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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 RMR ASSET MANAGEMENT
19 COMPANY, BRUCE A.
20 BROEKHUIZEN, DOUGLAS J.
21 DERRYBERRY, DAVID R. FROST,
22 RICHARD C. GOUNAUD, NEIL P.
23 KELLY, JOHN M. KIRSCHENBAUM,
24 DAVID S. LUTTBEG, TIMOTHY J.
25 MCALOON, JOCELYN M. MURPHY,
26 MICHAEL S. MURPHY, RALPH M.
27 RICCARDI, DEWEY T. TRAN, and
28 PHILIP A. WEINER,

Defendants.

Case No.: '18CV1895 AJB JMA

**COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF**

1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **INTRODUCTION**

4 1. This matter involves a long-running fraudulent scheme operated by
5 Defendant Ralph M. Riccardi (“Riccardi”) and his firm, Defendant RMR Asset
6 Management Company (“RMR”), to purchase new issue municipal bonds (“new issue
7 bonds”) and quickly re-sell or “flip” those bonds to broker-dealer customers. Riccardi
8 hired the other individual Defendants, Bruce A. Broekhuizen (“Broekhuizen”), Douglas
9 J. Derryberry (“Derryberry”), David R. Frost (“Frost”), Richard C. Gounaud
10 (“Gounaud”), Neil P. Kelly (“Kelly”), John M. Kirschenbaum (“Kirschenbaum”), David
11 S. Luttbeg (“Luttbeg”), Timothy J. McAloon (“McAloon”), Jocelyn M. Murphy (“J.
12 Murphy”), Michael Sean Murphy (“M. Murphy”), Dewey T. Tran (“Tran”), and Philip A.
13 Weiner (“Weiner”) (these twelve individuals are referred to collectively as the
14 “Participants”), to flip new issue bonds and other securities on behalf of RMR.

15 2. From at least 2009 to 2017, Defendants purchased new issue bonds in
16 primary offerings from underwriters and then quickly sold or flipped those bonds to their
17 own broker-dealer customers for a commission, usually within the same day. Between
18 2012 and 2016, Defendants executed over 50,000 trades, generating millions of dollars in
19 profits for RMR.

20 3. RMR’s fraudulent flipping business model exploited a unique feature of
21 municipal underwriting – a set of issuer-approved rules known as the “priority of orders.”
22 The priority of orders dictates the priority that underwriters assign to orders submitted by
23 various classes of investors. Typically, municipal issuers require underwriters to give the
24 highest priority to retail investor orders when allocating new issue bonds while broker-
25 dealers frequently receive the lowest priority. Because retail orders take priority and
26 because municipal bond offerings are often oversubscribed (*i.e.*, orders for the bonds
27 exceed the amount of bonds available for purchase), broker-dealers who want to purchase
28 new issue bonds for their own inventory are often unable to obtain them. To circumvent

1 the priority of orders, Defendants, operating as unregistered brokers, solicited orders for
2 new issue bonds from broker-dealers who were typically unable to purchase those bonds
3 directly from underwriters and filled those orders with bonds the Defendants obtained
4 from underwriters in new offerings. In exchange for this service, Defendants charged
5 their broker-dealer customers a fixed, pre-arranged commission, usually one dollar per
6 bond.

7 4. At all relevant times, RMR was controlled by and acted through Riccardi.

8 5. Many Defendants, including RMR, Broekhuizen, Derryberry, Frost, Kelly,
9 Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, obtained new issue
10 bonds by misrepresenting themselves as retail investors or asset managers for retail
11 investors when, in fact, they operated predominantly as flippers, placing orders on behalf
12 of other broker-dealers. Because issuers generally prioritize retail investors (or their
13 representatives), this deception allowed these Defendants to purchase a significantly
14 higher volume of new issue bonds than they would have obtained but for the deceptive
15 conduct.

16 6. During the relevant time period, RMR, Broekhuizen, Derryberry, Frost,
17 Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner engaged in
18 various types of fraudulent conduct to create the false appearance that they were, or
19 managed money on behalf of, retail investors and therefore their orders qualified for
20 higher priority, including:

21 a. Use of fraudulent zip codes: When placing orders for new issue
22 bonds, these Defendants provided fraudulent zip codes to indicate that the orders
23 were for a resident of the jurisdiction issuing the debt. Providing a zip code from
24 within the issuing jurisdiction was often necessary to qualify as top priority
25 “retail.”

26 b. Use of Multiple Entities and DBA names: Instead of placing orders
27 under RMR’s or Riccardi’s name, Defendants held accounts and placed orders
28 under dozens of different doing-business-as (“DBA”) names. Even within a single

1 brokerage firm, Defendants often maintained multiple customer accounts under
2 different DBA names to gain access to multiple salespeople at the firm, and
3 thereby maximize the number of orders they could place and allotments they could
4 receive of new issue bonds. RMR, Broekhuizen, Derryberry, Frost, Kelly,
5 Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner created and used
6 these DBAs to conceal from underwriters and/or issuers that any bonds allocated to
7 their DBAs would go to RMR.

8 c. Deceptive means to conceal flipping: Defendants knew that
9 underwriters and issuers commonly monitor early trading to look for signs of
10 flipping. In an effort to avoid detection of their flipping, which could lead
11 underwriters to reject their future retail orders, RMR, Broekhuizen, Derryberry,
12 Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner
13 would adjust prices, quantities, and times on their sales tickets to their purchasing
14 broker-dealer customers to disguise their subsequent sale or flip of the bonds to
15 those customers.

16 7. In addition, some Defendants, including RMR, Frost, Kirschenbaum, and
17 Riccardi, conspired with a registered representative (“Representative”) at an underwriting
18 firm (“Firm A”) in a scheme to obtain new issue bonds through fraudulent retail orders.
19 Representative was the salesperson for multiple accounts held at Firm A by Riccardi,
20 Frost, and Kirschenbaum, in the name of RMR and various other DBA names.
21 Representative caused Firm A to submit retail orders on behalf of these Defendants to
22 senior managers and/or issuers even though Representative knew that the orders included
23 fraudulent zip codes to obtain the highest priority. RMR, Frost, Kirschenbaum, and
24 Riccardi aided and abetted Representative’s materially misleading misrepresentations by:
25 (1) providing Representative with fraudulent zip codes to submit with their orders; and/or
26 (2) complying with Representative’s requests to disguise their subsequent flip of new
27 issue bonds Representative obtained for them through fraudulent retail orders.

28 8. By engaging in the conduct alleged in this Complaint:

1 a. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum,
2 McAloon, J. Murphy, Riccardi, Tran, and Weiner violated the antifraud provisions
3 of Section 10(b) of the Securities and Exchange Act of 1934 (“Exchange Act”), 15
4 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;

5 b. RMR, Frost, Kirschenbaum, and Riccardi aided and abetted
6 Representative’s violations of Section 10(b) of the Exchange Act, 15 U.S.C. §
7 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b);

8 c. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum,
9 McAloon, J. Murphy, Riccardi, Tran, and Weiner violated Municipal Securities
10 Rulemaking Board (“MSRB”) Rule G-17; and

11 d. All Defendants violated Section 15(a)(1) of the Exchange Act, 15
12 U.S.C. § 78o(a)(1), by acting as unregistered brokers.

13 9. Based on the aforementioned violations, the Commission brings this action
14 to request that the Court enter a final judgment that, *inter alia*: enjoins Defendants from
15 future violations of the relevant provisions of the Exchange Act and MSRB Rule G-17;
16 enjoins Defendants from opening or maintaining any brokerage account without
17 providing the brokerage firm a copy of this Complaint and a copy of any final judgment
18 entered against them in this action; and orders Defendants to disgorge ill-gotten gains
19 from their illegal conduct, together with prejudgment interest thereon, as well as pay civil
20 penalties based on their violations of the Exchange Act and MSRB Rule G-17.

21 **JURISDICTION AND VENUE**

22 10. The Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b),
24 77t(d)(1), 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27(a) of the Exchange
25 Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), and 78aa(a).

26 11. Defendants have, directly or indirectly, made use of the means or
27 instrumentalities of interstate commerce or of the mails, in connection with the
28 transactions, acts, practices, and courses of business alleged in this Complaint.

1 12. Venue is proper in this district pursuant to Section 22(a) of the Securities
2 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a),
3 because certain of the transactions, acts, practices, and courses of conduct constituting
4 violations of the federal securities laws occurred within this district. For example,
5 between at least 2012 and 2016, Riccardi operated RMR, which contracted with the
6 Participants, out of his home, which is located within this district. In addition, between at
7 least 2012 and 2016, Gounaud, J. Murphy, and M. Murphy regularly transacted with and
8 conducted securities trades on behalf of, and collectively received hundreds of thousands
9 of dollars in transaction-based compensation from, RMR, which conduct constituted
10 violations of the federal securities laws occurring within this district.

11 **THE DEFENDANTS**

12 13. **RMR** is a California corporation with its principal place of business in
13 Chula Vista, California. RMR's primary activity is to buy and quickly re-sell or flip new
14 issue bonds and other securities. RMR is owned by Riccardi and his wife. RMR has
15 never been registered with the Commission as a broker-dealer.

16 14. **Riccardi** resides in Chula Vista, California. Riccardi is RMR's president
17 and directs RMR's operations. In addition, Riccardi traded new issue bonds under the
18 entity name of RMR. Before forming RMR in 1995, Riccardi held Series 3 and 7
19 securities licenses and had at least a decade of municipal industry experience.

20 15. **Broekhuizen** resides in Brockport, New York. Broekhuizen previously held
21 Series 7, 52, and 63 securities licenses and had approximately 18 years of industry
22 experience before he began flipping bonds for RMR. Broekhuizen worked for RMR
23 from at least 2008 to 2017.

24 16. **Derryberry** resides in McKinney, Texas. Derryberry previously held a
25 Series 7 securities license and had approximately 4 years of industry experience before he
26 began flipping bonds for RMR. Derryberry worked for RMR from at least 2011 to 2017.
27
28

1 17. **Frost** resides in Spring Lake, New Jersey. Frost has never been registered
2 with the Commission as a broker-dealer or as an associated person of a registered broker-
3 dealer. Frost worked for RMR from at least 2007 to 2017.

4 18. **Gounaud** resides in Chester, New Jersey. Gounaud previously held Series
5 7, 24, and 63 securities licenses and had approximately 19 years of industry experience
6 before he began flipping bonds for RMR. Gounaud worked for RMR from at least 2009
7 to 2017.

8 19. **Kelly** resides in Plandome, New York. Kelly previously held Series 3, 7, 8,
9 63, and 65 securities licenses and had approximately 15 years of industry experience
10 before he began flipping bonds for RMR. Kelly worked for RMR from at least 2010 to
11 2017.

12 20. **Kirschenbaum** resides in Seattle, Washington. Kirschenbaum previously
13 held Series 3, 7, and 63 securities licenses and had approximately 12 years of industry
14 experience before he began flipping bonds for RMR. Kirschenbaum worked for RMR
15 from 2010 to 2017.

16 21. **Luttbeg** resides in San Diego, California. Luttbeg previously held a Series
17 6 license and had approximately 2 years of industry experience before he began flipping
18 bonds for RMR. Luttbeg worked for RMR from 2011 to 2014.

19 22. **McAloon** resides in Chatham, New Jersey. McAloon previously held Series
20 3, 7, 63, and 66 securities licenses and had approximately 20 years of industry experience
21 before he began flipping bonds for RMR. McAloon worked for RMR from at least 2011
22 to 2017.

23 23. **J. Murphy** resides in Denver, Colorado. J. Murphy previously held Series 7
24 and 63 securities licenses and had approximately 8 years of industry experience before
25 she began flipping bonds for RMR. J. Murphy worked for RMR from at least 2010 to
26 2017.

27 24. **M. Murphy** resides in Denver, Colorado. M. Murphy previously held
28 Series 7 and 63 securities licenses and had approximately 6 years of industry experience

1 before he began flipping bonds for RMR. M. Murphy worked for RMR from at least
2 2008 to 2017.

3 25. **Tran** resides in Land O' Lakes, Florida. Tran previously held Series 7, 53,
4 and 63 securities licenses and had approximately 16 years of industry experience before
5 he began flipping bonds for RMR. Tran worked for RMR from at least 2008 to 2017.

6 26. **Weiner** resides in Conifer, Colorado. Weiner has never been registered with
7 the Commission as a broker-dealer or as an associated person of a registered broker-
8 dealer. Weiner worked for RMR from 2001 to 2016.

9 **BACKGROUND ON NEGOTIATED OFFERINGS OF MUNICIPAL BONDS**

10 27. Municipalities often raise money by issuing bonds that are sold to the public
11 through an underwriting process. As part of this process, one broker-dealer or a
12 syndicate of broker-dealers – also known as underwriters – purchase new bonds from the
13 issuer and sell the securities to investors.

14 28. New issue bonds in negotiated offerings are made available to the public
15 during designated “order periods,” which are windows of time during which the
16 underwriters solicit orders from their customers. Underwriters announce and market
17 offerings by widely distributing electronic pricing wires to broker-dealers, who may be
18 interested in purchasing bonds for their inventory and/or marketing the bonds to their
19 customers. The pricing wires detail the bonds that will be offered for sale as well as rules
20 and restrictions that apply to the offering.

21 29. An issuer may specify separate order periods for different categories of
22 customers. Often, there is an initial order period reserved exclusively for retail
23 customers, known as a “retail order period.” The pricing wires distributed by the
24 underwriters to other broker-dealers frequently announce retail order periods and may
25 also contain definitions, which the issuer has either written or agreed to, to establish who
26 is and is not eligible to participate in a retail order period. For example, in some cases
27 “retail” orders can only be placed by residents of the issuer’s jurisdiction. Asset
28 managers transacting on behalf of individual clients generally meet the definition of

1 “retail.” In addition, issuers often require submission of zip codes with retail orders as a
 2 way to verify that the customer is a resident of the issuer’s jurisdiction. Such a
 3 requirement would be stated on the pricing wire.

4 30. Orders for bonds in a primary offering often exceed the amount of bonds
 5 available. The senior manager and issuer decide which orders will be filled. Priority
 6 provisions, which are usually set by issuers, are specified on the pricing wire and
 7 establish the sequence in which bonds will be allocated to specific order types. Where
 8 the issuer includes a retail order period, retail orders are generally afforded the highest
 9 priority. The priority afforded to retail customers means that, where an offering is
 10 oversubscribed, retail customers have the best chance of getting their orders filled.

11 FACTUAL ALLEGATIONS

12 31. Riccardi formed RMR in 1995. Between 2001 and 2010, Riccardi hired the
 13 Participants to increase the number of orders that could be placed on behalf of RMR and,
 14 consequently, the volume of new issue bonds RMR could purchase and flip to broker-
 15 dealer customers. Riccardi and the Participants opened and maintained numerous
 16 accounts at underwriting firms so that they could place orders for new issue bonds
 17 underwritten by different broker-dealers.

18 32. To disguise that all of the Participants’ accounts were connected to RMR,
 19 Riccardi directed the Participants to open brokerage accounts under DBA names.
 20 Riccardi knew that the Participants would be allocated more new issue bonds if they were
 21 perceived to be independent entities rather than flippers working on behalf of RMR.

22 33. Each Defendant operated under multiple DBA names, as shown in the chart
 23 below. Defendants commonly opened multiple accounts at the same firm under different
 24 DBA names, with each account assigned a different sales representative, to increase the
 25 pool of sales representatives to whom they could submit orders.

26 Defendant	DBA Names Used	
27 Broekhuizen	BAB Holdings DAR Management Group	Gate Hill Capital Oak Hill Capital
28		

Defendant	DBA Names Used	
Derryberry	Jacob Capital Holdings	Joseph Capital Holdings
Frost	Eagle Capital Management Madison Associates	Shoreline Partners Worthington Partners
Gounaud	Chester Cliffwood Associates Kingston Court Associates	Village Green Advisors
Kelly	AME Capital	NPK Capital
Kirschenbaum	Bess Investments	UJB Capital
Luttbeg	Barcelona Financial Management, LLC Madrid Financial Management	Valencia Financial Management
McAloon	Rose Hill Partners Titan-Lion Partners	Westerleigh Partners
J. Murphy	Humboldt Capital	Westwood Capital
S. Murphy	Atlas Capital Holdings Durant Limited	The Murphy Companies The Wilkie Group
Riccardi	Andalucia Financial Management Armor Asset Management Betancourt Capital Management Cayetano Capital Management Highlands Financial Management Innis Partners Granada Partners	Lisi Capital Management Mission Hills Capital Management Moneta Capital Management Oak Finance Management Otis Partners TOR Capital Management
Tran	Jono Capital Management Midwest Bay Partners	NJT Group
Weiner	Belgard Capital Management Braden Capital Management	Canyon Financial Management Lafayette Financial Management

34. Defendants also used delivery-versus-payment (“DVP”) accounts rather than cash accounts. This furthered the scheme because a DVP account, unlike a traditional brokerage account, does not require the account to maintain cash sufficient to cover all securities purchased. Rather, Defendants could “match” trades between DVP accounts at the underwriter from whom they were purchasing the bonds and the customer firm to whom they were selling the bonds, so that they did not have to pay cash up front for the

1 securities they traded. The use of DVP accounts therefore increased the volume of new
2 issue bonds Defendants could purchase.

3 **A. Defendants were Unregistered Brokers.**

4 35. All Participants traded new issue bonds on behalf of RMR using RMR's
5 capital, which was provided by Riccardi. The Participants placed orders for and
6 purchased new issue bonds from underwriters at Riccardi's direction and under his
7 supervision. Defendants had notice of most major municipal offerings coming to market
8 because they received electronic pricing wires from their account representatives at
9 broker-dealer firms serving as underwriters for those offerings.

10 36. In addition to purchasing new issue bonds at Riccardi's direction,
11 Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Tran, and
12 Weiner, as well as Riccardi, solicited orders and traded these bonds with their own
13 broker-dealer customers. Between 2012 and 2016, these Defendants regularly solicited
14 orders by, among other means, forwarding thousands of electronic pricing wires for
15 upcoming offerings to large distribution lists of municipal bond salespersons and traders
16 at various broker-dealer firms (collectively, the "RMR Customers"). After receiving
17 these pricing wires, RMR Customers frequently responded to these Defendants'
18 solicitations with an "indication of interest," conveying a desire to purchase a specific
19 quantity of a particular maturity and coupon of new issue bonds.

20 37. Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy,
21 Riccardi, Tran, and Weiner understood that indications of interest they received from
22 RMR Customers were commitments to purchase the bonds in the event that a Defendant
23 obtained the bonds from the underwriting syndicate.

24 38. When Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J.
25 Murphy, Riccardi, Tran, and Weiner were allotted bonds against their orders, they created
26 and sent electronic "tickets" to sell the bonds to the RMR Customers who indicated
27 interest for such bonds. To generate these sale tickets, Defendants had to enter the
28 CUSIP for the bonds being sold as well as other information such as the quantity, price,

1 and customer name. When Defendants sold bonds to RMR Customers, they generally
2 did so at a price of one dollar above the initial offering price, without negotiation and
3 irrespective of market value. In turn, the RMR Customers who purchased the bonds from
4 Defendants took them into their inventory, and typically marked them up further before
5 selling them on to customers or other broker-dealers.

6 39. RMR paid the Participants transaction-based compensation for each
7 allotment of bonds that RMR was able to flip at a profit. Specifically, for each trade,
8 RMR and the Participant who purchased the bonds on RMR's behalf split the profits
9 evenly.

10 40. Riccardi and the Participants executed numerous securities transactions on
11 behalf of RMR. Collectively, between January 1, 2012 and December 31, 2016,
12 Defendants executed approximately 47,000 trades of new issue bonds, with each
13 Defendant executing approximately the following number of trades of new issue bonds
14 over this time period:

- 15 a. Broekhuizen: 2,027
- 16 b. Derryberry: 2,831
- 17 c. Frost: 8,172
- 18 d. Gounaud: 422
- 19 e. Kelly: 1,685
- 20 f. Kirschenbaum: 7,867
- 21 g. Luttbeg: 502
- 22 h. McAloon: 8,208
- 23 i. J. Murphy: 2,378
- 24 j. M. Murphy: 355
- 25 k. Riccardi: 10,006
- 26 l. Tran: 1,736
- 27 m. Weiner: 1,553

28

1 41. In addition to purchasing new issue bonds, Gounaud, J. Murphy, and M.
2 Murphy purchased other securities on behalf of RMR using RMR's capital. The
3 additional securities Gounaud, J. Murphy, and M. Murphy purchased included stocks,
4 municipal bonds trading in the secondary market, corporate bonds, and/or collateralized
5 mortgage obligations (CMOs) (collectively, "Other Securities"). Gounaud, J. Murphy,
6 and M. Murphy purchased Other Securities through brokerage accounts they opened
7 under DBA names listed in the table shown in paragraph 33 above.

8 42. As with new issue bonds, Gounaud, J. Murphy, and M. Murphy purchased
9 Other Securities on behalf of RMR in order to flip these securities to broker-dealers. On
10 information and belief, Gounaud, J. Murphy, and M. Murphy received at least half of the
11 profits RMR earned from these trades, and RMR retained the remainder of the profits.

12 43. Between August 1, 2013 and May 31, 2017, Gounaud executed
13 approximately 2,297 trades of new issue bonds and Other Securities on behalf of RMR.

14 44. The securities purchased by Gounaud on behalf of RMR between August 1,
15 2013 and May 31, 2017 had an approximate total value of \$78.6 million.

16 45. Between November 28, 2011 and June 29, 2017, J. Murphy executed
17 approximately 6,407 trades of new issue bonds and Other Securities on behalf of RMR.

18 46. The securities purchased by J. Murphy on behalf of RMR between
19 November 28, 2011 and June 29, 2017 had an approximate total value of \$520.3 million.

20 47. Between November 28, 2011 and March 10, 2017, M. Murphy executed
21 approximately 10,174 trades of new issue bonds and Other Securities on behalf of RMR.

22 48. The securities purchased by M. Murphy on behalf of RMR between
23 November 28, 2011 and March 10, 2017 had an approximate total value of \$508 million.

24 49. Although Defendants regularly participated in securities transactions at key
25 points in the chain of distribution, effected securities transactions on behalf of others,
26 received transaction-based compensation, and/or actively solicited investors to purchase
27 securities, no Defendant, at any relevant time, was registered with the Commission as a
28 broker-dealer or associated person of a registered broker-dealer.

1 **B. Defendants Employed Fraudulent Means and Made Material**
2 **Misrepresentations to Obtain New Issue Bonds.**

3 50. Many Defendants, including RMR, Broekhuizen, Derryberry, Frost, Kelly,
4 Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, engaged in fraudulent
5 conduct to create the false appearance that they were, or managed money on behalf of,
6 retail investors, and therefore, that their orders for new issue bonds qualified for retail
7 priority treatment.

8 51. Riccardi trained and directed these Participants on ways to submit fraudulent
9 retail orders for new issue bonds. These tactics included: (1) using fraudulent zip codes;
10 (2) disguising the beneficial owner of the account by employing DBA names; and/or (3)
11 concealing the re-sale or flip of new issue bonds to RMR Customers by manipulating the
12 quantities, times, and prices of sales tickets.

13 **i. Use of fraudulent zip codes**

14 52. As discussed above, municipal issuers commonly require underwriters
15 distributing new issue bonds to give the highest priority to orders from retail customers
16 located within the issuer's jurisdiction. Such a requirement will be stated on the pricing
17 wires underwriters distribute to other broker-dealers, along with any verification the
18 issuer may require to be submitted with retail orders, such as a zip code. RMR,
19 Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi,
20 Tran, and Weiner received dozens of pricing wires each week from broker-dealers they
21 had accounts with and were familiar with this zip code requirement for retail orders.
22 These Defendants understood that when an issuer required submission of a zip code with
23 retail orders, they could increase their likelihood of receiving an allocation by providing a
24 qualifying zip code within the issuer's specified jurisdiction to create the false appearance
25 that they qualified for top-priority retail treatment. They, therefore, submitted fraudulent
26 zip codes, *i.e.*, zip codes in which they did not live or reside, along with their orders to
27 increase the likelihood that they would be allotted bonds, which would result in more
28 trades and more profits for these Defendants and RMR. For example, when these

1 Defendants wanted to purchase bonds offered by an issuer outside their home state, they
2 often looked up zip codes for that state on various online zip code databases, such as
3 www.uszipcodes.com. Riccardi also frequently sent other Defendants fraudulent zip
4 codes to submit with their orders. These Defendants' use of fraudulent zip codes in
5 connection with the orders they placed for new issue bonds occurred between at least
6 January 2012 and May 2016.

7 53. Based on their industry knowledge and experience, and their notice of the
8 applicable definitions of "retail" from the pricing wires they received, RMR,
9 Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi,
10 Tran, and Weiner knew or were reckless in not knowing that the zip codes they provided
11 were material to the allocation decisions of issuers and/or underwriters. In particular,
12 RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy,
13 Riccardi, Tran, and Weiner knew or were reckless in not knowing that when the issuer
14 required submission of zip codes with retail orders, the issuer was relying on the zip code
15 as a verification of the customer's location to confirm that customer's eligibility for retail
16 priority.

17 **ii. Use of multiple entities and DBA names**

18 54. Between 2012 and 2016, Defendants opened accounts at underwriting firms
19 and submitted orders for new issue bonds under multiple DBA names, which they
20 changed regularly.

21 55. Riccardi and the Participants' use of DBA names constituted deceptive
22 conduct because it disguised that all of their orders, which appeared to be submitted on
23 behalf of wealthy individual investors or different asset management firms, were in fact
24 all submitted on behalf of one entity, RMR, which was engaged in flipping securities to
25 broker-dealers and not managing assets on behalf of retail investors. In many cases,
26 Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Tran, and
27 Weiner furthered this deception by failing to disclose Riccardi or RMR as a beneficial
28 owner in their account opening applications. For example:

1 a. On or around January 26, 2010, Broekhuizen signed and submitted
2 documentation to a broker-dealer to open a new brokerage account under the DBA
3 name of Gate Hill Capital. Broekhuizen failed to identify RMR or Riccardi as a
4 beneficial owner of the account or as a source of funds in the account, as the forms
5 required.

6 b. On or around February 7, 2011, Derryberry signed and submitted
7 documentation to a broker-dealer to open a new brokerage account under the DBA
8 name of Joseph Capital Holdings. Derryberry falsely stated on these forms that he,
9 the account holder, had \$20 million in annual income and \$20 million in liquid
10 assets. Derryberry also did not disclose RMR or Riccardi as a beneficial owner of
11 the account as the forms required.

12 c. On or around April 19, 2011, Frost submitted documentation to a
13 broker-dealer to open a new brokerage account under the DBA name of
14 Worthington Partners. Frost falsely stated on these forms that he, the account
15 holder, had \$500 million in annual income and \$500 million in liquid assets. Frost
16 also did not disclose RMR or Riccardi as a beneficial owner of the account as the
17 forms required.

18 d. On or around November 14, 2011, Kelly signed and submitted
19 documentation to a broker-dealer to open a new brokerage account under the DBA
20 name of AME Capital. Kelly falsely stated on these forms that he, the account
21 holder, had a net worth of \$25 million. Kelly also failed to identify RMR or
22 Riccardi as a beneficial owner of the account as the forms required.

23 e. On or around March 17, 2010, Kirschenbaum submitted
24 documentation to a broker-dealer to open a new brokerage account under the DBA
25 name of UJB Capital. Kirschenbaum falsely stated on these forms that he, the
26 account holder, had \$5 million in annual income and a net worth of \$10 million.
27 Kirschenbaum also did not disclose RMR or Riccardi as a beneficial owner of the
28 account as the forms required.

1 f. On or around September 28, 2011, McAloon submitted
2 documentation to a broker-dealer to open a new brokerage account under the DBA
3 name of Rose Hill Partners LLC. McAloon did not disclose RMR or Riccardi as a
4 beneficial owner of the account as the forms required.

5 g. On or around December 9, 2010, J. Murphy signed and submitted
6 documentation to a broker-dealer to open a new brokerage account under the DBA
7 name of Westwood Capital LLC. J. Murphy failed to identify RMR or Riccardi as
8 a beneficial owner of the account.

9 h. On or around May 14, 2012, Weiner signed and submitted
10 documentation to a broker-dealer to open a new brokerage account under the DBA
11 name of Canyon Financial Management. Weiner failed to identify RMR or
12 Riccardi as a beneficial owner of the account or as a source of funds in the account,
13 as the forms required.

14 56. Riccardi's and the Participants' use of DBA names furthered their scheme in
15 multiple ways. First, having numerous accounts open under various DBA names allowed
16 Defendants to circumvent the order size limits typically applicable to retail orders. For
17 example, a Defendant could submit duplicative retail orders at the maximum size limit
18 using each of his or her DBA names, and thereby obtain many more bonds than would be
19 permitted for a single retail customer order.

20 57. In addition, DBA names helped Defendants avoid being flagged by
21 underwriters as flippers by allowing them to portray themselves as retail investors (or
22 asset managers acting on behalf of retail investors). This benefited Defendants because,
23 as Defendants knew, underwriters often avoid allocating bonds to flippers on a retail
24 basis according to an issuer's preferences. If an underwriter became aware that a
25 Defendant was a flipper, it would be less likely to allocate bonds on a retail basis to that
26 Defendant in the future, at least for deals in which the issuer had expressed a preference
27 to avoid selling bonds to flippers. This is because issuers typically reserve the right to
28 audit retail orders to verify that they represent legitimate retail buyers, and, if such an

1 order cannot be verified, to take action against the underwriter that submitted the
2 unverified order, including exclusion from that issuer's future underwriting syndicates.

3 **iii. Steps to disguise flipping of new issue bonds**

4 58. Defendants knew that underwriters and issuers often review early trading to
5 look for flipping activity. Issuers, in particular, may attempt to identify flipping to
6 determine compliance with their retail priority requirements. Because real retail investors
7 are typically "buy and hold" investors, immediate trading in bonds allocated on a retail
8 basis may suggest that the bonds were sold to a customer who does not meet the issuer's
9 definition of retail, and who has instead flipped the bonds to a pre-arranged buyer.

10 59. Underwriters and issuers may be able to detect flipping activity in several
11 ways. One hallmark of flipping is if, shortly after trading begins, bonds trade at a price
12 one dollar or fifty cents above the initial offering price, a typical flipper commission.
13 Underwriters and issuers may also be able to identify flipping based on the quantity of
14 bonds being traded. For example, if \$315,000 of bonds (at par value) are allocated to a
15 purportedly "retail" customer and that exact amount is not allocated to any other
16 customer, a trade of \$315,000 bonds immediately after trading begins may indicate the
17 bonds had been sold to a flipper and not a retail customer.

18 60. To avoid detection of their flipping, RMR, Broekhuizen, Derryberry, Frost,
19 Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner engaged in one
20 or more of the following deceptive practices:

- 21 a. altering the quantity or price of bonds they re-sold;
- 22 b. intentionally delaying ticketing their re-sale transactions until there
23 was an established pattern of trading, even though the RMR Customer had agreed
24 to purchase the bonds hours or days earlier; and/or
- 25 c. enlisting the RMR Customers to help disguise their flipping,
26 especially where Defendants had obtained bonds on a retail priority basis.
27 Defendants would do this by warning RMR Customers to "be careful" or
28

1 “disguise” their trading of the bonds, meaning the customers should break up
2 quantities, adjust prices, or delay trading as described above.

3 61. These Defendants engaged in the above-described deceptive tactics to hide
4 their flipping of new issue bonds because they knew that they were not qualified to obtain
5 bonds on a retail priority basis, and if an underwriter discovered that they flipped bonds
6 obtained on a retail priority basis, they would be less likely to get bonds from that
7 underwriter in the future. Their deceptive tactics, which were carried out to enable these
8 Defendants to continue flipping bonds and earning trading commissions, also defrauded
9 issuers who had set rules for their offerings to prioritize sales of their bonds to retail
10 investors.

11 **iv. Additional examples of Defendants’ fraudulent conduct**

12 *a. Broekhuizen*

13 62. Broekhuizen repeatedly misrepresented his zip code when placing orders for
14 new issue bonds during retail order periods.

15 63. For example, on August 24, 2015, a Kentucky issuer held a retail order
16 period for new issue bonds. The pricing wire defined retail orders as those “submitted by
17 individuals ... [or] by professional advisors/managers [] for individuals [or] for
18 dedicated Kentucky specific co-mingled accounts and mutual funds.” The pricing wire
19 further required submission of zip codes with all retail orders. During the retail order
20 period, Broekhuizen placed an order specifying that it was “retail” even though he knew
21 the bonds would be sold to a broker-dealer, and were not for an individual or a Kentucky
22 co-mingled account or mutual fund. Moreover, to increase the likelihood that he would
23 receive an allocation, Broekhuizen fraudulently provided two different Kentucky zip
24 codes with his “retail” order even though Broekhuizen knew he did not live or reside in
25 Kentucky.

26 64. In addition to placing retail orders using fraudulent zip codes, Broekhuizen
27 took steps to mislead issuers and/or underwriters by hiding his flipping of new issue
28 bonds, including by asking his customers to disguise their trading of the bonds

1 Broekhuizen obtained for them. For example, on February 28, 2013, Broekhuizen
2 notified one of his customers that Broekhuizen had obtained 200,000 bonds for the
3 customer, but that the customer needed to “disguise if possible” any re-sale of the bonds.

4 *b. Derryberry*

5 65. Derryberry repeatedly misrepresented his zip code when placing orders for
6 new issue bonds during retail order periods.

7 66. For example, on March 24, 2012, Derryberry placed an order for bonds
8 issued by a North Carolina medical center. The pricing wire for the offering specified
9 that orders from North Carolina retail customers would receive the highest priority. To
10 increase the likelihood that he would receive an allocation, Derryberry fraudulently
11 provided a North Carolina zip code with his order even though he knew he did not live or
12 reside in North Carolina.

13 67. In addition to placing retail orders using fraudulent zip codes, Derryberry
14 took steps to mislead issuers and/or underwriters by hiding his flipping of new issue
15 bonds, including by asking Riccardi to hide subsequent trades of bonds Derryberry
16 purchased on behalf of RMR. For example, on July 26, 2013, Derryberry wrote to
17 Riccardi that he had been allotted bonds but that Riccardi should “[h]ide them well,” as
18 Derryberry was allotted the bonds on a retail priority basis. Similarly, on April 17, 2012,
19 Derryberry wrote to Riccardi that he had been allotted bonds but that the underwriter had
20 them “under the spotlight after the Oceanside flip,” and so “it would be best to move
21 slow and hide the trades in a package if possible.”

22 *c. Frost*

23 68. Frost repeatedly misrepresented his zip code when placing orders for new
24 issue bonds during retail order periods.

25 69. For example, on January 15, 2013, Frost placed an order for bonds offered
26 by an Oregon issuer. The pricing wire for the offering specified that orders from Oregon
27 retail customers would receive the highest priority. To increase the likelihood that he
28 would receive an allocation, Frost fraudulently provided an Oregon state zip code with

1 his order even though he knew he did not live or reside in Oregon. On January 16, 2013,
2 Frost received an allotment against his order.

3 70. In addition to placing retail orders using fraudulent zip codes, Frost took
4 steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,
5 including by asking Riccardi to hide subsequent trades of bonds Frost purchased on
6 behalf of RMR. For example, on February 18, 2016, Frost wrote to Riccardi that he had
7 been allotted bonds on a retail basis “so please be careful.”

8 71. Frost also hid his flipping of new issue bonds by asking his customers to
9 disguise their trading of bonds Frost obtained for them. For example, on September 10,
10 2015, Frost notified one of his customers that the customer would receive 365,000 bonds,
11 but that the customer needed to “be careful” with the allotment, and the customer
12 responded “don’t worry” because he would “marr[y]” the allotment from Frost with
13 another allotment before re-trading the bonds.

14 *d. Kelly*

15 72. Kelly repeatedly misrepresented his zip code when placing orders for new
16 issue bonds during retail order periods.

17 73. For example, on January 18, 2012, Kelly placed an order for bonds offered
18 by a South Carolina issuer. The pricing wire for the offering specified that orders from
19 South Carolina retail customers would receive the highest priority. To increase the
20 likelihood that he would receive an allocation, Kelly fraudulently provided a South
21 Carolina zip code with his order even though he knew it was not the zip code in which he
22 lived or resided.

23 74. In addition to placing retail orders using fraudulent zip codes, Kelly took
24 steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,
25 including by asking Riccardi to hide subsequent trades of bonds Kelly purchased on
26 behalf of RMR. For example, on February 25, 2016, Kelly asked Riccardi to “combine”
27 an allotment of new issue bonds Kelly received with another allotment Riccardi received
28 of the same maturity before Riccardi flipped the bonds to an RMR customer.

1 *e. Kirschenbaum*

2 75. Kirschenbaum repeatedly misrepresented his zip code when placing orders
3 for new issue bonds during retail order periods.

4 76. For example, on October 22, 2014, Kirschenbaum placed an order for bonds
5 offered by a New Jersey issuer. The pricing wire for the offering specified that orders
6 from New Jersey retail customers would receive the highest priority. To increase the
7 likelihood that he would receive an allocation, Kirschenbaum fraudulently provided a
8 New Jersey zip code with his order even though he knew he did not live or reside in New
9 Jersey.

10 77. In addition to placing retail orders using fraudulent zip codes, Kirschenbaum
11 took steps to mislead issuers and/or underwriters by hiding his flipping of new issue
12 bonds, including by breaking up allotments he received from multiple broker-dealers
13 before re-selling the bonds to an RMR Customer. For example, on January 22, 2014,
14 Kirschenbaum agreed to “be careful” and split the allotments he was receiving before re-
15 trading the bonds.

16 *f. McAloon*

17 78. McAloon repeatedly misrepresented his zip code when placing orders for
18 new issue bonds during retail order periods.

19 79. For example, on June 5, 2013, McAloon placed an order for bonds offered
20 by a Connecticut issuer. The pricing wire for the offering specified that Connecticut
21 retail orders, defined as “orders placed for the account of a Connecticut resident,” would
22 receive the highest priority. To increase the likelihood that he would receive an
23 allocation, McAloon fraudulently provided a Connecticut state zip code with his order
24 even though he knew he did not live or reside in Connecticut. On June 6, 2013, McAloon
25 received an allotment against his order.

26 80. In addition to placing retail orders using fraudulent zip codes, McAloon took
27 steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,
28 including by asking his customers to alter the price and timing of their purchases of the

1 bonds McAloon obtained for them. For example, on February 21, 2013, McAloon
2 notified one of his customers that the customer would receive an allotment but that “we
3 need to be careful” with ticketing the trades because the underwriter “will be looking for
4 that up-\$1 ticket.” McAloon asked that they wait to write the sales tickets until the next
5 day and write them at a “weird” price to avoid detection by the underwriter.

6 *g. J. Murphy*

7 81. J. Murphy repeatedly misrepresented her zip code when placing orders for
8 new issue bonds during retail order periods.

9 82. For example, on or about June 7, 2012, a Puerto Rico issuer held a retail
10 order period for new issue bonds. The pricing wire stated that “orders [] for individuals,
11 bank trusts and investment advisors” could be placed during the retail order period, and
12 that the issuer’s intention was “to have bonds placed, without further sale with retail
13 buyers.” During the retail order period, J. Murphy placed at least four separate orders
14 with four separate firms, specifying that her orders were “retail” even though the orders
15 were intended for broker-dealers and not for individuals, bank trusts, or investment
16 advisors. To increase the likelihood that she would receive an allocation, J. Murphy also
17 fraudulently provided a different Puerto Rico zip code with each of her four retail orders
18 even though she knew she did not live or reside in Puerto Rico.

19 83. In another instance, on or about September 28, 2015, a California issuer held
20 a retail order period for new issue bonds. The pricing wire specified that California retail
21 orders would receive the highest priority, and defined “retail order” as an “order placed
22 for an account of an individual, or a bank trust, investment advisor or money manager
23 acting on behalf of an individual.” The pricing wire further required that “[t]he investor’s
24 zip code must be included with all Retail Orders.” During the retail order period, J.
25 Murphy placed at least two separate orders with different firms, even though the orders
26 were intended for broker-dealers and not for individuals, bank trusts, investment advisors,
27 or money managers. To increase the likelihood that she would receive an allocation, J.
28

1 Murphy also fraudulently supplied a different California state zip code with each of her
2 two orders even though she knew she did not live or reside in California.

3 84. In addition to placing retail orders using fraudulent zip codes, J. Murphy
4 took steps to mislead issuers and/or underwriters by hiding her flipping of new issue
5 bonds, including by asking Riccardi to hide subsequent trades of bonds J. Murphy
6 purchased on behalf of RMR.

7 85. For example, on January 15, 2015, J. Murphy wrote to Riccardi that she had
8 received allotments in multiple maturities but that the underwriter was “really worried
9 about seeing” the bonds trade early, so J. Murphy asked Riccardi to “hide them.”

10 86. Similarly, on or around December 14, 2011, an underwriter to whom J.
11 Murphy had submitted an order questioned her about whether her order was related to
12 another similar order the firm had received, and/or whether J. Murphy intended to flip
13 any bonds she received. J. Murphy falsely told the underwriter that her order was not
14 related to the other similar order, and then reported the incident to Riccardi to warn him
15 that if J. Murphy was allotted bonds, the underwriter would be “on the witch hunt” for
16 flipping activity.

17 *h. Riccardi and RMR*

18 87. Riccardi, operating as RMR (which he controlled), repeatedly
19 misrepresented his zip code when placing orders for new issue bonds during retail order
20 periods.

21 88. For example, on or about August 24, 2015, a New Jersey issuer held a retail
22 order period for new issue bonds. The pricing wire defined “retail” as “an order placed
23 on behalf of an individual, or a bank trust department/investment advisor acting on behalf
24 of an individual,” and stated that “retail orders must be valid ‘going away’ orders.”¹ The
25

26
27 ¹ “Going away” refers to orders placed by investors, who typically buy and hold new issue bonds, rather
28 than brokers or dealers, who are purchasing bonds for their inventory in order to trade them. See MSRB
Glossary, “Going Away Order,” available at <http://www.msrb.org/glossary/definition/going-away-order>.

1 pricing wire also specified that orders from New Jersey retail customers would receive
2 the highest priority. To increase the likelihood that he and RMR would receive an
3 allocation, Riccardi placed an order during the retail order period and fraudulently
4 provided a New Jersey zip code even though he knew he did not qualify as retail and did
5 not live or reside in New Jersey.

6 89. In addition to placing retail orders using fraudulent zip codes, Riccardi,
7 operating as RMR, took steps to mislead issuers and/or underwriters by hiding his
8 flipping of new issue bonds, including by combining allotments he received from
9 multiple Participants before re-selling the bonds to RMR Customers. For example, on
10 November 15, 2012, Derryberry reported to Riccardi that he got full allocations but that
11 he “ha[s] to hide them” because his broker was told “to make sure they don’t flip.”
12 Riccardi responded that he would hide the trade by “combin[ing] with other[.]”
13 allotments. Similarly, on May 21, 2015, Derryberry reported to Riccardi that he had
14 received an allotment but asked if Riccardi could “bundle the[] [bonds] or hide them a bit
15 on the sell side.” Riccardi responded that he would do so.

16 *i. Tran*

17 90. Tran repeatedly misrepresented his zip code when placing orders for new
18 issue bonds during retail order periods.

19 91. For example, on or about September 9, 2015, an Oklahoma issuer held a
20 retail order period for new issue bonds. The pricing wire stated that Oklahoma retail
21 individual orders would be afforded the highest priority, and it defined “individual order”
22 as an order “for direct placement to an account of an individual” To increase the
23 likelihood that he would receive an allocation, Tran placed an order during the retail
24 order period, fraudulently stating that it was “for” a zip code located in Oklahoma, even
25 though he knew that the order was not intended for direct placement to an individual’s
26 account and knew that he did not live or reside in Oklahoma.

27 92. In addition to placing retail orders using fraudulent zip codes, Tran took
28 steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,

1 including by placing orders under multiple DBA names even though he was actually
2 purchasing the bonds on behalf of RMR, who would flip them to an RMR customer
3 under another DBA name distinct from the DBA name Tran used to place the order.
4 Tran engaged in this deceptive conduct to prevent underwriters from discovering that he
5 was flipping new issue bonds.

6 *j. Weiner*

7 93. Weiner repeatedly misrepresented his zip code when placing orders for new
8 issue bonds during retail order periods.

9 94. For example, on or about October 23, 2012, an Indiana issuer held a retail
10 order period for new issue bonds. The pricing wire defined Indiana retail as “an
11 individual resident in the State of Indiana” and required zip codes with all Indiana retail
12 orders. To increase the likelihood that he would receive an allocation, Weiner placed an
13 order during the retail order period and fraudulently provided an Indiana state zip code
14 with his order even though he knew that the order was not for a resident of Indiana and
15 that he did not live or reside in Indiana.

16 95. In addition to placing retail orders using fraudulent zip codes, Weiner took
17 steps to mislead issuers and/or underwriters by hiding his flipping of new issue bonds,
18 including by asking Riccardi to hide subsequent trades of bonds Weiner purchased on
19 behalf of RMR. For example, on March 30, 2012, Weiner asked Riccardi to give him
20 “protection” when flipping the bonds Weiner was allocated because Weiner had
21 represented the bonds would be “going away.” Riccardi agreed to “batch” Weiner’s
22 allocation with other allotments so the quantity given to Weiner would not be traceable.

23 **C. RMR, Frost, Kirschenbaum, and Riccardi Aided and Abetted Representative**
24 **in Placing Fraudulent Orders.**

25 96. In addition to the fraudulent conduct described above, RMR, Frost,
26 Kirschenbaum, and Riccardi worked in tandem with Representative from Firm A to
27 increase their allotments of new issue bonds through fraudulent retail orders submitted to
28 issuers and/or underwriters by Firm A.

1 97. In particular, Representative knowingly placed fraudulent retail orders for
2 these Defendants by submitting fraudulent zip codes with their orders, which he obtained
3 from these Defendants or on his own by looking up zip codes for the relevant jurisdiction.

4 98. Representative placed these retail orders even though he knew RMR, Frost,
5 Kirschenbaum, and Riccardi did not qualify for retail priority. Moreover, Representative
6 knew that the misrepresentations, *i.e.*, the fraudulent zip codes he submitted along with
7 his misrepresentations that RMR, Frost, Kirschenbaum, and Riccardi were eligible to
8 place retail orders, would be communicated to the underwriter and/or issuer for use in
9 deciding whether to allocate bonds to these Defendants.

10 99. By providing Representative with orders during the retail order period that
11 contained fraudulent zip codes and by submitting orders during the retail order period
12 despite knowing that they did not qualify as retail, RMR, Frost, Kirschenbaum, and
13 Riccardi knowingly or recklessly provided substantial assistance to Representative's
14 fraudulent conduct.

15 100. Additionally, when RMR, Frost, Kirschenbaum, or Riccardi received an
16 allotment against a retail order Representative had placed for them using a fraudulent zip
17 code, Representative often asked them to disguise the flipping of the allotted bonds to
18 deceive the underwriter or issuer. RMR, Frost, Kirschenbaum, and Riccardi complied
19 with these requests to disguise their flipping by altering quantities, prices, or times
20 reflected on trade tickets in the manner described above.

21 101. RMR, Frost, Kirschenbaum, and Riccardi knowingly and/or recklessly
22 assisted Representative's deceptive efforts to hide his fraudulent retail orders from
23 underwriters and issuers because they financially benefitted from Representative's
24 fraudulent misrepresentations. In particular, as a result of his fraud, they were able to
25 obtain more allocations of new issue bonds (through bogus retail orders), which bonds
26 they later flipped to RMR customers at a profit. Moreover, assisting Representative's
27 fraud ensured that he would continue to submit fraudulent orders to benefit these
28 Defendants financially in the future.

1 102. Instances in which RMR, Frost, Kirschenbaum, and Riccardi knowingly
2 and/or recklessly assisted Representative's fraud include the following:

3 a. On January 28, 2014, Representative notified Frost that Frost would
4 receive \$125,000 of new issue bonds, but told Frost that Representative had been
5 "warned on this one ... no flipping ... please break-up, bury, disguise, etc. etc.
6 etc." Frost responded that he would do so. Frost's agreement to disguise the flip
7 of the \$125,000 of bonds Representative had sold him, by breaking up the quantity
8 or other means, substantially assisted Representative by inhibiting issuers' and
9 underwriters' ability to trace the fraudulently obtained allotment of bonds flipped
10 by Frost back to Representative.

11 b. Similarly, on June 13, 2014, Representative notified Kirschenbaum
12 that Kirschenbaum would receive \$100,000 of new issue bonds, and asked
13 Kirschenbaum to "marry" the bonds with "other orders" before flipping them.
14 Kirschenbaum agreed to do so. Kirschenbaum's agreement to combine the
15 \$100,000 of bonds he received from Representative with another allotment before
16 flipping the bonds substantially assisted Representative by inhibiting issuers' and
17 underwriters' ability to trace the fraudulently obtained allotment of bonds flipped
18 by Kirschenbaum back to Representative, because the quantity of bonds sold by
19 Kirschenbaum would be different than the quantity of bonds Representative sold to
20 Kirschenbaum.

21 c. In another example, on April 23, 2015, Representative notified
22 Riccardi that his RMR account would receive bonds released by a California issuer
23 but that because Firm A put the order in as "Calif[ornia] retail" the bonds "must
24 disappear." Representative asked that Riccardi "marry" the bonds with "other
25 orders" before flipping them. Riccardi agreed to do so. Riccardi's agreement to
26 combine the bonds he received from Representative with another allotment before
27 flipping the bonds substantially assisted Representative by inhibiting issuers' and
28

1 underwriters' ability to trace the fraudulently obtained allotment of bonds flipped
2 by Riccardi back to Representative.

3 **D. Defendants' Conduct Harmed Municipal Issuers and Investors.**

4 103. Defendants' conduct harmed municipal issuers by, for example, violating
5 their established rules and restrictions concerning retail orders for particular offerings.

6 104. Defendants' conduct also harmed retail and other investors who legitimately
7 qualified for higher priority treatment, but were unable to purchase new issue bonds in
8 oversubscribed offerings because bonds that could otherwise have been used to fill their
9 orders were allocated to Defendants. In addition, because Defendants charged a pre-
10 arranged commission when they flipped bonds irrespective of the bonds' market value,
11 their activity sometimes artificially inflated prices such that retail and other investors
12 purchasing these bonds in the secondary market would have to pay a higher price than
13 they otherwise would have if the bonds had not been flipped.

14 **TOLLING AGREEMENTS**

15 105. All Defendants except Gounaud signed, on or before February 14, 2017,
16 tolling agreements with the Commission that specified a period of time (a "tolling
17 period") in which "the running of any statute of limitations applicable to any action or
18 proceeding against [Defendants] authorized, instituted, or brought by...the
19 Commission...arising out of the [Commission's investigation of Defendants' conduct],
20 including any sanctions or relief that may be imposed therein, is tolled and suspended...."
21 Each tolling agreement further provides that Defendants and any of their agents or
22 attorneys "shall not include the tolling period in the calculation of the running of any
23 statute of limitations or for any other time-related defense applicable to any proceeding,
24 including any sanctions or relief that may be imposed therein, in asserting or relying upon
25 any such time-related defenses." All Defendants except Gounaud subsequently signed
26 additional tolling agreements to extend the tolling period.

1 106. Collectively, these agreements tolled the running of any limitations period or
2 any other time-related defenses for all Defendants except Gounaud from November 28,
3 2011 to present.

4 **FIRST CLAIM FOR RELIEF**

5 **Fraud in Connection With the Purchase of Securities**

6 **Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c)**
7 **(Against Defendants RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum,**
8 **McAloon, J. Murphy, Riccardi, Tran, and Weiner)**

9 107. The Commission realleges and incorporates by reference paragraphs 1
10 through 106 above.

11 108. RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J.
12 Murphy, Riccardi, Tran, and Weiner, by engaging in the conduct described above in
13 paragraphs 50 through 95, directly or indirectly, in connection with the purchase or sale
14 of a security, by the use of the means or instrumentalities of interstate commerce, of the
15 mails, or of the facilities of a national securities exchange, with scienter:

- 16 (a) employed devices, schemes, or artifices to defraud;
- 17 (b) made untrue statements of material fact or omitted to state a material fact
18 necessary in order to make the statements made, in light of the circumstances under
19 which they were made, not misleading; and
- 20 (c) engaged in acts, practices, or courses of business which operated or would
21 operate as a fraud or deceit upon other persons.

22 109. By engaging in the conduct described above, RMR, Broekhuizen,
23 Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and
24 Weiner violated, and unless restrained and enjoined will continue to violate, Section
25 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a), (b), and (c)
26 thereunder, 17 C.F.R. §§ 240.10b-5(a)-(c).
27
28

SECOND CLAIM FOR RELIEF

Fraud in Connection With the Purchase of Securities

Aiding and Abetting Violations of Section 10(b)

of the Exchange Act and Rule 10b-5(b)

(Against Defendants RMR, Frost, Kirschenbaum, and Riccardi)

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6 110. The Commission realleges and incorporates by reference paragraphs 1
7 through 106 above.

8 111. By engaging in the conduct described above in paragraphs 96 through 102,
9 Representative, directly or indirectly, in connection with the purchase or sale of a
10 security, and by the use of the means or instrumentalities of interstate commerce, of the
11 mails, or of the facilities of a national securities exchange, with scienter, made untrue
12 statements of a material fact or omitted to state a fact necessary in order to make the
13 statements made, in the light of the circumstances under which they were made, not
14 misleading.

15 112. As alleged above in paragraphs 96 through 102, RMR, Frost, Kirschenbaum,
16 and Riccardi knowingly or recklessly provided substantial assistance to Representative's
17 violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder in
18 connection with fraudulent retail orders that Representative submitted on behalf of RMR,
19 Frost, Kirschenbaum, and Riccardi.

20 113. By engaging in the conduct described above, RMR, Frost, Kirschenbaum,
21 and Riccardi aided and abetted, and unless enjoined will continue to aid and abet,
22 violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b)
23 thereunder, 17 C.F.R. § 240.10b-5(b).
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THIRD CLAIM FOR RELIEF

Violations of MSRB Rule G-17

(Against Defendants RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner)

114. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

115. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

116. As alleged above in paragraphs 35 through 102, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, acting as brokers, unreasonably (1) failed to deal fairly with persons and entities, and/or (2) engaged in deceptive, dishonest, or unfair practices in violation of MSRB Rule G-17.

117. By engaging in the conduct described above, RMR, Broekhuizen, Derryberry, Frost, Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner violated, and unless restrained and enjoined will continue to violate, MSRB Rule G-17.

FOURTH CLAIM FOR RELIEF

Failure to Register as a Broker-Dealer

Violations of Section 15(a)(1) of the Exchange Act

(Against All Defendants)

118. The Commission realleges and incorporates by reference paragraphs 1 through 106 above.

119. Defendants, by engaging in the conduct described above in paragraphs 35 through 102, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of

1 securities, without being registered as brokers in accordance with Section 15(a)(1) of the
2 Exchange Act, 15 U.S.C. § 78o(a)(1).

3 120. By engaging in the conduct described above, Defendants violated, and
4 unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange
5 Act.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Commission respectfully requests that the Court:

8 **I.**

9 Issue findings of fact and conclusions of law that Defendants committed the
10 alleged violations.

11 **II.**

12 Issue judgments permanently enjoining RMR, Broekhuizen, Derryberry, Frost,
13 Kelly, Kirschenbaum, McAloon, J. Murphy, Riccardi, Tran, and Weiner, and their agents,
14 servants, employees, and attorneys, and those persons in active concert or participation
15 with any of them, who receive actual notice of the judgment by personal service or
16 otherwise, and each of them, from violating Section 10(b) of the Exchange Act, 15
17 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and MSRB Rule G-
18 17.

19 **III.**

20 Issue judgments permanently enjoining RMR, Frost, Kirschenbaum, and Riccardi,
21 and their agents, servants, employees, and attorneys, and those persons in active concert
22 or participation with any of them, who receive actual notice of the judgment by personal
23 service or otherwise, and each of them, from aiding and abetting violations of Section
24 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R.
25 § 240.10b-5(b).

26 **IV.**

27 Issue judgments permanently enjoining all Defendants, and their agents, servants,
28 employees, and attorneys, and those persons in active concert or participation with any of

1 them, who receive actual notice of the judgment by personal service or otherwise, and
2 each of them, from violating Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a).

3
4 **V.**

5 Issue judgments permanently enjoining Defendants from, directly or indirectly,
6 opening or maintaining any brokerage account(s) without providing the relevant
7 brokerage firm(s) a copy of this Complaint and a copy of any final judgment entered
8 against them in this action.

9 **VI.**

10 Order Defendants to disgorge ill-gotten gains from their illegal conduct, together
11 with prejudgment interest thereon.

12 **VII.**

13 Order Defendants to pay civil penalties under Section 20(d) of the Securities Act,
14 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

15 **VIII.**

16 Retain jurisdiction of this action in accordance with the principles of equity and the
17 Federal Rules of Civil Procedure in order to implement and carry out the terms of all
18 orders and decrees that may be entered, or to entertain any suitable application or motion
19 for additional relief within the jurisdiction of this Court.

20 **IX.**

21 Grant such other and further relief as this Court may determine to be just and
22 necessary.

23 Dated: August 14, 2018

24 /s/ Nicholas A. Pilgrim

25 NICHOLAS A. PILGRIM

26 Kevin Guerrero

27 Laura J. Cunningham

28 Warren E. Greth, Jr.

Cori M. Shepherd

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Attorneys for Plaintiff
Securities and Exchange Commission