UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92370 / July 9, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5768 / July 9, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20389

In the Matter of **HILLTOP SECURITIES INC. AND DANIEL C. TRACY** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b), 15B(c), AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS 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 Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Hilltop Securities Inc. ("Hilltop"), and that public administrative proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 203(f) of the Advisers Act against Daniel C. Tracy ("Tracy") (Hilltop and Tracy referred to collectively as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent

to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b), 15B(c), and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, 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 Respondents' Offers, the Commission finds[1] that:

Summary

This matter involves Hilltop and Daniel C. Tracy's violation of certain rules of the Municipal Securities Rulemaking Board ("MSRB") and Hilltop's failure reasonably to supervise a registered representative in connection with retail order periods for negotiated new issue municipal bonds. Between January 2016 and April 2018 (the "relevant period"), Tracy obtained bonds for Hilltop's inventory by placing orders with a co-managing underwriter during the retail order period. Municipal issuers hold retail order periods to give first priority to orders from retail investors in the bond allocation process. Dealer or "stock" orders to obtain bonds for inventory are not permitted during retail order periods. Stock orders receive the lowest priority and are rarely filled. Tracy knew that Hilltop's stock orders did not qualify as retail customer orders. Tracy should have known that the co-manager that received these orders during the retail order period was submitting them to the senior manager as retail customer orders, which effectively gave Hilltop a higher priority in the bond allocation process, to which it was not entitled.

Respondents also placed stock orders for Hilltop with another broker-dealer in offerings in which Hilltop was acting as a co-managing underwriter. Hilltop lacked policies or procedures reasonably designed as to how its registered representatives were to submit stock orders for new issue municipal bonds to third parties, both when Hilltop was part of the syndicate and when Hilltop was not part of the syndicate. In these offerings, Hilltop did not inform the senior managing underwriter that Tracy had submitted stock orders through another co-manager, in violation of syndicate rules, which prevented the senior manager from discovering that orders placed by one syndicate member were actually on behalf of another syndicate member, Hilltop.

As a result of this conduct, Respondents violated MSRB Rule G-17. In addition, Hilltop violated Section 15B(c)(1) of the Exchange Act and MSRB Rule G-27, and failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting violations by Tracy.

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

1. **Hilltop Securities Inc.**, incorporated in Delaware and headquartered in Dallas, Texas, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

2. **Daniel C. Tracy**, age 57, resides in Bedford, New York and is a registered representative with Hilltop Securities Inc. Tracy has over 20 years of experience as a municipal trader and has worked as an institutional municipal trader at Hilltop since 2014.

Background on Negotiated Offerings of Municipal Bonds

3. 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.

4. 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.

5. 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.

6. 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.

Respondents Improperly Obtained Retail Allocations of New Issue Municipal Bonds

7. Tracy began working at Hilltop as an institutional municipal trader in 2014. Tracy's job involves purchasing and selling municipal bonds on behalf of Hilltop.

8. In January 2016, Tracy was contacted by a municipal sales representative at another broker-dealer ("Representative A"), whom Tracy had worked with at a prior firm. Representative A invited Tracy to submit orders for new issue municipal bonds in offerings his firm was underwriting as co-manager. Tracy then began placing stock orders on behalf of Hilltop for new issue municipal bonds with Representative A.

9. During the relevant period, Tracy placed stock orders on behalf of Hilltop with Representative A during retail order periods in at least 37 offerings. Representative A's firm in turn placed Hilltop's stock orders with the senior manager as retail customer orders. As a result of these orders, Hilltop received at least 97 allotments of new issue municipal bonds that the senior manager had designated for retail customers. Hilltop made $206,606 in profit by trading these 97 allotments of new issue municipal bonds.

10. Tracy understood that retail orders have a much higher likelihood of being filled as compared to stock orders, and also understood that his stock orders on behalf of Hilltop did not qualify for retail priority. Tracy should have known that Representative A's firm was submitting his stock orders to the senior manager as retail customer orders, which had the effect of giving Hilltop a higher priority in the bond allocation process, to which it was not entitled.

11. Tracy should have known that Representative A was improperly submitting Hilltop's stock orders as retail customer orders based on communications Tracy received regarding those orders. In addition, Tracy received new issue municipal bonds from Representative A that Tracy should have known were retail allocations because the institutional pricing wire stated that "no more orders" would be accepted for those bonds during the institutional order period. This should have indicated to Tracy that his orders were placed during the retail order period.

12. In nine of the offerings in which Tracy placed stock orders with Representative A during retail order periods, Representative A's firm and Hilltop were both acting as co-managers for the offerings. Hilltop did not have policies or procedures reasonably designed to address this circumstance. The syndicate rules stated on the relevant pricing wires required that:

> *Pursuant to MSRB Rule G-11, all syndicate members must inform [the senior manager] if they are submitting an order for their own account, an affiliated account or a related account to themselves or any other syndicate member.*

In these nine offerings, Hilltop did not report to the senior manager that Hilltop had placed stock orders with another co-manager. This prevented the senior manager from discovering that Hilltop, a syndicate member, was submitting orders for its own account through another syndicate member.

Hilltop's Policies and Procedures

13. Hilltop's written supervisory procedures (WSPs) were not reasonably designed to prevent and detect violations of issuer priority rules in new issue municipal bond offerings when Hilltop was buying new issue municipal bonds for its inventory. Hilltop lacked policies or procedures with respect to how its registered representatives were to submit stock orders for new issue municipal bonds to third parties, both when Hilltop was part of the syndicate and when Hilltop was not part of the syndicate. Under these circumstances, Hilltop failed to establish policies and procedures that would reasonably be expected to prevent and detect MSRB rule violations by its registered representatives related to issuer priority and disclosure rules in connection with Hilltop's purchase of new issue municipal bonds.

14. As discussed above, Respondents obtained new issue municipal bonds from Representative A in violation of MSRB rules. As a result of Hilltop's lack of WSPs regarding the purchase of new issue municipal bonds for stock, Hilltop failed reasonably to prevent or detect Tracy's violations for over two years.

Legal Discussion

Respondents Violated MSRB Rule G-17

15. 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.

16. Respondents obtained new issue municipal bonds by submitting stock orders to Representative A during the retail order period. Respondents should have known that Representative A's firm was placing these stock orders with the senior manager as retail customer orders, and Respondents knew that the stock orders did not qualify for retail priority.

17. Respondents also submitted stock orders to Representative A in offerings in which Hilltop was acting as a co-manager without notifying the senior manager that Hilltop was submitting stock orders through another co-manager, in violation of syndicate rules. This prevented the senior manager from discovering that Hilltop had submitted orders for its own account to the syndicate through a third party. Respondents should have known about this syndicate rule because it was stated on the pricing wires.

[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.

18. Through the conduct described above, Respondents willfully[3] violated MSRB Rule G-17.

Hilltop Failed Reasonably to Supervise and to Establish an Adequate Supervisory System

19. Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to impose sanctions against a broker-dealer for failing reasonably to supervise a person subject to the firm's supervision who committed a securities law violation. A broker-dealer can be liable for failure to supervise either when it lacks procedures reasonably designed to prevent and detect the underlying violation, see, e.g., Smith Barney, Harris Upham & Co., Exch. Act Release No. 21813, 1985 WL 548567, at *3 (Mar. 5, 1985), or when it has failed to adopt a reasonable system to implement those procedures. See, e.g., A.G. Edwards & Sons, Inc., Exch. Act Release No. 55692, 2007 WL 1285761, at *4 (May 2, 2007).

20. MSRB Rule G-27(a) obligates brokers, dealers, and municipal securities dealers to "supervise the conduct of the municipal securities activities of the firm and its associated persons to ensure compliance with [MSRB] rules and the applicable provisions of the [Exchange] Act and rules thereunder." MSRB Rule G-27(b) obligates brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules.

21. As described above, Hilltop registered representative Tracy violated MSRB Rule G-17 in connection with his purchase of new issue municipal bonds from Representative A. Hilltop failed to establish policies and procedures reasonably designed to prevent and detect Tracy's violations.

22. Under the circumstances, Hilltop failed reasonably to supervise the municipal securities activities of its registered representative to ensure compliance with MSRB rules and the federal securities laws. As a result, Hilltop failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act, and willfully violated MSRB Rule G-27.

[3] "Willfully," for purposes of imposing relief under Sections 15(b) and 15B of the Exchange Act and Section 203(f) 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).

Hilltop Violated Section 15B(c)(1) of the Exchange Act

23. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer or municipal securities dealer from effecting interstate transactions in, or inducing or attempting to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB.

24. As a result of its willful violations of MSRB Rules G-17 and G-27, Hilltop willfully violated Section 15B(c)(1) of the Exchange Act.

Disgorgement

25. The disgorgement and prejudgment interest ordered in Section IV, paragraph D, is consistent with equitable principles, does not exceed Hilltop's net profits from its violations, and returning the money to Hilltop would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in Section IV, paragraph D shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Hilltop's Remedial Efforts

26. In determining to accept Hilltop's Offer, the Commission considered remedial acts undertaken by Hilltop, including the following:

- implementing new WSPs governing when and how traders may place orders for new issue municipal bonds with third parties;
- hiring additional managers to supervise Hilltop's municipal traders;
- implementing new training programs and certification requirements regarding MSRB rules as well as Hilltop's policies and procedures applicable to municipal trading, sales, and underwriting; and
- engaging an outside law firm to review Hilltop's policies and procedures related to the underwriting, sale, purchase, and trading of municipal bonds, and to propose additional enhancements to those policies and procedures.

IV.

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

Accordingly, pursuant to Sections 15(b), 15B(c), and 21C of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Hilltop cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rules G-17 and G-27.

B. Respondent Hilltop is censured.

C. Respondent Tracy be, and hereby is, subject to the following limitations on his activities for twelve months, commencing immediately upon the entry of this Order:

> Respondent Tracy shall not offer, purchase, or sell negotiated new issue municipal securities on behalf of (1) any broker, dealer, investment adviser, or municipal securities dealer, or (2) any customer or client of any broker, dealer, investment adviser, or municipal securities dealer, for the time period specified above.

D. Respondent Hilltop shall, within 30 days of the entry of this Order, pay disgorgement of $206,606 and prejudgment interest of $48,587 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). Respondent Hilltop shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $85,000 to the Securities and Exchange Commission, of which $21,250 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 $63,750 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600; if timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. Respondent Tracy shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $25,000 to the Securities and Exchange Commission, of which $12,500 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 $12,500 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

F. 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 each Respondent's name 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 St., NE, Washington, DC 20549.

G. 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, Respondents agree that in any Related Investor Action, Respondents shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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(s) 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 Tracy, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Tracy 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 Tracy 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