

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93044 / September 17, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20570

In the Matter of

Jaime L. Durando,

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 Jaime L. Durando (“Durando” 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 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 finds¹ that:

Summary

This matter involves improper conduct by Durando in connection with the allocation and sale of new issue bonds by RBC Capital Markets, LLC ("RBC") to unregistered brokers known as "flippers." Between January 2014 and December 2017 (the "relevant period"), Durando served as Head of RBC's syndicate desk.

During the relevant period, 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, the syndicate desk did not always follow the standard methodology, instead sometimes allocating some bonds to flippers ahead and instead of institutional customer and dealer orders when orders exceeded the bonds available. In connection with one 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.

Durando, on more than one occasion, did not allocate bonds in accordance with the standard methodology. He also participated in the decision to allocate bonds to one of the flippers in the offering where they placed retail orders with RBC although he knew that the flipper did not meet the issuer's retail eligibility criteria.

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

Respondent

1. **Jaime L. Durando**, age 62, resides in Short Hills, New Jersey. Durando joined RBC as a registered representative in 2006 and, since 2009, he has served as Head of the firm's syndicate desk in the municipal Sales, Trading and Syndication group (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

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.

new issue bonds. RMR was not registered with the Commission. The Commission filed an enforcement action against RMR and its associates in August 2018.²

4. **Core Performance Management, LLC (“CPM”)** was a Florida limited liability company located in Boca Raton, Florida that was dissolved on July 27, 2016. During the relevant period, 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 2018.³

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.

RBC’s Standard Methodology for Allocating Bonds in Primary Offerings

7. During the relevant period, 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:

- 1st priority: Orders for Customers

² *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.

³ *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).

- 2nd 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)
- 3rd priority: Orders for Broker-Dealers other than [RBC] and syndicate members
- 4th 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 2nd, 3rd and 4th 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.

Durando Participated in the Improper Allocation and Sale of New Issue Bonds to Flippers

11. During the relevant period, when serving as sole underwriter or senior syndicate manager, RBC's underwriters on the syndicate desk did not always adhere to the standard methodology set forth in the Policy and the Notices in the absence of different priority instructions from issuers. Instead, on some occasions when orders exceeded the new issue bonds available, underwriters on the syndicate desk prioritized orders for flippers over institutional customer and dealer orders. As a result, the flippers' orders "crowded out" institutional and dealer orders that should have been filled first. Further, the syndicate desk failed to document these deviations from the standard methodology or the reasons for them. Durando, on more than one occasion, did not allocate bonds in accordance with the standard methodology and allocated some bonds to orders for flippers ahead of higher priority institutional customer and dealer orders.

12. In one offering during the relevant period, the syndicate desk also allocated bonds to flippers ahead and instead of retail customers although the flippers did not meet the issuer's retail eligibility criteria. 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, a RBC salesperson assigned to

cover the flippers submitted two orders for RMR and a third 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. Durando was the senior underwriter for the offering, and he and the Head of the Municipal Group decided which orders to allocate bonds. Although Durando and the Head of the Municipal Group knew that flippers were not retail customers and that they did not meet the issuer's retail eligibility criteria, they 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.

Legal Discussion

Durando Violated MSRB Rule G-17

13. 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).

14. As discussed above, on more than one occasion, Durando did not allocate bonds in accordance with the standard methodology. Additionally, in one offering where RBC had received issuer priority instructions, Durando participated in the decision to allocate some bonds to retail orders for one flipper ahead and instead of other retail orders when he knew that the flipper did not meet the issuer's retail eligibility criteria for the offering.

15. By this conduct, Durando willfully⁴ violated MSRB Rule G-17.

Durando Violated MSRB Rule G-11(k)

16. 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

⁴ "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)).

customer names or social security numbers); and (v) the par amount of the order.⁵

17. As discussed above, in connection with a November 2015 offering, Durando participated in the decision to allocate some bonds to fill “retail” orders for one flipper that were submitted to RBC’s syndicate desk, which was serving as senior syndicate manager, during the retail order period. Durando knew that the flipper did not meet the issuer’s retail eligibility criteria, but nonetheless authorized the allocation of bonds to the flipper as retail.

18. By this conduct, Durando willfully violated MSRB Rule G-11(k).

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

19. 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.

20. As a result of the negligent conduct described above and his willful violations of MSRB Rules G-11(k) and G-17, Durando 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. Durando cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act.

B. Durando is censured.

C. Durando shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000.00 to the Securities and Exchange Commission, of which a total of \$8,333.33 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$16,666.67 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.

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

⁵ 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.

- (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, 24th Floor, Boston, MA 02110.

E. 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