

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10972 / August 31, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 92820 / August 31, 2021

INVESTMENT COMPANY ACT OF 1940
Release No. 34369 / August 31, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20505

In the Matter of

ANTHONY A. FALSETTA

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b), 15B(c), AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Anthony A. Falsetta (“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 and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist (“Order”), as set forth below.

III.

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

Summary

This matter involves deceptive conduct by former registered representative Anthony A. Falsetta in connection with retail order periods in municipal bond offerings. Municipal issuers hold retail order periods to give top priority to retail investors seeking to purchase new issue bonds. This retail priority is important because municipal offerings are often over-subscribed, meaning not all orders to purchase the bonds will be filled.

Between January 2016 and April 2018 (the “relevant period”), Falsetta violated retail order period priority provisions in certain new issue municipal bond offerings by placing orders for broker-dealers, who were attempting to buy bonds for their inventory, as retail customer orders. Falsetta did so despite knowing that pursuant to issuer priority rules, orders on behalf of broker-dealers do not qualify for retail priority. This practice misled issuers and senior managing underwriters, who were deceived into allocating bonds to a broker-dealer instead of to legitimate retail investors. This practice also operated as a fraud on purchasers because, in some instances, it resulted in legitimate retail purchasers being crowded out of the offering.

As a result of the conduct described herein, Falsetta violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, Section 17(a)(3) of the Securities Act, and Municipal Securities Rulemaking Board (MSRB) Rules G-11(k) and G-17.

Respondent

1. **Anthony A. Falsetta**, age 54, resides in Boca Raton, Florida. From August 2015 to October 2018, Falsetta worked as an institutional municipal sales representative at Drexel Hamilton, LLC. Prior to that, from 2010 to 2015, Falsetta worked in municipal sales roles at other broker-dealers. Falsetta also worked in the municipal securities industry between 1986 and 2000. Falsetta is currently unemployed.

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 Entity and Individual

2. **Drexel Hamilton, LLC** (“Drexel Hamilton”), incorporated in Pennsylvania and headquartered in Philadelphia, Pennsylvania, is registered with the Commission as a broker-dealer and municipal advisor.

3. **Daniel C. Tracy** (“Tracy”), age 57, resides in Bedford, New York and is, and was throughout the relevant period, an institutional municipal trader at Hilltop Securities Inc. (“Hilltop”).

Background on Negotiated Offerings of Municipal Bonds

4. 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.

5. 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 announce order periods by distributing electronic “pricing wires.” 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.

6. 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 state that retail priority is available to individuals and/or financial professionals acting on behalf of individuals. 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 MSRB rules generally require underwriters to fill retail and institutional customer orders ahead of stock orders. As a result, stock orders often go unfilled.

7. 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.

8. At a designated time after it allots new issue bonds, the senior manager notifies the syndicate of a particular time at which the bonds will be “free to trade,” meaning underwriters can begin trading the bonds at a price other than the initial offering price in the secondary market.

Falsetta Submitted Fraudulent Retail Orders in Primary Offerings of Municipal Bonds

9. During the relevant period, Drexel Hamilton acted as a co-manager within an underwriting syndicate for negotiated offerings of new issue municipal bonds. As an institutional sales representative, Falsetta marketed new issue municipal bonds that Drexel Hamilton was offering. These offerings frequently began with retail order periods. Falsetta understood that pursuant to issuer priority rules, retail orders receive the highest priority and therefore are most likely to be filled.

10. In January 2016, Falsetta contacted Daniel Tracy, whom Falsetta had worked with at a prior firm, and invited Tracy to submit orders for new issue municipal bonds that Drexel Hamilton was underwriting. Falsetta understood that any orders Tracy submitted would be for Hilltop’s inventory. During the relevant period, Falsetta improperly placed orders he received from Tracy on behalf of Hilltop as retail customer orders, and obtained 97 retail allotments of bonds for Hilltop.

11. Falsetta also improperly placed retail orders for another municipal bond trader at Wells Fargo (“Trader A”). Falsetta understood that Trader A’s orders were for Wells Fargo’s inventory. During the relevant period, Falsetta improperly placed orders he received from Trader A on behalf of Wells Fargo as retail customer orders, and obtained 9 retail allotments of bonds for Wells Fargo.

12. Because the orders from Tracy and Trader A were for their respective broker-dealers’ inventory, those orders should have been submitted as stock orders. Falsetta’s submission of these stock orders as retail customer orders violated the issuer priority rules stated on the pricing wires for these offerings, many of which stated that “[s]tock orders are not permitted to be entered during the retail order period.” Falsetta understood that the stock orders he received from Tracy and Trader A did not qualify for retail priority. Falsetta submitted these orders as retail to create the false appearance that they were submitted on behalf of an individual rather than on behalf of a broker-dealer.

13. Falsetta took additional steps to disguise his sale of retail allotments of new issue bonds to Hilltop and Wells Fargo. For example, in several instances in 2017, Drexel Hamilton obtained retail allotments of new issue bonds to fill broker-dealer stock orders that Falsetta had submitted. Falsetta then delayed writing the sales tickets for these orders until the bonds were “free to trade.” This created the false appearance that the bonds were sold in the secondary market, which would be more typical than a broker-dealer receiving bonds in the primary offering.

14. In another instance in May 2017, Falsetta called Trader A to report Trader A’s allotments on a New York offering and asked Trader A to be “discreet and not go back and show [i.e., offer the bonds to] the manager” of the offering. Falsetta made this request to prevent the

senior manager from discovering that Wells Fargo was re-selling bonds it had received to fill purportedly retail customer orders, which were actually stock orders.

15. As discussed above, orders for bonds in a primary offering often exceed the amount of bonds available. Falsetta knew or should have known that the dealer stock orders he improperly submitted as retail customer orders could be filled to the exclusion of other, legitimate retail customer orders. Falsetta's improper retail orders crowded out legitimate retail purchasers in at least 22 instances during the relevant period.

16. Falsetta earned approximately \$122,353 in commissions on the 106 retail allotments he sold to Hilltop and Wells Fargo.

Violations

Falsetta Violated Section 10(b) of the Exchange Act, Rules 10b-5(a) and (c) Thereunder, and MSRB Rule G-17 by Submitting Fraudulent Retail Orders

17. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit any person, in connection with the purchase or sale of any security, from directly or indirectly: employing any device, scheme, or artifice to defraud (subpart (a)); or engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person (subpart (c)). 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. Establishing a primary violation of Section 10(b) and Rule 10b-5 requires proof of scienter. Aaron v. SEC, 446 U.S. 680, 695-97 (1980).

18. 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.

19. Falsetta willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, as well as MSRB Rule G-17, by placing broker-dealer stock orders for new issue municipal bonds as retail customer orders when he knew these orders did not qualify for retail priority. Falsetta intentionally submitted these orders as retail to mislead the senior manager and issuer into allocating bonds for a dealer's stock. Falsetta further violated these provisions by taking steps to disguise his sale of retail allocations of new issue bonds to broker-dealers.

Falsetta Violated Section 17(a)(3) of the Securities Act and MSRB Rule G-17 by Crowding Out Legitimate Retail Investors

20. Section 17(a)(3) of the Securities Act prohibits any person, in the offer or sale of a security, from directly or indirectly engaging in any transaction, practice, or course of business 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.

operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a)(3). Negligence is sufficient to establish a violation of Section 17(a)(3). Aaron, 446 U.S. at 696-97.

21. Falsetta willfully violated Section 17(a)(3) of the Securities Act and MSRB Rule G-17 by submitting broker-dealer stock orders as retail priority customer orders in particular offerings when he knew or should have known that the stock orders were not eligible for retail priority. This practice resulted in legitimate retail purchasers being crowded out of the offering.

Falsetta Violated MSRB Rule G-11(k)

22. 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.

23. Falsetta willfully violated MSRB Rule G-11(k) by submitting broker-dealer stock orders as retail customer orders without disclosing that these orders did not meet the issuer's eligibility criteria for retail priority.

Disgorgement

24. Respondent Falsetta has submitted a sworn Statement of Financial Condition dated March 12, 2020, as updated on March 4, 2021 and July 23, 2021, and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest.

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 Section 8A of the Securities Act, Sections 15(b), 15B(c), and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Falsetta cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Falsetta be, and hereby is:

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

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred 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.

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Falsetta shall pay a civil money penalty in the amount of \$40,000 to the Securities and Exchange Commission, of which \$10,000 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 \$30,000 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) \$7,500, within 10 days of the entry of this Order; and (2) thirty-five (35) payments of 928.57 due monthly on the day of the month this Order is entered, beginning in the month after the Order is entered. Payments shall be deemed made on the date they are received by the Commission and 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.

E. 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 Anthony A. Falsetta as the 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.

F. 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.

G. Respondent Falsetta shall, within 10 days of the entry of this Order, pay disgorgement of \$122,353 and prejudgment interest of \$24,228.64, but payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated March 12, 2020, as updated on March 4, 2021 and July 23, 2021, and other documents submitted to the Commission.

H. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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