

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89961 / September 22, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5588 / September 22, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20047

In the Matter of

ELISEO SAMPAYO

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 15B(c) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 15B(c) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Eliseo Sampayo (“Respondent”).

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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 203(f) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

Summary

1. These proceedings arise out of the misconduct by Eliseo Sampayo, a former registered representative in the municipal securities market. Municipal issuers hold retail order periods to give top priority to retail investors seeking to purchase new issue municipal bonds. This retail priority is important because municipal offerings are often over-subscribed, meaning not all orders will be filled. Issuers often require that retail orders include the customer's zip code to verify that the customer resides in the issuer's jurisdiction and therefore qualifies for retail priority.

2. Between October 2016 and August 2017 (the "relevant period"), Respondent was an institutional municipal sales representative at a registered broker-dealer that underwrites new issue municipal bonds ("Dealer"). In his sales position, Respondent's role was to market these new issue municipal bonds to his institutional customers. If his customers wanted the new issue municipal bonds, Respondent submitted those customer orders to Dealer's underwriting desk.

3. During the relevant period, Respondent accepted orders during retail order periods for new issue municipal bonds not just from his institutional customers, but also on behalf of a registered broker-dealer with a large retail customer business, which was attempting to buy bonds for its inventory. The registered broker-dealer submitted orders for new issue municipal bonds to Respondent during retail order periods. Respondent improperly submitted orders for the broker-dealer in the primary offering as retail customer orders when he should have known that these were dealer stock orders that did not qualify for retail priority. Respondent also submitted inaccurate zip codes with some of these retail orders, which created the appearance that the orders were on behalf of an individual residing in the issuer's jurisdiction when in fact they were not.

Respondent

4. **Eliseo Sampayo**, age 53, resides in Larchmont, New York. From March 2009 to August 2017, Respondent served as an institutional municipal sales representative at Dealer. Respondent is not currently employed in the securities industry.

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

Other Relevant Individual

5. **Thomas C. Muldoon** (“Muldoon”), age 70, was a municipal trader at Wells Fargo Clearing Services, LLC (“Wells Fargo”) during the relevant period. In September 2019, the Commission instituted an enforcement action against Muldoon. In the Matter of Thomas C. Muldoon, Exch. Act Rel. No. 86848 (Sept. 3, 2019) (finding that Muldoon violated Section 10(b) of the Exchange Act and MSRB rules by submitting fraudulent retail orders to obtain new issue bonds for Wells Fargo inventory).

Background on Negotiated Offerings of Municipal Bonds

6. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a “negotiated” municipal offering, the municipal issuer sells new issue bonds to a sole underwriter or an underwriting syndicate, which is responsible for distributing the bonds to the public. An underwriting syndicate consists of multiple “co-managers” that receive orders and relay them to the lead firm in the syndicate, known as the “senior manager,” who is responsible for maintaining the order book and presenting orders to the issuer.

7. Bonds in negotiated municipal offerings are offered for sale during designated “order periods,” which are windows of time during which underwriters solicit orders from potential investors. Underwriters market offerings by distributing electronic “pricing wires” to solicit orders from their own customers as well to other broker-dealers, who may want to purchase bonds for their inventory. The pricing wires describe the bonds being offered as well as applicable rules for the offering, including the “priority of orders,” which establishes the sequence in which bonds will be allocated to specific order types. The priority of orders is important to potential purchasers because orders for bonds in a primary offering often exceed the amount of bonds available. Typically, orders from individual retail investors have the highest priority. Retail investors may also reside in the issuer’s jurisdiction and therefore benefit from state- or locality-specific tax advantages.

8. An issuer may specify separate order periods for different categories of customers, typically by holding an initial retail order period for retail customers and a subsequent institutional order period for institutional customers. Retail order period pricing wires typically define who is eligible for retail priority. Retail priority is generally available to individuals and/or financial professionals acting on behalf of individuals. In some cases, “retail” orders can only be placed by residents of the issuer’s jurisdiction, and issuers often require the submission of zip codes as a way to verify that the customer is a resident of the issuer’s jurisdiction. Retail priority is not available to broker-dealers attempting to purchase bonds for their inventory (known as a “stock order”). Retail order period pricing wires commonly state that “stock orders are not permitted” during the retail order period. Stock orders may be entered during institutional order periods, but Municipal Securities Rulemaking Board (MSRB) rules generally require underwriters to fill retail and institutional customer orders ahead of stock orders. As a result, stock orders often go unfilled.

9. After the order period(s) close, the senior manager and the issuer decide which orders will be filled. When making allocation decisions for retail orders submitted by co-managers, senior managers and issuers rely on the information submitted by co-managers. Senior managers typically have no way to independently verify retail eligibility because co-managers usually submit retail orders without customer names in order to protect privacy and prevent client poaching.

Respondent Submitted Improper Retail Orders on Behalf of Muldoon

10. During the relevant period, Dealer acted as a lead manager or a co-manager within an underwriting syndicate for negotiated offerings of new issue municipal bonds. While employed as an institutional sales representative at Dealer, Respondent marketed new issue municipal bonds that Dealer was offering. These offerings frequently began with retail order periods.

11. Respondent received orders for new issue municipal bonds from his institutional customers as well as from Thomas Muldoon, a trader employed by Wells Fargo. Muldoon submitted orders for new issue municipal bonds to Respondent during retail order periods. During the relevant period, Respondent submitted at least 18 orders that he received from Muldoon during retail order periods as retail customer orders. All 18 orders were filled in whole or in part.

12. Respondent knew or should have known that Muldoon's orders were on behalf of Wells Fargo and not an individual, that the orders should have been submitted as stock orders, and that they were not entitled to retail priority, regardless of whether Wells Fargo might re-sell the bonds to its retail customers in the secondary market. Among other reasons, Respondent should have known this because the retail priority rules stated on the pricing wires for these offerings contained at least one of the following rules regarding retail eligibility:

- "Stock orders are not permitted to be entered during the retail order period."
- "The Authority's intention is to have the bonds placed, without further sale, with retail buyers."
- Retail orders are defined as "'going away' orders placed for individuals, bank trusts and investment advisors for which an individual customer is already conditionally committed."
- "'Individual retail order' is defined as an order placed for the account of an individual ... [and] 'professional retail order' is defined as an order placed by a bank trust department, investment advisor, or money manager acting on behalf of an individual."

13. In connection with the Muldoon orders submitted during retail order periods, Respondent submitted zip codes corresponding to the state of the issuer to Dealer's underwriting desk. Issuers require zip codes with retail orders to verify that the customer is an individual residing in a specific jurisdiction. Respondent acknowledged that he submitted inaccurate zip codes with some of Muldoon's orders to the underwriting desk. Respondent negligently submitted these inaccurate zip codes with Muldoon's orders when he should have known that they did not correspond to the residence of any customer. The submission of these zip codes with Muldoon's orders had the effect of giving the orders retail priority, and created the impression that Muldoon's orders were *bona fide* retail orders when they were not.

Violations

14. MSRB Rule G-17 provides in relevant part that, in the conduct of its municipal securities business, every broker-dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.² Negligence is sufficient to establish a violation of MSRB Rule G-17.

15. MSRB Rule G-11(k) provides in relevant part that every dealer that submits an order during a retail order period to the senior manager shall disclose: whether the order is from a customer that meets the issuer's eligibility criteria for retail priority; and any identifying information required by the issuer in connection with such retail order.

16. Respondent willfully³ violated MSRB Rule G-17 by submitting retail orders with inaccurate zip codes on behalf of Wells Fargo when he knew or should have known that (a) these orders were for Wells Fargo's inventory and therefore did not qualify for retail priority, and (b) the zip codes Respondent provided were inaccurate.

17. Respondent willfully violated MSRB Rule G-11(k) by submitting retail orders on behalf of Wells Fargo without disclosing that Wells Fargo did not meet the issuer's eligibility criteria for retail priority. Respondent further violated this rule by submitting inaccurate zip codes, which some of the issuers had required as customer identifying information.

IV.

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

Accordingly, pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

² Subject to certain exceptions not relevant here, MSRB Rule D-11 includes "associated persons" within the definitions of brokers, dealers, and municipal securities dealers for purposes of all other MSRB rules.

³ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

A. Respondent be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

for a period of six months, effective immediately upon the entry of this Order.

B. Respondent shall pay a civil money penalty in the amount of \$20,000.00 to the Securities and Exchange Commission, of which \$10,000.00 shall be transferred to the Municipal Securities Rulemaking Board in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$10,000.00 shall be transferred to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (1) \$10,000.00, within 10 days of the entry of this Order; and (2) \$10,000.00 plus post-Order interest as may accrue, within 180 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails 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 Order, including post-order 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 Commission.

C. 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 Eliseo Sampayo 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 Ivonia K. Slade, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent 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).

By the Commission.

Vanessa A. Countryman
Secretary