

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 93043 / September 17, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20569**

**In the Matter of**

**Kenneth G. Friedrich,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 15(b), 15B(c) 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), 15B(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Kenneth G. Friedrich (“Friedrich” or “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 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 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

This matter involves improper conduct by Friedrich in connection with RBC Capital Markets, LLC's ("RBC") purchase and sale of certain new issue municipal bonds from and to unregistered brokers known as "flippers." Friedrich served as Head of RBC's Municipal Sales, Trading and Syndication group (the "Municipal Group") from 2010 to June 2016.

RBC's internal policy for primary offerings required the firm's syndicate desk, when acting as sole underwriter or senior syndicate manager, to allocate bonds according to a "standard methodology" that prioritized customer and dealer orders over orders for flippers absent different instructions from issuers. However, between January 2014 and December 2017, the syndicate desk did not always follow the standard methodology, instead sometimes filling orders for flippers ahead and instead of institutional customer and dealer orders when orders exceeded the bonds available. In connection with one November 2015 offering where the issuer directed a retail order period, the syndicate desk also allocated some bonds to two flippers ahead and instead of retail customers although the flippers did not meet the issuer's retail eligibility criteria. From at least January 2014 to June 2016, Friedrich was aware that the syndicate desk did not always follow the standard methodology and he permitted the underwriters on the syndicate desk to fill orders for flippers ahead and instead of customer and dealer orders. He also participated in the decision to allocate bonds to flippers in the November 2015 offering.

Between January 2014 and December 2017, RBC also used flippers to circumvent issuer priority instructions and receive higher priority for its dealer orders in some instances when RBC was not a participating underwriter in the offering. From at least January 2014 to June 2016, Friedrich permitted RBC traders to place orders for new issue bonds with flippers. He was aware that the flippers sometimes placed purported "customer" orders with the underwriters and, when allocated bonds, sold the bonds to RBC.

As a result of this conduct, Friedrich violated Section 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board ("MSRB") Rules G-11(k) and G-17. He also violated 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 of MSRB Rules G-11(k) and G-17 by a certain registered representative.

#### Respondent

1. **Kenneth G. Friedrich**, age 57, resides in New York, New York. From January 1999 to June 2016, Friedrich was a registered representative associated with RBC. From 2007 to

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<sup>1</sup> 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.

2010, he served as Head of RBC's sales desk in the Municipal Group and, from 2010 to June 2016, he served as Head of the Municipal Group.

### **Relevant Entities**

2. **RBC Capital Markets, LLC**, incorporated in Minnesota with a principal place of business in New York, New York, is registered with the Commission as a broker-dealer, municipal securities dealer, investment adviser and municipal advisor.

3. **RMR Asset Management Company ("RMR")**, was a California corporation with a principal place of business in Chula Vista, California. RMR primarily bought and sold new issue bonds. RMR was not registered with the Commission. The Commission filed an enforcement action against RMR and its associates in August 2018.<sup>2</sup>

4. **Core Performance Management, LLC ("CPM")** was a Florida limited liability company located in Boca Raton, Florida that was dissolved on July 27, 2016. CPM primarily bought and sold new issue municipal bonds. CPM was not registered with the Commission. The Commission filed an enforcement action against CPM and its associates in August 2018.<sup>3</sup>

### **Background on Municipal Underwriting Process**

5. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a "negotiated" offering, the municipal issuer chooses a broker-dealer to act either as sole underwriter or as the senior manager of an underwriting syndicate. An underwriting syndicate is a group of broker-dealers that join together to purchase new issue bonds from the issuer to distribute the bonds to the public.

6. Negotiated offerings of new issue municipal bonds are conducted according to certain rules, including the "priority of orders," which establishes the sequence in which bonds will be allocated to specific types of orders. Issuer priority rules typically assign retail customer orders the highest priority in the bond allocation process. Issuers generally prioritize customer orders ahead of orders for broker-dealers seeking bonds for their own inventory, and as a result such orders are often not filled.

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<sup>2</sup> *SEC v. RMR Asset Management Company, et al.*, 18-CV-01895-AJB-JMA (S.D. Cal. filed Aug. 14, 2018) (partially settled action against RMR and 13 associated individuals for acting as unregistered brokers and, as to 10 of them, for engaging in fraudulent practices in connection with flipping new issue municipal bonds). In August 2020, the U.S. District Court for the Southern District of California granted summary judgment to the SEC, finding that the three non-settling RMR associates acted as unregistered brokers in violation of Section 15(a) of the Exchange Act when they engaged in thousands of securities transactions for RMR.

<sup>3</sup> *SEC v. Core Performance Management, LLC, et al.*, 18-CV-81081-BB (S.D. Fla., filed Aug. 14, 2018) (settled action against CPM and five associated individuals for acting as unregistered brokers and for engaging in fraudulent practices in connection with flipping new issue municipal bonds).

## **RBC's Standard Methodology for Allocating Bonds in Primary Offerings**

7. Between January 2014 and December 2017, RBC had a written internal policy (the "Policy") relating to new issue municipal bond offerings. The Policy established procedures that RBC's syndicate desk was to follow when RBC was acting as sole underwriter or senior syndicate manager. In the absence of different priority instructions from issuers, flippers were to receive the lowest priority. Specifically, the Policy required RBC's syndicate desk to adhere to a "standard methodology," and prioritize orders and allocate bonds as follows:

- 1<sup>st</sup> priority: Orders for Customers
- 2<sup>nd</sup> priority: Orders for [RBC's] own account, [RBC] related accounts or [RBC] affiliated accounts (or syndicate member's own, related or affiliated accounts, if applicable)
- 3<sup>rd</sup> priority: Orders for Broker-Dealers other than [RBC] and syndicate members
- 4<sup>th</sup> priority: Any other orders

8. The Policy defined "Customer" orders entitled to first priority under the standard methodology to "generally include all orders received by or on behalf of an individual or institution other than 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> priority." Orders that had last, or fourth, priority were defined as "[any] other orders, including orders such as those submitted by a customer who, in the reasonable belief of [RBC] plans to purchase the securities and immediately resell such securities at higher prices (known as a "flipper") or instances in which [RBC] is unable to reasonably authenticate the status or qualification of an order during a retail order period directed by an Issuer."

9. Pursuant to the Policy, in advance of each negotiated offering where RBC's syndicate desk acted as sole underwriter or senior syndicate manager, RBC provided issuers a written notice titled "Notice of Priority of Orders from and Allocations to Investors" (the "Notices"). The Notices described the standard methodology, and they stated that RBC would "deviate from such priority only when deemed by [RBC] to be in the best interests of the syndicate or unless the Issuer otherwise consents."

10. The Policy further required RBC's syndicate desk to document any and all deviations from established priority provisions, as well as the reasons for the deviations, and to keep that documentation and any issuer instructions in the firm's underwriting files.

## **Friedrich Permitted the Improper Allocation of New Issue Bonds to Flippers**

11. In 2008, Friedrich, as Head of Sales, appointed a single institutional salesperson to cover certain of RBC's accounts for RMR, CPM and their affiliates (collectively, "the flippers"). As a result of this structure, all of RBC's municipal bond transactions with flippers were coordinated through the salesperson responsible for covering the flippers' accounts.

12. When serving as sole underwriter or senior syndicate manager, RBC's syndicate desk did not always adhere to the standard methodology in the Policy and the Notices, in the absence of different priority instructions from issuers. Instead, on at least 41 occasions when

orders exceeded the new issue bonds available, the syndicate desk prioritized orders for flippers over orders for institutional customer and dealer orders. As a result, the flippers orders' "crowded out" institutional customer and/or dealer orders which should have been filled first. Further, RBC's syndicate desk failed to document these deviations from the standard methodology or the reasons for them. Friedrich knew that the syndicate desk did not always follow the standard methodology in the absence of different instructions from issuers, and he permitted the Head of the RBC syndicate desk (the "Syndicate Manager") and the other underwriters on the syndicate desk to sometimes allocate bonds to the flippers ahead and instead of customers and dealers.

13. For example, in March 2016, RBC served as senior manager for a negotiated offering of municipal bonds in the total principal amount of \$62.2 million. In connection with the offering, the salesperson who Friedrich assigned to cover the flipper accounts submitted four orders for three different bond maturities on behalf of RMR and two CPM affiliates. Orders for the three bond maturities exceeded the available bonds by between 19% and 77%. Despite this, RBC's syndicate desk allocated a combined \$1.1 million in the three bond maturities to RMR and the CPM affiliates. As a result, approximately \$7.9 million in institutional customer orders and approximately \$7.8 million in dealer orders were not filled.

14. In one offering during the relevant period, the syndicate desk also allocated oversubscribed bonds to the flippers ahead and instead of retail customers in contravention of the issuer's priority instructions. In November 2015, RBC acted as senior syndicate manager for a negotiated offering of municipal bonds in the total principal amount of \$626.8 million. The issuer directed that a retail order period be held in which first priority was to be given to retail customer orders. Shortly before the retail order period closed, the salesperson who Friedrich assigned to cover the flippers submitted two orders for RMR and an order for a CPM affiliate to the syndicate desk. The salesperson falsely certified that the orders met the issuer's retail eligibility criteria and affirmed their eligibility by providing zip codes that were not associated with the flippers' locations. Friedrich and the Syndicate Manager participated in the decision to allocate bonds to the flippers in this offering. Although Friedrich and the Syndicate Manager, who directly managed the offering, were aware that the flippers were not retail customers and that the flippers did not meet the issuer's retail eligibility criteria, the syndicate desk allocated \$500,000 in bonds of one maturity to RMR and \$1,000,000 and \$250,000 in bonds of another maturity to RMR and the CPM affiliate, respectively. As a result, retail orders from other buyers for these maturities were not filled.

15. Friedrich permitted the syndicate desk to deviate from the standard methodology because he understood that RBC benefitted from its relationships with the flippers, who often purchased new issue bonds from RBC in deals where there were not enough other buyers for the bonds.

### **Friedrich Permitted the Improper Purchase of New Issue Bonds from Flippers**

16. When acquiring new issue municipal bonds for inventory, broker-dealers are required to submit dealer orders directly to the underwriters offering the bonds. From at least January 2014 to June 2016, Friedrich permitted RBC traders to use flippers to circumvent this requirement and obtain higher priority for RBC's orders in offerings in which the firm was not a

participating underwriter. When RBC's trading desk wanted new issue bonds for inventory, the traders directed the salesperson Friedrich assigned to cover the flippers to place indications of interest in purchasing the bonds with the flippers. Friedrich was aware that the flippers sometimes attempted to fill the indications they received from RBC by placing customer orders, which had higher priority than dealer orders, with the underwriters. He also was aware that, when the flippers obtained bonds from the underwriters, they immediately sold or "flipped" the bonds to RBC. Between January 2014 and December 2017, RBC improperly obtained bonds for inventory from flippers on at least 87 occasions.

### **Friedrich Failed Reasonably to Supervise the Syndicate Manager**

17. Between January 2014 and June 2016, Friedrich was the first-level supervisor of RBC's Syndicate Manager. Friedrich was responsible for the Syndicate Manager's compliance with the standard methodology in the Policy. The Syndicate Manager did not always comply with the standard methodology and, at times, improperly prioritized orders for new issue bonds for the flippers ahead of institutional customer and dealer orders. As discussed above, in connection with a November 2015 offering, the Syndicate Manager also failed to follow the issuer's priority instructions and allocated bonds to fill "retail" orders for the flippers that were submitted to RBC's syndicate desk during the retail order period when he knew that the flippers' orders did not meet the issuer's retail eligibility criteria. The Syndicate Manager thereby violated Section 15B(c)(1) of the Exchange Act and MSRB Rules G-11(k) and G-17.

### **Legal Discussion**

#### **Friedrich Violated MSRB Rule G-17**

18. MSRB Rule G-17 provides that, in the conduct of its municipal securities business, every broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. Negligence is sufficient to establish a violation of MSRB Rule G-17; no finding of scienter is required. *See Wheat, First Securities, Inc.*, Exch. Act Release No. 48378, 2003 WL 21990950, at \*10 (Aug. 20, 2003).

19. As discussed above, Friedrich permitted the syndicate desk to sometimes fill orders for the flippers ahead and instead of institutional customer and dealer orders in contravention of the standard methodology in the Policy and the Notices. In one offering, he participated in the decision to improperly designate and fill flipper orders as retail orders when he knew the flippers' orders did not meet the issuer's retail eligibility criteria for the offering.

20. In addition, Friedrich permitted RBC traders to circumvent issuer priority instructions of certain new issue bond offerings by placing orders with the flippers for RBC's inventory when he was aware that the flippers would sometimes place higher priority customer orders for RBC.

21. By this conduct, Friedrich willfully<sup>4</sup> violated MSRB Rule G-17.

Friedrich Violated MSRB Rule G-11(k)

22. MSRB Rule G-11(k) provides that each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide in writing the following information relating to each order designated as retail submitted during a retail order period: (i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order is one for which a customer is already conditionally committed; (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order.<sup>5</sup>

23. As discussed above, in connection with a November 2015 offering, Friedrich participated in the decision to allocate bonds to fill three "retail" orders for the flippers that were submitted to RBC's syndicate desk, which was serving as senior syndicate manager, during the retail order period. Friedrich was aware that the salesperson he assigned to cover the flippers falsely certified that the orders met the issuers' retail eligibility criteria and included zip codes affirming their purported eligibility that were not associated with the flippers. Friedrich was aware that the flippers' orders did not meet the issuer's retail eligibility criteria.

24. By this conduct, Friedrich willfully violated MSRB Rule G-11(k).

Friedrich Failed Reasonably to Supervise the Syndicate Manager

25. Section 15(b)(6)(A)(i) of the Exchange Act incorporates by reference Section 15(b)(4)(E) and provides for the imposition of sanctions against any individuals associated with a broker or dealer who fail reasonably to supervise others. Such individuals may be held liable for failing to reasonably supervise those subject to their supervision when they ignore red flags, even if the firm does not have specific procedures to address the misconduct. See, e.g., Bridge, Exch. Act Release No. 60736, 2009 WL 3100582, at \*16-18 (Sept. 29, 2009) (Commission Opinion) (direct supervisor failed reasonably to supervise where he was "fully aware of, and complicit in," misconduct, even though firm did not have policies or procedures to address the misconduct).

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<sup>4</sup> "Willfully," for purposes of imposing relief under Sections 15(b) and 15B of the Exchange 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)).

<sup>5</sup> Rule G-11(k) further provides that the senior syndicate manager may rely on the information furnished by each broker, dealer, or municipal securities dealer that provided the information required by (i) - (v) unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate, or complete.

26. 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.

27. As discussed above, the Syndicate Manager violated Section 15B(c)(1) of the Exchange Act and MSRB Rules G-11(k) and G-17 by allocating bonds to orders for flippers ahead and instead of Customer and dealer orders in contravention of the Policy and Notices in the absence of different issuer instructions. The Syndicate Manager also allocated bonds to retail orders submitted to the syndicate desk on behalf of the flippers when he knew that the orders did not meet the issuer’s retail eligibility criteria. Although Friedrich was aware that the Syndicate Manager was engaging in this misconduct, he did not take any action as his direct supervisor to prevent the misconduct.

28. As a result, Friedrich failed reasonably to supervise the Syndicate Manager, within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing and detecting the Syndicate Manager’s violations of MSRB Rules G-11(k) and G-17, and willfully violated MSRB Rule G-27.

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

29. 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.

30. As a result of the negligent conduct described above and his willful violations of MSRB Rules G-11(k), G-17 and G-27, Friedrich willfully violated Section 15B(c)(1) of the Exchange Act.

#### **IV.**

On the basis of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent’s Offer.

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

A. Friedrich cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act.

B. Friedrich is censured.

C. Friedrich shall be, and hereby is, subject to the following limitations on activities for six months, commencing immediately upon the entry of this Order:



Friedrich shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for the time period specified above; and

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

D. Friedrich shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$30,000 to the Securities and Exchange Commission, of which a total of \$9,000 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$21,000 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.

E. Payments must be made in one of the following ways:

- (1) Respondent may transmit payments 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 RBC 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 Assistant Regional Director Kevin B. Currid, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110.

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. Respondent shall not argue that it is entitled to, nor shall Respondent 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 it 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