriter at the time of the June 2008 projections advised the District that based upon Global's June 2008 numbers, the District bond issuance might be difficult. Shortly after receiving Global's June 2008 projections, the City's former Mayor and Williams urged Kozuback and Global's financial consultant to provide more optimistic numbers. The former Mayor and Williams held a conference call with Kozuback and Global's financial consultant, during which the former Mayor made an impassioned argument that Global's projections had not been sufficiently optimistic, that they knew the local citizens better than Global, and those citizens would ultimately support the Regional Center even though Global was experiencing weak ticket sales and other troubling indicators regarding anticipated revenue. After

the conversation, Williams emailed Kozuback, “[t]o reiterate our conversation this [morning], if we were to recommend the current pro forma as a budget for consideration to the District, staff would not recommend approval. Based on the spreadsheet ... sent earlier, there are a number of areas that are considerably out of line with your prior projections, upon which we based our endorsement of the project.”

28. Prior to the District, Global was perceived to be a competent operator of events centers, but Global and Kozuback had limited experience forecasting revenues and virtually no experience with municipal offerings. Nonetheless, even though COI continued to be a problem for Global in June and July of 2008, on July 1, 2008 Global provided a set of revised projections in response to the plea for more optimistic numbers. The email from Global that attached the revised projections states, “As you will note the revenues increased significantly throughout the forecast. Yet we still think they are realistic.” Upon receipt of the new Global numbers, Williams emailed the team working on the financing, stating, “[h]ere is the revised pro forma. It has been completely redone, so we’ll be doing a fresh review on our end, but it looks closer to what is needed.” However, the District’s further review of the purportedly “realistic” projections was inadequate.

29. Both the June 2008 and the July 2008 projections presented by Global showed less cash flow than the numbers previously presented by Global and reviewed by the independent consultant in August 2006 and May 2007. According to the District, the projected cash available for debt service (cash flow before taxes and debt) changed from May 2007 as follows:

Date of Global projection	Cash Flow Before Taxes and Debt Service in Dollars
May 2007	1,210,207
June 13, 2008	370,245
July 1, 2008	839,365

30. After receiving the July 2008 projections, the District financing team, including Williams, bond counsel, and the District’s initial underwriter, pushed forward with the bond issuance. In early September, the District’s initial underwriter, having obtained credit ratings and finalized a Preliminary Official Statement deemed near final by the District, attempted to sell the District’s long-term bonds.

31. However, in September of 2008, the global financial crisis made it impossible for the District to issue bonds as planned. In late September 2008, the District’s initial underwriter reported to the City and the District that there was no access to the market and it was unable to underwrite the bonds at that time.

32. In early October 2008, Global’s lender on the construction of the facility maintained that the Regional Center was substantially completed and therefore the first lease payment under the lease agreement was due on November 3, 2008.

33. Towery and Piper began working on the project on October 22, 2008, just more than three weeks before the District sold its BANs on November 13. Piper and Towery suggested

several financing options, although only one, short-term BANs, was considered viable. BANs are short-term obligations issued by municipal entities that are expected to be repaid at a later time through the issuance of long-term bonds. As underwriter for the BANs, Piper agreed to purchase the BANs from the District and then offer the BANs for sale to investors. In November 2008, the District issued \$41.77 million of three year BANs to finance the purchase of the Regional Center. The principal of the BANs was payable on December 1, 2011.

34. By the time Towery and Piper agreed to underwrite the BANs for the District, Piper's predecessor had already completed the Preliminary Official Statement for long-term bonds which had received an investment grade rating. The Official Statement for the BANs was based on that Preliminary Official Statement, which included the same financial projections from Global and similar disclosures. Piper incorporated all modifications from the Preliminary Official Statement for the long-term bonds to the Official Statement for the BANs, including modifications submitted by other parties, as it maintained the master electronic version of the document after being hired by the District. Towery and Piper did little to verify significant portions of the content, implicitly relying on the efforts of others. Nevertheless, Towery and Piper never contacted the other underwriter and never determined the extent of its due diligence activities.

35. In 2008, Piper's due diligence policies and procedures provided limited guidance to its bankers relating to due diligence. Piper's Fixed Income Policy and Procedure Manual contained a short section on the evaluation of issuers and a short section on due diligence documentation. Both sections left the banker on a particular transaction to decide on an appropriate due diligence plan and did not require a written plan or a supervisory review. Piper's policies and procedures in 2008 required that a form entitled Public Finance Closed File Checklist be completed and signed by the senior banker on a transaction after the transaction was complete. According to Towery, Piper's due diligence policies and procedures required that she review the documents listed on the form, including feasibility reports and pro formas, but Towery was not aware of any additional due diligence requirements under Piper's policies. Towery did not ask for or review all the required documents, including the independent consultant's report that she believed at the time was a feasibility report and the various pro formas prepared by Global. Piper did not have policies and procedures reasonably designed to ensure that Towery's due diligence was appropriate or that she followed Piper's policies and procedures.

36. Although the Official Statement listed Regional Center revenues as the first source of payment for the majority of the BANs, Piper and Towery stated that they focused their due diligence on a contingent loan agreement entered into by the City and the District that operated as a backstop for the payment of interest on the BANs and, in particular, the City's ability to make payments if necessary. Towery conducted only a cursory inquiry into the projections provided by Global. Towery had no contact with Global. She did not review the Global projections that were used for the drafting of the Preliminary Official Statement for the failed bond offering to check for accuracy; she simply read what was in the Preliminary Official Statement that she requested from Williams. Towery did not check with Global to see if the projections or the financials underlying the projections had changed since the drafting of the Preliminary Official Statement. She was not aware of the various changes in Global's projections from May 2007 to June 2008 to July 2008. She was not aware of the June 2008 discussion between the former Mayor and Williams and

Kozuback and Global's financial consultant that prompted the more optimistic July 2008 projections.

37. Towery conducted no due diligence regarding Global's business. Towery failed to review Global's SEC filings; she failed to investigate other current and past projects Global worked on; she failed to ascertain whether Global was involved in any lawsuits; and she did not determine whether Global was a profitable company.

38. Towery disregarded the work performed by the independent consultant. Although Towery learned of at least one of the independent consultant's reports from Williams, she did not ask to see the studies to determine their relevance or their impact on the adequacy of the Official Statement.

39. Towery's due diligence consisted of reviewing the following documents: the Preliminary Official Statement, the contingent loan agreement and various agreements among members of the District and between the City and the District, the City's financial statements, sales tax collection histories received from the City, and rating reports on the unissued bonds. Towery also researched the City's most recent bond offering and financial statements. Towery and Piper spoke to bond counsel, Williams, and another City employee performing services for the District about the documents reviewed by Towery. Towery's only substantive changes to the Preliminary Official Statement were changes to reflect the issuance of BANs rather than bonds. Although bond counsel was involved in making changes to the Preliminary Official Statement, Piper never asked for, nor received, an opinion from bond counsel as to the accuracy or completeness of the Official Statement for the BANs.

40. According to Towery, the City's ability to loan money to the District in the event of a District shortfall was the most important aspect of the offering and this is where she focused her due diligence. But Towery failed to realize that the Official Statement for the BANs was materially false and misleading because the body of the Official Statement did not disclose that the City's obligations under a contingent loan agreement for any future long-term bonds could be limited by the City's remaining debt capacity. An initial draft of the Official Statement for the BANs contained a lightly revised paragraph from the Preliminary Official Statement prepared for the aborted long-term bond offering, entitled "Contingent Loan Agreement - Limitation of Pledge." That paragraph disclosed that the City's obligation to make loans under the contingent loan agreement was limited by its remaining debt capacity of \$19.3 million, and explicitly warned that "[s]hould the District encounter financial difficulties causing the District to be unable to pay debt service on the Revenue and Special Tax Notes when due, there is no guarantee that the City will have the capacity to make up the entire shortfall." This paragraph was not included in the body of the final Official Statement for the BANs. Since the BANs were to be paid at the end of December 2011 by bonds, the City's debt limits and potential limits to the City's ability to support a bond issuance designed to repay the notes were material to purchasers of the BANs.

41. The drafters of the Official Statement for the BANs apparently did not notice a second reference to how the obligations of the City under the Contingent Loan Agreement were limited by its debt capacity, hidden on page 5 of Appendix C under the caption "Limits on Amount of General Obligation Indebtedness," an otherwise generic description of the different limits on

general obligation indebtedness of the City. This reference was factually inaccurate in that it referred to an obligation under the Contingent Loan Agreement to make loans to pay the principal of the BANs. Moreover, given the context and location of this reference, it did not constitute adequate disclosure to a reasonable investor.

42. The Official Statement for the BANs included a section titled “Projected Regional Center Revenue and District Tax Revenue” which included the following language that was also in the Preliminary Official Statement for the aborted bond issue:

No feasibility report on the [District] and Global’s unaudited projected financial performance of the Regional Center has been prepared and the unaudited projected financial performance of the Regional Center has not been examined by any financial adviser or by any accounting or other firm in order to verify either the reasonableness of the assumptions used by the [District] and Global, the appropriateness of the preparation and presentation of the unaudited projected financial performance of the Regional Center or the conclusions contained in such unaudited projected financial performance of the Regional Center.

43. The Official Statement was materially false and misleading because the projected financial performance of the Regional Center had been examined twice by an independent consultant which raised questions about the Regional Center’s economic viability in two separate reports.

44. The Official Statement was materially false and misleading because it failed to inform investors that Williams and the City’s former Mayor had questioned the assumptions underlying Global’s projections and asserted that the Wenatchee community would support the Regional Center, and that the projections contained within the Official Statement had been made more optimistic based upon the assertions made by Williams and the City’s former Mayor.

45. Piper, which received \$146,195 for underwriting the BANs, negligently recommended and sold the BANs to its customers notwithstanding its failure to form a reasonable basis for believing the truthfulness of key statements contained in the Official Statement for the BANs.

Legal Discussion

46. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” Section 17(a)(3) of the Securities Act makes it unlawful “to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” The prohibitions of Sections 17(a)(2) and (a)(3) apply to the offer or sale of municipal securities. In order to establish a cause of action under Sections 17(a)(2) and 17(a)(3), the Commission must establish that: (1) the misrepresentations or omissions were material; and (2) the misrepresentations or omissions were in

the offer or sale of securities. Aaron v. SEC, 446 U.S. 680 (1980). No finding of scienter is required to establish a violation of Sections 17(a)(2) and 17(a)(3); negligence is sufficient. Id. at 696-97. Negligence is a failure by an actor to conform conduct to the standard of “a reasonable [person] under like circumstances.” See Restatement (Second) of Torts §§ 282 and 283. A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

47. “By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.” Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (quoting Municipal Securities Disclosure, Exchange Act Rel. No. 26100, 1988 SEC LEXIS 2619 at *53 (Sept. 22, 1988), 53 Fed. Reg. 37778 (Sept. 28, 1988) (“1988 Proposing Release”). An underwriter “occupies a vital position” in a securities offering because investors rely on its reputation, integrity, independence, and expertise. Id. at 641-2 (rejecting underwriter’s argument that he would have disclosed the information “to investors if they had only asked him the right questions” and stating that “underwriters have a ‘heightened obligation’ to ensure adequate disclosure . . .”); see also 1988 Proposing Release, 53 Fed. Reg. at 37787.

48. In negotiated municipal offerings, where the underwriter is involved in the preparation of the official statement, development of a reasonable basis for belief in the accuracy and completeness of the statements therein should involve an inquiry into its key representations. 53 Fed. Reg. at 37789. “Sole reliance on the representations of the issuer [will] not suffice.” Id. An underwriter must investigate and disclose material facts that are known or “reasonably ascertainable.” Id. at 37787. While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a “heightened obligation” to take steps to ensure adequate disclosure. Id. at 37788 n.74; Dolphin and Bradbury, Inc., 512 F.3d at 642; see also SEC v. GLT Dain Rauscher, Inc., 254 F.3d 852, 858 (9th Cir. 2001) (holding that municipal underwriter “had a duty to make an investigation that would provide him with a reasonable basis for a belief that the key representations in the statements provided to the investors were truthful and complete”). Industry standards at the time, as evidenced by, among other sources, the Government Finance Officers Association’s 1991 “Disclosure Guidelines for State and Local Government Securities,” suggest that Official Statements should include disclosure of financial feasibility reports or any other reports or studies known to the issuer that may have a significant bearing on the conclusion of feasibility of the project.

49. There is a substantial likelihood that a reasonable investor determining whether to purchase the BANs would attach importance to the disclosures in the Official Statement regarding the examinations of and revisions to the financial projections for the Regional Center as well as information relating to the City’s financial support for the BANs, including support for the issuance of long-term bonds to repay the BANs.

50. Based on the conduct described above, Piper and Towery willfully violated Sections 17(a)(2) and (3) of the Securities Act.

Piper's Remedial Efforts

51. In September 2012, the District issued long-term bonds to retire the BANs, including principal along with interest from the date of default. Prior to the sale of the long-term bonds to refinance the BANs, on September 10, 2012, Piper entered into a settlement agreement with the District and others pursuant to which Piper underwrote the 2012 bonds at a reduced underwriting discount and made a settlement payment to the District.

52. In December 2012, Piper revised its due diligence policies and procedures, including various due diligence checklists, and conducted training of Piper's banking personnel, including Towery.

53. In determining to accept Respondents' Offer, the Commission considered remedial acts undertaken by Piper.

Undertakings

Towery has undertaken to:

54. Limit her activities as an associated person of a broker-dealer or municipal advisor for twelve months, commencing immediately upon entry of this Order, by refraining from:

- (i) any contact with any existing or prospective municipal issuer client or customer, either directly or indirectly through any such issuer representative, agent, or counsel, for the purpose, in whole or in part, of conducting, maintaining, or developing business; and
- (ii) making decisions on behalf of a broker-dealer in connection with any due diligence activities.

Piper has undertaken to:

55. Retain at its expense and within thirty (30) days of the entry of this order, an independent consultant (the "Consultant") not unacceptable to the staff of the Division of Enforcement ("Commission Staff") to (1) review Piper's municipal underwriting due diligence policies and procedures to ensure compliance with the federal securities laws; and (2) review Piper's supervisory policies and procedures relating to municipal underwriting due diligence to ensure compliance with the federal securities laws.

56. Require the Consultant to complete its review and submit a written report (the "Report") to Piper and the Commission Staff within ninety (90) days of the issuance of this Order. Piper shall require that the Report describe the review performed, the conclusions reached, and recommendations for any changes in or improvements to Piper's municipal underwriting due diligence and/or supervisory policies and procedures, including but not limited to policies and procedures related to written due diligence plans, training, record-keeping, monitoring, verification, and the adequacy of the time budgeted to conduct due diligence.

57. Within thirty (30) days of receiving the Report, adopt and implement all recommendations contained in the Report; provided, however, that as to any recommendation that Piper considers to be, in whole or in part, unduly burdensome or impractical, Piper may submit in writing to the Consultant, within thirty (30) days of receiving the Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five (45) days of receiving the Report, Piper and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that Piper considers to be unduly burdensome or impractical. Piper shall ultimately abide by the determination of the Consultant.

58. Require the Consultant to enter into an agreement that provides that for the period of the engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Piper, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant's duties under this Order shall not, without prior written consent of Commission Staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Piper, 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.

59. To ensure the independence of the Consultant, Piper shall not have the authority to terminate the Consultant without prior written approval of Commission Staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

60. To certify, in writing, compliance with the undertakings according to the timelines set forth above. 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 Piper agrees to provide such evidence. The certification and supporting material shall be submitted to Cary S. Robnett, Assistant Director, Municipal Securities and Public Pensions Unit, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104 or to her successor in office no later than sixty (60) days from the receipt of the Consultant's report. Piper would certify continued compliance with all of the undertakings on the one year and two year anniversaries of Piper's initial compliance certification. Each of the certifications will address Piper's adherence to the Independent Consultant's recommendations regarding due diligence and due diligence supervision.

61. Preserve, for a period of not less than five (5) years from the date of the Order, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth herein.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant Section 8A of the Securities Act and Sections 15(b) and 15(B)(c) of the Exchange Act, it is hereby ORDERED that:

Piper

A. Piper shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Piper is censured.

C. Piper shall, within (10) days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 to the United States Treasury. 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 Piper 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 Cary S. Robnett, Assistant Director, Municipal Securities and Public Pensions Unit, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. Piper shall comply with the undertakings enumerated in Section III above.

Towery

A. Towery shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Towery is censured.

C. Towery shall, within (10) days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. 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 Towery 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 Cary S. Robnett, Assistant Director, Municipal Securities and Public Pensions Unit, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. Towery shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary