

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CORE PERFORMANCE MANAGEMENT, LLC,
JAMES P. SCHERR, DEBORAH B. DORA,
SHARLENE F. MESITE, JAMES O'NEIL, and
ANADEL R. PINZON,

Defendants.

Case No. 18-cv-81081-BB

**FINAL JUDGMENT AS TO DEFENDANTS JAMES P. SCHERR
AND CORE PERFORMANCE MANAGEMENT, LLC**

The Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendants James P. Scherr (“Scherr”) and Core Performance Management LLC (“CPM”) (together, “Defendants”) having entered a general appearance; consented to the Court’s jurisdiction over Defendants and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VIII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS ORDERED AND ADJUDGED that Defendants are permanently restrained and enjoined from violating Section 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails,

directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud; or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser

by, directly or indirectly, making undisclosed payments in exchange for, or to induce the purchase of, municipal securities.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the identity of any purchaser of new issue municipal securities, (ii) making any false or misleading statement concerning eligibility to purchase new issue municipal securities; or (iii) creating a false appearance as to the terms of any sales of municipal securities.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in accordance with Section 15(a)(1) of the Exchange Act while engaged in the business of effecting transactions in securities for the account of others.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

IV.

Defendants are permanently restrained and enjoined from violating, directly or indirectly, Rule G-17 of the Municipal Securities Rulemaking Board by, while acting as a broker, dealer, or municipal securities dealer, not dealing fairly with all persons and/or engaging in any deceptive,

dishonest, or unfair practice by, directly or indirectly: (i) creating a false appearance or otherwise deceiving any person about the identity of any purchaser of new issue municipal securities; (ii) making any false or misleading statement concerning eligibility to purchase new issue municipal securities; (iii) creating a false appearance as to the terms of any sales of municipal securities; or (iv) making undisclosed payments in exchange for, or to induce the purchase of, municipal securities.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

V.

Defendants are permanently restrained and enjoined from, directly or indirectly, opening or maintaining any brokerage account(s) without providing the relevant brokerage firm(s) a copy of the Complaint and a copy of this Final Judgment.

VI.

(i) Defendants are liable, jointly and severally, for disgorgement of \$680,624, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$66,058; and (ii) Defendant Scherr is liable for a civil penalty in the amount of \$150,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendants shall satisfy this obligation pursuant to the terms of the payment schedule set forth in paragraph VII below.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly

from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; James P. Scherr and/or Core Performance Management, LLC, as appropriate, as Defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

VII.

Defendants shall pay the total of disgorgement and prejudgment interest of \$746,682 in four (4) installments to the Commission according to the following schedule: (1) \$186,670.50 within 14 days of entry of this Final Judgment; (2) \$186,670.50 within four months of entry of

this Final Judgment; (3) \$186,670.50 within eight months of entry of this Final Judgment; and (4) \$186,670.50 within 364 days of entry of this Final Judgment.

Defendant Scherr shall pay the penalty of \$150,000 in four (4) installments to the Commission according to the following schedule: (1) \$37,500 within 14 days of entry of this Final Judgment; (2) \$37,500 within four months of entry of this Final Judgment; (3) \$37,500 within eight months of entry of this Final Judgment; and (4) \$37,500 within 364 days of entry of this Final Judgment.

Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 14 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Defendants shall contact the staff of the Commission for the amount due for the final payment.

If Defendants fail to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court.

VIII.

Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendants, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendants under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by

Defendants of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

IX.

This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

X.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

DONE AND ORDERED in Miami, Florida, this 15th day of August, 2018.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record