

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77254 / February 29, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3750 / February 29, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17140**

**In the Matter of**

**KeyBanc Capital Markets Inc.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against KeyBanc Capital Markets Inc. (“Respondent” or “KBCM”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Exchange Act, 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 Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

## **Summary**

1. These proceedings concern Respondent's failure to make and keep accurate books and records.
2. Respondent, a broker-dealer registered with the Commission, is a subsidiary of KeyCorp, a financial services company headquartered in Cleveland, Ohio.
3. Beginning at some point prior to January 2011, and through January 2012, Respondent's then Chief Financial Officer ("CFO") (until November 2011), Jason Maiher, caused unsubstantiated or "plug" entries to be made to one or more accounts in Respondent's general ledger. The amount of the unsubstantiated entries varied over time.
4. The plug entries resulted in Respondent reporting unsubstantiated assets in the financial statements included in its fiscal year 2010 Annual Audited Report filed with the Commission in February 2011 and in its monthly FOCUS Reports filed with FINRA, which then furnished the FOCUS Reports to the Commission, including those filed in 2011 and January 2012.
5. In Respondent's Annual Audited Report for the year ended December 31, 2011, Respondent disclosed that its prior period financial statements (for fiscal year 2010) included unsubstantiated assets of \$13,679,000 (\$8,591,000 net of taxes) and omitted liabilities of \$4,305,000 (\$2,701,000 net of taxes). Accordingly, Respondent restated net income as \$3,136,000 versus the previously reported \$14,428,000 (a 78% reduction) and restated shareholder's equity from \$328,088,000 to \$316,796,000, as of December 31, 2010.

## **Respondent**

6. Respondent is a broker-dealer registered with the Commission and is headquartered in Cleveland, Ohio.

## **Other Relevant Party**

7. Jason Maiher, age 41, was Respondent's Chief Financial Officer from April 2007 through November 2011 and Series 27 Financial and Operations Principal from April 2007 through December 2011. Maiher was primarily responsible for maintaining Respondent's financial records and oversaw the filing of its monthly FOCUS Reports with FINRA, which then furnished the FOCUS Reports to the Commission. As required by company policy, Maiher was required to certify at the close of each month that Respondent's general ledger balance sheet information had been compared with, and reconciled to, the underlying back-office system information from which the general ledger was prepared.

### **KBCM's Books and Records Were Inaccurate**

8. Beginning at some point prior to January 2011 through January 2012, Maiher caused unsubstantiated or “plug” entries to be made to one or more accounts in Respondent’s general ledger, in order to complete Respondent’s monthly close-the-books process.

9. The plug entries resulted in Respondent overstating its assets and income in its fiscal year 2010 financial statements, which were included in its fiscal year 2010 Annual Audited Report filed with the Commission in February 2011. Maiher signed this report, affirming that the accompanying financial statements were “true and correct.”

10. The plug entries to the general ledger also resulted in inaccurate financial information being included in Respondent’s monthly FOCUS Reports that Maiher caused to be filed with FINRA, which then furnished the FOCUS Reports to the Commission, in January 2011 through January 2012, among other months.

11. In its Annual Audited Report for the year ended December 31, 2011, Respondent disclosed that its prior period financial statements (for fiscal year 2010) included unsubstantiated assets of \$13,679,000 (\$8,591,000 net of taxes) and omitted liabilities of \$4,305,000 (\$2,701,000 net of taxes). The firm’s write-off of the unsubstantiated assets and accrual of the unrecorded liabilities resulted in restated net income of \$3,136,000, a 78% reduction versus the previously reported \$14,428,000, and restated shareholder’s equity of \$316,796,000, an \$11,292,000 reduction from the previously reported \$328,088,000.

12. As a result of the conduct described above, Respondent willfully<sup>2</sup> violated Sections 17(a) and 17(e) of the Exchange Act and Rules 17a-3(a)(2) and 17a-5(a) and (d) thereunder, which require broker-dealers to make and keep current books and records, and to make certain reports and filings as required by the Commission.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent KBCM’s Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

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<sup>2</sup> 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)).

A. Respondent KBCM cease and desist from committing or causing any violations and any future violations of Sections 17(a) and 17(e) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

B. Respondent KBCM is censured.

C. Respondent KBCM shall, within 10 (ten) days of the entry of this Order, pay a civil money penalty in the amount of \$175,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 KeyBanc Capital Markets Inc. 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 Timothy L. Warren, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson, Suite 900, Chicago, IL 60604.

By the Commission.

Brent J. Fields  
Secretary